



# General Assembly

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## United Nations Commission on International Trade Law Forty-fourth session

### Summary record of the 940th meeting

Held at the Vienna International Centre, Vienna, on Wednesday, 6 July 2011, at 2 p.m.

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

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*The meeting was called to order at 2.15 p.m.*

#### **Election of officers** (*resumed*)

1. **The Chairperson** invited the Group of Eastern European States to submit a nomination for the office of Vice-Chairperson of the Commission.

2. **Mr. Lebedev** (Russian Federation), speaking on behalf of the Group of Eastern European States, nominated Mr. Jezewski (Poland) for the office of Vice-Chairperson of the Commission.

3. *Mr. Jezewski (Poland) was elected Vice-Chairperson by acclamation.*

#### **Date and place of future meetings** (*resumed*)

4. **The Chairperson**, referring to the Secretary-General's proposal that the Commission no longer hold any of its sessions in New York, said that one possible response would be to indicate that, while Commission members understood the budgetary constraints faced by the United Nations, they were unanimously opposed to the discontinuation of meetings in New York. Such a step would make it more difficult to ensure the full representation of States at both plenary and working group sessions, which would be detrimental to the Commission's central function of harmonizing trade law. It would also damage the perception of the Commission and its work.

5. However, in recognition of the need to cut costs, the Commission might wish to make an alternative proposal — to reduce its total meeting time from 15 weeks a year to 14, which would result in a saving of \$130,000 a year, an amount similar to the projected saving to be made from discontinuing meetings in New York. If the Commission were to agree to such a proposal, it should be presented to the Fifth Committee as an alternative to the discontinuation of New York meetings and not as an additional measure; it would be regrettable if the Commission were to lose a week of meeting time on top of the loss of its travel budget.

6. **Ms. Sabo** (Canada) said that her delegation supported efforts within the United Nations to reduce costs and recognized the need, however unwelcome, for a reduction in the budgets both of the International Trade Law Division and of UNCITRAL. Its support for the statement that the Commission was unanimously opposed to the discontinuation of New York meetings

was therefore entirely contingent on savings being made elsewhere.

7. She welcomed the proposal to reduce the Commission's meeting time; one way to achieve that aim would be to reduce the frequency of working group sessions. If the Working Group on Security Interests completed its current project in 2012, further sessions of the Group could be postponed for a year. In addition, it might be advisable not to start new projects at a time of budget constraints.

8. Another way of reducing costs would be to reduce the number of Secretariat staff members sent to New York for sessions. Over a two-year period, the cost of sending one member of the Secretariat staff to New York was about \$16,600. However, it was important to ensure that working groups had adequate Secretariat support. In most cases, an appropriate number of staff members for a working group session would be two: one senior legal officer acting as Secretary and one less experienced legal officer. It was not generally necessary to have more than two staff members present.

9. **The Chairperson** said that reducing the number of working group sessions was certainly one way to reduce the Commission's overall meeting time. However, a more general proposal to cut one week of meeting time from the total would allow the Commission greater flexibility in deciding how to use its remaining time. For example, if in a given year the Commission did not need a full three-week session, it could decide to use part of the time for working group meetings instead.

10. **Mr. Sorieul** (Secretary of the Commission) said that, even if the Commission were allowed to keep its travel budget for sessions in New York, it would still be necessary to reduce costs by sending fewer Secretariat staff members to those sessions. In recent years, exchange rate changes had increased the cost of paying for travel from Vienna, and that trend was likely to continue. The Secretariat was already attempting to reduce staff travel costs, for example by arranging two working group sessions back to back, and it would continue its efforts in that regard. However, a degree of flexibility should be retained, so that, for example, where it was necessary to send three staff members to a session instead of two, such a requirement could be accommodated.

11. **The Chairperson** said that the Commission could undertake to consider further ways of reducing costs for every working group session held in New York. However, it was difficult to quantify the potential cost savings in advance, since the workload could vary greatly from one session to another. For the same reason, flexibility as to staffing levels should be maintained.

