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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 97 and 99 (b) (agenda and organization of work), 99 (a), 101 and 103 (election of officers), and rule 100 (representation of Members) of the Rules of Procedure of the General Assembly in the Commission and its subsidiary organs.

D. Rules 97 and 99 (b): agenda and organization of work

2. Rule 97 reads as follows: “Items relating to the same category of subjects shall be referred to the committee or committees dealing with that category of subjects. Committees shall not introduce new items on their own initiative.”

3. The rule is accompanied by a footnote that refers to a number of provisions in the annexes to the Rules of Procedure of the General Assembly.¹ These provisions deal with more efficient allocation of agenda items among the plenary of the General Assembly and the Main Committees. Some of them are not applicable to the Commission. Those that are applicable raise the following considerations: (i) a rational distribution of agenda items;² (ii) earlier allocation of items so that member States might have more time to study them;³ (iii) referring more items directly to the plenary;⁴ (iv) avoiding the referral of the same questions or the same aspects of a question to the same subsidiary organ;⁵ (v) consultation with the Sixth Committee *inter alia* before making a recommendation to the General Assembly to request an advisory opinion from the International Court of Justice, to refer a matter to the International Law Commission, or to adopt any amendment to the rules of procedure of the General Assembly;⁶ (vi) initial consideration of substantive items in a subsidiary organ unless there are compelling circumstances requiring their consideration in plenary meeting;⁷ (vii) simplification of agenda by grouping or

¹ The footnote refers to paragraphs 22 and 23 of annex I entitled “Recommendations and suggestions of the Special Committee on Methods and Procedures of the General Assembly approved by the Assembly” (the recommendations reproduced in the Rules of Procedure are those endorsed by the General Assembly); paragraphs 1, 19 and 20 of annex II entitled “Methods and procedures of the General Assembly for dealing with legal and drafting questions”; paragraphs 25 to 28 of annex IV entitled “Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly”; paragraph 4 of annex V, entitled “Decision 34/401 on the rationalization of the procedures and organization of the General Assembly” (adopted by the General Assembly at its 4th, 46th, 82nd and 99th plenary meetings, on 21 September, 25 October, 29 November and 12 December 1979, on the recommendations of the General Committee); paragraph 3 of annex VI entitled “Conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning the rationalization of the procedures of the General Assembly”; and paragraph 4 of annex VII entitled “Conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning the rationalization of existing United Nations procedures”.

² See paragraph 22 of annex I and paragraph 25 of annex IV.

³ *Ibid.*, paragraph 26.

⁴ *Ibid.*, paragraph 27, and paragraph 23 of annex I.

⁵ See paragraph 28 of annex IV, and paragraph 3 of annex VI.

⁶ Paragraph 1 of annex II.

⁷ See paragraph 4 of annex V.

merging, to the extent possible, related items and, where it is appropriate for discussion of a particular item, by setting an interval of more than a year between the discussions on it;⁸ and (viii) consultations of the presiding officer with delegations on agenda simplification.⁹

4. Rule 99 (b) reads as follows: “Each Main Committee, taking into account the closing date for the session fixed by the General Assembly on the recommendation of the General Committee, shall adopt its own priorities and meet as may be necessary to complete the consideration of the items referred to it. It shall at the beginning of the session adopt a programme of work indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.”¹⁰

5. The rules and the accompanying provisions are applicable *mutatis mutandis* to the Commission’s allocation of agenda items among plenary, and sessional and intersessional subsidiary organs. The sections below describe the practice in the Commission with the formulation and adoption of its agenda for any given session, allocation of agenda items for consideration in plenary and in subsidiary organs, determination of duration of sessions and scheduling of meetings and organization of work during sessions.

1. Formulation of the Commission’s agenda

6. Since the first session of the Commission, the Commission’s agenda for any given session has been adopted on the basis of the annotated provisional agenda prepared by the Secretariat. In accordance with the United Nations practice, the annotated provisional agenda prepared by the Secretariat lists items suggested for consideration, provides a historical background of each item (how it appeared on the agenda and the status of its consideration), explains the reasons for suggesting a new item, lists documents that will be before the organ at the session, and informs about place and location of the session and conference services available during the session, including a number of meetings. In the provisional agenda, the Secretariat also makes suggestions regarding the organization of work during the session.

