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UNCITRAL rules of procedure and methods of work

Note by the Secretariat

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I. Introduction

1. At its fortieth (Vienna, 25 June–12 July and 10-14 December 2007) and forty-first (New York, 16 June–3 July 2008) sessions, the Commission considered the issue of its working methods on the basis of the following documents: the observations and proposals by France on the working methods of the Commission (A/CN.9/635); the observations by the United States on the same topic (A/CN.9/639); notes by the Secretariat on the rules of procedure and methods of work of the Commission (A/CN.9/638 and Add.1 to 6 and A/CN.9/653); and notes by the Secretariat transmitting the comments received from States on document A/CN.9/653 prior to the Commission's forty-first session (A/CN.9/660 and Add. 1 to 5).¹ (These and most of the other documents cited hereunder are available on the UNCITRAL website: www.uncitral.org.)

2. At its forty-first session, the Commission requested the Secretariat to prepare, on the basis of the note by the Secretariat (A/CN.9/653), a first draft of a reference document addressing decision-taking, the status of observers in UNCITRAL and the preparatory work by the Secretariat, for use by chairpersons, delegates, observers and by the Secretariat itself. It was understood that the reference document should be somewhat more normative in nature than document A/CN.9/653. While the term "guidelines" was most often used to describe the future reference document, no decision was made as to its final form. The Secretariat was requested to circulate the draft reference document for comments by States and interested international organizations and to prepare a compilation of those comments for consideration by the Commission at its forty-second session.²

3. The present document is submitted pursuant to that request. It addresses decision-taking, the status of observers in UNCITRAL, and the working methods of the Commission's secretariat. It is based on existing practice of UNCITRAL. Without prejudice to the Commission's decision on the matter, the materials in the current document are presented in the form of draft guidelines.

II. Draft guidelines for the preparation and conduct of UNCITRAL meetings, based on the established practice of UNCITRAL

A. Purpose

4. These guidelines are for use by chairpersons, delegates, observers and the secretariat of the United Nations Commission on International Trade Law (UNCITRAL). As decided by the Commission at its first session, the rules relating to the procedure of committees of the General Assembly as well as rules 45 and 60 would apply to the procedure of the Commission. The Commission further decided that on matters not covered by these rules, the Commission would be guided by the

¹ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17 (A/62/17)*, Part one, paras. 234-241, and Part two, paras. 101-107; and *ibid.*, *Sixty-third Session, Supplement No. 17 (A/63/17)*, paras. 375-381.

² *Ibid.*, *Sixty-third Session, Supplement No. 17 (A/63/17)*, para. 381.

general principle that the rules of procedure of the General Assembly would apply *mutatis mutandis* to the Commission as may be appropriate for the performance of its functions.³

5. These guidelines are not exhaustive: they address only a number of procedural issues that commonly arise in the Commission and its secretariat.

B. Decision-taking

1. General

6. Decisions in the Commission are taken by member States of the Commission. Views of non-member States and observer organizations are for the benefit of member States who may take such views into account in determining their positions on the issue to be decided upon.

7. The presence of a majority of the members of the Commission is required for taking decisions (rule 108 of the Rules of Procedure of the General Assembly⁴). As described in section 2 below, the practice in the Commission has been to take decisions by consensus. In the light of this practice, the rules on the quorum have been applied with flexibility: all members that are physically present in the room as well as those members that confirmed to the Secretariat their participation at the session have been counted as present. Where decisions have to be taken by vote (it should be noted in this context that formal voting in the Commission took place only once, on a purely organizational matter⁵), only those members of the Commission physically present in the room are counted. Non-member States and observer organizations are not counted for establishing the quorum.

2. Consensus as the preferred method for taking decisions

8. The practice in the Commission has been to take decisions by consensus. At its first session, the Commission decided that the decisions in the Commission should as far as possible be reached by way of consensus, but in the absence of a consensus, decisions should be taken by a vote as provided for in the relevant rules of procedure of the General Assembly.⁶ Throughout the history of UNCITRAL, most recently at the Commission's forty-first session,⁷ it was consistently reaffirmed that consensus should remain the preferred method of taking decisions in the Commission since it is more reflective of the collaborative spirit that characterizes the deliberations in UNCITRAL.

