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**United Nations Commission  
 on International Trade Law**  
**Working Group III (Online Dispute Resolution)**  
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**Online dispute resolution for cross-border electronic  
 commerce transactions: draft procedural rules**

**Addendum**

**Note by the Secretariat**

**Contents**

	<i>Paragraphs</i>	<i>Page</i>
B. Notes on draft procedural rules ( <i>continued</i> ) . . . . .	1-65	
3. Negotiation . . . . .	1-15	2
4. Neutral . . . . .	16-34	5
5. Facilitated settlement and arbitration . . . . .	35-43	9
6. Decision by the neutral . . . . .	44-52	10
7. Other provisions . . . . .	53-65	12



### 3. Negotiation

#### 1. Draft article 5 (Negotiation and settlement)

*[Negotiation]*

“1. *[Upon [submission][receipt] of the response [and, if applicable, counter-claim] [[to][on] the ODR platform][and notification thereof to the claimant] referred to in article [4B, paragraph[s] (1) and [(2)]]], the parties shall attempt to settle their dispute through direct negotiation including, where appropriate, through the communication methods available on the ODR platform.]*

“2. *If the respondent does not [communicate to the ODR provider a response to the notice in accordance with the form contained in article 4B, paragraph (3)] [respond to the notice] within seven (7) calendar days, it is presumed to have refused to negotiate and the ODR proceedings shall automatically move to the [next] [facilitated settlement [and arbitration]] stage[s], at which point the ODR provider shall [promptly] [without delay] proceed with the appointment of the neutral in accordance with article 6 (Appointment of Neutral).*

“3. *If the parties have not settled their dispute by negotiation within ten (10) calendar days of receipt of the response [by the ODR provider] [and notification thereof to the claimant], then the ODR proceedings shall automatically move to the [next] [facilitated settlement [and arbitration]] stage[s].*

“4. *The parties may agree to a one-time extension of the deadline [for the filing of the response] [for reaching settlement]. However no such extension shall be for more than ten (10) calendar days.*

*[Settlement]*

“5. *If settlement is reached [during the negotiation stage][and/or at any other stage of the ODR proceedings], [the terms of such settlement shall be recorded on the ODR platform], [at which point,] [subject to article 5, paragraph (6),] the ODR proceedings will automatically terminate.*

“*[6. Where a party has failed to implement any settlement reached under paragraph (5) within [ten (10)] days of such settlement being agreed [and recorded on the ODR platform][the “long-stop date”], either party may [re-commence] [re-open] ODR proceedings [with the same ODR provider] [within fifteen (15) days of the long-stop date] to seek a [decision] [award] reflecting the terms of the settlement which [decision] [award] a neutral shall have the power to grant.]”*

*Remarks*

*General*

2. The Secretariat has reordered draft article 5, taking into account the proposals of the Working Group and with a view to reflecting more clearly the probable chronology of negotiation and settlement. The Working Group may wish to consider including the provisional subheadings provided in this article in order to better

distinguish between the negotiation and settlement phases, particularly if the Working Group is inclined to consider settlement as a process that could take place at any time during the proceedings, including at or during the facilitated settlement and/or arbitration stages (although see A/CN.9/744, para. 85).

3. The Working Group may wish to note that the negotiation stage can involve assisted negotiation, automated negotiation or both. In assisted negotiation, the parties endeavour to reach a settlement communicating by electronic means offered by the ODR provider. In automated negotiation, each party offers a solution, usually in monetary terms, for settlement of the dispute, which is not communicated to the other party. The software then compares the offers and aims to reach a settlement for the parties if the offers fall within a given range. The Rules may need to take into consideration the use of automated negotiation where it is the technology (software) that “negotiates” the settlement on the basis of proposals submitted by the parties. The Working Group may wish to consider whether the provisions on negotiation should include assisted negotiation and automated negotiation.