7. The Secretary-General’s note on the provisional agenda of the Commission’s first session mentioned that the provisional agenda had been prepared by the Secretary-General on the basis of General Assembly resolution 2205 (XXI), establishing UNCITRAL, and relevant United Nations procedures and practices.¹¹ The provisional agenda of the Commission’s first session listed the following items: (1) opening of the session; (2) election of officers; (3) adoption of the agenda; (4) adoption of rules of procedure; (5) programme of work of the Commission under section II, paragraph 8, of General Assembly resolution 2205 (XXI),

⁸ See paragraph 4 of annex VII.

⁹ *Ibid.*

¹⁰ The rule is accompanied by a footnote that refers to: paragraphs 7, 15, 30 and 47 of the introduction that provide drafting history of rule 99; to paragraph 21 of annex V relevant in the context of paragraph (a) of rule 99 discussed in paragraph 23 of this note; and to paragraph 23 of annex V entitled “Decision 34/401 on the rationalization of the procedures and organization of the General Assembly” reading: “The Main Committees which require the largest number of meetings should be encouraged to hold more meetings early in the session in order to ensure a better distribution of meetings over the whole session.”

¹¹ A/CN.9/2, Item 3.

including: (a) selection of topics and priorities; and (b) organization of work and methods; (6) working relationships and collaboration with other bodies; (7) date of the second session; and (8) adoption of the report of the Commission.¹²

8. Items (1) to (3) and (7) and (8) being procedural in nature have been included in a similar order in all subsequent provisional agenda of the Commission. Item (7) has been expanded to refer to dates and places of future meetings of not only the Commission but also its working groups. Since the second session, the item on training and technical assistance has consistently been included in the provisional agenda of the Commission. Also since the second session, the item on the Commission's future work (in general or with reference to a specific field) and the item on coordination and cooperation among international organizations active in the field of international trade law have almost always been included.¹³ In the later years, the Secretariat has included other recurrent items in the provisional agenda, such as: (i) progress reports of the Commission's various working groups; (ii) progress reports of the Secretariat on projects assigned to it, such as on monitoring the implementation of the New York Convention, on the Case Law on UNCITRAL texts (CLOUT), and on commercial fraud; (iii) other business (since the Commission's sixth session); (iv) status of legal texts emanated from the work of UNCITRAL (since the Commission's fourteenth session); and (v) relevant General Assembly resolutions (since the Commission's fifteenth session).

9. As a rule, new items have been included by the Secretariat in the provisional agenda pursuant to the Commission's decision at its previous session(s). In some cases, the Commission gave discretion to the Secretariat as regards the inclusion of some items.¹⁴

10. The Secretariat has also included a new item on the provisional agenda of the Commission on the basis of the General Assembly resolution,¹⁵ in which the General Assembly recommended to the Commission to consider the inclusion of a new topic in its programme of work¹⁶ or invited it to undertake work on a topic or

¹² A/CN.9/2.

¹³ See A/CN.9/314, A/CN.9/327, A/CN.9/340, A/CN.9/355, A/CN.9/430, A/CN.9/443, A/CN.9/464, A/CN.9/503 and A/CN.9/567 for exceptions, as regards the item on future work; and A/CN.9/383, A/CN.9/404, A/CN.9/418 and A/CN.9/430 for exceptions, as regards the item on coordination, the latter due to the lack of sufficient resources in the UNCITRAL secretariat, which made it impossible to produce regularly reports on current activities (legislative and technical assistance) of international organizations in the area of international trade law. As a result of allocation of additional resources to, and restructuring of, the UNCITRAL secretariat, the submission of these reports to the Commission's annual sessions has been resumed.

¹⁴ For example, at its second session, the Commission decided that the subject of bankers' commercial credits should be included in the provisional agenda of the third session only to the extent necessary to consider any report of the Secretary-General on the subject (A/7618, para. 95 (last paragraph)). At its tenth session, the Commission agreed that at its eleventh session it would consider, apart from the items clearly identified by the Commission, such other matters which the Secretary of the Commission may wish to place before it (A/32/17, para. 52).

¹⁵ See, e.g., A/CN.9/13/Add.1, items 7, 11 and 12; A/CN.9/84, item 9; A/CN.9/85, item 10; and A/CN.9/482, item 13.