9. This method permits the Commission, whose members are States with different social-economic systems, different levels of development and different

³ A/7216, para. 16.

⁴ At the date of this note, the Rules of Procedure of the General Assembly are contained in document A/520/Rev.17.

⁵ At the Commission's eleventh session, in 1978, a formal vote took place 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 a decision at that session. See A/33/17, paras. 97 and 101-102.

⁶ A/7216, paras. 18, 35, 40 V and 44.

⁷ A/63/17, para. 377.

legal systems and traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. It is conducive to achieving a larger cooperation among countries having different legal, economic and social systems and ensuring that the uniform rules derived from the work of the Commission are generally acceptable.⁸ It would not be conducive to the harmonization of commercial laws if some provisions or instruments were approved by a small majority.⁹

10. In addition, this practice is consistent with the long-established and common practice in the General Assembly, its committees, subsidiary organs and plenipotentiary conferences convened under the United Nations auspices, to operate on the basis of consensus.¹⁰ The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly 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.”¹¹ This conclusion of the Special Committee, among others, was approved by the General Assembly in its resolution 2837 (XXVI) of 17 December 1971, in which it declared the conclusions to be useful and worthy of consideration by the Assembly, its committees and other relevant organs, and decided that they should be annexed to its Rules of Procedure.

11. Consensus is generally understood to mean adoption of a decision without formal objection and vote.¹²

12. Consensus may not necessarily reflect unanimity of opinion, namely, complete agreement as to substance and a consequent absence of reservations,¹³ and should therefore be distinguished from unanimity, i.e., the decision-taking by a vote wherein no negative votes are cast, albeit with abstentions. There are numerous occasions in the United Nations practice where States make declarations or reservations to a matter at issue while not objecting to a decision being recorded as taken by consensus.¹⁴ Consensus in the Commission is based on the substantially prevailing view, a flexible notion that does not embody a pre-defined mode of calculation and is characterized by the absence of a formal objection resulting in a request for a vote.

13. Declarations or reservations to the substantive matter at issue or a part thereof in the absence of the formal objection to a decision being recorded as taken by consensus do not block the adoption of the decision by consensus. Those dissenting

⁸ See, e.g., 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.

⁹ See, e.g., A/7214, para. 159; and A/9015/Rev.1, para. 556.

¹⁰ See the legal opinion in *United Nations Juridical Yearbook, 1987* (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

¹¹ Rules of Procedure of the General Assembly, paragraph 104 of annex IV.

¹² See the legal opinion in *United Nations Juridical Yearbook, 1987* (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

¹³ Based on the wording of the legal opinion in *ibid.*

¹⁴ *Ibid.*

from the general trend may make their position or reservation known and placed on the record.¹⁵

14. The chairperson plays an important role in determining the existence and the exact nature of the consensus.¹⁶ In practical terms, when a chairperson announces that it is her/his understanding that the Commission wishes to take a decision by consensus, the following scenarios are possible:

(a) If the announcement is met by silence or explicit expression of support of member States of the Commission, the chairperson can declare the decision taken by consensus;

(b) If an objection to the decision being recorded as taken by consensus is lodged by a member State of the Commission, the chairperson gives the floor to the objecting delegation to formulate the grounds for its objection. The chairperson may wish at this stage to explain to the objecting delegation that a formal objection by a delegation to a decision being adopted by consensus does not have effect akin to a veto but is to be treated as an implicit request for formal voting. The chairperson may wish subsequently to seek confirmation of the delegation's intention. If a vote is requested by the objecting delegation or another member State of the Commission, the chairperson proceeds to formal voting (see section 3 below). In the absence of such a request for a vote, the chairperson should decide whether further negotiations seem desirable or whether the Commission should consider to proceed to formal voting (see further paragraphs 18 and 19 below);

(c) If a delegation announces that it is not participating in the decision-taking but does not prevent the chairperson from stating that the decision has been adopted by consensus, the chairperson can make such a statement and then, in effect, the situation would be viewed as if such a State was not present when the decision was taken;¹⁷

(d) Those delegations which do not expressly indicate that they do not participate in a consensus are deemed to have participated in it;¹⁸

(e) Non-member States and observer organizations are not formally called upon to express their views when consensus is being determined.

