



UNCITRAL's Discussion on Dispute Resolution in the Digital Economy (DRDE)

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Discussion on DRDE – its genesis

- At its **51st session**, in 2018, the Commission decided that the secretariat should compile information on legal issues related to the digital economy, including by organizing symposiums and other expert meetings.
- Japan: Proposal on Stocktaking of Dispute Resolution in the Modern Context (2020, A/CN.9/1037)
- At its **53rd session**, in 2020, the Commission expressed general support for the secretariat to conduct research and take stock of the wide range of developments in that area. In light of the support received, the Commission requested the secretariat to explore possible means to implement such activities and report back to the Commission at its fifty-fourth session, in 2021.

Discussion on DRDE – its evolution

- At its **54th session**, the Commission considered a report on activities of the secretariat in relation to dispute resolution in the digital economy (A/CN.9/1064/Add.4) and the proposals presented therein.
- The proposal by Japan that the secretariat should conduct stocktaking activities – compile, analyze and share relevant information – was endorsed.
- The Commission requested the secretariat to **organize a colloquium** during the seventy-fifth session of Working Group II to further explore the relevant legal issues and to identify the scope and nature of possible legislative work.
- With regard to **online platforms for dispute resolution**, there was general support that the secretariat should continue to collaborate with the Department of Justice of Hong Kong, China.

Colloquium on Possible Future Work on Dispute Settlement

Dates: 28 March 2022 to 1 April 2022
(Friday)

The Colloquium touched upon the following topics:

- **Developments in dispute resolution in the digital economy**
- **Online platforms for dispute resolution**
- Technology-related dispute resolution
- Adjudication

Colloquium on possible future work on dispute settlement (28 March - 1 April 2022) Final programme	
Venue: Conference room 2 , UNHQ, New York and online Time: 11:00 – 13:00; 15:00 – 17:00 New York time (Eastern Daylight Time)	
Monday (28 March 2022)	
11:00-13:00	Session 1 - Dispute resolution in the digital economy <i>Moderated by Anna Joubin-Bret, Secretary, UNCITRAL</i> Speakers: Takashi Takashima, Stephanie Cohen, Sarah McEachern, Lise Alm, Toby Landau, Kim Rooney, Andrés Jana, James Castello, Jaemin Lee & Giuditta Codero Moss
15:00-17:00	Session 2 - Dispute resolution in the digital economy <i>Moderated by Anna Joubin-Bret, Secretary, UNCITRAL</i> Speakers: Kevin Nash, Yulia Mullina, Dirk Pulkowski, Rekha Rangachari, Yasmine Lahlou, Seokchun Yun, Yoshimi Ohara, Ijeoma Ononogbu & Mingchao Fan
Tuesday (29 March 2022)	
11:00-13:00	Session 3 - Dispute resolution in the digital economy <i>Moderated by Jae Sung Lee, Secretary of WG II</i> Speakers: James Claxton, Anne-Karin Grill, George Lim, Camilla Macpherson, Federico Ast & Charles T. Kotuby Jr.
15:00-17:00	Session 4 - Online platforms for dispute resolution <i>Moderated by James Kwok Wing Ding, Department of Justice, HKSAR China</i> Speakers: Teresa Rodriguez De Las Heras Ballell, Colin Rule, Nicolás Lozada-Pimiento, Laura Aguilera Villalobos, Amy J. Schmitz, Mike Dennis & Yoshihisa Hayakawa
Wednesday (30 March 2022)	
11:00-13:00	Session 5 - Adjudication <i>Moderated by Judith Knieper, UNCITRAL Secretariat</i> Speakers: Michael Schneider, Lindy Patterson, Allan Stitt, Pierre D. Grenier & Jesusito G. Morillos
15:00-17:00	Session 6 - Technology-related dispute resolution <i>Moderated by Jae Sung Lee, Secretary of WG II</i> Speakers: Cedric Yehuda Sabbah, Elliot Friedman, Patricia Shaughnessy, Lawrence Akka, Shai Sharvit, Andrés Jana, Christian Ascheur, Elizabeth Stong & Takashi Takashima
Thursday (31 March 2022)	
11:00-13:00	Session 7 - Technology-related dispute resolution <i>Moderated by Jae Sung Lee, Secretary of WG II</i> Speakers: Tilman Niedermaier, Chris Clements & Crenguta Leaua
15:00-17:00	Session 8 - Technology-related dispute resolution <i>Moderated by Jae Sung Lee, Secretary of WG II</i> Speakers: Patricia Shaughnessy, Monika Feigerlova, Crenguta Leaua, Manuel Gomez, Gilad Wekselman & Racheli Pry-Reichman
Friday (1 April 2022)	
11:00-13:00	Roundtable discussion

Colloquium (Session 1- 3): DRDE and the Stocktaking Project

- Introduction of work by other institutions: ICC, IBA, ICCA, etc.
- Acknowledgement of significant **increase in the use of technology in dispute resolution**, further accelerated by the pandemic and which would likely continue.
- Shared recognition that the use of technology generally contributed to enhancing the **efficiency** of the proceedings but with emphasis on the need to take into account the disruptive aspects of digitalization, in particular with respect to **due process and fairness**.
- Regional perspectives shared, illustrating a level of commonality.