*Paragraph (1)*

4. At its twenty-fifth session, the Working Group requested the Secretariat to modify the drafting of paragraph (1) to take into account suggestions that the negotiation stage should be more clearly defined and furthermore that the Rules support implementation of negotiated settlements (A/CN.9/744, paras. 79-81). Consequently, paragraph (1) now addresses the timing and content of the negotiation stage. This paragraph formerly addressed the consequences of settlement (namely, termination of proceedings), which now appears as draft paragraph (5).

*Paragraph (2)*

5. The following suggested wording “[*communicate to the ODR provider a response to the notice in accordance with the form contained in article 4B, paragraph (3)*]” has been inserted as an alternative to “[*respond to the notice*]” in the interest of maintaining consistency with the requirements for the notice set out in article 4B, paragraph (4), and also in order to avoid ambiguity in relation to the timing of receipt.

6. The Working Group may wish to recall its decision that, following a failure to negotiate, the proceedings will move to the next stage automatically (A/CN.9/739, para. 97). In defining that next stage (the second set of square-bracketed language), the Working Group may wish to consider whether the three envisaged and specific phases of ODR proceedings — negotiation, facilitated settlement and arbitration — may require separate and distinct definitions of commencement (see A/CN.9/WG.III/WP.112, para. 33).

*Paragraph (3)*

7. Bracketed language has been included with the aim clarifying the timing of receipt of the response, and to maintain consistency with the other provisions in this article.

*Paragraph (4)*

8. It was suggested at the Working Group's twenty-fifth session that limiting the time period during which an extension could be agreed would be preferable to facilitate efficient proceedings; ten days was agreed to be sufficient in this respect (A/CN.9/744, paras. 84, 86).

9. The Working Group may wish to consider whether the intent of this paragraph is to extend the deadline for filing a response (under draft article 4, paragraph (3)), or for reaching a settlement (under draft article 5, paragraph (5)). Although these options are not mutually exclusive, the Working Group may wish to recall its consensus that only one of these options should be included (A/CN.9/744, para. 85). There was some discussion regarding whether the paragraph should govern only the commencement of proceedings, and hence be applicable only to a response, or whether it should instead place some limitation on the capacity of the parties to negotiate through the ODR system by limiting the time in which they can reach settlement through such negotiation (without prejudice to their ability to negotiate outside the ODR system in any event).

*Paragraph (5)*

10. The Working Group may wish to recall the preference expressed for settlements to be clearly recorded on the ODR platform (A/CN.9/744, para. 90). The Working Group may wish to consider whether a settlement may be reached at any stage of ODR proceedings and the desirability of recording any such settlement on the ODR platform. Should the Working Group decide to adopt an approach whereby settlement may be reached at different points in the ODR proceedings, it may wish to consider whether settlement should be included in a separate draft article to distinguish it as distinct from the negotiation process.

11. The Working Group may further wish to consider any technical aspects regarding formation of settlement agreements, including whether these would require a separate provision providing for disputes arising out of the settlement.

*Paragraph (6)*

12. The Working Group may wish to recall its agreement that the purpose of this paragraph was to permit a party to re-commence proceedings for the sole purpose of obtaining an award or decision with which it could seek enforcement (A/CN.9/744, para. 90).

13. In particular the Working Group may wish to recall the following matters, raised at the twenty-fifth session, as being applicable to a provision on non-implementation (A/CN.9/744, para. 90): (i) the relationship between this paragraph and (the current) paragraph (5) in relation to settlement; (ii) that short time periods for implementation of settlement and/or re-commencement could encourage compliance on the part of a defaulting party; (iii) that the phrase "re-open" better captures the intent of the paragraph than "re-commence", as the intention was not to begin ODR proceedings afresh from the claim/notice stage; (iv) the possibility for forum shopping between ODR providers if it was not made clear in the paragraph that the same ODR provider must be used; and (v) the need to have settlements clearly recorded on the ODR platform.