¹⁶ See, e.g., General Assembly resolution 2421 (XXIII) for General Assembly recommendation to the Commission to consider the inclusion of international shipping legislation among the priority topics, bearing in mind the wish expressed by many members of the UNCTAD Trade and Development Board. See also, resolutions 3108 (XXVIII) and 3316 (XXIX), in which the General Assembly invited the Commission to consider the advisability of preparing uniform

in the area referred to it.¹⁷ In all cases, the Commission followed the recommendation of the General Assembly to consider the inclusion of a new topic in its programme of work. Such consideration has not always resulted in the decision by the Commission to undertake the work.¹⁸

11. Some items have been included at the initiative of the Secretariat. For example, the item “Other business”, which became a recurrent agenda item, was first included in the provisional agenda of the Commission’s sixth session at the initiative of the Secretariat, to allow the Commission under this agenda item to discuss points of interest not covered by other agenda items.¹⁹ Since then, the Commission has considered under this agenda item various issues, such as bibliographies of recent writings related to the work by UNCITRAL and procedural issues (e.g., reduction of documentation requirements, principles of interpretation and other matters referred to the Commission by the Secretariat). Some issues considered under that agenda item became separate agenda items. Most recently, the item Willem C. Vis International Commercial Arbitration Moot competition was included as a separate agenda item in the provisional agenda of the thirty-ninth and fortieth sessions of the Commission (at previous sessions, it was considered as a sub-item under other agenda items, most often under the agenda item “Other business”).²⁰

rules on the civil liability of producers for damage caused by their products intended for or involved in international sale or distribution, taking into account the feasibility and most appropriate time therefor in view of other items in its programme of work.

¹⁷ By its resolution 2928 (XXVII), paragraph 5, the General Assembly invited the Commission to undertake work on the legal problems related to activities of multinational enterprises. In its resolutions 3108 (XXVIII) and 3316 (XXIX), the General Assembly recommended that the Commission continue to consider the legal problems presented by different kinds of multinational enterprises.

¹⁸ For example, upon recommendation of the General Assembly, the Commission, at its second session, included the item “International Shipping Legislation” among the priority topics in its programme of work (A/7618, para. 133), and the work on the item was subsequently undertaken and resulted in an international convention. In comparison, work on the legal problems presented by different kinds of multinational enterprises and on the subject of products liability, referred to the Commission by the General Assembly (see the immediately preceding two footnotes) have never been undertaken. As regards multinational enterprises, after deferring the consideration of the item at a number of its sessions, the Commission eventually, at its ninth session, requested the Secretariat to keep it informed of any developments in the work programme of other United Nations bodies in the field of multinational enterprises which may be of interest to it (A/31/17, para. 73). In its resolution 31/99, the General Assembly, reflecting the deliberations in the Commission and in the Sixth Committee, recommended that the Commission maintain liaison with the ECOSOC Commission on Transnational Corporations (TNCs) with regard to the consideration of legal problems that would be susceptible of action by it, and invited the Commission on TNCs, if it identified specific legal issues in its programme of work that would be susceptible of action by the Commission, to refer such issues to the Commission for its consideration. As regards the subject of products liability, at its tenth session, the Commission, after considering studies by the Secretariat (A/CN.9/103, A/CN.9/133 and A/CN.9/139), decided not to pursue work on it for the time being and that the matter might be reviewed in the context of its future programme of work at a future session if one or more Member States of the Commission should take an initiative to that effect (A/32/17, para. 44). No such initiative has subsequently been taken.

¹⁹ A/CN.9/84, item 12.

²⁰ For other examples, see A/CN.9/13/Add.1, item 13 “Programme of work until the end of 1972,” which was included at the initiative of the Secretariat, in the light of the need for the Secretariat to prepare budget and planning estimates on the basis of anticipated Commission and Secretariat

12. Most recently, changes were made by the Secretariat to the provisional agenda of the Commission to reflect a new pattern of reporting by the Secretariat to the Commission on some projects. Changes in the pattern of reporting have in particular resulted from the internal restructuring in the Commission's secretariat. For example, progress reports on CLOUT, until recently a recurrent separate agenda item in the Commission's agenda, was subsumed under agenda item "Technical assistance to law reform" since Secretariat's reports on CLOUT have lately been presented as part of a Secretariat's report on technical assistance to law reform, including technical assistance resources. This aimed at the Commission's simplifying agenda by grouping or merging, to the extent possible, related items (see the relevant recommendation in paragraph 3, item (vi), above).

