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Exploratory work on digital platforms and private law

Note by the Secretariat

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I. About this note

1. This note outlines the exploratory work that the secretariat has conducted at the request of the Commission on the topic of digital platforms and private law. After recalling the background to the request (chapter II), it summarizes the exploratory work conducted (chapter III) and presents an outline of a legal text for possible preparatory work on the topic (chapter IV).

II. Background

2. In 2025, at its fifty-eighth session, the Commission considered a joint proposal by the United Arab Emirates and Spain for possible future work on legal aspects of digital trade, with a special focus on digital platforms (A/CN.9/1227).

3. Several points were highlighted during discussions at the Commission:[1]

(a) The proposal draws connections with previous exploratory work on legal issues related to the digital economy;[2]

(b) Digital platforms have become a defining feature of the digital economy, serving not only as intermediaries but also as architects of online marketplaces governed by platform rules;

(c) While certain digital platforms are the subject of regulatory regimes in some jurisdictions, the operation of digital platforms fundamentally relies on contracts;

(d) Future work should be guided by the principles of transparency, equity and due diligence, and should aim at promoting greater openness and inclusivity in the digital economy, as well as greater system interoperability and integration in global supply chains;

(e) Future work should avoid regulatory issues such as data privacy and protection and consumer protection, as well as intellectual property and competition law;

(f) The concept of "digital platform" is broad, and future work could focus on online marketplaces.

4. After discussion, it was agreed that exploratory work should be conducted, with a focus on digital platforms and private law, including an assessment of the desirability and feasibility of developing a harmonized legal text, possibly in the form of a model law (A/80/17, para. 266).

III. Summary of exploratory work

A. Overview

5. The secretariat organized three events to advance exploratory work on the topic:

(a) The UAE-UNCITRAL Global Summit on Digital Trade and Digital Platforms, co-organized with the Ministry of Economy and Tourism of the United Arab Emirates (Dubai, United Arab Emirates, 8–9 December 2025) (the "Dubai event");

[1] *Official Records of the General Assembly, Eightieth Session, Supplement No. 17* (A/80/17), paras. 262–265.

[2] That exploratory work resulted in the publication of the *Taxonomy of legal issues related to the digital economy* (United Nations publication, Sales No. E.12.V.11) (hereafter "Taxonomy"), part four of which explores the actors, legal relationships and legal issues involved in the deployment and use of online platforms.

(b) The Colloquium on Harmonizing Law in the Age of Digital Trade and Finance (New York, 10–13 February 2026), stream two of which was devoted to the topic of digital platforms and private law (the "Colloquium");

(c) An expert group meeting co-organized with Universidad Carlos III de Madrid and the Ministry of Foreign Affairs, European Union and Cooperation of Spain (Madrid, 9–10 April 2026) (the "Madrid event").

6. A discussion paper on the topic was prepared, which identified a series of questions to guide exploratory work. That paper is contained in the annex to A/CN.9/1258 and complements this note.

7. The secretariat also reviewed recent legislative interventions regarding digital platforms, as well as legal commentary on the private law aspects of digital platforms, including on legal responses to historical analogies such as merchant guilds. It also presented ongoing work at several events, including the Fourth Forum on the Rule of Law in Digital Trade (Hangzhou, China, 26 September 2025) and the third meeting (28 April–1 May 2026) of the Experts' Group of the Hague Conference on Private International Law (HCCH) on Digital Tokens; see A/CN.9/1252, para. 23(a)).

B. Dubai event

8. A summary of the Dubai event is contained in A/CN.9/1251.

C. Colloquium

1. Introduction

9. Basic information about the Colloquium is contained in A/CN.9/1258. Stream one of the Colloquium (on the use of digital assets as collateral in secured transactions) is summarized in A/CN.9/1260. Stream two of the Colloquium, which consisted of five panels and brought together twenty-three speakers, focused on digital platforms in international trade and the private law aspects of their operations.

2. Digital platforms in international trade

10. Stream two opened with a scene-setting panel (panel 8). This was followed by three panels which examined specific types of digital platforms encountered in cross-border trade, namely online marketplaces (panel 9), supply-chain platforms (panel 10) and registries and exchanges (panel 11).

