



General Assembly

Distr.: General
18 June 2009

Original: English

**United Nations Commission
on International Trade Law**
Forty-second session
Vienna, 29 June-17 July 2009

Possible future work on electronic commerce – Proposal of the United States of America on online dispute resolution*

1. The United States recommends that the Secretariat be asked to prepare, subject to the availability of sufficient staff resources, a study on possible future work that UNCITRAL might engage in on the subject of online dispute resolution in cross-border e-commerce transactions. If such a study is undertaken, it would be expected that the Secretariat would consult with and inform member and observer States on the progress made in developing its recommendations concerning future work and suggests that the Secretariat consider holding a colloquium of experts on the matter.

2. For a number of years UNCITRAL has monitored online dispute resolution systems currently being experimented within the field of e-commerce with the understanding that at some point in time it could propose a course of action for the Commission in the field of online dispute resolution (ODR).¹ In 2003 the UNCITRAL Secretariat concluded that:

the best course of action ... is to monitor and review emerging practices with respect to ODR, to analyse the various experiments done in field, to gather information and prepare studies as to the perceived or objectively identified legal, technical and commercial difficulties arising with respect to ODR, with a view to enlightening further debate as to the better way in which those issues might be addressed in a comprehensive framework. Subject to the findings of such analyses and studies, our opinion is that it is still too early for the United Nations to engage in the preparation of any normative instrument.²

* The late submission of the document reflects the date on which the proposal was communicated to the Secretariat.

¹ Current Work by UNCITRAL in the Field of Electronic Commerce, UN Doc. TRADE/CEFACT/2002/20 at 4 (18 April 2002), available at http://www.unece.org/cefact/cf_plenary/plenary02/docs/02cf20.pdf.

² UNCITRAL Secretary Jernej Sekolec letter dated January 17, 2003, to CEFACT Trade Division



3. Since then the Commission at its plenary sessions has consistently maintained online dispute resolution as possible future work for both Working Group II (arbitration) or Working Group IV (e-commerce).³ However, the Commission has not specifically requested that the Secretariat prepare any subsequent studies concerning the legal, technical and commercial difficulties arising from ODR or possible future work on the matter. As some studies indicate that cross-border e-commerce has not grown as fast as could have been expected, due, in part, to concerns about where the parties can turn if disputes arise, the United States believes it would be timely for the Secretariat to revisit these matters.

4. A study by the Secretariat might consider some of the following issues:

i. Types of conflicts that may be solved by ODR systems

The Secretariat might wish to explore the types of e-commerce transactions where ODR can be most successful.⁴

The study might also consider the issue of whether any possible future work on ODR mechanisms should include e-commerce disputes involving both business-to-business as well as business-to-consumer transactions.

ii. Accrediting ODR providers

The Secretariat might also explore whether it would be possible or desirable to maintain a single database of certified ODR providers for e-commerce transactions.⁵

Director concerning a draft recommendation on online alternative dispute resolution, at 6, available at <http://markmail.org/download.xqy?id=iupo4oag7aijppnj&number=1>.

³ Report of the Commission sessions for 2008 (UN Doc. A/63/17, para. 316); 2007 (UN Doc. A/62/17, para. 176); 2006 (UN Doc. A/61/17, para. 187); 2005 (UN Doc. A/60/17, paras. 178, 215); 2004 (UN Doc. A/59/17, para. 60). See also *Reducing Time and Costs on International Arbitration*, José María Abascal Zamora, presented at the fortieth annual session of UNCITRAL Vienna, 9-12 July 2007, available at <http://www.uncitral.org/pdf/english/congress/Abascal-rev.pdf>.

⁴ The first international body to enter into this field was the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, which was established to provide an internet-based, online dispute resolution system that can provide a neutral, speedy and inexpensive means of resolving disputes including under the Uniform Domain Name Dispute Resolution Policy (UDRP). See Record Number of Cybersquatting Cases in 2008, WIPO Proposes Paperless UDRP, PR/2009/585, March 16, 2009, available at http://www.wipo.int/pressroom/en/articles/2009/article_0005.html. At least part of the success of the UNRP would appear to be based on the fact that the process is mandatory for all domain name registrants and the remedy is easily enforceable. See also Redress & Alternative Dispute Resolution in Cross-Border E-commerce Transactions, Briefing Note European Parliament, at ii, 7 (January 2007), available at http://www.europarl.europa.eu/comparl/imco/studies/0701_crossborder_ecom_en.pdf (recommending that for the short term “[f]urther empirical research is necessary to identify if other niche areas, akin to the UDRP domain name situation, exist where hard ODR can be successful.”). It may now be possible to develop practical incentives for compliance with online awards through use of trustmarks provided to entities that comply with awards and agreements. Id. at 8.

⁵ The U.S. Federal Trade Commission and consumer protection agencies in 23 other countries have created an International ADR Directory containing contact information of dispute resolution service providers that can help consumers resolve problems with cross-border sellers. The Directory is available at <http://www.econsumer.gov/english/resolve/directory-of-adrs.shtm>.

iii. Procedural rules

The Secretariat might also consider whether it is appropriate to draft procedural rules for online dispute resolution in cross-border e-commerce transactions which utilize fast-track procedures which comply with due process requirements.⁶

iv. Enforcement of online awards

Consideration could be given to the applicability to awards made through the ODR process of the relevant international conventions on the recognition and enforcement of arbitral awards.⁷ However, given the small size of many e-commerce claims, reliance on these treaties may not be cost-effective in the typical case. For this reason, it may be useful to consider how to establish practical incentives for compliance with such online awards.

Similarly, the European Commission together with its member States, currently maintains a central database of ADR bodies which are considered to be in conformity with the Commission's Recommendations on dispute resolution. The data is maintained on the website of the Health and Consumer Protection Directorate General. See http://ec.europa.eu/consumers/redress_cons/adr_en.htm.

⁶ In the OAS CIDIP VII negotiations the United States has proposed Draft Model Rules for Electronic Arbitration of Small Cross-Border Consumer Claims. The rules are intended to provide practical procedures for resolution of certain common types of small consumer disputes that are simple, economical, effective, fast and fair.

⁷ For the relevant instruments see the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); the Inter-American Convention on International Commercial Arbitration (Panama, 1975); and the European Convention on International Commercial Arbitration (Geneva, 1961).