2. Adoption of the agenda

13. The Commission adopts the agenda of a session usually at one of the first meetings of the session (the item on adoption of the agenda is listed in provisional agenda immediately after agenda items "Opening of the session" and "Election of officers").²¹ The Commission is not bound by the provisional agenda suggested by the Secretariat. Any State member of the Commission may make a proposal as regards the agenda of a session (for example, to propose an additional item or the deletion of an item).²² In two instances, the Commission adopted an agenda different from the provisional agenda suggested by the Secretariat.²³

3. Allocation of agenda items

14. Most agenda items during the session are considered in plenary. Some agenda items may be allocated to a committee of the whole established for such purpose. This is usually done for finalization of texts submitted for adoption or approval by the Commission.

4. Duration of the session and scheduling of meetings

15. The General Assembly, in its resolution 2205 (XXI) establishing the Commission, decided that the Commission shall normally hold one session a year. The General Assembly did not fix the timing and duration of the first and subsequent sessions of the Commission.²⁴

activities until the end of 1972, to comply with the relevant General Assembly directives.

²¹ The Commission's reports record the meeting when the agenda was adopted. Usually the agenda is adopted at the first meeting in the session (see, e.g., A/7618, para. 7; A/9017, para. 6; A/9617, para. 6; A/10017, para. 8; A/31/17, para. 8; and most recently, A/62/17 (Part I), paras. 3 and 10). There were exceptions. For example, the agenda of the first, third, fourth and fifth sessions were adopted at the second meeting of the respective session (A/7216, para. 15; A/8017, para. 6; A/8417, para. 6; and A/8717, para. 7), and the agenda of the tenth session was adopted at the third meeting of the session (A/32/17, para. 9).

²² See rule 120 of the Rules of Procedure of the General Assembly, applicable to the Commission, discussed in A/CN.9/638/Add.3.

²³ See, e.g., A/7216, para. 15, as compared to A/CN.9/2; and A/37/17, para. 9, as compared to A/CN.9/209.

²⁴ This is different from the practice existing with respect to other subsidiary organs of the General Assembly, such as the International Law Commission. The General Assembly, in its resolution on the report of the International Law Commission, decides, upon recommendation of the

16. Except for the duration of its first session that was decided upon by the United Nations Secretary-General,²⁵ the Commission decides, usually at the end of each session, upon the duration of its next session. In some cases, the Commission has determined only the starting date for a session while duration was fixed in a flexible manner (for example, from four to five weeks or with a possible extension or shortening).²⁶

17. Depending on the progress of work in working groups and needs of the session, the Commission may envisage changes in the agreed dates and duration of the session. It may explicitly request the Secretary-General to make arrangements under which the session could be shortened or extended.²⁷ Usually, if any changes to the previously agreed dates are justified, they are agreed upon before the Commission's session. In at least one case, the Commission decided to shorten its session during that session.²⁸ The Secretariat, in the provisional agenda, reflects the Commission's decision made at the preceding session as regards the duration of the session, and the actual dates when the session will be held.

18. The duration of the Commission's session has varied from 5²⁹ to 21³⁰ days.³¹ The issue of the duration of the Commission sessions was raised in a number of cases in the Commission and the Sixth Committee of the General Assembly. In the Sixth Committee, some representatives noted that the Commission should not extend the length of its future sessions and should continue to make the most expeditious use of the time available for its sessions.³² Several representatives noted that the success of the Commission's work depended on the selection by Member States of skilled experts for the sessions and that this requirement would be difficult to meet if such sessions were permitted to last too long.³³ Without prejudice to the Commission's decision to hold longer or shorter sessions, the Secretariat makes arrangements for servicing Commission's annual sessions on the basis of the time normally allotted for Commission's annual sessions, which is four weeks.

19. As regards the scheduling of meetings of the Commission's working groups, no uniform practice existed in early years of the Commission. The Commission sometimes was not specific about the duration of working groups' sessions,³⁴ noting at least in one instance that consideration should be given to the appropriate time and place of a meeting in the light of the convenience of the members and the

International Law Commission, on the timing and duration of its sessions. See, e.g., the most recent resolution of the General Assembly on the report of the International Law Commission (A/RES/61/34, para. 10).

²⁵ A/CN.9/1, para. 4.

²⁶ See, e.g., A/7216, para. 72; and A/7618, para. 188.

²⁷ See, e.g., A/8417, para. 162; A/8717, para. 115; and A/32/17, para. 47.

²⁸ A/7618, para. 1.

²⁹ See the dates of the Commission's seventh session (13-17 May 1974) (A/9617).

³⁰ See the dates of the first (29 January-26 February 1968) (A/7216) and second (3-31 March 1969) (A/7618) sessions of the Commission.