(a) Setting the scene

11. Panel 8 positioned the topic within UNCITRAL's mandate. That mandate was concerned with commercial relationships of a private nature involving different countries. Work at UNCITRAL was not concerned with measures regulating digital platforms or with special protections for consumers that use them, but should nevertheless be cognizant of laws specifically regulating digital platforms, which were being enacted or developed in several jurisdictions.

12. The premise of the joint proposal by the United Arab Emirates and Spain was that digital platforms represented a new and pervasive organizational model for international trade; its purpose was to work towards a new digital trade model law that took account of the role of digital platforms throughout the trade cycle.

13. The proposal acknowledged that digital platforms were fundamentally based on the contract between the platform operator and each user of the platform (the "platform-to-user contract"). UNCITRAL could not fully discharge its mandate without taking digital platforms into account. Past work on harmonizing rules for certain trade-related contracts – reflected in the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by

Sea (Rotterdam Rules) – meant that it was well-placed to address the platform-to-user contract.

14. Three defining features of "digital platforms" were put forward:

(a) A centralized operator whose principal role was to manage the operation of the platform;

(b) An operational model based on a contract with each platform user; and

(c) A community of users interacting on the platform.

15. A centralized operator did not preclude the use of distributed ledger technology (DLT) systems to support the operation of the platform, as future work should be based on the principle of technological neutrality, but it did assume a counterparty to the contract with each user. Some digital platforms were moving to DLT-based operational models and the merits of expanding the project to encompass decentralized operational models – such as those based on contractual networks or decentralized autonomous organizations – could be explored.

16. Common to all digital platforms was the multiple roles performed by the platform operator in facilitating trade and "regulating" trade (i.e. setting the terms and conditions by which users transact), as well as in reshaping global supply chains (from "pipeline" to data-driven networks) and creating new markets. Future work should bear these roles in mind as they shaped the dynamics of the platform-user relationship.

17. There was nevertheless significant variety in digital platforms in terms of (i) the types of users (e.g. businesses, consumers, governments, machines), (ii) the types of platform-based interactions (e.g. sale of goods, supply of financial services, social networking), and (iii) the degree of involvement of the platform operator in platform-based interactions. Such variety posed scoping questions for future work, including:

(a) How to address digital platforms where the platform operator acted not merely as an intermediary but as a market participant or supply chain participant. In some circumstances, the platform operator could be likened to other types of legally recognized actor, such as an agent, distributor or fulfilment service provider;[3]

(b) Whether to confine the scope of work by reference to particular types of user-to-user interactions (e.g. "transactional" platforms which not only connect users but through which users conclude or carry out commercial transactions). Where such interactions were contract-based, the digital platform presented a "triangulation" of contracts (i.e. the "vertical" contract between the platform operator and each user and the "horizontal" contract between users);

(c) Whether to confine the scope by reference to the capacity in which users engaged with the platform. Some doubts were expressed as digital platforms, particularly online marketplaces, were used for both business-to-business and business-to-consumer transactions. Moreover, it risked distracting the focus from the platform-to-user relationship.

18. Several issues were identified for closer examination on account of their relevance to trade, including:

(a) Unilateral modification of contractual terms by the platform operator, including the platform rules;

(b) Supervision of user-to-user interactions by the platform operator;

(c) Restrictions (e.g. sanctions or penalties) imposed by the platform operator against users for non-compliance with the platform rules;

(d) Incompatibility between the platform rules and applicable law;

[3] The term "fulfilment services" refers to a range of logistics, shipping, warehousing and forwarding services.

(e) Transparency of systems affecting the digital goodwill[4] of users;

(f) Exclusions and limitations of platform operator liability.

