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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.



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

1. The present addendum describes the practice with the implementation of rules 104 to 107 (prerogatives and functions of a presiding officer), and rules 108-123 (conduct of business) of the Rules of Procedure of the General Assembly in the Commission and its subsidiary organs.

G. Rules 104-107: prerogatives and functions of a presiding officer

1. Content of the rules

2. Rule 104 reads as follows: “The Chairman of a Main Committee shall not vote, but another member of his delegation may vote in his place.”

3. Rule 105 reads as follows: “If the Chairman finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Chairmen to take his place. A Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman. If any officer of the committee is unable to perform his functions, a new officer shall be elected for the unexpired term.”¹

4. Rule 106 reads as follows: “The Chairman shall declare the opening and closing of each meeting of the committee, direct its discussions, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Chairman may, in the course of the discussion of an item, propose to the committee the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion.”

5. Rule 107 reads as follows: “The Chairman, in the exercise of his functions, remains under the authority of the committee.”

6. Rules 106 and 107 are accompanied by the same footnote that refers to a number of provisions in the introduction and annexes of the Rules of Procedure of the General Assembly.² The referred provisions, in the relevant parts, stress the importance of the role of the presiding officers, reaffirm their functions and prerogatives and list some of their specific functions.

7. The provisions, in particular, state that: “the satisfactory progress of the proceedings depends essentially on their [presiding officers’] competence, authority, tact and impartiality, their respect for the rights both of minorities as well as majorities, and their familiarity with the rules of procedure. The General Assembly,

¹ The rule is accompanied by a footnote that refers to paragraph 30 of the introduction to the Rules of Procedure of the General Assembly providing the drafting history of the rule.

² Paragraph 7 of the introduction to the Rules of Procedure of the General Assembly that provides the drafting history of inter alia rule 106; paragraph 39 of annex I; paragraph (g) of annex III; paragraphs 39 and 67 of annex IV; paragraphs 3 and 22 of annex V; and paragraphs 6 and 7 of annex VI.

or the committee, as the case may be, is the master of the conduct of its own proceedings. It is, however, the special task of the Chairmen to guide the proceedings of these bodies in the best interests of all the Members.”³

8. Among the presiding officer’s specific functions, the following are listed: (i) to open meetings at the scheduled time;⁴ (ii) to urge representatives to take the floor in the order in which they were inscribed on the list of speakers, it being understood that representatives prevented from so doing will normally be placed at the end of the list, unless they have arranged to change places with other representatives; (iii) to apply the rules of procedure in such a way as to ensure the proper exercise of the right of reply, explanation of votes and points of order;⁵ (iv) to propose more frequently the limitation of the time to be allowed to speakers or of the number of times each representative may speak on any given item;⁶ and (v) to propose to the Committee the closing of the list of speakers on each item at a suitably early stage, that agreed programmes of work should be respected, to this end, meetings should start at the scheduled time and the time allotted for meetings should be fully utilized.^{7, 8}

2. Practice in the Commission and its subsidiary organs

9. With reference to rule 104 (see paragraph 2 above), the decision-making process in the Commission and its subsidiary organs is described in document A/CN.9/638/Add.4.

10. With reference to rule 105 (see paragraph 3 above), no instances of absence of an officer in the Commission have been found. As regards working groups, no consistent practice exists as regards a replacement of the elected officer who has to be absent. In some cases, the chairperson designated a vice-chairperson elected by the working group as the presiding officer. In the absence of the office of a vice-chairperson in most of subsidiary organs of the Commission, the chairperson has designated a rapporteur to perform the functions of the presiding officer in his/her absence. In other instances, the working group elected an acting chairperson.⁹ In at least one instance, the records of a working group indicate that because the vice-chairperson elected at the preceding session of the working group was not able to attend the session, the working group elected the second vice-chairperson.¹⁰

³ Paragraph 39 of annex I.