14. The Working Group may also wish to consider the practicalities of re-opening proceedings and whether the Rules ought to clarify issues such as (i) whether a new neutral would be appointed to replace any neutral that had previously been acting, or whether the previous neutral would be expected to re-commence his or her duties; and (ii) whether reference should be made to draft article 9 in order to clarify the timelines of the rendering of any award or decision.

15. Bracketed language has been inserted in the event the Working Group wishes to consider whether a deadline should be imposed on the party seeking to re-open proceedings following an alleged non-implementation of a settlement agreement.

#### 4. Neutral

##### 16. Draft article 6 (Appointment of neutral)

*“1. The ODR provider through the ODR platform shall appoint the neutral by selection from a list of qualified neutrals maintained by the ODR provider [or belonging to other arbitral institutions]. Once the neutral is appointed, the ODR provider shall notify the parties of such appointment.*

*[“2. The neutral, by accepting appointment, shall be deemed to have undertaken to make available sufficient time to enable the ODR proceedings to be conducted and completed expeditiously in accordance with the Rules.]*

*“3. The neutral shall declare his or her independence and shall disclose to the ODR provider any circumstances [arising at any time during the ODR proceedings] likely to give rise to justifiable doubts as to his or her impartiality or independence. The ODR provider shall communicate such information to the parties.*

*“4. Either party may object to the neutral’s appointment within [two (2)] calendar days of [(i) ]the notice of appointment [without giving reasons therefor] [; or (ii) a fact or matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the neutral, [so long as that party sets out the fact or matter giving rise to such doubts,] at any time during the ODR proceedings].*

*“4 bis. Where a party objects to the appointment of a neutral, that neutral shall be automatically disqualified and another appointed in his or her place by the ODR provider. Each party shall have a maximum of [three (3)] challenges to the appointment of a neutral following each notice of appointment [under [(i)/[(i) or (ii)]] above, following which the appointment of a neutral by the ODR provider will be final[, subject to article 4(ii) above]. [Alternatively if no challenges are made within two (2) days of any notice of appointment, the appointment becomes final, subject to (ii) above.]*

*“5. Either party may object, within three (3) calendar days from the final appointment of the neutral, to the provision by the ODR provider to the neutral of information generated during the negotiation stage [except in the situation to which article 5(6) applies]. Following the expiration of this three-day period and in the absence of any objections, the ODR provider shall convey the full set of existing information on the ODR platform to the neutral.*

“6. If the neutral has to be replaced during the course of ODR proceedings, the ODR provider through the ODR platform will appoint a neutral to replace him or her and will inform the parties [promptly][without delay]. The ODR proceedings shall resume at the stage where the neutral that was replaced ceased to perform his or her functions.

“7. The number of neutrals shall be one unless the parties otherwise agree.”

*Remarks*

*Paragraph (1)*

17. It was suggested that the bracketed language at the end of the first sentence be included in order to accommodate access to a wider range of neutrals, including neutrals from arbitral institutions (A/CN.9/744, para. 103).

18. The Working Group may wish to note that the second sentence has been moved from the original paragraph (4) (now paragraph (5)) in order to clarify the chronology of communication of a neutral’s appointment to the parties.

*Paragraph (2)*

19. Draft article 6, paragraph (2) has been moved from draft article 7, paragraph (1), following the determination of the Working Group that this paragraph was more closely related to the appointment of the neutral (A/CN.9/744, para. 104).

*Paragraph (3)*

20. The Working Group may wish to recall the suggestion that the neutral’s duty of independence and impartiality be drafted as an ongoing one (A/CN.9/744, para. 92). This duty is also reflected in the current draft article 7, paragraph (1) bis.

*Paragraphs (4) and (4) bis.*

21. At its twenty-fifth session, the Working Group requested the Secretariat to draft a separate provision in draft article 6 permitting a party to object to the appointment of a neutral at any stage of proceedings where there was a justification for such objection (A/CN.9/744, para. 94). Consequently, the former paragraph (3) has been split into two paragraphs, (4) and (4) bis., to differentiate between the right of a party to object to the appointment of a neutral at any time, and the consequences of such objection.