¹⁵ Based on the wording of the legal opinion in *ibid.*, 1982 (United Nations publication, Sales No. E.89.V.1), p. 177, under item 16; *ibid.*, 1983 (United Nations publication, Sales No. E.90.V.1), p. 172, under item 11, para. 3; and *ibid.*, 1987 (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

¹⁶ It should be noted that the chairperson, in the exercise of her/his functions, remains under the authority of the Commission (rule 107 of the Rules of Procedure of the General Assembly), which may overrule her/his decisions by a majority of the members present and voting (rule 125 of the same rules). It is therefore recommended that, as a general rule, before the chairperson announces her/his rulings, s/he seeks views from the member States of the Commission.

¹⁷ Based on the wording of the legal opinion in *United Nations Juridical Yearbook, 1987* (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

¹⁸ *Ibid.*

3. Voting in the Commission as the Charter-given right of United Nations Member States

15. Under the United Nations Charter, Member States of the United Nations enjoy the right to exercise a vote.¹⁹ In an intergovernmental organ of limited membership, such as the Commission, the right to vote is reserved only for full members of that organ.²⁰

16. Thus, if a vote is formally requested by a member State of the Commission, the vote shall take place regardless of the views of the majority, even of a substantial majority. In such situations, the chairperson cannot declare consensus by disregarding a demand for a vote even by one member State of the Commission.²¹

17. Apart from that Charter-based consideration, there may be other appropriate circumstances and considerations justifying recourse to voting. Differing views with respect to the approach to specific problems are inevitable and the consensus method should not be allowed to block the solutions to these problems or used merely to satisfy a “dissident minority”.²²

18. Voting should always be regarded as an exceptional procedure that would not allow UNCITRAL to fulfil its mandate if it became common practice. In the elaboration of legislative standards such as those prepared by UNCITRAL, tens of decisions may have to be made in the course of a single day, for example when each subparagraph of a draft legislative text is under review. Apart from expenses (conference resources and time) involved in taking such series of decisions by vote, taking them by a simple majority may increase the risk that, in the course of the discussion, decisions are taken in isolation, to the detriment of the coherence of the legislative text as a whole.

19. Alternatives to formal voting should therefore always be explored first. The Commission may for example decide to take indicative votes of [member] States [and observer organizations] on the proposals to determine which level of support the proposals gain and whether it is feasible to achieve consensus.²³ On the basis of the results of the indicative voting, the Commission may decide to continue negotiations, during which any delegation dissenting from the general trend may decide to join the existing consensus, or request that its reservations be placed on the record (see paragraphs 12 and 13 above). The Commission may decide, instead of taking a vote, to place the provisions on which reaching consensus is not possible within square brackets, or to present alternative formulations, for subsequent consideration.

¹⁹ See Article 18 of the United Nations Charter.

²⁰ Based on the legal opinion in *United Nations Juridical Yearbook, 1971* (United Nations publication, Sales No. E.73.V.1), p. 196.

²¹ Based on the legal opinion in *United Nations Juridical Yearbook, 1987* (United Nations publication, Sales No. E.96.V.6), pp. 174-175, under item 5.

²² See, e.g., A/7408, para. 9; A/8146, para. 13; and A/9408, para. 18.

²³ See the legal opinion in *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 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 of the Commission do not confirm this.