19. The panel provided an opportunity to situate the project within other international initiatives. Reference was made to the Global Digital Compact (GDC) and the potential links between the project and commitments in the GDC related to digital public infrastructure (DPI). A presentation was also delivered on ongoing projects at the HCCH on central bank digital currencies, carbon markets and digital tokens, for which digital platforms could play an important role as registries and exchanges. The need for modernized and harmonized private international law rules was emphasized, particularly in cases where transactions on digital platforms determined rights and entitlements of users or had third-party effects. Coordination with the HCCH was thus reiterated. Similarly, the operation of digital platforms was relevant to work by International Institute for the Unification of Private Law (UNIDROIT) on the Principles on Digital Assets and Private Law (DAPL) and its ongoing project on best practices for effective enforcement.

(b) Online marketplaces

20. Panel 9 focused on online marketplaces, which were characterized by the buying and selling of goods. The panel examined the legal structures supporting the establishment of online marketplaces, as well as the rules and enforcement measures that had been legislated in different jurisdictions to regulate their operation.

21. The state of the law in the United States of America was highlighted. Two common business models were distinguished: (i) the "distributor-resale" model, where the operator acquires and resells goods in separate transactions; and (ii) the "marketplace" model, where the operator acts merely as an intermediary, facilitating transactions between third-party sellers and buyers. Both models could involve the platform operator providing additional services, such as fulfilment services, which had implications for operator liability for defective products. In the first model, the operator inserted itself in the chain of commerce, thus attracting the application of product liability law, while in the second model, case law and legislation in some states extended liability to the platform operator, depending on the degree of its involvement in the transaction.

22. The emphasis placed on freedom of contract was juxtaposed against the habitual use of contracts of adhesion[5] for platform-to-user contracts, even in business-to-business transactions. Significant contractual terms included liability limitations, mandatory arbitration clauses and class action waivers, as well as rules governing user-to-user interactions, such as compliance with third-party intellectual property rights, product safety requirements and prohibitions on supplying illegal goods.

23. The Electronic Commerce Law (2019) of China provided an example of a law that specifically regulated the platform-to-business relationship in the operation of online marketplaces. In particular, the law imposed obligations on platform operators to apply principles of openness, fairness and impartiality when formulating platform rules and to consult on proposed modification to those rules. Some practical challenges in monitoring compliance were identified, and reference was made to additional measures introduced for the supervision and administration of platform rules.

24. In many jurisdictions, the power of large platform operators to "regulate" through private ordering (under the platform rules) rivalled that of public authorities. However, public law enforcement measures had limited effect in addressing the power of platform operators. Private law tools could offer a more promising avenue for legal

[4] The term "contract of adhesion" refers to standard-form contracts whose terms are established by the platform operator and not negotiated with the platform user.

[5] The term "digital goodwill" is not established in legal commentary and is used here for convenience to refer to data representing the "goodwill" of a user's business, including its reputation, brand, and connections with customers. It thus covers ranking and reputation data, which is commonly associated with online marketplaces.

development. A cooperative regulatory approach employed in the Eurasian region, whereby platform operators participated in the development of standards for platform operation, was presented as a potential model.

25. A representative of an operator of a large platform operator elaborated on the function of digital platforms in creating new markets, particularly for small and medium-sized enterprises, thus contributing to economic inclusion. Some of the challenges faced by sellers were highlighted, including cross-border payments (see A/CN.9/1262). It was emphasized that public law regulation and private law modernization should not be seen as alternatives but rather as complementary; the former providing oversight, the latter providing consistency and certainty.

(c) Supply-chain platforms

26. Panel 10 examined platforms connecting stakeholders in a supply chain, including manufacturers, transport providers, and financial institutions.

27. The panel emphasized the variety of business models and focused on two types of supply-chain platforms:

(a) "Post-trade" platforms, [6] which supported transactions in electronic transport documents (e.g. electronic bills of lading);

(b) Trade finance platforms, which supported transactions in electronic letters of credit instruments.

28. The panel highlighted differences between supply-chain platforms and online marketplaces. First, supply-chain platforms performed different functions, including promoting cooperation among supply chain participants, streamlining the cross-border movement in goods, and facilitating compliance with regulatory requirements for supply-chain management. Second, they did not represent a new link in the supply chain but rather connected existing links. Third, supply chain platforms were still an emerging business and did not generally exert influence over the transactions that they supported. Overall, supply-chain platforms played a smaller role in the business operations of users.