⁴ Paragraph (g) of annex III, paragraph 67 of annex IV and paragraph 3 of annex V.

⁵ Paragraph (g) of annex III.

⁶ Paragraph 22 of annex V.

⁷ Paragraphs 6 and 7 of annex VI.

⁸ Paragraph 39 annex IV reaffirms the functions and prerogatives of a presiding officer under the Rules of Procedure.

⁹ See the report of the Working Group on Sales on the work of its sixth and seventh sessions (A/CN.9/100, para. 7, and A/CN.9/116, para. 5, respectively); the report of the Working Group on International Legislation on Shipping on the work of its eighth session (A/CN.9/105, para. 8); and the report of Working Group I (Procurement) on the work of its eighth session (A/CN.9/590, para. 6). Election very often takes the form of explicit or tacit confirmation by the subsidiary organ.

¹⁰ The report of the Working Group on International Legislation on Shipping on the work of its third session (A/CN.9/63 and Add.1, para. 6).

11. With reference to rules 106 and 107 (see paragraphs 4 and 5 above), in the Commission and its subsidiary organs, the presiding officer has the same prerogatives and functions as described in paragraphs 4 to 8 above.

12. The reports of the Commission in the early years referred specifically to the actions taken by a chairperson of the Commission, including providing to the Commission a summary of statements made, responding to requests for clarifications, making concluding remarks, in which the chairperson summarized the Commission's decisions or understandings and pointed out issues with respect to which consensus seemed to exist and to issues in respect to which some further discussion seemed to be desirable with a view to arriving at a consensus, as well as declaring the session closed.¹¹ References are also found to the Commission's endorsement of the statements or suggestions made by the chairperson.¹² In later years, the reports only occasionally indicate specific actions taken by the chairperson.¹³ Summary records are more indicative as regards the implementation by chairpersons of the Commission of their prerogatives and functions.¹⁴

13. Additional prerogatives and functions have been permanently or from time to time assigned to a presiding officer of the Commission. In particular, pursuant to a decision taken by the Sixth Committee in 1968, an annual report of the Commission is to be introduced to the Committee by a chairperson of UNCITRAL at the session covered by the report, or by another officer designated by him.¹⁵ The Commission in several instances gave special authorities to its chairperson at a particular session, such as to appoint members of a working group in consultation with the different regional groups concerned,¹⁶ decide on the need to convene a working group,¹⁷ convene a working group,¹⁸ and represent or nominate someone from among the members of the Commission to represent the Commission in other bodies.¹⁹

14. From time to time, the Commission assigns specific functions to a chairperson of a working group. For example, at its third session, the Commission instructed the

¹¹ See, e.g., A/7216, paras. 34, 35, 38, 53, 55, 56 and 73; and A/8417, footnote 11.

¹² See, e.g., A/7216, para. 40 V; and A/8017, para. 101.

¹³ See, e.g., A/32/17, annex II, para. 58.

¹⁴ Summary records cover only those meetings of the Commission that relate to the formulation of normative texts.

¹⁵ A/7408, para. 3. As a rule, the Commission's reports are introduced to the Sixth Committee by the chairpersons of the Commission's respective sessions. There have been exceptions. For example, a Vice-Chairperson at the Commission's sixth session introduced the report of that session to the Sixth Committee (A/9408, para. 3). In 1974, in view of the fact that the Chairperson was not able to remain in New York for the duration of the debate on the Commission's report on the work of its seventh session, a Vice-Chairperson of the Commission at its seventh session replied to statements made in the course of the debate (A/9920, para. 3).

¹⁶ A/7216, para. 52.

¹⁷ A/7618, para. 133 (3).

¹⁸ A/8017, para. 166 (3).

¹⁹ A/7618, para. 133 (4); and A/10017, para. 94 (2) (b).