22. The Working Group may wish to note that the current bracketed language in paragraph (4) permits a party to object to an appointed neutral two days after a fact or matter comes to its attention providing it with a justification for such an objection, albeit at any time during the ODR proceedings. The Working Group may wish to consider (i) whether the objecting party would need to furnish an objective justification for such a fact or matter (see A/CN.9/744, para. 94, as well as the ongoing duty to self-report required by the neutral in draft article 6, paragraph (3)); and (ii) whether the existing neutral would be competent to rule on his own competence in respect of such a challenge (bearing in mind the current competence-competence provision in article 7(4)).

23. The Working Group may wish to consider whether the maximum number of challenges (currently expressed as three) should apply to both the original appointment of a neutral (in respect of whom the parties need show no good cause for their objection), as well as to a replacement neutral appointed further to a party showing an objective justification for such objection. The current bracketed drafting provides the option for the maximum number of challenges to apply in relation to the former situation only, or in both cases.

*Paragraph (5)*

24. Paragraph (5) (previously paragraph (4)) has been amended to reflect the principle that within a three-day period the parties may object to the provision of information to the neutral, but that after the expiration of that period the full set of information would be conveyed to the neutral (A/CN.9/744, para. 97).

*Paragraph (7)*

25. At its twenty-fifth session, the Working Group agreed to retain this paragraph as drafted, given that it provided clarity while also permitting a certain degree of flexibility (A/CN.9/744, paras. 101-102).

26. The Working Group may wish to consider whether moving this paragraph to follow paragraph (1) might create a more logical chronology.

**27. Draft article 7 (Power of the neutral)**

*“1. Subject to the Rules [and the Guidelines and Minimum Requirements for ODR Neutrals], the neutral may conduct the ODR proceedings in such manner as he or she considers appropriate.*

*“1 bis. The neutral, in exercising his or her [discretion] [functions under the Rules], shall conduct the ODR proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute. In doing so, the neutral shall remain at all times wholly independent and impartial and shall treat both parties equally.]*

*“2. Subject to any objections under article 6, paragraph (5), the neutral shall conduct the ODR proceedings on the basis of documents filed by the parties and any communications made by them to the ODR provider, the relevance of which shall be determined by the neutral. The ODR proceedings shall be conducted on the basis of these materials only unless the neutral decides otherwise.*

*“3. At any time during the proceedings the neutral may [require][request] or allow the parties (upon such terms as to costs and otherwise as the neutral shall determine) to provide additional information, produce documents, exhibits or other evidence within such period of time as the neutral shall determine.*

*“4. The neutral shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence or validity of any agreement to refer the dispute to ODR. For that purpose, a dispute settlement clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A [decision] [award] by the*

*neutral that the contract is null shall not automatically entail the invalidity of the dispute settlement clause.*

*“[5. Where it appears to the neutral that there is any doubt as to whether the respondent has received the notice under the Rules, the neutral shall make such inquiries or take such steps as he or she deems necessary to satisfy himself with regard to such receipt, and in doing so may where necessary extend any time period provided for in the Rules;*

- (i) [as to whether any party has received any other communication in the course of the ODR proceedings, the neutral may make such inquiries or take such steps as he or she deems necessary to satisfy himself with regard to such receipt, and in doing so may where necessary extend any time period provided for in the Rules.]]”*

*Remarks*

*Paragraphs (1) and (1) bis.*

28. This paragraph (formerly paragraph (2)) has been split into paragraphs (1) and (1) bis. and slightly reorganized in order more clearly to characterize (i) the functions of the neutral; and (ii) the neutral’s broad discretion to conduct the ODR proceedings as he or she sees appropriate, subject to certain constraints (see A/CN.9/744, para. 105).