29. The Model Law on Electronic Transferable Records (MLETR) was a game changer for supply-chain platforms as it reduced the need to rely on "rulebooks" – which were incorporated into platform-to-user contracts – to guarantee the legal effectiveness of dealings in electronic trade documents that the platform supported. However, the continued role of rulebooks in allocating liability among the parties was emphasized.

30. Interoperability attracted considerable attention. Here, the reliance on contracts of adhesion to ensure standardization was emphasized; indeed, standard-form contracts were critical to the success of all digital platforms. But beyond that, it was questioned whether interoperability challenges called for legal solutions as opposed to better cooperation among platform operators, including in developing common technical standards and data models. Conversely, data governance was an issue that did call for legal solutions, specifically the rights of platform operators and users to use data processed on the platform.

31. The panel also discussed supply-chain finance platforms that were used for trading receivables. Unlike the other platforms discussed, these platforms could be scaled to support a suite of services to users across a value chain. Moreover, because supply-chain finance platforms were not concerned with digital assets that might migrate from one system to another, issues of interoperability were not as pressing.

[6] The term "post-trade" refers to a range of services provided following a trade transaction, such as clearing, settlement and custody.

(d) Registries and exchanges

32. Panel 11 examined digital platforms that supported transactions in digital assets and data. It provided an opportunity to explore exchange platforms and to re-examine digital asset registries, which had been discussed in stream one of the Colloquium (see A/CN.9/1260).

33. A survey was presented of recent cases in China concerning the operation of various registries and exchanges. Among other things, the survey indicated a concern for platform operators to exercise due diligence when performing a role in "regulating" trade on the platform, and for the exercise of contractual discretion similar to the regulatory discretion exercised by public authorities to be reviewable under the contract and public policy.

34. A presentation was delivered on the role of registries in the emerging market of voluntary carbon credits (VCCs), which was being examined in ongoing work at UNIDROIT. It was emphasized that registry models were still being developed and that the legal effect of registration on property rights in VCCs was still being explored. VCC registries were also contract-based and the terms of service routinely disclaimed any role beyond recording information. This stood in contrast with market practice, which attributed greater significance to the registry operator as a gatekeeper. Some registry operators offered additional services, such as matchmaking or providing an exchange for trading VCCs, which could transform the registry into a digital platform.

3. Private law aspects of platform operations

35. Panel 12 focused on the contractual aspects of digital platforms.

(a) Digital platforms as contract-based operational models

36. The panel presented several empirical studies of platform-to-user contracts covering all three types of digital platforms addressed in the earlier panels. Despite differences in business models, similarities existed in the contractual structures underpinning the operation of the platform and in the role of the platform operator in governing platform-based interactions between users. In particular, quite apart from establishing a "rulebook" to support the transferability of electronic trade documents, the platform-to-user contracts underpinning supply-chain platforms contained terms similar to those used for online marketplaces.

37. There was widespread acceptance of contracts of adhesion to establish the platform-to-user relationship and acknowledgment of the need for the platform-to-user contract to evolve over time to keep pace with changes in the regulatory environment and technological developments. Nonetheless, if the law recognized that platform operators could set contractual terms unilaterally, which already challenged basic assumptions of contract law, legislative intervention to rebalance the relationship by controlling that practice was appropriate. Such intervention was not aimed not so much at protecting weaker parties in the relationship as at managing the use of standard-form contracting on a mass scale. Indeed, contractual terms were seldom read and understood by businesses and consumers alike.

38. Several presenters subscribed to the "triangulation" of contracts depicted in panel 8 (para. 17 above). Others characterized the operation of digital platforms as a network or "web" of contracts. Joining a platform commonly involved not a single contract with the platform operator but a bundle of contracts with different service providers (e.g. providers of logistics services and providers of identity management and trust services). It was indicated that this complexity might affect the viability of different legal solutions.