Chairperson of the Working Group on International Legislation on Shipping to represent UNCITRAL in UNCTAD.²⁰⁻²¹

15. At the Commission's fourth session, the Chairperson of the Commission was elected as the Chairperson of the newly established Working Group on International Legislation on Shipping. The Commission's report of that session refers to statements made to the Commission by the Chairperson in both his capacities, as the Chairperson of the Commission and of the Working Group.²²

H. Rules 108-123: conduct of business

1. Rule 108: quorum

16. The rule reads as follows: "The Chairman may declare a meeting open and permit the debate to proceed when at least one quarter of the members of the committee are present. The presence of a majority of the members shall be required for any decision to be taken."²³

17. The reports of the Commission and its working groups record the attendance of member States at the session on the basis of the relevant information received from member States in response to a note verbale circulated by the Secretariat notifying about the upcoming session. In the note verbale, the Secretariat requests Governments to notify the Secretary of the Commission by whom it will be represented at the session. No record of actual attendance of any meeting during the session is taken.

18. According to the reports, at all sessions of the Commission and its working groups at least a quarter of the members of the Commission were always present. The reports, with one exception, do not specifically indicate whether at the time of the adoption of any decision, a majority of the members were present. The exception is found in the report of the Commission on the work of its eleventh session when a formal vote took place in the Commission on the motion to reconsider the Commission's decision taken at that session (see paragraph 57 below).²⁴ The Commission consisted of 36 members at that time.²⁵ The recorded

²⁰ A/8017, para. 166. The understanding was that the Chairperson of the Working Group would perform the authority of the UNCITRAL's Special Representative in his individual capacity if the country that he represents would not be re-elected as the member of UNCITRAL in the 1970 upcoming election of new UNCITRAL members by the General Assembly (A/8017, para. 164) (Chile was re-elected at that time, see A/8417, para. 2).

²¹ Pursuant to the Commission's instruction, the Chairperson of the Working Group submitted a report to the Commission's fourth session on his participation as special representative of UNCITRAL in UNCTAD (A/8417, para. 11).

²² A/8417, in particular paras. 5 and 20-21.

²³ The rule is accompanied by a footnote that refers to paragraphs 7 and 30 of the introduction to the Rules of Procedure of the General Assembly, providing drafting history of the rule.

²⁴ A/33/17, paras. 99-103.

²⁵ Ibid., para. 4.

results of the voting indicate that the quorum required under the rule was present as 24 members were present during the voting.²⁶

2. Rule 109: speeches

19. The rule reads as follows: “No representative may address the committee without having previously obtained the permission of the Chairman. The Chairman shall call upon speakers in the order in which they signify their desire to speak. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.”

20. 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.²⁷ The provisions, in the relevant parts, state that: (i) the presiding officer should, soon after the beginning of the debate on an item, indicate a date for the closing of the list of speakers. He should endeavour to have the list of speakers closed at the latest after one third of the meetings allocated to the item have been held;²⁸ and (ii) speakers should, as far as possible, avoid putting down their names to speak on a given item and at the same time indicating an alternative meeting if they are unable to keep to their original schedule.^{29, 30}

21. There is no practice in the Commission or its subsidiary organs to keep a list of speakers. As a general rule, the presiding officer calls upon speakers in the order in which they signify their desire to speak. Exceptions are made, when necessary, for example in order to ensure a structured debate on any given issue (in particular, a presiding officer may change the order of speakers when clarifications are necessary from any representative as a result of the statement made by another representative). The presiding officer may appeal to speakers to speak on the subject under discussion.

3. Rule 110: congratulations

22. The rule reads as follows: “Congratulations to the officers of a Main Committee shall not be expressed except by the Chairman of the previous session – or, in his absence, by a member of his delegation – after all the officers of the Committee have been elected.”³¹

23. The practice in the Commission and subsidiary organs deviates from this rule. Any representative in the Commission or its working group may congratulate

²⁶ Ibid., para. 102. At the time of the voting in the Commission, the following version of the Rules of Procedure of the General Assembly was applicable: A/520/Rev.12 and Amend. 1 and 2 (see A/520/Rev.16, Introduction, para. 50). The substance of the relevant rule in that version of the Rules of Procedure is the same as of the corresponding rule in the current version.