³¹ Of the Commission's forty sessions, 1 was one-week duration, 12 for around two weeks, 16 for around 3 weeks and 11 for around 4 weeks.

³² See, e.g., A/10420, para. 38.

³³ See, e.g., A/7747, para. 12.

³⁴ See, e.g., A/7618, para. 38, as regards the Working Group on Sales, and *ibid.*, para. 46, and A/8017, para. 97, as regards the Working Group on Prescription.

availability of conference services.³⁵ In other cases, only duration of working groups' sessions was established without specific dates, except that a working group should meet before the next session of the Commission.³⁶ In some cases, the Commission made convening working group meetings conditional.³⁷ Sometimes, the Commission referred the decision on the duration, dates and place of the sessions to working groups or the Secretariat after consultations with representatives of a working group.³⁸

20. Since the Commission's sixth session, the Commission reports have as a rule reflected the Commission's decision on the timing and duration of meetings of its working groups, adopted on the recommendation or request of working groups and in relation to the needs of other working groups. The actual dates of the working groups' sessions may not coincide with those approved by the Commission, mainly due to conference servicing consideration or the needs of working groups.³⁹

21. In the early years of the Commission, the working groups met, at the request of the Commission or upon recommendation of the relevant working group, in addition to regular, in special sessions.⁴⁰ Special sessions were held in the course of the Commission's session or between the Commission's sessions. In the later years, working groups met only in regular sessions. Since the Commission's thirty-sixth session, working groups have normally met for a one-week session twice a year and extra time, if required, has been allocated from the unused entitlement of another working group provided that such an arrangement does not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission.⁴¹

5. Organization of work during the session

22. It has become practice for the Secretariat in the provisional agenda to suggest to the Commission or its working groups organization of work during their sessions, including the format of consideration (i.e., plenary or in a sessional subsidiary body), number of meetings suggested to be allocated for consideration of each provisional agenda item, days of consideration and sequence of taking up provisional agenda items, which usually coincides with the sequence of listing items on the provisional agenda. The Commission usually adheres to the Secretariat's recommendations. In the early years, the Commission itself sometimes decided at the preceding session how the work at its next session would be organized.⁴²

³⁵ A/8017, para. 97.

³⁶ See, e.g., A/8017, para. 166 (4), as regards the new and enlarged Working Group on International Legislation on Shipping.

³⁷ See, e.g., A/7216, para. 52, as regards the Working Group on Priority Topics; and A/7618, para. 133 (3), as regards the Working Group on International Legislation on Shipping.

³⁸ See, e.g., A/8717, paras. 32 (2) and 62; and A/31/17, para. 70.

³⁹ See, e.g., the dates of the sixth session of the Working Group on Sales as approved by the Commission at its seventh session in A/9617, para. 85 (e), which were 10-21 February 1975, and the actual dates of the sixth session of the Working Group (27 January-7 February 1975) (A/CN.9/100).

⁴⁰ See, e.g., A/8717, paras. 49 and 51.

⁴¹ For the Commission's decision approving that arrangement, see A/58/17, para. 275.

⁴² See, e.g., A/10017, para. 116; and A/31/17, para. 69.

E. Rules 99 (a), 101 and 103: election of officers

23. Rule 99 (a) reads as follows: “(a) All the Main Committees shall, at least three months before the opening of the session, elect a Chairman. Elections of the other officers provided for in rule 103 shall be held at the latest by the end of the first week of the session.” The rule is accompanied by a footnote that refers to a number of provisions in the introduction and annex of the Rules of Procedure of the General Assembly.⁴³ One of the provisions, relevant in the context of paragraph (a) of rule 99, states that during sessions the Chairmen or other officers of the Main Committees should be entrusted by their Committees, whenever appropriate, with the conduct of informal negotiations aimed at reaching agreement on specific issues.⁴⁴

24. Rule 101 reads as follows: “Upon designation by the chairman of the delegation, advisers, technical advisers, experts or persons of similar status may act as members of committees. Persons of this status shall not, however, unless designated as alternate representatives, be eligible for election as Chairmen, Vice-Chairmen or Rapporteurs of committees or for seats in the General Assembly.”