(b) Legal issues related to the platform-to-user contract

39. A comparative study of contractual terms used by major online marketplaces operating globally was presented. Echoing the issues outlined in panel 8 (para. 18

above), several recurrent and systemic challenges were identified, including (i) the absence of a statement of general principles articulating core commitments to fairness, integrity and good faith, (ii) the fragmentation of critical terms across multiple policy documents, (iii) the unilateral modification of platform rules and termination of the platform service with minimal procedural safeguards, as well as comprehensive limitations on liability, which shifted operational and compliance risk to the user, and (iv) internal dispute resolution pathways lacking clarity, neutrality and timeliness, as well as costly mandatory arbitration in distant jurisdictions, which foreclosed access to an effective remedy.

40. The asymmetry in the platform-to-user relationship in the context of supply-chain platforms was explained. Businesses made significant investments when joining a digital platform, including IT integration and onboarding, personnel training, and marketing. As a result, even if there was healthy competition between platforms, users faced significant costs in switching between them, which gave rise to a "lock-in effect". The imbalance between platform operator and user was exacerbated over time due to (i) the broad contractual rights enjoyed by the platform operator to exploit data generated by the user's interaction with the platform, and (ii) the "hold-up problem", whereby the platform operator used its position to extract value from users (e.g. through unilateral modification of contractual terms, including the price). Similar patterns could be observed in all types of digital platforms and had a dampening effect on digital transformation efforts, particularly among small and medium-sized enterprises.

41. If legal issues related to the asymmetry between platform operator and user existed when digital platforms succeeded, those issues came to the fore when digital platforms failed. This point was illustrated in a presentation on the insolvency of cryptocurrency exchanges and other digital platforms that held and managed digital assets, although it was indicated that the analysis extended to any digital platform where the user entrusted value to the platform operator as a trusted intermediary and provider of reliable digital infrastructure. It was explained that the contractual basis of platforms was thrown into sharp relief when platform operators became insolvent and users found themselves as unsecured creditors with a mere contractual claim, rather than as account holders with protected proprietary rights. Insolvency thus exposed a critical misalignment between the expectations of users in joining the platform and how the platform actually operated. Insolvency also exposed the vulnerability of users to decisions by the platform operator as to how entrusted assets were held, including along a chain of third-party custodians, each with its own insolvency risk. Users typically had no visibility over these arrangements or ability to assess associated risks. While the platform could be said to work best when users did not have to carry out such assessments, safeguards were needed to offset the relinquishment of control.

42. The data-dependency of digital platforms gave rise to additional legal issues (see also paras. 31 and 41 above). The allocation of rights to access and use data – including data portability – was an important element in the platform-to-user relationship. Digital platforms were also fertile ground for the deployment of automated systems powered by artificial intelligence (e.g. to supervise platform-based interactions, implement dynamic pricing, operate ranking and reputation systems, or resolve disputes); quite apart from legal issues related to the "autonomous" operation of these systems, it was noted that the ability of the platform operator to derive insights related to market dynamics and user preferences from the large amounts of data generated on the platform (referred to in para. 20 of the discussion paper as "digital intelligence") raised issues regarding the application of existing contract law rules that were conditioned on the knowledge or expectations of the parties.

(c) Addressing legal issues within existing law

43. Complementing the presentation of the Electronic Commerce Law of China in panel 8 (para. 23 above), panel 12 looked at how legal issues related to the platform-to-user contract could be addressed within other existing private law frameworks.

44. The doctrine of unconscionability and laws on unfair contractual terms had been applied in some jurisdictions to check the power of platform operators with respect to users. The decision of the Supreme Court of Canada in *Uber Technologies Inc. v. Heller*,[7] which invalidated a mandatory arbitration clause based on the unequal bargaining power between platform operator and user, was cited as an example. However, it was questioned whether other contract law rules were sufficiently adaptable to account for the new ways of trading epitomized by the platform economy.