²⁷ Paragraph (g)(ii) of annex III, paragraphs 69-71 of annex IV and paragraph 6 of annex VI.

²⁸ Paragraph 69 of annex IV. Supplemented by paragraph 6 of annex VI, stating that the Chairmen of the Main Committees should propose to the Committee the closing of the list of speakers on each item at a suitably early stage. See also paragraph 8 (v) of this note.

²⁹ Paragraph 70 of annex IV.

³⁰ For the content of paragraph (g)(ii) of annex III, as reaffirmed in paragraph 71 of annex IV, see paragraph 8 (ii) of this note.

³¹ The rule is accompanied by a footnote that refers to paragraph 30 of the introduction to the Rules of Procedure of the General Assembly, providing drafting history of the rule.

officers upon their election. Usually this is done when a representative takes the floor first time after the relevant election has taken place.

4. Rule 111: precedence

24. The rule reads as follows: “The Chairman and the Rapporteur of a committee or subcommittee may be accorded precedence for the purpose of explaining the conclusions arrived at by their committee or subcommittee.”

25. This rule is generally followed in the Commission and its subsidiary organs.

5. Rule 112: statements by the Secretariat

26. The rule reads as follows: “The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to any committee or subcommittee concerning any question under consideration by it.”

27. This rule is generally followed in the Commission and its subsidiary organs.

6. Rule 113: points of order

28. The rule reads as follows: “During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote, and the Chairman’s ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.”

29. The rule is accompanied by a footnote that refers to a number of provisions in the introduction and annex to the Rules of Procedure of the General Assembly.³² The provisions, in the relevant part,³³ explain the concept of “point of order” as follows:

(a) A point of order is basically an intervention directed to the presiding officer, requesting him to make use of some power inherent in his office or specifically given him under the rules of procedure. It may, for example, relate to the manner in which the debate is conducted, to the maintenance of order, to the observance of the rules of procedure or to the way in which presiding officers exercise the powers conferred upon them by the rules.

(b) Under a point of order, a representative may request the presiding officer to apply a certain rule of procedure or he may question the way in which the officer applies the rule. Thus, within the scope of the rules of procedure, representatives are enabled to direct the attention of the presiding officer to violations or misapplications of the rules by other representatives or by the presiding officer himself.

³² The footnote refers to paragraph 7 of the introduction, and paragraph 79 of annex IV. Paragraph 7 of the introduction provides drafting history of the rule.

³³ See paragraph 79 of annex IV.

(c) Points of order involve questions necessitating a ruling by the presiding officer, subject to possible appeal. They are therefore distinct from the procedural motions, which can be decided only by a vote and on which more than one motion may be entertained at the same time (see rule 119 referred to in paragraph 43 below that lays down the precedence of procedural motions). They are also distinct from requests for information or clarification, or from remarks relating to material arrangements (seating, interpretation system, temperature of the room), documents, translations, etc., which – while they may have to be dealt with by the presiding officer – do not require rulings from him. However, in established United Nations practice, a representative intending to submit a procedural motion or to seek information or clarification often rises to “a point of order” as a means of obtaining the floor. The latter usage, which is based on practical grounds, should not be confused with the raising of points of order.

(d) A point of order has precedence over any other matter, including procedural motions.

(e) A point of order must be immediately decided by the presiding officer in accordance with the rules of procedure; any appeal arising therefrom must also be put immediately to the vote. It follows that as a general rule: (i) a point of order and any appeal arising from a ruling thereon is not debatable; and (ii) no point of order on the same or a different subject can be permitted until the initial point of order and any appeal arising therefrom have been disposed of. Nevertheless, both the presiding officer and delegations may request information or clarification regarding a point of order. In addition, the presiding officer may, if he considers it necessary, request an expression of views from delegations on a point of order before giving his ruling; in the exceptional cases in which this practice is resorted to, the presiding officer should terminate the exchange of views and give his ruling as soon as he is ready to announce that ruling.