C. Status of non-member States, observer organizations and other persons and entities in UNCITRAL

1. Non-member States

20. Non-member States have been invited to attend sessions of the Commission and its subsidiary organs. Pursuant to General Assembly's resolution 31/99, paragraph 10 (c), "governments of Member States that are not members of the United Nations Commission on International Trade Law are entitled, when they so request, to attend the sessions of the Commission and its Working Groups as observers." In its subsequent resolutions, the General Assembly reaffirmed the importance of the participation of observers from all States at sessions of the Commission and its working groups.²⁴

21. As noted in paragraph 15 above, it is a well-established rule in the United Nations that the right to vote is reserved for full members of an intergovernmental organ. As regards decision-taking by consensus or without a vote, these terms are commonly interpreted in the General Assembly and its committees and other subsidiary organs as meaning decision-taking with participation of only members of the organ concerned. Representatives of non-member States may therefore participate in the deliberations of the Commission but not in formal decision-taking. They may attend all formal and informal meetings of the Commission and its subsidiary organs. The possibility exists for the organ concerned to decide that exceptional circumstances require that the meeting be held in private with participation of only member States of the Commission (see rule 60 of the Rules of Procedure of the General Assembly and section 3 below). It may be noted that there is no recorded use of that possibility in UNCITRAL. Representatives of non-member States may make statements at the meetings upon invitation of the chairperson, including in reply to statements by member States, and may circulate written proposals/documents.

22. It has been the long-existing practice in the Commission and its subsidiary organs to allow representatives of non-member States to serve occasionally and exceptionally as officers of the Commission and its subsidiary organs in their personal capacity.²⁵ This practice has proved to be useful in the light of the changing membership of UNCITRAL. In particular, it has ensured the uninterrupted chairmanship of a working group during its work on a project, which significantly contributes to the quality and speed of the work.

²⁴ See, e.g., resolutions 36/32, para. 9; 37/106, para. 7 (b); and 38/134, para. 7 (c). In some other resolutions, the General Assembly stressed the value of participation by States at all levels of economic development, including developing countries, and from different legal systems, in the process of harmonizing and unifying international trade law (see, e.g., resolutions 40/71, 41/77, 42/152, 43/166, 47/34, 48/32, 49/55, 50/47, 51/161, 52/157, 53/103, 54/103, 55/151, and 56/79, preambular paragraphs). In its resolutions 3108 (XXVIII) and 57/20, the General Assembly expressed conviction that wider participation of States in the work of the Commission would further the progress of its work.

²⁵ See A/CN.9/638/Add.2 and Add.5, in both para. 40.

2. Observer organizations

23. Sessions of the Commission and its subsidiary organs are open to representatives of international governmental and non-governmental organizations invited by the Secretariat on behalf of the organ concerned (observer organizations).²⁶

24. The General Assembly, in its resolution 2205 (XXI) establishing UNCITRAL, laid down the basis for collaboration and coordination of UNCITRAL with various organizations active in the field of international trade law.²⁷ Since the early years of the Commission, attendance at sessions of the Commission and its working groups by relevant organizations has been regarded as one of the appropriate and effective means to achieve collaboration and coordination between UNCITRAL and these organizations.²⁸ This arrangement enables the Commission and its subsidiary organs to secure expert information or advice from organizations having special competence in the subjects under consideration by the Commission or its subsidiary organs. The General Assembly, on several occasions in its resolutions, affirmed the importance of the participation of observers from interested international organizations at sessions of the Commission and its working groups.²⁹

25. United Nations organs, specialized agencies brought into relationship with the United Nations, and organizations and entities enjoying observer status with the General Assembly are permitted to participate in the sessions and the work of the General Assembly and its subsidiary organs. A general rule has developed through practice according to which these entities participate only with regard to items in which they have a functional interest. They themselves determine the subjects of their interest and therefore the sessions of the organs of the General Assembly which they wish to attend.³⁰ It has therefore been the practice of the Secretariat to invite these organizations to the sessions of the Commission or its subsidiary organs upon their request. The same practice has been usually followed with respect to all international intergovernmental organizations.