12. **Mr. González** (Argentina) said there was a tendency in certain quarters to forget that UNCITRAL was an intergovernmental body and that, as such, it was concerned not merely with technical issues but also with issues of a political and financial nature. The proposal under discussion would have a significant impact on its work, and it was therefore regrettable that no working document containing detailed information and figures had been produced to support its deliberations. Instead, the Commission was being forced to base its discussion on information provided orally. There was no clear argument for departing from the practice of alternating sessions between New York and Vienna. His delegation therefore endorsed the proposal that the Commission's unanimous support for maintaining that practice should be conveyed to the Secretary-General.

13. His delegation agreed that, in its response to the Secretary-General, the Commission should propose to reduce its meeting time from 15 weeks to 14 weeks a year. However, such a step on its own would not be sufficient to address the broader concern about the funding of the Commission's work. The response to the Secretary-General's proposal should therefore include a number of other points.

14. First, the current session had shown that most of the Commission's work could be accomplished in much less time than the three weeks normally allocated to a plenary session. The Commission should therefore take an immediate decision to reduce the standard length of its plenary sessions to two weeks, and could even consider scheduling a session of one week or one and a half weeks on a trial basis.

15. Second, a review should be carried out of the Commission's practice of holding two sessions of each working group every year. For the working groups with a clear mandate, two sessions a year were warranted, but for others that number was not justified. The number of sessions required by each working group should be determined year by year.

16. Third, it was surprising that only a partial appraisal of the working groups' activities had been carried out at the current session. A broader analysis, with inclusion of the issue of funding, should be conducted so as to establish a coherent strategy for the Commission's future work. For example, if the Commission wished to task a working group with considering the issue of microfinance, another working group should be wound down. Projects should have clear deadlines, so that work on them did not continue for years without producing results. The Commission should undertake to begin a strategic discussion along those lines at its next session with a view to reducing the number of working group meetings.

17. Lastly, the present number of Secretariat staff members was appropriate. It should not be reduced, since all of the staff members already had full workloads. Moreover, as indicated by the Chairperson, it was difficult to determine in advance how many staff members would be needed for each session. Micromanagement of staffing levels was therefore unacceptable.

18. **The Chairperson** said that the Commission might wish to make a distinction between the immediate requirement to save \$130,000 a year and the idea of a strategic review aimed at identifying further savings possibilities. Such a review was naturally desirable and necessary, but it should be an internal matter for the Commission. An offer to conduct such a review at the present stage might create an expectation that further substantial savings possibilities would be quickly identified.

19. **Ms. González Lozano** (Mexico) said that the practice of holding alternate sessions in New York and Vienna should be maintained. At the same time, UNCITRAL needed to play its part in the budget reduction efforts of the United Nations. In that context, her delegation supported the proposal to reduce the Commission's meeting time from 15 weeks a year to 14. It also supported the proposal made by the representative of Argentina for a wide-ranging review focused on strategy and not merely on cost-cutting. Colleagues in the Fifth and Sixth Committees should be kept informed of the issues under discussion.

20. Also, the Commission could consider asking the working groups to take a more in-depth look at the organization of their work. In some cases, informal consultations might be an appropriate way forward.

21. With regard to the number of Secretariat staff members attending meetings in New York, his delegation welcomed the efforts being made to accommodate the needs of the working groups in a more efficient and effective manner, as outlined by the Secretary.

22. **Mr. Loken** (United States of America) said that his delegation welcomed the efforts being made within the United Nations to increase efficiency and reduce costs. However, the proposal to change the historical practice of holding alternate UNCITRAL sessions in New York and Vienna raised important policy questions, and alternative ways of making savings should be sought.

23. The proposed reduction of the Commission's meeting time from 15 weeks a year to 14 might present a problem in that, under the United Nations accounting system, the resulting saving might not be properly credited to the Commission's budget.

24. **Mr. Olivencia Ruiz** (Spain) said that, at a time of budgetary difficulties, it was necessary to reassess priorities. However, the "dual headquarters" arrangement for UNCITRAL was based on a long-established and politically important principle that should not be undermined by the budget situation. It was therefore necessary to find savings elsewhere, for example by reducing the amount of meeting time or documentation or by cutting travel costs. Also, the Commission should focus on improving its methods of work and making more efficient use of its time, so as to achieve the maximum results with the minimum resources.

