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**United Nations Commission
on International Trade Law**
Working Group III (Online Dispute Resolution)
Twenty-sixth session
Vienna, 5-9 November 2012

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards on online dispute resolution.
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2016), Argentina (2016), Armenia (2013), Australia (2016), Austria (2016), Bahrain (2013), Benin (2013), Bolivia (Plurinational State of) (2013), Botswana (2016), Brazil (2016), Bulgaria (2013), Cameroon (2013), Canada (2013), Chile (2013), China (2013), Colombia (2016), Czech Republic (2013), Egypt (2013), El Salvador (2013), Fiji (2016), France (2013), Gabon (2016), Georgia (2015), Germany (2013), Greece (2013), Honduras (2013), India (2016), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2013), Jordan (2016), Kenya (2016), Latvia (2013), Malaysia (2013), Malta (2013), Mauritius (2016), Mexico (2013), Morocco (2013), Namibia (2013), Nigeria (2016), Norway (2013), Pakistan (2016), Paraguay (2016), Philippines (2016), Poland (2012), Republic of Korea (2013), Russian Federation (2013), Senegal (2013), Singapore (2013), South Africa (2013), Spain (2016), Sri Lanka (2013), Thailand (2016), Turkey (2016), Uganda (2016), Ukraine (2014), United Kingdom



of Great Britain and Northern Ireland (2013), United States of America (2016) and Venezuela (Bolivarian Republic of) (2016).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The twenty-sixth session of the Working Group will be held at the Vienna International Centre, from 5 to 9 November 2012. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2.00 p.m. to 5.00 p.m., except on Monday, 5 November 2012, when the session will be opened at 10.00 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Preparation of legal standards on online dispute resolution

(a) Previous deliberations

5. At its thirty-third session (New York, 12 June-7 July 2000), the Commission held a preliminary exchange of views on proposals to include online dispute resolution in its future work programme.¹ At that session, it was generally agreed that further work could be undertaken to determine whether specific rules were needed to facilitate the increased use of online dispute settlement mechanisms. In that context, it was suggested that special attention might be given to the ways in which dispute settlement techniques such as arbitration and conciliation might be made available to both commercial parties and consumers. It was widely felt that the use of electronic commerce tended to blur the distinction between consumers and commercial parties. It was also recalled that in a number of countries, the use of arbitration for the settlement of consumer disputes was restricted for reasons involving public policy considerations and might not easily lend itself to harmonization by international organizations. At its thirty-fourth² (Vienna, 25 June-13 July 2001) and thirty-fifth³ (New York, 17-28 June 2002) sessions, the Commission decided that future work on electronic commerce would include further research and studies on the question of online dispute resolution and that Working Group II (Arbitration and Conciliation) would cooperate with Working Group IV (Electronic Commerce) with respect to possible future work in that area.

¹ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 385.

² *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 287 and 311.

³ *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 180 and 205.

6. At its thirty-ninth (New York, 19 June-7 July 2006) to forty-first (New York, 16 June-3 July 2008) sessions, the Commission took note of suggestions that the issue of online dispute resolution should be maintained as an item for future work.⁴

7. At its forty-second session, (Vienna, 29 June-17 July 2009), the Commission had heard a recommendation that a study should be prepared on possible future work on the subject of online dispute resolution in cross-border electronic commerce transactions, with a view to addressing the types of e-commerce disputes that might be solved by online dispute resolution systems, the appropriateness of drafting procedural rules for online dispute resolution, the possibility or desirability to maintain a single database of certified online dispute resolution providers, and the issue of enforcement of awards made through the online dispute resolution process under the relevant international conventions.⁵ The Commission had agreed on the importance of the proposals relating to future work in the field of online dispute resolution to promote electronic commerce and requested the Secretariat to prepare a study on the basis of proposals contained in document A/CN.9/681/Add.2, and to hold a colloquium on the issue of online dispute resolution, resources permitting.⁶

8. At its forty-third session (New York, 21 June-9 July 2010), the Commission had before it a note by the Secretariat on the issue of online dispute resolution which summarized the discussion at a colloquium organized jointly by the Secretariat, the Pace Institute of International Commercial Law and the Penn State Dickinson School of Law (A/CN.9/706).⁷ The Commission also had before it a note from the Institute of International Commercial Law in support of possible future work by UNCITRAL in the field of online dispute resolution reproduced in document A/CN.9/710.

9. At that session, the Commission noted that, during the colloquium, it had been said that proposals for regional online dispute resolution systems were in the process of being developed, and it might therefore be timely to deal with the matter internationally from the outset in order to avoid development of inconsistent mechanisms. It was further noted that the goal of any work undertaken by UNCITRAL in this field should be to design generic rules which, consistent with the approach adopted in UNCITRAL instruments (such as the Model Law on Electronic Commerce),⁸ could apply in both business-to-business and business-to-consumer environments. The Commission was informed that the commonly shared view expressed during the colloquium was that traditional judicial mechanisms for legal recourse did not offer an adequate solution for cross-border electronic commerce disputes, and that the solution — providing a quick resolution and enforcement of disputes across borders — might reside in a global online dispute

⁴ *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), paras. 183 and 186-187; *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), para. 177; and *Sixty-third Session, Supplement No. 17* (A/63/17), para. 316.