29. The Working Group may wish to consider whether a document to be prepared in relation to guidelines and minimum requirements for neutrals (see A/CN.9/WG.III/WP.114) should be explicitly incorporated into paragraph (1) as a standard to which the neutral is subject in his or her conduct of proceedings.

30. Whilst the wording of paragraph (1) bis. mirrors the wording of Article 17 of the UNCITRAL Arbitration Rules, the Working Group may also wish to consider whether the word “function” would be more consistent with the wording previously used in article 6(6) of the Rules.

*Paragraph (2)*

31. The Working Group may wish to recall its agreement that this paragraph should be subject to the ability of a party to object to the provision by the ODR provider to the neutral of information generated during the negotiation stage of ODR proceedings (A/CN.9/744, para. 108).

*Paragraph (3)*

32. This paragraph has been modified slightly to reflect the Working Group’s concerns that the “burden of proof” concept should be retained in the Rules but, as a substantive legal principle with legal consequences and obligations, should be relocated (A/CN.9/744, paras. 110-112). Consequently the provision on burden of proof has been relocated to draft article 9, paragraph (6) below.

33. Furthermore the Working Group may wish to recall that it considered modifying slightly the powers of the neutral in order to allow the neutral to request, but not to require, the parties to provide additional information (A/CN.9/744, para. 109).



*Paragraph (5)*

34. The Working Group may wish to recall its request to the Secretariat to redraft this paragraph (previously paragraph (6)) in order (i) to oblige the neutral to conduct enquiries where any doubt existed regarding receipt of the notice, and (ii) to give the neutral the discretion to do so regarding all other communications (A/CN.9/744, paras. 115-117). Square bracketed language has been inserted to reflect this request.

**5. [Facilitated settlement and arbitration]****35. Draft article 8 (Facilitated settlement)**

*“1. The neutral shall evaluate the dispute based on the information submitted and shall communicate with the parties to attempt to reach an agreement. If the parties reach [an agreement][a settlement], then [such settlement shall be recorded on the ODR platform], [at which point,][subject to article 5, paragraph (6),] the ODR proceedings will automatically terminate.*

*“1 bis. If the parties do not reach [an agreement][a settlement] within ten (10) calendar days, [the parties shall have the option to move to the next [stage[s]] of the ODR proceedings] [the neutral shall render a [decision] [award] pursuant to article 9].*

*“[2. If, as a consequence of his or her involvement in the facilitation of settlement, any neutral develops doubts as to his or her ability to remain impartial or independent in the future course of the ODR proceedings under article 9, that neutral shall resign and inform the parties and the ODR provider accordingly.]”*

*Remarks**General*

36. The word “settlement” has been included in square brackets as an alternative to “agreement” as it may be considered more consistent with the language in draft article 5.

*Paragraph (1)*

37. Paragraph (1) has been split into two paragraphs to more clearly express the chronology of facilitated settlement, and of failure to reach a facilitated settlement.

38. Square-bracketed language has been inserted in paragraph (1) to reflect the settlement language in draft article 5, paragraph (5). The Working Group may wish to consider whether another option might be to simply note that, if settlement is achieved, the provisions on settlement in draft article 5, paragraphs (5) and (6) will apply.

39. In particular, the Working Group may also wish to consider whether a provision in respect of a failure to implement a settlement, parallel to that in article 5, paragraph (6) should apply to any settlement arising out of a facilitated settlement stage.

*Paragraph (1) bis.*

40. Paragraph (1) bis. is closely linked to draft article 1, regarding the staged nature of ODR proceedings, as well as to the mechanism in draft article 5, paragraphs (2) and (3), regarding the transition from negotiation to the next stage of arbitration proceedings.

41. The Working Group may wish to recall that this paragraph is intended to determine whether, after the failure of facilitated settlement, the parties should have the option to determine whether proceedings move to the final stage, or whether this progression to an award or decision would be automatic (A/CN.9/744, para. 121).