25. **Ms. Keyte** (United Kingdom), having expressed agreement with the comments made by the representative of Spain, said that the United Nations system as a whole had been asked to achieve a budget reduction of 3 per cent. However, it was not clear what percentage was being suggested for UNCITRAL specifically, since no report or breakdown of figures had been prepared for the current agenda item. Her delegation agreed with the proposal to reduce the Commission's meeting time from 15 weeks to 14 weeks a year. Further reductions might be possible through simple measures aimed at increasing efficiency, such as starting meetings promptly, using all the time available, and ensuring that meeting agendas were well focused. As the Chairperson had indicated, the Commission did not need to commit itself to

further cuts at the present stage, but it should commit itself to seeking further savings possibilities in the future.

26. It was vital to work closely with colleagues in the Sixth and Fifth Committees and to keep them informed of the Commission's efforts to increase efficiency. In the immediate future, the Commission should consider whether further savings could be made on travel costs, staff attendance at meetings and documentation. Staff time and printing costs could be saved by producing shorter reports on working group meetings, for example. Such measures might not produce very large savings, but they would demonstrate to colleagues in New York that the Commission was serious in its efforts to increase efficiency.

27. Lastly, she agreed that the Commission should conduct a broad review of its strategy for the future. It should be proactive in considering how its aims could be achieved with maximum efficiency, rather than simply reacting to requests to make cuts.

28. **Mr. Phua** (Singapore) said that his delegation supported the current practice of holding alternate sessions in New York and Vienna, particularly as Singapore did not have a mission in Vienna. In addition, the "dual headquarters" arrangement gave the Commission's work a higher profile. Nonetheless, it was important for the United Nations, including UNCITRAL, to seek ways of achieving the same results with fewer resources or achieving greater results with the same resources. His delegation would welcome a thorough analysis of options for the future and their implications.

29. **The Chairperson** asked the Secretariat how a report on the Commission's future strategy might be prepared.

30. **Mr. Sorieul** (Secretary of the Commission) said that the Secretariat stood ready to prepare a document with a view to facilitating discussion of the streamlining of the Commission's work at the next session. However, budget decisions were taken in New York and not by the Commission, and it would be too late at that point to influence the budget for the 2012-2013 biennium.

31. The UNCITRAL Secretariat did not have direct access to the budget discussions in the Fifth Committee, but it had received from colleagues in New York copies of budget documents that indicated

that the proposed cut to the Commission's budget was 63.5 per cent. That was the extent of the savings that would be achieved by discontinuing meetings of the Commission and its working groups in New York.

32. Cuts had also been proposed in the budget for non-post expenditures of the International Trade Law Division: the amount allocated for the recruitment of consultants was \$60,000 over two years, a reduction of 23.6 per cent; \$180,000 had been allocated for the recruitment of experts, a cut of almost 18 per cent; the general travel budget was \$94,000, a cut of 20 per cent; the amount allocated for contractual services such as computer maintenance had been cut by 6.5 per cent to \$99,000; and the budget for office supplies had been reduced by 45 per cent. That left little room for manoeuvre; it would be difficult to achieve further savings without cutting posts. While the budget reduction requested by the Secretary-General for the United Nations as a whole was 3 per cent, the budgets proposed for the International Trade Law Division and UNCITRAL represented a cut of more than 5 per cent.

33. **The Chairperson** said that, while the Commission had no power to make budget decisions, the fact that it was being consulted about the proposed cuts was welcome. However, in order to respond to the proposals made, it needed appropriate information contained in a formal report and not simply conveyed orally. Moreover, such a report should focus not only on making cuts but also on the broader issue of increasing efficiency. It was important, for example, to start meetings on time so as to avoid wasting conference room resources.

34. **Mr. González** (Argentina), recalling the comments made by the United States representative, said that the Commission should point out, in its response to New York, that the proposed reduction in meeting time should be accounted for correctly. Also, Commission members should convey their concerns to colleagues in the Fifth and Sixth Committees so that they might support the Commission's position.

35. The Commission's response should not be overly specific about where cuts would be made; an assurance that the Commission would continue considering the issue should suffice.

36. Although decisions on the Commission's budget were taken in New York, it was vital for the Commission to provide input to the budget process

based on its expertise and experience. To that end, a working document should be prepared by the Secretariat for the next session so that the Commission did not have to rely on information provided orally, and the working document should be issued well before the session so that delegations might have time to consult with their capitals. The working document should be proactive, proposing a strategy that would both benefit the Commission and lead to cost reductions.