(f) A representative rising to a point of order may not speak on the substance of the matter under discussion. Consequently, the purely procedural nature of points of order calls for brevity. The presiding officer is responsible for ensuring that statements made on a point of order are in conformity with the present description.

30. The rule and its understanding are generally followed in the Commission and its subsidiary organs, except that decisions in the Commission and its subsidiary organs are taken by consensus (see A/CN.9/638/Add.4 for the review of the decision-making process in the Commission and its subsidiary organs).

7. Rule 114: time limit on speeches

31. The rule reads as follows: “The committee may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his allotted time, the Chairman shall call him to order without delay.”³⁴

³⁴ The rule is accompanied by a footnote that refers to paragraphs 7 and 30 of the introduction to the Rules of Procedure of the General Assembly, which provide drafting history of the rule.

32. There is no practice in the Commission or its subsidiary organs to limit time on speeches. The presiding officer may however appeal to speakers to be brief.

8. Rule 115: closing of list of speakers, right of reply

33. The rule reads as follows: “During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the committee, declare the list closed. He may, however, accord the right of reply to any member if a speech delivered after he has declared the list closed makes this desirable.”

34. Although the rule is formulated in a way that gives the presiding officer discretion to grant the right of reply or not to do so, the established practice is that the right of reply is regarded to be an absolute right of Member States, which is not subject to the discretion of the presiding officer as regards States which are full members of the organ concerned. If a statement in the exercise of the right of reply by one State gives rise to a request by another State for a statement in reply, this request is normally acceded to in the practice of the General Assembly. The presiding officer may nevertheless limit the length and the number of interventions that may be made in the exercise of the right of reply at a given meeting and under the same agenda item.³⁵

35. 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.³⁶ The provisions, in the relevant parts, state that: (i) delegations should use restraint in the exercise of their right of reply, both in plenary meetings and in the Main Committees, and that their statements in exercise of that right should be as brief as possible;³⁷ (ii) statements made in the exercise of the right of reply should be delivered, as a general rule, at the end of meetings,³⁸ or at the end of the day whenever two meetings have been scheduled for that day and whenever such meetings are devoted to the consideration of the same item;³⁹ 40 (iii) the number of interventions in the exercise of the right of reply for any delegation at a given meeting should be limited to two per item;⁴¹ and (iv) the first intervention in the exercise of the right of reply for any delegation on any item at a given meeting should be limited to ten minutes and the second intervention should be limited to five minutes.⁴²

36. As mentioned in paragraph 21 above, there is no practice in the Commission and subsidiary organs to maintain a list of speakers. The right of reply is accorded to

³⁵ See *United Nations Juridical Yearbook, 1983* (United Nations publication, Sales No. E.90.V.1), p. 170, under item 8.

³⁶ The footnote refers to paragraphs 69, 77 and 78 of annex IV, paragraphs 8 to 10 of annex V, and paragraph 6 of annex VI. For the content of paragraph 69 of annex IV and paragraph 6 of annex VI, see *supra* footnote 28, since they refer to the rules on closing of list of speakers.

³⁷ Paragraph 77 of annex IV.

³⁸ *Ibid.*, paragraph 78.

³⁹ Paragraph 8 of annex V.

⁴⁰ See also *United Nations Juridical Yearbook, 1982* (United Nations publication, Sales No. E.89.V.1), pp. 160-161, under item 5, in particular para. 5 stating that the practice examined reveals that, when more than one item is considered in the course of a particular day, statements in the exercise of the right of reply have been made at the conclusion of the consideration of the relevant agenda item before the next agenda item is considered.

⁴¹ Paragraph 9 of annex V.

