

DISCUSSION PAPER

Consensus decision-making in the implementation of United Nations General Assembly resolution 74/247 - Countering the use of information and communications technologies for criminal purposes

General Assembly resolution 74/247 is silent on rules of procedure generally, and on decision-making in particular, in the work of the ad hoc committee established under the resolution.

Rule 161 of the General Assembly rules of procedure provides:

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions. The rules relating to the procedure of committees of the General Assembly, as well as rules 45 and 60, shall apply to the procedure of any subsidiary organ unless the Assembly or the subsidiary organ decides otherwise.

Thus, it is open for the ad hoc committee to decide to adopt modified rules of procedure.

A key aspect of the work of the ad hoc committee will be decision-making, in particular consensus. Most States¹ that have made public submissions to the UNODC to date (e.g., Australia, Canada, EU, Iran, Japan, USA) have already proposed that the ad hoc committee should work on the basis of consensus.

Many considerations favour the adoption of modified rules of procedure establishing consensus decision-making for the ad hoc committee:

- Important crime treaties such as *UNTOC* and *UNCAC* were negotiated on the basis of consensus and adopted without vote. These two instruments today enjoy near universal ratification and show the importance of consensus decision-making for achieving effective international cooperation.
- Of note, for both *UNTOC* and *UNCAC*, the successful consensus negotiation of the treaty text was accompanied by consensus negotiation of draft rules of procedure for future conferences of States Parties to each treaty. In both cases, these draft rules included modified rules which committed Parties to consensus decision-making.
- In recent years, cyber-related matters at the UN have been addressed in processes that are explicitly consensus-based (e.g., the current UN OEWG, the current UN GGE, and all previous UN GGEs).
- With respect to its work in the field of crime prevention and criminal justice, the UN has operated on the basis of consensus (e.g., Crime Commission, IEG on cybercrime). With respect to treaty negotiation processes, it is common to adopt modified rules of procedure that make explicit States' commitment to consensus decision-making (e.g., Arms Trade Treaty).

¹ The use of the term 'State(s)' throughout this paper shall not be understood as precluding the participation of international organisations to the open-ended ad hoc intergovernmental committee of experts nor as affecting their participation rights.

In light of all this, it would be appropriate for the background documentation for the August organizational meeting of the ad hoc committee to include provisional rules of procedures to include consensus decision-making. These could then be adopted at the start of the August meeting. In this regard, the following text could be considered:

PROPOSED LANGUAGE²:

Decision-Making

The ad hoc committee shall conduct its work in an open and transparent manner, on the basis of consensus.

Substantive work

Rule #: The ad hoc committee shall take its decisions and consider the text of the instrument by consensus.

Procedural matters

Rule ##.

1. The ad hoc committee shall exhaust every effort to ensure that all its decisions on matters of procedure are taken by consensus.
2. Except as otherwise provided in these rules, decisions of the ad hoc committee on all matters of procedure shall be taken by a two-thirds majority of the representatives present and voting, only when the Chair decides that efforts to reach a consensus have been exhausted.
3. If the question arises as to whether a matter is one of procedure or of substance, the Chair shall rule on the question. An appeal against this ruling shall be put to the vote immediately, and the Chair's ruling shall stand unless overruled by a majority of the representatives present and voting.
4. If a vote is equally divided, the proposal or motion shall be regarded as rejected.

² The proposed text for these rules is adapted from the rules of procedures agreed in multiple precedents, including for the Arms Trade Treaty (**ATT**): A/CONF.217/L.1 , in particular rules 33-36 (see: https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/L.1&Lang=E), and the UNTOC Conference of Parties (CoP), in particular rules 56-61: https://www.unodc.org/documents/treaties/Rules_of_Procedure_corr/15-00000_E_book.pdf