26. The invited observer organizations generally have been international in focus and membership. They were invited with the goal to achieve in sum a balanced representation at the sessions of the major viewpoints or interests in the relevant fields in all areas and regions of the world. The notion of “international organizations” has been interpreted broadly as encompassing regional and subregional organizations, as well as other organizations with demonstrated international expertise.

27. The Secretariat may be requested by the Commission or its subsidiary organs to invite a specific organization to the relevant session. It may also receive a request

²⁶ For the general authority given to the Secretariat in this respect at the Commission’s first sessions, see A/7216, para. 56; A/7618, para. 147; and A/8017, paras. 189-190.

²⁷ See section II, paras. 8 (a, c and f-h), 11 and 12, of the resolution.

²⁸ See, e.g., A/7618, paras. 147 and 155; A/8017, paras. 189-190; and A/40/17, para. 351.

²⁹ See, e.g., resolutions 36/32, para. 9; 37/106, preambular para. 3 and operative para. 7 (b); 38/134, para. 7 (c); and 57/20, preambular para. 3.

³⁰ See A/CN.9/638/Add.5, paras. 6, 7 and 11, and therein, references to the legal opinions in *United Nations Juridical Yearbook, 1975* (United Nations publication, Sales No. E.77.V.3), pp. 166-167; and *ibid.*, 1980 (United Nations publication, Sales No. E.83.V.1), pp. 188-189, under item 7.

from an organization to be invited to a session or it may itself take the initiative to invite an organization on the basis of its assessment of the relevance and potential contribution of the organization to the deliberations at the session concerned. Where the Secretariat has to make such an assessment and doubts arise about the usefulness of inviting a specific organization to participate in the session, the Secretariat may expressly seek the views of member States of the Commission.³¹

28. In making an assumption as to whether a non-governmental organization should be invited, the Secretariat generally considers whether the organization is international in focus and membership (see paragraph 26 above). However, the main criteria taken into account have been:

(a) Conformity of the aims and purpose of the organization with the spirit, purposes and principles of the Charter of the United Nations;

(b) Ability of the organization to contribute meaningfully to the deliberations at the session in view of the organization's recognized competence or interest in the subject matter under consideration at the session and its role in representing a particular sector or industry;

(c) Legal or commercial experience to be reported upon by the organization, which is not represented by other organizations already participating in the session.³²

28 bis. The status of a non-governmental organization with ECOSOC has not been a decisive factor in granting requests for invitation. This has been in line with the legal opinions issued by the United Nations Office of Legal Affairs, according to which the General Assembly does not consider itself bound by decisions of other United Nations organs taken as regards questions of representation.³³ With particular reference to ECOSOC resolution 1996/31, one of the legal opinions states that, being a resolution of a separate principal organ of the United Nations, the resolution cannot bind the General Assembly, its Main Committees or subsidiary organs or international conferences convened by the General Assembly unless the Assembly so decides.³⁴

29. The Commission has a final say with respect to participation of any organization in its sessions or sessions of its subsidiary organs. It may invite an organization to a particular session(s) or decide against the Secretariat continuing inviting any particular organization. In this connection, the Commission has regard to its terms of reference, structure, functions, methods of work, its practice

³¹ For lists of non-governmental organizations being invited to and attending the sessions of the Commission and its working groups, please see the UNCITRAL website (www.uncitral.org).

³² Similar criteria are found in rules of procedure of other organs of the United Nations, for example the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD). TD/B/16/Rev.4, rule 77 and annex III.

³³ See e.g., *United Nations Juridical Yearbook, 1979* (United Nations publication, Sales No. E.82.V.1), pp. 166-168, under item 2, last paragraph.

