



# General Assembly

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**United Nations Commission  
on International Trade Law**  
**Working Group III (Online Dispute Resolution)**  
**Thirty-second session**  
Vienna, 30 November-4 December 2015

## **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 (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Czech Republic (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Poland (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016), United Kingdom of Great Britain



and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019).

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 thirty-second session of the Working Group will be held at the Vienna International Centre, from 30 November to 4 December 2015. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 p.m. to 5 p.m., except on Monday, 30 November 2015, when the session will be opened at 10 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 regarding future work, including in the fields of electronic commerce and arbitration.<sup>1</sup> At its thirty-fourth<sup>2</sup> (Vienna, 25 June-13 July 2001) and thirty-fifth<sup>3</sup> (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.

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.<sup>4</sup>

7. At its forty-second session (Vienna, 29 June-17 July 2009), the Commission 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

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

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

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

<sup>4</sup> *Ibid.*, *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.

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.<sup>5</sup> 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 certain proposals<sup>6</sup> and to hold a colloquium on the issue of online dispute resolution, resources permitting.<sup>7</sup>

8. At its forty-third session (New York, 21 June-9 July 2010), 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.<sup>8</sup> It was also agreed that the form of the legal standard to be prepared should be decided after further discussion of the topic.

9. At its forty-fourth session (Vienna, 27 June-8 July 2011) the Commission reaffirmed the mandate of the Working Group to create a legal standard on online dispute resolution for cross-border electronic transactions, including business-to-business and business-to-consumer transactions. The Commission decided that, while the Working Group should be free to interpret that mandate as covering consumer-to-consumer transactions and to elaborate possible rules governing consumer-to-consumer relationships where necessary, it should be particularly mindful of the need not to displace consumer protection legislation.<sup>9</sup>

10. At its forty-fifth session (New York, 25 June-6 July 2012), the Commission decided that: (a) the Working Group should consider and report back at a future session of the Commission on how the draft rules would respond to the need of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process; (b) the Working Group should continue to include in its deliberations the effects of online dispute resolution on consumer protection in developing and developed countries and countries in post-conflict situations, including where the consumer was the respondent party in an online dispute resolution process; and (c) the Working Group should continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration. Moreover, the Commission reaffirmed the mandate of the Working Group in respect of low-value, high-volume cross-border electronic transactions.<sup>10</sup>

11. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission unanimously confirmed that decision, and reaffirmed the mandate of the Working

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

<sup>6</sup> As contained in document A/CN.9/681/Add.2.

<sup>7</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 342-343.

<sup>8</sup> *Ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 257.

<sup>9</sup> *Ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 218.

<sup>10</sup> *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 79.

Group in relation to low-value, high-volume transactions, encouraging the Working Group to continue to conduct its work in the most efficient manner possible.<sup>11</sup>

12. At its forty-seventh session (New York, 7-18 July 2014), the Commission reaffirmed its understanding of the Working Group's mandate, as expressed at the forty-fifth and forty-sixth sessions of the Commission.<sup>12</sup>

13. At its forty-eighth session (Vienna, 29 June-16 July 2015), the Commission took note of the main issues arising from the two Working Group sessions held since its forty-seventh session in 2014, namely that a third proposal for ODR Rules before the Working Group (which envisaged a single set of Rules) had not yet led to consensus on the issue of whether binding pre-dispute agreements to arbitrate concluded with consumers were to be given effect under the Rules. The Commission heard proposals that UNCITRAL could develop a non-binding descriptive instrument for use by ODR providers and neutrals, to guide and support this critical area of dispute resolution. The Commission instructed the Working Group to continue its work towards elaborating a non-binding descriptive document reflecting elements of an ODR process, on which elements the Working Group had previously reached consensus, excluding the question of the nature of the final stage of the ODR process (arbitration/non-arbitration). It was also agreed that the Working Group would be given a time limit of one year or no more than two Working Group sessions to undertake this work, after which the work of the Working Group would come to an end, whether or not a result had been achieved.<sup>13</sup>

**(b) Documentation**

14. The Working Group will have before it proposals regarding the preparation of a non-binding descriptive document reflecting elements of an ODR process (A/CN.9/WG.III/WP.136 and A/CN.9/WG.III/WP.137 and further documents to be advised).

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

- Reports 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)*); forty-fourth session (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*); forty-fifth session (*Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*); forty-sixth session (*Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*); forty-seventh session (*Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*) and forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*).
- Reports of Working Group III (Online Dispute Resolution) on the work of its twenty-sixth (A/CN.9/762); twenty-seventh (A/CN.9/769), twenty-eighth (A/CN.9/795), twenty-ninth (A/CN.9/801), thirtieth (A/CN.9/827) and

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<sup>11</sup> Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 222.

<sup>12</sup> Ibid., *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 140.

<sup>13</sup> Ibid., *Seventieth Session, Supplement No. 17 (A/70/17)*, under preparation.

thirty-first (A/CN.9/833) sessions. The proposal from China on the draft procedural rules submitted at the thirty-first session of Working Group III is set out in A/CN.9/833, paras. 72-141.

- Online dispute resolution for cross-border electronic commerce transactions: draft procedural rules, notes by the Secretariat (A/CN.9/WG.III/WP.119 and its addendum; A/CN.9/WG.III/WP.120 and its addendum; A/CN.9/WG.III/WP.123 and its addendum; A/CN.9/WG.III/WP.127 and its addendum; A/CN.9/WG.III/WP.130 and its addendum; A/CN.9/WG.III/WP.131 and A/CN.9/WG.III/WP.133 and its addendum).
- Online dispute resolution for cross-border electronic commerce transactions: proposal by the Governments of Colombia and the United States (A/CN.9/WG.III/WP.134).
- Online dispute resolution for cross-border electronic commerce transactions: draft guidelines (A/CN.9/WG.III/WP.128).

16. Relevant UNCITRAL documents are posted on the UNCITRAL website ([www.uncitral.org](http://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. Any additional proposals or other information (such as on enforcement mechanisms) submitted by member States or observers for consideration by the Working Group will be made available at this location as early as practicable.

#### **Item 6. Adoption of the report**

17. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-ninth session of the Commission scheduled to be held in New York, from 27 June to 15 July 2016. 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**

18. The Working Group's thirty-second 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,<sup>14</sup> 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).

19. The Working Group may wish to note that its thirty-third session is tentatively scheduled to be held in New York from 29 February to 4 March 2016.

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<sup>14</sup> *Ibid.*, *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.