25. Rule 103 reads as follows: “Each Main Committee shall elect a Chairman, three Vice-Chairmen and a Rapporteur. In the case of other committees, each shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur. These officers shall be elected on the basis of equitable geographical distribution, experience and personal competence. The elections shall be held by secret ballot unless the committee decides otherwise in an election where only one candidate is standing. The nomination of each candidate shall be limited to one speaker, after which the committee shall immediately proceed to the election.” The rule is accompanied by a footnote that refers to a number of provisions in the introduction and annexes of the Rules of Procedure of the General Assembly.⁴⁵ Most of those provisions provide drafting history of rule 103 and are reflected in the rule itself. Other provisions state that: (i) before the conclusion of a session of the General Assembly, regional groups should agree on the distribution of chairmanships among them for the following session; (ii) candidates for the chairmanships of the Main Committees should be nominated as soon as possible; and (iii) it is strongly recommended that nominees for the chairmanships of the Main Committees should have experience in the work of the General Assembly.⁴⁶

26. The rules with accompanying provisions are applicable to the Commission *mutatis mutandis* as regards election of officers in the Commission and its subsidiary organs. (Functions of officers, including as regards facilitation of discussion through informal negotiations, are discussed in document A/CN.9/638/Add.3, paragraphs 2-15.)

⁴³ See *supra*, footnote 10.

⁴⁴ Paragraph 21 of annex V.

⁴⁵ Paragraphs 30 and 45 of the introduction, paragraphs 40 and 54-57 of annex IV, and paragraphs 18-20 of annex V, of the Rules of Procedure of the General Assembly.

⁴⁶ Paragraphs 18-20 of annex V.

1. Officers of the Commission

27. At its first session, in 1968, the Commission decided that its bureau should consist of a Chairperson, three Vice-Chairpersons and a Rapporteur. The decision was taken as the Commission deemed it desirable that each of the five regional groups of States referred to in resolution 2205 (XXI) on the establishment of the Commission should be represented on the bureau of the Commission.⁴⁷

28. The candidature for the chairperson is usually known in advance of the opening of the session as a result of consultations among States members of the Commission, in particular among members of the regional group that is nominating a candidate. Candidatures of other officers are decided upon by regional groups, usually during the session.

29. The agenda of a session lists election of officers as the second agenda item. The chairperson is elected at the first meeting of the session. This deviates from the requirement found in rule 99 (a) of the Rules of Procedure of the General Assembly (see paragraph 23 above) that a Chairperson shall be elected at least three months before the opening of the session. Other officers may be elected later at the session, and not necessarily by the end of the first week of the session as required by the same rule of procedure of the General Assembly.⁴⁸

30. The election of officers takes place by acclamation⁴⁹ upon nomination by one of the delegations, usually from the regional group of the nominee, and seconded by one or more delegations usually from other regional groups.

31. Officers are elected among representatives of States members of the Commission. In at least one instance, a member of the delegation of a member State who was not designated as a representative or alternate representative in the final list of participants was elected as an officer of the Commission.⁵⁰ This deviates from the requirement found in rule 101 of the Rules of Procedure of the General Assembly (see paragraph 24 above) that to be entitled for election as an officer a member of the delegation has to be designated at least as an alternate representative. In the absence of the relevant data in the list of participants, it was not always possible to determine the designation of some officers of the Commission.⁵¹

32. As regards the election of officers on the basis of equitable geographical distribution (see rule 103 as described in paragraph 25 above), although no formal decision to that effect has ever been taken by the Commission, seats in the

⁴⁷ See A/7216, para. 14.

⁴⁸ See, e.g., A/7216, para. 14; A/8017, para. 5; A/8417, para. 5; A/8717, para. 6; A/9017, para. 5; A/9617, footnote 2; A/10017, footnote 2; A/31/17, footnote 2; A/32/17, footnote 2; and A/50/17, endnote 2.

⁴⁹ In the early years of the Commission, the Commission's reports explicitly stated that the election took place by acclamation. See, e.g., the Commission's reports on the work of its second to fourteenth sessions (the latter is in A/36/17, para. 8).

⁵⁰ See A/CN.9/XXXVIII/INF.1/Rev.2, with reference to a member of the delegation of the Czech Republic, who was elected as a vice-chairperson at the Commission's thirty-eighth session (A/60/17, para. 9).

⁵¹ See, e.g., A/CN.9/XXV/INF.1/Rev.1 and A/47/17, para. 8, as regards officers from Mexico and Poland; A/CN.9/XXXI/INF.1 and A/53/17, para. 9, as regards officers from Cameroon and Iran (Islamic Republic of); and A/CN.9/XXXIII/INF.1 and A/55/17, para. 9, as regards an officer from Egypt.