³⁴ See the advance version of the 2000 *United Nations Juridical Yearbook* at <http://www.un.org/law/UNJuridicalYearbook/index.htm>, p. 59. In some cases, the General Assembly explicitly decided that ECOSOC resolution 1996/31 governs accreditation of non-governmental organizations to its organs.

regarding the relationships with organizations as well as any relevant recommendations or instructions from the General Assembly.³⁵

30. The representatives of an invited observer organization may attend all formal and informal meetings of the Commission and its subsidiary organs unless the organ concerned decides that the meeting is to be held in private with participation of only member States of the Commission or only member and non-member States (see rule 60 of the Rules of Procedure of the General Assembly and section 3 below). However, no such private meeting is known to have taken place so far in UNCITRAL history. Upon invitation of the chairperson, representatives of the observer organizations may represent the views of their organizations on questions within the scope of their competence as related to the points under consideration by the Commission or the subsidiary organ concerned. The order of their statements, including in reply to statements made by States, is determined by the chairperson with a view to ensuring comprehensive, uninterrupted and structured debates that benefit from expert contributions of the observer organizations.

31. The observer organizations do not participate in decision-taking, do not sponsor or co-sponsor substantive proposals (including amendments) or procedural motions, and should not raise points of order or challenge rulings by the chairperson.³⁶ The chairperson is, however, expected to permit them to indicate objections to procedural matters directly affecting their interest, which might then be converted into a formal point of order by the representative of any member State of the Commission. As a general rule, representatives of the observer organizations should not be elected in their personal capacity as officers of the Commission or its subsidiary organs.

32. Written proposals by the observer organizations may be circulated by the Secretariat to the Commission and/or its relevant subsidiary organ unless decided otherwise by the Commission or the subsidiary organ concerned.

3. Other persons and entities

33. As a general rule, meetings of the Commission and its subsidiary organs are public unless decided otherwise by the organ concerned (see rule 60 of the Rules of Procedure of the General Assembly).

34. The presence in the room of the so-called silent observers during public meetings of intergovernmental bodies is common in the United Nations. These silent observers may be members of the public who gained access to the United Nations buildings through guided tours, or individual experts, students and other interested members of the public and representatives of organizations invited by the Secretariat to observe, without access to the floor, a specific session upon their request. They may also be representatives of other organizations, intergovernmental or non-governmental, or press correspondents, with general or ad hoc access to the United Nations buildings. As such, they may attend sessions of any intergovernmental body regardless of whether a specific invitation to the session has

³⁵ Based on the legal opinions in *United Nations Juridical Yearbook, 1975* (United Nations publication, Sales No. E.77.V.3), p. 166, para. 13; and *ibid.*, 1980 (United Nations publication, Sales No. E.83.V.1), pp. 188-189, under item 7.

³⁶ *Ibid.*

been issued to them by the Secretariat, unless the intergovernmental body decides to meet in a private/closed meeting format. In such case, the Secretariat ensures that only those to whom the meeting is open are present in the room.

35. Since the terms “public/open” or “private/closed” meetings are not well defined in United Nations practices,³⁷ the Commission or its subsidiary organ, in deciding to meet in a private/closed meeting format, may wish to specify to whom the meeting is closed or open. The decision may not be discriminatory. The following variants are possible:

(a) The meeting may be closed only to the public. This seems to be the common understanding of the term “closed meeting” in the United Nations at present.³⁸ For the Commission’s purposes, the term “the public” should mean everyone other than member and non-member States, the observer organizations as defined in paragraph 23 above and the Secretariat staff;

(b) The meeting may be closed to the public and representatives of the observer organizations; or

(c) The meeting may be closed to all but member States of the Commission and essential Secretariat staff.³⁹

36. Special arrangements may be justifiable for the participation of the mass media depending on various factors, including the means intended to be used by them for the coverage of the meetings in question. For example, taking notes or audio- or video-recording can be done by representatives of the mass media, and in fact by any member of the public, having access to open meetings of the Commission or its subsidiary organs, without much, if at all, disruption of the meeting. Live transmission or interviewing, on the other hand, may be disruptive and should therefore be generally allowed outside the conference rooms or after the meetings. The Commission or its subsidiary organ, as the case may be, may therefore make arrangements with representatives of the mass media regarding the coverage of its meetings on a case-by-case basis.