⁴² *Ibid.*, paragraph 10.

speakers by presiding officers, both in the Commission and its subsidiary organs, with much flexibility.

9. Rule 116: adjournment of debate

37. The rule reads as follows: “During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The Chairman may limit the time to be allowed to speakers under this rule.”⁴³

38. The rule is followed in the Commission and its subsidiary organs with much flexibility. Decisions in the Commission and its subsidiary organs are taken by consensus (see A/CN.9/638/Add.4 for the review of the decision-making process in the Commission and its subsidiary organs).

10. Rule 117: closure of debate

39. The rule reads as follows: “A representative may at any time move the closure of the debate on the item under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the committee is in favour of the closure, the Chairman shall declare the closure of the debate. The Chairman may limit the time to be allowed to speakers under this rule.”⁴⁴

40. The rule is followed in the Commission and its subsidiary organs with much flexibility.

11. Rule 118: suspension or adjournment of the meeting

41. The rule reads as follows: “During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated but shall be immediately put to the vote. The Chairman may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.”⁴⁵

42. The rule is followed in the Commission and its subsidiary organs with much flexibility.

12. Rule 119: order of procedural motions

43. The rule reads as follows: “Subject to rule 113, the motions indicated below shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;

⁴³ The rule is accompanied by a footnote that refers to paragraph 7 of the introduction to the Rules of Procedure of the General Assembly. The paragraph provides drafting history of the rule.

⁴⁴ Ibid.

⁴⁵ Ibid.

- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) To close the debate on the item under discussion.”

44. The rule is followed in the Commission and its subsidiary organs with much flexibility.

13. Rule 120: proposals and amendments

45. The rule reads as follows: “Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the committee unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.”

46. The rule is accompanied by a footnote that refers to the provisions of an annex to the Rules of Procedure of the General Assembly.⁴⁶ The provisions state that: (i) draft resolutions should be submitted as early as possible so as to give debates a more concrete character; (ii) no rigid rule should be established in the matter, since it is for delegations to determine, in each case, the most appropriate moment for submitting draft resolutions; and (iii) so as to ensure that debates take shape as quickly as possible without making it mandatory for delegations to submit a formal draft resolution, delegations might resort more often to the possibility of circulating draft resolutions as informal working papers which would provide a basis for the discussion but whose contents would be strictly provisional.

47. Although in the provisions references are made to draft resolutions, they may be read as also applying to proposals and amendments made in the Commission and its subsidiary organs. The rule is followed in the Commission and its subsidiary organs with much flexibility.

48. At its third session, the Commission, in connection with the consideration of working methods on uniform rules governing the international sale of goods, adopted a decision in which the preference was expressed for proposals and comments to be submitted in writing and in advance of sessions/meetings to allow their subsequent distribution to other members of the Commission or a subsidiary organ, as the case may be, for comment.⁴⁷

49. Nevertheless, according to the practice in the Commission and its subsidiary organs, proposals and amendments are made in writing but also orally. Proposals in writing may be submitted before or during the session.⁴⁸ They are issued as a document of the Commission or its subsidiary organ with the appropriate symbol

⁴⁶ The footnote refers to paragraphs 87 and 88 of annex IV.

⁴⁷ A/8017, para. 72 (c) and (g).

⁴⁸ See, e.g., A/7216, paras. 40, 57, 59 and 64; A/7618, paras. 18, 37, 49, 125-128 and 168; and A/8017, paras. 18, 128, and 211.

number. Oral proposals are made during the session and cited or summarized in the report of the relevant organ.⁴⁹

50. Since its first session, the Commission has allowed consideration of proposals at the same meeting when they were submitted either orally or in writing.⁵⁰ The Commission and its subsidiary organs consider comments on a proposal, including any amendments thereto, made either orally or in writing, often instantaneously.⁵¹ In some instances, the Commission may decide to defer the consideration of the proposal.⁵² In some cases, the decision on the deferral may be accompanied by referral of a proposal back to a sponsor delegation for further elaboration or clarification.⁵³

14. Rule 121: decisions on competence

51. The rule reads as follows: “Subject to rule 119, any motion calling for a decision on the competence of the General Assembly or the committee to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.”