42. The Working Group may wish to recall that there was some support for the need for an agreement or additional requirement to move to the next stage of proceedings, on the basis that the timing of such agreement would amount to a post-dispute agreement to arbitrate (A/CN.9/744, para. 123; see also paragraph 14 of WP.117 regarding the desirability of requiring a confirmation at this stage). Moreover, the Working Group may wish to consider whether the automatic rendering of an award or decision at this stage may blur the line between the facilitated settlement stage and the arbitration stage, with consequential difficulties for providing a “confirmatory” agreement to enter into an arbitration stage of proceedings.

*Paragraph (2)*

43. The Working Group may wish to consider whether paragraph (2) is suitable to be included in draft article 8, or whether would be better suited in draft article 6, and in particular paragraph (3).

## **6. Decision by the neutral**

### **44. Draft article 9 ([Issuing of] [Communication of] [decision] [award])**

*“1. The neutral shall render a [decision] [award] [promptly][without delay] and in any event within seven (7) calendar days [with possible extension of additional seven (7) calendar days] after the parties make their final submissions to the neutral. The ODR provider shall communicate the [decision] [award] to the parties. Failure to adhere to this time limit shall not constitute a basis for challenging the [decision] [award].*

*“2. The [decision] [award] shall be made in writing and signed by the neutral, and shall contain the date on which it was made [and brief grounds for the [decision] [award]].*

*“[3. The [decision] [award] shall be final and binding on the parties. The parties shall [promptly] carry out the [decision] [award] without delay.]*

*“4. Within [five (5)] calendar days after the receipt of the [decision] [award], a party, with notice to the other party, may request the neutral to correct in the [decision] [award] any error in computation, any clerical or typographical error, [or any error or omission of a similar nature]. If the neutral considers that the request is justified, he or she shall make the correction [including a brief statement of reasons therefore] within*

*[two (2)] calendar days of receipt of the request. Such corrections [shall be in writing and] shall form part of the [decision] [award].*

*“5. In all cases, the neutral shall decide in accordance with the terms of the contract, taking into consideration any relevant facts and circumstances[, and shall take into account any usage of trade applicable to the transaction].”*

*[“6. Each party shall have the burden of proving the facts relied on to support its claim or defence.]*

#### *Remarks*

##### *Paragraph (1)*

45. The Working Group may wish to consider whether the Rules provide sufficiently for a link between facilitated settlement and the decision stage, and furthermore whether there is sufficient guidance in the Rules in relation to the timeframe in which parties must make submissions (including “final submissions”) to the neutral.

46. The Working Group may wish to deliberate on what happens in the event that a neutral fails to render a decision within the time provided in the paragraph (A/CN.9/739, para. 133) as well as to consider the suggestion to impose reputation-based penalties on ODR parties defaulting on their obligations (A/CN.9/739, para. 136).

##### *Paragraph (2)*

47. The Working Group may wish to address the question whether a neutral needs to provide grounds for his or her decision (A/CN.9/739, para. 137).

48. The requirement for the decision or award to be in writing and signed by the neutral reflects the language in Article 31(1) of the Model Law on Arbitration.

##### *Paragraph (4)*

49. The Working Group may wish to address the question whether a neutral needs to provide grounds for his or her correction to the decision (A/CN.9/739, para. 139).

##### *Paragraph (5)*

50. The Working Group may wish to note that, as paragraph (5) relates to substantive legal principles for resolving disputes, it was suggested to delete it from draft article 9 and to include it elsewhere (A/CN.9/739, para. 141). The Working Group may also wish to note that this issue is discussed in A/CN.9/WG.III/WP.113. The Working Group may wish to consider relocating this paragraph, as well as the subsequent paragraph regarding burden of proof, into a separate annex or document in relation to substantive legal principles/guidelines for neutral’s resolution of ODR disputes.

