ENFORCEMENT OF CONSUMER PROTECTION RULES IN CROSS-BORDER DISPUTES OF E-COMMERCE
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ABSTRACT
As the theme of this year's conference points out, globalisation and harmonisation of rules regulating the Internet is essential, but as a follow up step, providing effective enforcement of those rules is also as important. By the technology it is based on, “borderlessness” is arguably the primary feature attributable to commerce on the Internet. This brings some grave challenges with it particularly in terms of enforcement of consumer protection rules. As the Internet based e-commerce facilities take place literally all around the world, things often go beyond borders. When cross-border factors get involved, the nature of the dispute turns into an extra-national one, where enforcement remains purely national. Providing effective enforcement of consumer protection rules in cross-border disputes of e-commerce is critical for two main purposes. First, it increases consumer confidence and the volume of e-commerce accordingly. Second, enforcement is essential as a means of post-contractual redress for the consumers. Unified laws for protecting consumers when buying online would offer a lot to consumers in their purchases abroad, however, as regards accessing rights in case of a problem, enforceability of such rules across borders is more important for the consumers. As a matter of fact, the non-enforceable rules are equivalent to those non-exist. The prescription for the proper processing of the enforcement procedure is simply “closer co-operation and co-ordination” between the national enforcement authorities. The question on who will lead a global initiative for setting up common values to govern the Internet has already been addressed in the first phase of the WSIS (World Summit on the Information Society) held in Geneva in 2003. Accordingly, the UN was called to launch a working party to investigate the possible need for a new system of governance for the Internet. In the second phase of the WSIS, which was held in Tunis in 2005, it was decided that an Internet Governance Forum will be established by the UN as a multi-stakeholder policy dialogue, to outline a new scheme. Although governance of the Internet appears to be undertaken by the UN, it has not yet been addressed that who will deal with structuring an international enforcement network. ICPEN (International Consumer Protection Enforcement Network) is an important initiative, however far from being a comprehensive configuration for providing effective cross-border enforcement for the consumers. Therefore, a new international forum to ensure that consumers are provided with effective enforcement mechanisms that enable them to access their rights should be introduced, possibly again under the far-reaching umbrella of the UN.