Commission's bureau are rotated among regional groups as is the practice in the General Assembly. In two instances, a regional group chose not to nominate a chairperson when its turn came and the regional group next in turn nominated a chairperson instead.⁵²

33. Under rule 103, and in accordance with normal practice for subsidiary organs of the General Assembly, the officers are elected as individual representatives and not as Member States or delegations. This is indicated by the rule that includes individual qualifications ("experience and personal competence") among the criteria for election.⁵³ The majority of the Commission's officers have reflected a broad spectrum of expertise and practical experience within the field of international trade law. They have come from academia, government ministries and the diplomatic corps.⁵⁴

2. Officers of committees of the whole

34. In the early years of the Commission, there was no consistent practice in electing officers of committees of the whole: in addition to chairpersons, some committees had rapporteurs, and it might have been the Commission or the committee itself that elected officers.⁵⁵

35. In the later years, committees have had only a chairperson, elected by the Commission by acclamation. A chairperson elected has as a rule been the chairperson of the working group that had prepared a document referred by the Commission to the committee for consideration during the session.⁵⁶

3. Officers of working groups

36. Working groups as a general rule have only a chairperson and a rapporteur.⁵⁷ Before a working group's session, the Secretariat might facilitate consultations among States members of the Commission as regards the candidature for the position of a chairperson. Practice has shown a preference for the same person to

⁵² See the Commission's reports on the work of its twenty-seventh and thirty-sixth sessions (A/49/17, para. 8, and A/58/17, para. 9, respectively), when instead of representatives of the group of Eastern European States, the representatives of the group of Western European and other States were elected as the chairpersons of the sessions.

⁵³ See *United Nations Juridical Yearbook, 1973* (United Nations publication, Sales No. E.75.V.1), p. 144, para. 2.

⁵⁴ A majority of Commission officers were professors of law or from ministries of justice.

⁵⁵ E.g., the report of the Commission's tenth session notes that the Chairperson of Committee I was elected by the Commission at the first plenary meeting of the tenth session. The Chairperson of Committee II and Rapporteurs of both Committees were elected by the respective Committees themselves (A/32/17, para. 12).

⁵⁶ See, e.g., the most recent reports of the Commission (A/56/17, para. 11; A/61/17, para. 11; and A/62/17(Part I), para. 12).

⁵⁷ The Working Group on International Legislation on Shipping had in addition two Vice-Chairpersons (A/84/17, para. 20; A/CN.9/63, para. 6; A/CN.9/88, para. 6; A/CN.9/96, para. 6; and A/CN.9/105, para. 8). The Working Group on International Contract Practices had a Vice-Chairperson at one session (A/CN.9/275, para. 8). The Working Group on Electronic Commerce had a Vice-Chairperson at its thirty-first to thirty-fourth sessions (A/CN.9/437, para. 13; A/CN.9/446, para. 9; A/CN.9/454, para. 14; and A/CN.9/457, para. 12). The Working Group on Insolvency Law had a Vice-Chairperson at its twenty-second, twenty-fourth and twenty-ninth sessions (A/CN.9/469, para. 9; A/CN.9/504, para. 14; and A/CN.9/542, para. 15).

continue the chairmanship during the whole duration of the work of a working group on a project.

37. Although the reports of working groups usually do not indicate the meetings and dates when officers are elected, it is the practice to elect the chairperson at the first meeting of the working group's session. Other officers may be elected later during the session.

38. Officers are elected by acclamation upon nomination by a representative of a State belonging to the regional group of the nominees and secondment by representatives of States from other regional groups.

39. Chairpersons of working groups, as a rule, are elected on the basis of their experience and personal competence. Efforts are made that chairmanship in various working groups of the Commission is distributed equitably among regions.

40. In several instances, an officer of the working group was elected from a State that was not a member of the Commission at the time of the election.⁵⁸ In the case of the election of a chairperson from a non-member State, the working group usually notes in its report that the chairperson was elected in his/her personal capacity.⁵⁹

41. Officers of the working group are as a rule elected from representatives or alternate representatives of the delegations. In at least one instance found in the lists of participants reviewed, a member of the delegation not designated as a representative or alternative representative was elected as an officer of the working group.⁶⁰