45. Potential foundations in English common law doctrine for private law intervention in the platform-to-user relationship were explored. Two lines of enquiry were identified:

(a) The first looked at possible contractual mechanisms to moderate the platform operator's exercise of contractual rights to unilaterally modify the platform rules or to impose restrictions, which stemmed from a willingness of the courts – as demonstrated by the Supreme Court of the United Kingdom of Great Britain and Northern Ireland in the case of *Braganza v. BP Shipping Ltd.*[8] – to imply terms limiting contractual discretion. It was acknowledged that such mechanisms would not extend to the types of "ex ante" controls contained in the Platform-to-Business (or P2B) Regulation in the European Union,[9] and that questions remained as to how the courts would approach standard-form platform-to-user contracts given the fact-specific demands of the doctrine of implied terms;

(b) The second looked at a possible recharacterization of the legal framework underpinning the operation of digital platforms – from a series of bilateral platform-to-user contracts to a network of contracts binding each user to the platform operator and every other user – based on the analysis in the decision of the House of Lords in the "Satanita" case.[10] That approach could have implications for obligations regarding the functioning of the platform not only of the platform operator, but also of users.

(d) Soft law initiatives

46. Panel 12 provided an opportunity to present recent soft law initiatives aimed at rebalancing the platform-to-user relationship, specifically:

(a) The *Guiding Principles for Cross-border E-Commerce Platform Rules* (referred to as the "Hangzhou Initiative"), jointly developed by the China Society of Private International Law and other organizations in China to "guide the formulation, interpretation, application, and enforcement of rules governing cross-border e-commerce platforms";

(b) The *ELI Model Rules on Online Platforms*, which establish transparency requirements, fairness standards and liability rules for digital platforms that draw on existing European Union and national law while also developing new solutions that stand alongside existing contract law.

4. Towards a new legal text

47. At the close of the Colloquium, several ideas emerged regarding the content and form of a possible future legal text to address the issues that had been identified during the Colloquium. It was acknowledged that the feasibility of future work depended on identifying a concrete set of recurring issues that were common to all digital platforms and crafting "actionable" rules (i.e. readily and effectively enforceable by the parties) that transcended different legal traditions.

[7] Judgment, 26 June 2020, *Supreme Courts Reports*, vol. 2020, No. 2.

[8] Judgment, 18 March 2015, *Weekly Law Reports*, vol. 2015, No. 1.

[9] Regulation 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (hereafter "P2B Regulation"). See Taxonomy, para. 145.

[10] *Clarke v. Dunraven*, Judgment, 19 November 1896, *Appeals Cases*, vol. 1897.

48. Echoing views expressed at the Commission (para. 3 above), it was suggested that private law could make a meaningful contribution to the topic by promoting (i) clarity in the platform-to-user relationship through transparency and information disclosure requirements regarding the platform service, and (ii) the exercise of due diligence in the functioning of the platform. In that regard, similarities existed between the ELI Model Rules on Online Platforms and Hangzhou Initiative in terms of the standards and principles that they espoused.

49. Some of the issues identified during the Colloquium revealed a need for guidance on applying existing law to the novelties of digital platforms, while other issues demonstrated a need for legislative intervention. A future legal text by UNCITRAL would not be so much about harmonizing private law as about modernizing private law in a uniform way. While a future legal text might take the form of model contractual terms or legislated default rules,[11] doubts were raised as to the desirability of either approach given the power of platform operators effectively to ignore or displace them.

50. Additional reflections were offered on a future legal text:

(a) To account for the variety in digital platforms, particularly the types of trade-related interactions supported by the platform and the degree of involvement of the platform operator in those interactions, the project should avoid developing a comprehensive definition of "digital platform". A convenient starting point might be to focus on digital platforms for the supply of goods and services related to goods;

(b) Contrary to the suggestion in the discussion paper (A/CN.9/1258, annex, para. 15), the mere fact that a digital platform operated as a regulated exchange did not detract from the contractual underpinnings of the platform. Therefore, such platforms should not automatically be excluded from scope;

(c) Legislative intervention in some jurisdictions had been very successful in reshaping the platform-to-user relationship. To achieve similar success, the project should avoid rules that simply appealed to abstract principles – such as fairness and transparency – or rules that ran the risk of "cosmetic compliance".

D. Madrid event

1. Introduction

51. The Madrid event was structured around the life cycle of the platform-to-user contract. In a more intimate setting led by representatives from the United Arabic Emirates and Spain, experts presented the views of regulators, practitioners, industry and academia on the scope and content of a possible legal text.