##### *Paragraph (6)*

51. The Working Group may wish to note that, as paragraph (6) (formerly draft article 7, paragraph (4)) relates to substantive legal principles for resolving disputes,

it was suggested that this paragraph be moved from draft article 7 and included elsewhere in the Rules (A/CN.9/744, para. 112).

52. The Working Group may wish to consider whether such a provision is required in the Rules. The Working Group may also wish to recall the concern expressed that the current formulation of this paragraph did not reflect the varying concepts of burden of proof in consumer cases in different jurisdictions (A/CN.9/744, para. 111).

## 7. Other provisions

### 53. Draft article 10 (Language of proceedings)

*“[The ODR proceedings shall be conducted in the language used in connection with the transaction in dispute, [unless another language is agreed upon by the parties] [unless the neutral decides otherwise]. [In the event the parties do not agree on the language of proceedings, the language of proceedings shall be determined by the neutral.]]”*

#### *Remarks*

54. The Working Group may wish to note that in some situations, the language used in connection with a transaction may be different for the seller and buyer, depending on their respective locations. For instance, a seller may access a selling website in one language while the website automatically changes to another language depending on the buyer’s Internet protocol (IP) address, which reflects his location and the language commonly used there. In such a case, identifying the “language used in connection with the transaction” could be problematic.

55. In addition, a common argument against choosing the language of the transaction as the language of proceedings is that the level of understanding of a language needed to conclude a transaction may differ from that needed when making a claim. Technology may assist parties in overcoming such language issues, making it possible for users to submit a claim while having little understanding of the language of the ODR platform. However, it should be borne in mind that a given ODR platform may not have the capacity to provide such technology-based services, and may not be able to accommodate the full range of languages.

56. In order to facilitate agreement on the language of proceedings, the Working Group may wish to provide for selection of language by the parties in annexes A and B of draft article 4 (see A/CN.9/WG.III/WP.112, para. 38).

57. Draft article 10 reflects the suggestion made by the Working Group that, where the parties have failed to reach an agreement on the language of proceedings, this matter could be left to the discretion of the neutral (A/CN.9/716, para. 105). In that case, the Working Group may wish to consider how the language of proceedings is to be determined prior to the involvement of the neutral and on what grounds the neutral will decide on the language of proceedings.

58. The Working Group may also wish to note that in cases where the neutral needs to review supporting documentation submitted by the parties, the ODR provider may need to appoint a neutral who has understanding of the relevant language(s).

59. A proposal was made to include a separate paragraph along the following lines (A/CN.9/739, para. 143): “An ODR provider dealing with parties using different languages shall ensure that its system, Rules and neutrals are sensitive to these differences and shall put in place mechanisms to address the needs of parties in this regard”. The Working Group may wish to consider whether such a reference is more appropriately placed in guidelines and minimum requirements for ODR providers.

**60. Draft article 11 (Representation)**

*“A party may be represented or assisted by a person or persons chosen by that party. The names and designated electronic addresses of such persons [and the authority to act] must be communicated to the other party by the ODR provider.”*

**61. Draft article 12 (Exclusion of liability)**

*“[Save for intentional wrongdoing or gross negligence, neither the neutral nor the ODR provider shall be liable to the parties for any act or omission in connection with any ODR proceedings under the Rules.]”*

*Remarks*

62. Draft article 12 deals with the question of exclusion of liability of the persons involved in the ODR proceedings. It mirrors article 16 of the UNCITRAL Arbitration Rules, with necessary adjustments.

**63. Draft article 13 (Costs)**

*“[The neutral shall make no [decision] [award] as to costs and each party shall bear its own costs.]”*

*Remarks*

64. The term “costs” refers to an order by a neutral for the payment of money from one party (usually the losing party) to another (usually the successful party) in compensation for the successful party’s expenses in bringing its case.

65. The Working Group may wish to consider, in the event the claimant is successful in ODR proceedings where the neutral is involved, whether his or her filing fee should be paid by the unsuccessful party.