⁵⁸ See, e.g., the report of the Working Group on International Contract Practices on the work of its twenty-sixth session (A/CN.9/434, para. 9), as regards the Rapporteur from Pakistan; the reports of the Working Group on Electronic Commerce on the work of its thirty-first to thirty-eighth sessions, as regards the Chairperson from Denmark and later from Canada (A/CN.9/437, para. 13; A/CN.9/446, para. 9; A/CN.9/454, para. 14; A/CN.9/457, para. 12; A/CN.9/465, para. 15; A/CN.9/467, para. 15; A/CN.9/483, para. 18; and A/CN.9/484, para. 16); the reports of the Working Group on Insolvency Law on the work of its eighteenth to twenty-first sessions, as regards the Chairperson from Canada (A/CN.9/419, para. 8; A/CN.9/422, para. 9; A/CN.9/433, para. 9; and A/CN.9/435, para. 10), on the work of its twenty-second and twenty-fourth sessions, as regards the Vice-Chairperson from New Zealand (A/CN.9/469, para. 9 and A/CN.9/504, para. 14) and on the work of its twenty-ninth session, as regards the Vice-Chairperson from the Republic of Korea (A/CN.9/542, para. 15); and the reports of the Working Group on the New International Economic Order on the work of its fifth to ninth sessions, as regards the Chairperson from Finland (A/CN.9/247, para. 8; A/CN.9/259, para. 8; A/CN.9/262, para. 8; A/CN.9/276, para. 8; and A/CN.9/289, para. 8) (although elected as the Chairperson at the previous sessions of the Working Group when Finland was a member of the Commission (A/CN.9/198, para. 8; A/CN.9/217, para. 10; and A/CN.9/234, para. 10).

⁵⁹ See, e.g., the reports of the Working Group on International Negotiable Instruments on the work of its thirteenth and fourteenth sessions (A/CN.9/261, para. 4; and A/CN.9/273, para. 5); the reports of the Working Group on Electronic Commerce on the work of its thirty-first to thirty-eighth sessions (A/CN.9/457, para. 12; A/CN.9/465, para. 15; A/CN.9/467, para. 15; A/CN.9/483, para. 18; and A/CN.9/484, para. 16); the reports of the Working Group on Insolvency Law on the work of its twenty-second, twenty-fourth and twenty-ninth sessions (A/CN.9/469, para. 9; A/CN.9/504, para. 14; and A/CN.9/542, para. 15).

⁶⁰ E.g., the Rapporteur at the thirty-ninth session of the Working Group on Electronic Commerce is listed as an advisor in the list of participants (see A/CN.9/509, para. 11, and A/CN.9/WG.IV/XXXIX/INF.1, under Cameroon).

F. Rule 100: representation of Members

42. Rule 100 reads as follows: “Each Member may be represented by one person on each Main Committee and on any other committee that may be established upon which all Members have the right to be represented. It may also assign to these committees advisers, technical advisers, experts or persons of similar status.”

43. There is no consistent pattern of representation of member States, non-member States and invited international organizations in the Commission and its working groups. They may be represented by one or more representatives and have one or more alternate representatives. It is also common for States to include advisers, technical advisers, experts or persons of similar status as members of their delegations.

44. In accordance with paragraph 4 of General Assembly resolution 2205 (XXI) on the establishment of UNCITRAL, the representatives of members in the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade.⁶¹ The General Assembly, in its other resolutions related to UNCITRAL, emphasized the complex and technical nature of the work of the Commission and its working groups, which necessitated special arrangements as regards the Commission’s composition and the appeal to States to ensure that their representatives in the Commission have relevant expertise in the field of international trade law.⁶²

45. The reviewed lists of participants in the sessions of the Commission and its working groups indicate that members of the Commission usually appoint experts in the field of the law of international trade as their representatives in the Commission and its working groups. Both the Commission and the General Assembly have nevertheless expressed concern about “the relatively low incidence of expert representation from developing countries at sessions of the Commission and particularly of its working groups,” owing in part to inadequate resources to finance the travel of such experts.⁶³

⁶¹ Reiterated in paragraph 8 (e) of resolution 3108 (XXVIII).

⁶² See, e.g., preambular paragraphs of resolution 46/56 B, and paragraph 2 of resolution 57/20.

⁶³ See, e.g., A/44/17, para. 235; A/45/17, para. 73; and A/56/17, paras. 372 and 375; and General Assembly resolutions 39/82, last preambular paragraph; 45/42, para. 5; 46/56 B; 47/34, last preambular paragraph and para. 12; 48/32, last preambular paragraph and paras. 5 and 6; 49/55, the sixth preambular paragraph and paras. 6-8; and subsequent resolutions on the report of the Commission, most recently resolutions 59/39, paras. 6-7; 60/20, paras. 6-7; and 61/32, paras. 7-8.