2. Scope of a possible future text

52. Experts addressed some of the conceptual points and scoping questions that had been raised at the Colloquium (paras. 14–17 above).

53. There was broad agreement that work should focus on the platform-to-user relationship. At its core, that relationship was defined by the service that the platform operator provides to the user by electronic means.

54. Experts coalesced around the view that a "functional" approach should guide consideration of the range of digital platforms to be covered and the issues to be addressed. In that regard, the essential function of a digital platform was to facilitate and govern interactions between users. There was broad agreement that work should focus on "transactional" platforms (para. 17(b) above), and the definition of "online intermediation services" in the P2B Regulation of the European Union was presented as a model (save insofar as it applied only to business-to-consumer transactions). It

[11] The term "default rules" refers to rules establishing rights and obligations that the parties are able to vary, or from which they are able to derogate, based on the principle of party autonomy.

was clarified that, on that approach, services such as online classifieds and online search engines would fall beyond scope,[12] but a broad range of types and business models would otherwise fall within scope.

55. There was also broad agreement that, while work should focus on the platform-to-user relationship (i.e. the "vertical" relationship), the commercial nature of the user-to-user transactions enabled by the platform (i.e. the "horizontal" relationship) should play a role in defining scope. Focusing on e-commerce platforms would firmly position the topic within UNCITRAL's mandate. In that regard, reference was made to the wide interpretation given to the term "commercial activities" in the footnote to article 1 of the Model Law on Electronic Commerce. While the digital economy gave rise to new types of transactions that were not listed in the footnote (e.g. data transactions), the list was not exhaustive. Moreover, the user-to-user relationship might not always be contractual.

56. A functional approach made it unnecessary to categorize different types of digital platforms. While the typology of digital platforms outlined in the discussion paper (A/CN.9/1258, annex, para. 12) was useful for illustrative purposes, existing platforms did not always fit neatly into the types identified; moreover, evolution in business practices and technological developments could be expected to introduce new types. A corollary of the functional approach was that, while social networking platforms would not ordinarily be covered, they could be covered if the platform operator provided additional services aimed at supporting transactions for the supply of goods and services.

57. The concept of digital platforms as online "ecosystems" that supported a community of users received broad support. The complexity of contractual arrangements involved in the operation of digital platforms was acknowledged, although it was cautioned that this should not distract from the focus on the platform-to-user contract, which remained the gateway for users to access the community. At the same time, the "network effect"[13] of digital platforms should not be overlooked, particularly as it shaped the expectations of users. In that regard, users were ultimately concerned with accessing the community rather than the platform service itself.

3. Content of a possible future legal text

(a) General considerations

58. Experts picked up a point on the characterization of the platform-to-user contract, which had been raised in the proposal (A/CN.9/1258, annex, para. 30) but not addressed during the Colloquium. The atypical (or non-standard) nature of the contract for some legal systems was reiterated, and analogies were drawn with long-term contracts, membership agreements and relational contracts. It was cautioned that an overly formal approach to characterizing the contract should be avoided. At the same time, lessons could be drawn from the legal treatment of such contracts, including in the application of general principles and the implication of contractual terms.

59. It was generally acknowledged that the content of a future text should be anchored in well-recognized general principles of international trade law. It was recommended that obligations imposed on platform operators should be intrinsic to the platform-user relationship and should also be shaped by the commitments and representations that platform operators made with respect to the platform, as well as by any applicable industry standards. There was broad agreement that a future text should be guided by the principle of technology neutrality.

[12] The same could be said for the "distributor-resale" model for online marketplaces (para. 21 above).

[13] The term "network effect" refers to the effect that a platform user has on the value of the platform to another user or potential user, such that value of the platform increases as the number of users grows.

(b) Contract formation and modification

60. Experts reaffirmed views expressed at the Colloquium regarding the need for contracts of adhesion and for the contract to evolve over time (para. 38 above). The contract could be concluded and modified in a "click-wrap" scenario. While questions about assent and contract validity were best left to applicable law, standards for reviewing the terms of platform-to-user contracts could be developed, possibly based on a requirement for the terms to be "legitimate" in the sense that they conformed to the reasonable expectations of users.