37. **Mr. Kerma** (Egypt) said that, in the present climate of austerity, the Commission was fully aware that it would have to accept its share of cuts. His delegation supported the proposals to make savings by reducing the Commission's annual meeting time to 14 weeks and by reducing the number of documents produced. Also, the Commission should try to improve its working practices. At the current session, the establishment of a drafting group to work on the UNCITRAL Model Law on Public Procurement had saved time in the plenary meetings and paved the way for an agreement.

38. The challenge for the Commission was to achieve the objectives set out in its mandate while striving to improve its working methods at a time of shrinking budgetary resources. Improved working methods would lead to greater efficiency in the long term, but they could not be achieved without an investment of resources in the short term. An in-depth study on that issue was needed.

39. **Mr. Bellenger** (France) said that his delegation would welcome a document that provided the information necessary for the Commission's discussions and offer some possible solutions.

40. With regard to future strategy, supporting the activities of six working groups represented a heavy burden for the Secretariat; perhaps the number of working groups should be reduced. For example, the Working Group on Security Interests could be wound down in the near future, on completion of its current project.

41. **Ms. Addario Dávalos** (Paraguay) said that the "dual headquarters" arrangement for UNCITRAL should be maintained. At the same time, there was clearly a need to find ways of achieving savings.

42. Commission members should consult with their counterparts in New York and coordinate their

approach to budget issues in the relevant Committees of the General Assembly.

43. **Ms. Sabo** (Canada) said that it was crucial not to contemplate cutting Secretariat posts as a means of achieving savings. The members of the Secretariat were already under considerable pressure in their efforts to fulfil all the tasks required of them by the Commission; indeed, some tasks had been outsourced and some working groups were unable to proceed with their work because the Secretariat was so thinly stretched. Moreover, cutting posts was ill-advised from the point of view of succession planning and staff development. The Secretariat should have a good mix of senior and junior staff and should be properly equipped to support the Commission in its work.

44. It was regrettable that no formal document with figures had been presented to the Commission in order to permit an informed discussion on budget reductions. Her delegation looked forward to considering, at the next session, a report that would enable the Commission to take decisions on priorities, in the light of the resources available.

45. **The Chairperson**, referring to the absence of a detailed report at the current session, said it should be borne in mind that the Secretariat was reacting to a developing situation as best it could.

46. **Mr. Gandhi** (India) said that the “dual headquarters” arrangement should be maintained, but it was nonetheless important to look for budgetary savings elsewhere. In that regard, his delegation supported the proposal to reduce the Commission’s meeting time from 15 weeks a year to 14. It looked forward to a detailed report, as Commission members needed clear facts and figures. Without them, it would be difficult to argue the Commission’s case with counterparts in the Fifth and Sixth Committees.

47. **Mr. Jezewski** (Poland) said that the Commission should seek immediate small efficiency gains that would send the right message to New York. Discussion of the budget situation should be linked with discussion of a long-term plan for the Commission’s work and of potential savings.

48. His delegation, which would like a report to be prepared by the Secretariat, was in favour of a reduction in the Commission’s meeting time from 15 weeks a year to 14.

49. **Mr. Lebedev** (Russian Federation) said that UNCITRAL was not alone in having to contemplate budget cuts; the entire United Nations system was affected.

50. It was difficult to make specific proposals without the benefit of a supporting document; nonetheless, a number of options that would not impair the effectiveness of the Commission’s work had been identified.

51. Departing from long-established principles would be detrimental not only to the work of the Commission but also to its standing as the United Nations body concerned with the legal aspects of the international economy.

52. The proposals made by delegations were worthy of consideration. However, they should perhaps not all be mentioned in the Commission’s response to the Secretary-General’s proposal. The Secretariat should prepare a document on the basis of the Commission’s discussions that did not commit the Commission to cuts that might hamper the continued implementation of the agreed workplan.

53. **Mr. Maradiaga Maradiaga** (Honduras) said that his delegation supported the continuation of the “dual headquarters” arrangement and the proposal to reduce the Commission’s meeting time. Since some of the working groups had overlapping mandates, merging them might help to increase efficiency. The Secretariat could advise on the practicalities of such a step.

