



General Assembly

Distr.: General
24 June 2009

Original: English

United Nations Commission on International Trade Law

Forty-second session

Vienna, 29 June-17 July 2009

UNCITRAL rules of procedure and methods of work

Comments received from Member States and interested international organizations

Note by the Secretariat*

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-2	2
II. Comments received from Member States		2
Singapore		2

* This document transmits comments by a Member State. It was submitted less than ten weeks before the opening of the session, upon receipt of the comments.



I. Introduction

1. The background information relevant to the present note may be found in paragraphs 1-4 of document A/CN.9/676/Add.1.
2. The present document reproduces the comments from Singapore on document A/CN.9/676, as received by the Secretariat on 24 June 2009.

II. Comments received from Member States

A. Member States

Singapore

[Original: English]
[24 June 2009]

I. Introduction

Since its inception in 1966, UNCITRAL has played a crucial role in the development of legal rules and practical procedures for international trade. It has embarked on many ambitious projects and undertakings involving the formulation of model laws, legislative guides and other legal texts to facilitate and promote global business transactions. These legal texts continue to serve as models for the development of trade-related laws in many jurisdictions. As UNCITRAL's membership comprises only States, a large part of its success has been due to the involvement of experts in the various areas worked on by the Commission and its Working Groups. These experts participate as members of delegations from member States of UNCITRAL and other Member States of the United Nations. They also participate as representatives of non-state entities which are invited to participate in UNCITRAL's deliberations as observers. Many of these non-state entities invited to participate as observers are either organizations with considerable expertise in the subject areas being addressed by UNCITRAL, or are themselves active players in these subject areas and would be directly affected by any rules promulgated by UNCITRAL in its efforts to harmonize international trade law.

The membership of UNCITRAL has been expanded and the number of its Working Groups have also increased. Additionally, in recent years there has been increasing requests by non-state entities to participate in UNCITRAL's deliberations. Some non-state entities have made it clear that they are seeking participation not on account of any expertise that they can offer to the discussion, but in order to advocate for certain positions which are in line with their objectives. Such requests can only increase over time. It is therefore timely for the Commission's rules of procedure and methods of work to be reviewed. Explicit rules on the working methodology of the Commission would in particular be useful in clarifying the decision-making process, and the participation of observer States and non-state entities in the work of the Commission.

This note conveys Singapore's views on the proposed rules of procedure and methods of work submitted by the Secretariat for the consideration of the

Commission at its forthcoming 42nd Session to be held in Vienna from 29 June to 17 July 2009.

II. Participation of observers

Singapore acknowledges the valuable contributions made by non-member States and non-state observer organizations to the Commission's work. The legal and technical expertise and resources provided by the observers have greatly enriched the deliberations of the Commission and have promoted the effectiveness and acceptance of the results of the Commission's work among diverse legal, economic and social systems.

It is appropriate however for the rules to clarify that any decision of the Commission (whether taken through consensus, indicative voting or formal voting) have to be made by the member States of UNCITRAL. This is because UNCITRAL is a body established by the General Assembly of the United Nations with a specific mandate and is responsible to the General Assembly for its outcomes. The General Assembly established UNCITRAL as a body that comprises only Member States of the United Nations, elected periodically by the General Assembly itself. The mandate of UNCITRAL can only be carried out by these States, and no other. If the mandate is to be carried out by other States or non-state entities, this can only mean that the work of UNCITRAL is undertaken by States and entities that are not mandated to undertake this work. The actions of UNCITRAL would thus be *ultra vires* its mandate.

III. Decision-making

Singapore supports wholly the principle that determinations of any issue during deliberations of UNCITRAL should be through consensus. This is the best mode as this ensures that the determination would enjoy the acceptance and support of all those affected by it. In order to arrive at a consensus, it is important that full opportunity should be provided for all views on the matter to be articulated. This means that full opportunity should be given to all participants, whether they be member States of UNCITRAL, other Member States of the United Nations, or non-state entities participating as observers, to articulate their views. Singapore would note that it is an important responsibility of persons who chair discussions to guide the discussion in a manner that ensures that fair consideration is given to all relevant views expressed, and that the final determination of the issue through consensus is arrived at in a manner that is efficient, fair and thus acceptable to all.

However, in the rare instance that consensus is not possible, then in accordance with established practices of the United Nations, the issue may have to be resolved through a vote. Any vote conducted should be in accordance with established procedural rules of the United Nations. Rule 125 of the Rules of the General Assembly is an important rule and should be applied. This rule mandates that where voting takes place, decisions should be made by a majority of member States (in this case, the member States of UNCITRAL) who were present and voting. It is assumed that in deciding on how they should vote, these member States of UNCITRAL would give due consideration to all views expressed during the deliberations, including the views of other Member States of the United Nations and non-state entities who participate in the deliberations as observers. Such a modality would not only comply with the procedural norms of the United Nations, but would also

maintain the principle that the decisions of UNCITRAL in the exercise of its mandate from the General Assembly are taken by the States mandated by the General Assembly to make such decisions, and not others.

The same principle should apply in the rare instance where a Chairman decides to take an indicative vote from the participants before declaring a consensus. Chairmen of UNCITRAL proceedings should be sensitive to the mandate of UNCITRAL and should not indulge in processes that can lead to an outcome not supported by those mandated by the General Assembly to make that decision. This means ensuring that any decision to be made by UNCITRAL and/or its Working Groups are made by the State members of UNCITRAL.

The reservation of decision-making to its member States would not diminish the effectiveness of UNCITRAL given its long-standing practice of consulting various expert and interest groups and inviting observers to offer their views and inputs at its forums. UNCITRAL should continue to give observers full and free speaking rights at its meetings so that its member States would have the benefit of the observers' views and expertise before they arrive at a decision.

IV. Participation in delegations

Member States of UNCITRAL or other Member States of the United Nations should be permitted to determine for themselves whether they would be represented at the meetings by persons other than its public officials. Any delegate from outside the public sector who represents a member State of UNCITRAL or other Member State of the United Nations as part of its delegation should be accorded the full rights to represent that State at the meetings. It should be made clear that such a person, when speaking as a member of a delegation of a member State of UNCITRAL or other Member State of the United Nations, does so as a representative of that State and not on his own account or on account of any non-state entity that he may be involved in.

V. Guidelines on conduct of meetings and discussions

To ensure consistency of practice in meetings and discussions of the Commission and the various Working Groups of UNCITRAL, Singapore is of the view that clear and consistent guidelines must be formulated to assist chairpersons on the conduct of these meetings. An experts group can be established to work with the Secretariat to draw up these Guidelines which can be contained in a "practice handbook" for all UNCITRAL Chairpersons.