⁵ *Ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 338, and A/CN.9/681/Add.2, para. 4.

⁶ *Ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 342-343.

⁷ The colloquium, entitled “A Fresh Look at Online Dispute Resolution and Global E-Commerce: Toward a Practical and Fair Redress System for the 21st Century Trader (Consumer and Merchant)” was held in Vienna, on 29 and 30 March 2010. Information about the colloquium is available at the date of this report at www.uncitral.org/pdf/english/news/IICL_Bro_2010_v8.pdf.

⁸ United Nations publication, Sales No. E.99.V.4.

resolution system for small value, high-volume business-to-business and business-to-consumer disputes. Electronic commerce cross-border disputes required tailored mechanisms that did not impose costs, delays and burdens that were disproportionate to the economic value at stake. Those views were generally supported in the Commission. The Commission also noted that work on this topic should recognize the digital divide and that more efforts should be made to hear the views of developing States. The Commission was generally of the view that topics identified at the colloquium required attention and that work by the Commission in the field of online dispute resolution would be timely.

10. At that session, some concerns were expressed with regard to the scope of work to be undertaken. It was suggested that such scope should be limited, at an initial stage, to business-to-business transactions. It was pointed out that issues related to consumer protection were difficult to harmonize, since consumer protection laws and policies varied significantly from State to State. It was also stated that work in that area should be conducted with extreme caution to avoid undue interference with consumer protection legislation. In response, the view was expressed that, in the present electronic environment, consumer transactions constituted a significant portion of electronic and mobile commercial transactions and were often cross-border in nature. It was also argued that it was practically and theoretically difficult to make a distinction not only between business-to-business and business-to-consumer transactions but also between merchants and consumers. It was concluded that work by a Working Group should be carefully designed not to affect the rights of the consumers. Although it was generally felt that it would be feasible to develop a generic set of rules applicable to both kinds of transactions, it was also agreed that the Working Group should have the discretion to suggest different approaches, if necessary.

11. Further, at that session, the Commission agreed that a Working Group should be established to undertake work in the field of online dispute resolution relating to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions.⁹ It was also agreed that the form of the legal standard to be prepared should be decided after further discussion of the topic.

12. At its twenty-second session (Vienna, 13-17 December 2010), Working Group III commenced its work on the preparation of a legal standard on online dispute resolution for cross-border electronic transactions (A/CN.9/WG.III/WP.105).

13. At its twenty-third session (New York, 23-27 May 2011), twenty-fourth session (Vienna, 14-18 November 2011) and twenty-fifth session (New York, 21-25 May 2012) the Working Group continued its work on the preparation of legal standards on online dispute resolution for cross-border electronic transactions on the basis of notes prepared by the Secretariat (A/CN.9/WG.III/WP.107, A/CN.9/WG.III/WP.109, A/CN.9/WG.III/WP.110, A/CN.9/WG.III/WP.112 and its addendum, and A/CN.9/WG.III/WP.113).

14. At its twenty-sixth session, the Working Group is expected to continue its work on the preparation of legal standards on online dispute resolution for

⁹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 257.

cross-border electronic transactions and consider proposals on principles applicable to Online Dispute Resolution providers and neutrals.

(b) Documentation

15. The Working Group will have before it notes by the Secretariat regarding the preparation of legal standards on online dispute resolution for cross-border electronic transactions: draft procedural rules (A/CN.9/WG.III/WP.117 and its addendum) and issues for consideration in the conception of a global ODR framework (A/CN.9/WG.III/WP.113). The Working Group will also have before it a note submitted by the delegation of Canada on a proposal for the preparation of principles applicable to Online Dispute Resolution providers and neutrals (A/CN.9/WG.III/WP.114) and a note submitted by the Center for International Legal Education regarding an analysis and proposal for incorporation of substantive principles for ODR claims and relief into article 4 of the draft procedural rules (A/CN.9/WG.III/WP.115).

16. A limited number of the following background documents will be made available at the session:

Report of the United Nations Commission on International Trade Law on the work of its forty-third session (*Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17));

Report of the United Nations Commission on International Trade Law on the work of its forty-fourth session (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17));

Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (*Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17));

Report of the Working Group III (Online Dispute Resolution) on the work of its twenty-second session (A/CN.9/716);

Report of the Working Group III (Online Dispute Resolution) on the work of its twenty-third session (A/CN.9/721);

Report of the Working Group III (Online Dispute Resolution) on the work of its twenty-fourth session (A/CN.9/739);

Report of the Working Group III (Online Dispute Resolution) on the work of its twenty-fifth session (A/CN.9/744);

Online dispute resolution for cross-border electronic commerce transactions: draft procedural rules, note by the Secretariat (A/CN.9/WG.III/WP.112 and its addendum).

17. Relevant UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

18. The Working Group may wish to consider reviewing the guidance from the Commission regarding the future deliberations of the Working Group as set out in

Section VI of the Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/67/17)*).

Item 6. Adoption of the report

19. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-sixth session of the Commission scheduled to be held in Vienna, from 8 to 26 July 2013. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

20. The Working Group's twenty-sixth session will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,¹⁰ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

21. The Working Group may wish to note that its twenty-seventh session is scheduled to be held in New York, from 20-24 May 2013.

¹⁰ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, para. 381.