54. **Mr. Piedra** (Observer for Ecuador) said that it was important to emphasize, when the Commission’s views were presented to the General Assembly, that the proposal to discontinue meetings in New York would hamper the ability of some States to participate fully in the Commission’s work, particularly those developing countries that did not have missions in Vienna.

55. In countries like Ecuador, there was little awareness of the work of UNCITRAL, which was sometimes perceived as an elite club for rich countries where the voice of the developing world was not heard. If it were made more difficult for developing countries to participate, that perception would only be reinforced.

56. **The Chairperson** said that every effort should be made to explain the Commission’s position to the General Assembly, and States should speak up in

defence of the Commission's proposal to reduce its meeting time. The Commission was unanimously opposed to the proposal to discontinue meetings in New York not simply on the grounds that such a step would hinder the Commission's work and damage the perception of UNCITRAL, but also as a matter of principle: it was vital to ensure that developing countries were able to participate.

57. He took it that, in its response to the Secretary-General's proposal, the Commission wished to make it clear that it had understood the need for budget cuts and had spent considerable time debating the issue. It would state its unanimous opposition to the discontinuation of meetings in New York and propose instead a reduction in meeting time from 15 to 14 weeks a year, which would achieve an equivalent saving that should be recognized as such even if it pertained to a different part of the budget. Further, the Commission would state that it had decided to carry out a fuller analysis of its methods of work and priorities. There was no need to indicate specific actions; they would be reflected in the Commission's report on the work of the session. If the Commission's proposal were not accepted and its New York sessions were discontinued, those sessions already scheduled to take place in New York in 2012 would have to be rescheduled at short notice. The Commission might wish to indicate in its response that it was aware of that possibility and was ready to address it should the need arise.

58. *It was so decided.*

59. **Ms. Sabo** (Canada) asked whether there was any problem that needed immediate attention with regard to the scheduling of the next session of Working Group I.

60. **Mr. Sorieul** (Secretary of the Commission) noted that the Commission had agreed that Working Group I would hold only one session within the next 12 months, not two as indicated in the Commission's agenda (A/CN.9/711). From the budgetary point of view, it would be wisest to hold that session before the end of 2011. Both Working Group I and Working Group VI wished to hold their sessions as late as possible in 2011, which raised the question of how to avoid a clash in their schedules. The Secretariat would try to resolve the issue before the end of the Commission's current session. The dates in November currently allocated to Working Group III might provide an option for rescheduling.

61. **Mr. Loken** (United States of America) noted that Working Group I was currently working on, and aiming to finalize, the draft revised Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement. However, his delegation believed that a working group was not, in fact, the most appropriate forum for that type of work, and it had therefore expressed support for the idea of holding only one session of Working Group I before the Commission's next session. If it were deemed important, for overriding budgetary reasons, to hold the Working Group I session in 2011, it should be scheduled as late as possible in the year in order to allow the maximum possible time for further work on the draft Guide.

62. **Mr. González** (Argentina) said that his delegation favoured holding only one session of Working Group I before the Commission's next session. If a session took place late in 2011, none should be held early in 2012. However, a decision needed to be taken as to the future of Working Group I beyond its next session.

63. **The Chairperson** said it was his understanding that there would be one session of Working Group I before the end of 2011 and no session early in 2012. The Commission would decide on the future of Working Group I at its next session. Now that there was an agreed way forward, the Secretariat would try to determine the scheduling of Working Groups I and VI before the end of the Commission's current session.

*The meeting was suspended at 3.55 p.m. and resumed at 4.05 p.m.*

#### **Role of UNCITRAL in promoting the rule of law at the national and international levels (resumed)**

64. *A panel discussion on the role of commercial law reforms in post-conflict reconstruction and the use of UNCITRAL texts in that context was held. Presentations were made by the following speakers: Ms. Judith Knieper (Deutsche Gesellschaft für Internationale Zusammenarbeit), Ms. Amanda Ashford (Organization for Security and Co-operation in Europe) and Mr. Jernej Sekolec (London Court of International Arbitration).*

*The meeting rose at 5 p.m.*