D. Working methods of the UNCITRAL secretariat

1. General

37. The secretariat has discretion in determining its working methods.

³⁷ 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)*, pp. 146-147.

³⁸ *Ibid.*

³⁹ Based on the legal opinion in *United Nations Juridical Yearbook, 1971* (United Nations publication, Sales No. E.73.V.1), pp. 195-196.

2. Statements by the secretariat at the meetings of the Commission and its subsidiary organs

38. Representatives of the secretariat may at any time make either oral or written statements to the Commission or its subsidiary organ concerning any question under consideration by it.⁴⁰

3. Recourse by the secretariat to the assistance of outside experts

39. The secretariat may have recourse to the assistance of outside experts from different legal traditions and affiliations, such as government officials, academics, practising lawyers, judges, bankers, arbitrators and members of various international, regional and professional organizations.⁴¹

40. The secretariat decides on the appropriate form that the assistance of outside experts may take depending on the needs of the secretariat and the resources available to it. Such assistance takes most commonly the form of ad hoc consultations (by e-mail, phone, videoconferencing etc.), meetings of groups of experts, conferences and colloquiums in a particular field.

41. When the secretariat decides to convene an expert group meeting, information about the meeting (dates and format of the upcoming meeting, subject(s) to be discussed and participants invited to the meeting) is made available to States upon their request. Conferences and colloquiums are broadly advertised, particularly through the posting of the relevant information about the events on the UNCITRAL website.

42. For the avoidance of doubt regarding the nature of expert group meetings convened by the UNCITRAL secretariat to seek the views of outside experts, these meetings do not involve intergovernmental processes and should be regarded solely as a working method of the secretariat. They are therefore to be distinguished from intergovernmental meetings, including informal meetings of (member) States convened by the Secretariat. Rules applicable to intergovernmental meetings, including rules on multilingualism, are not applicable to the secretariat's expert group meetings.

43. The working language at expert group meetings convened by the secretariat is most commonly English. As demonstrated by practice so far, the use of English only has not hampered but rather facilitated the consultation process at such meetings. Nevertheless, the UNCITRAL secretariat is committed to endeavour, resources permitting, to provide at such meetings translation and interpretation in French (as the other working language of the Secretariat). In addition or alternatively, as the case may be, the Secretariat may find it necessary, under certain circumstances, to provide at such meetings translation and/or interpretation into another official

⁴⁰ Based on rule 112 of the Rules of Procedure of the General Assembly.

⁴¹ Already in its early years, the Commission envisaged that the UNCITRAL secretariat would hold consultations with the organs and organizations concerned as may be appropriate in the different phases of the work. In particular, it envisaged that studies and other preparatory documents would be prepared by the secretariat with the assistance of experts, if necessary, and budget permitting. The Commission agreed that budget and planning estimates prepared by the secretariat for subsequent years should take into account the need for obtaining the services of consultants or organizations with special expertise in matters dealt with by the Commission, in order to enable the Commission to carry out its work. See, e.g., A/8017, paras. 219-221.

language of the United Nations (for example, when expert advice from a particular country or region is required and the experts coming from that country or region do not have a good command of English or French but they can communicate in another official language of the United Nations). In its requests for translation/interpretation services during such meetings, the secretariat has to take into account that the requested services can only be provided on “as available” basis, since intergovernmental meetings, formal or informal, have priority access to translation and interpretation services.

44. As a general rule, no report of expert group meetings is issued. Results of the meetings are reflected as appropriate in the documents prepared by the Secretariat for the Commission and/or its subsidiary organs, as the case may be.

45. The secretariat is not bound by the advice of experts. It formulates its proposals to the Commission or its subsidiary organs under its own responsibility and in accordance with the specific instructions received from the Commission or its subsidiary organs, if any, also bearing in mind the policies expressed in the relevant General Assembly resolutions and decisions made previously by the Commission.