Advocate/Improve

Due process
Fairness
Flexible nature
Access to justice
Accountability
Legitimacy
Capacity building...

Avoid

Uneven access to technology
Digital divide
Disproportionate technology
entailed cost
...

Scope of the Stocktaking Project

- “[I]t is suggested that the stocktaking project consists of activities to collect, compile and analyse relevant information which address the following questions.”
(A/CN.9/WG.II/WP.222)

- A. Equality and fairness issues arising from the use of technology in arbitration
 - What are the technological means used?
 - Does the use of such technological means give rise to concerns on equality and fairness? If so, under what circumstances does that occur?
 - Is there a need for standards, rules or guidelines (legal standards) to address those issues?
 - If so, what kind of legal standards should be developed?
- B. Addressing the flood of information problem
 - What exactly is the problem and its magnitude?
 - What are the existing rules on case management which may be utilized to address the problem?
 - What are the practical steps and the procedural approaches to address the problem?
 - Is there a need for legal standards and if so, what kind of legal standards should be developed?
- C. Appropriate use of dispute resolution on online platforms
 - What are the characteristics of ODR platforms?
 - What new forms of dispute resolution other than arbitration and mediation exist on ODR platforms?

- What types of disputes are best resolved on ODR platforms?
- Does dispute resolution on online platforms give rise to concerns regarding due process, fairness, and accountability?
- Is there a need for legal standards and if so, what kind of legal standards should be developed to safeguard the principles of due process, fairness, and accountability on the use of dispute resolution on such platforms?
- D. Online hearings and witness examination
 - What standards, protocols or guidelines exist and are being used in practice for the conduct of online hearings in arbitration?
 - Are standards or guidelines on online hearings on ODR platforms different from those for arbitration?
 - Is there a need for a common set of protocols or guidelines on the organization and conduct of online hearings and/or online witness examination, and if so, what should they address?
- E. Online mediation
 - What standards, protocols or guidelines are being used in practice for the conduct of online mediation?
 - Is there a need for a common set of standards, protocols or guidelines on the organization and conduct of online mediation and if so, what should they address?

It was further suggested that the stocktaking project should:

- Begin with an assessment of how UNCITRAL instruments addressed the developments and whether they need to be updated;
- Examine the interaction with UNCITRAL instruments in other areas, including those that provide functional equivalence rules for “writing” and “signature”;
- Be coordinated with projects of other Working Groups, for example, Working Group IV on legal issues related to the digital economy and Working Group V on civil asset recovery and tracing in insolvency;
- Take into account the wide range of dispute resolution means including new forms as well the experience of courts in handling small claims and in supporting arbitration;
- Consider the range of experience in jurisdictions with different legal backgrounds and different levels of economic development; and
- Result in a product that can be shared not only with the Commission but more broadly with the international community.

Colloquium (Session 4): Online Platforms for Dispute Resolution

- Practical experiences of implementing ODR platforms in different jurisdictions and challenges
- Due process and fairness
- Recall the UNCITRAL Technical Notes on Online Dispute Resolution (2016, “Technical Notes”): fairness, transparency, due process and accountability
- Related works by other organizations (APEC, ISO, etc.)
- It was generally felt that there was a need to carefully assess the developments that had taken place since the adoption of the Technical Notes both in practice and standard making
- An international instrument on online platforms for dispute resolution with minimum core standards?

Commission's 55th session in July 2022

The Commission entrusted the secretariat with the following:

- Continuation of implementing the DRDE stocktaking project and the Inclusive Global Legal Innovation Platform on Online Dispute Resolution (iGLIP on ODR). The secretariat was requested to report back on the preliminary finding at the fifty-sixth session in 2023.

Upcoming activities on the Stocktaking Project

As requested by the Commission, the secretariat will:

- Report to the Commission on the preliminary findings at the fifty-sixth session in 2023.
- In doing so, continue to conduct research and organize discussions to seek inputs from different regions, ensuring that perspectives from different parts of the world are properly reflected.
- As part of this effort, co-organize with the Japanese Ministry of Justice the 2022 Tokyo Forum on Dispute Resolution scheduled for 15/16 December 2022.
- Introduce gender perspectives in DRDE, mindful of the gender issues, including bias and uneven access to technology.

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