52. The rule is accompanied by a footnote that refers to the provision in an annex to the Rules of Procedure of the General Assembly that states that the text of a draft resolution should not go beyond the competence of the Committee in which it is submitted. Where, however, it is suggested that a draft resolution does so, it is up to the Committee concerned to take a decision in the matter.⁵⁴ Although in the provisions references are made to draft resolutions, they may be read as also applying to proposals and amendments made in the Commission and its subsidiary organs.

53. The Commission and its subsidiary organs applied the rule with flexibility. In particular, no motion calling for a decision on the competence of the Commission or its subsidiary organs to adopt a proposal submitted to it has ever been put to the vote. The records indicate that in those instances the usual decision-making process was followed.⁵⁵ For the discussion of the decision-making process in the Commission and its subsidiary organs, see document A/CN.9/638/Add.4.

15. Rule 122: withdrawal of motions

54. The rule reads as follows: “A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any member.”

55. The rule has been followed in the Commission and its subsidiary organs with flexibility.

⁴⁹ See, e.g., A/7216, paras. 40, 52, 60, 65 and 66; and A/8017, paras. 26-28, 38-41 and 48.

⁵⁰ See, e.g., A/7216, paras. 57-58.

⁵¹ See e.g., A/7618, paras. 160 and 168-177.

⁵² The Commission, at its second session for example, in one instance, decided that it could not give adequate consideration to the proposal since the latter was not made available prior to the session and deferred the consideration of the proposal to its next session (A/7618, para. 97).

⁵³ See e.g., A/7618, paras. 173 and 176; A/8017, paras. 216-217; and A/8417, para. 62.

⁵⁴ Paragraph 96 of annex IV.

⁵⁵ See, e.g., A/8417, paras. 153-155; A/32/17, paras. 59-68; and A/33/17, paras. 91-97.

16. Rule 123: reconsideration of proposals

56. The rule reads as follows: “When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the committee, by a two-thirds majority of the members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.” For the purpose of the rule, the phrase “members present and voting” means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting (see rule 126 discussed in A/CN.9/638/Add.4).

57. A formal vote in the Commission took place only once and that was on the motion made at the Commission’s eleventh session to reconsider the Commission’s decision taken at that session.⁵⁶ The Commission’s decision in question concerned 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.⁵⁷ Following the statement by the Legal Counsel in which he questioned the Commission’s authority to call in question the General Assembly’s decision on the subject,⁵⁸ two representatives proposed that the decision of the Commission should be amended so that the recommendation contained therein would be addressed to the Secretary-General, who was authorized to implement the relevant decision of the General Assembly, rather than to the General Assembly.⁵⁹ Another view expressed at that session was that it was proper for the Commission to recommend to the General Assembly to reconsider the matter, and the Commission should not reopen the discussion on the matter on which it had already taken a decision.⁶⁰ By 10 votes to 5, with 9 abstentions, the Commission decided not to reopen the matter and maintain its decision adopted.⁶¹ Thus, according to the voting record, the decision was taken in the Commission by a two-thirds majority of the members present and voting as required under rules 123 and 126.⁶²

⁵⁶ A/33/17, paras. 89-103.

⁵⁷ Ibid., para. 97.

⁵⁸ Ibid., para. 98.

⁵⁹ Ibid., para. 99.

⁶⁰ Ibid., para. 100.

⁶¹ Ibid., para. 102.

⁶² At the time of the voting in the Commission, the following version of the Rules of Procedures of the General Assembly was applicable: A/520/Rev.12 and Amend. 1 and 2 (see A/520/Rev.16, Introduction, para. 50). The substance and numbering of the relevant rules in that version of the Rules of Procedure are the same as of the corresponding rules in the current version.