61. A review of contractual terms could take place at different levels. At one level, existing national laws subjected the terms of platform-to-user contracts to a fairness test, including in a business-to-business setting.[14] It was observed that the doctrine of unconscionability, as applied by the Supreme Court of Canada in *Uber Technologies Inc. v. Heller*,[15] invoked concepts of fairness and reasonable expectations. It was added that the expectations of users should account for the evolving nature of the platform-to-user relationship.

62. At another level, trends were identified towards requiring the disclosure of contractual terms. Reference was made to article 3 of the P2B Regulation of the European Union, which imposed information requirements and minimum content requirements for terms that were unilaterally determined by the platform operator, and which invalidated non-compliant terms.[16] Reference was also made to existing laws that subjected platform-to-user contracts to a requirement of openness or transparency.[17] In the United States, in the wake of the decision of the Supreme Court in *AT&T Mobility LLC v. Concepcion*,[18] legal challenges to mandatory arbitration clauses and class action waivers had shifted from invoking the doctrine of unconscionability to invalidate contractual terms to relying on the inadequacy of pre-contractual disclosure to deny the incorporation of terms. Relevant legal principles were common to business-to-business and business-to-consumer transactions alike.

63. Echoing views expressed during the Colloquium on "algorithmic governance" (para. 43 above), it was acknowledged that a digital platform was the product not only of the terms of service forming the platform-to-user contract, but also of technical design (e.g. software systems controlling how information is presented and processed). The operation of automated systems deployed on digital platforms was not ordinarily prescribed in the contract but could significantly affect the user experience. Different views were offered as to whether the technical design of the platform merely implemented the terms of service or could also be an expression of the contract. In any event, transparency and openness should be pursued in a manner that took into account the legitimate interest of the platform operator in protecting its source code and other commercially sensitive information.

64. Regarding contract modification, consideration could be given to the "principle of consultative co-governance" espoused by the Hangzhou Initiative, according to which the platform operator was obliged to solicit input from users before making any modification affecting significant rights or interests. While such an obligation might be regarded as overly onerous, there was scope to require the platform operator to put mechanisms in place to gauge the interests of users, which in any event could be seen as an application of the principle of good faith and fair dealing.

[14] See, e.g. article 32 of the Electronic Commerce Law of China. See also Part 2-3 of the Australian Consumer Law, contained in Schedule 2 to the Competition and Consumer Act 2010 of Australia, which applies to consumer and small business contracts.

[15] See footnote 8 above.

[16] See Taxonomy, para. 145. See also article 15 of Law No. 42/X/2024 of Cabo Verde.

[17] See, e.g. article 32 of the Electronic Commerce Law of China. Disclosure requirements have also been enacted in Japan (Act on Improving Transparency and Fairness of Specified Digital Platforms) and Thailand (Royal Decree on the Operation of Digital Platform Service Businesses that are Subject to Prior Notification) and Viet Nam (Law on E-Commerce).

[18] Judgment, 26 June 2020, *Supreme Courts Reports*, vol. 2020, No. 2, 2020 SCC 16.

(c) Functioning of the platform

65. The *Quoine* case before the courts of Singapore, [19] which involved a cryptocurrency exchange platform, was mentioned as an example of the potential impact on user-to-user transactions of shortcomings in the functioning of a digital platform.[20] Moreover, the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (MLIT) was cited as an example of a recent UNCITRAL text that imposed obligations on the operator of an information system regarding the functioning of the system in the interests of the community of system users.

66. It was observed that, as the platform economy matured, the principle of good faith and fair dealing in international trade, as stated in article 1.7 of the UNIDROIT Principles of International Commercial Contracts, could be seen to be crystallizing into a series of specific obligations on the platform operator regarding the operation of the platform, specifically:

(a) Notifying users if they breached the platform rules and taking measures to protect the platform and other users;

(b) Making communication channels available by which users could raise concerns with the platform operator and responding to those concerns;

(c) Take reasonable care that the platform infrastructure functions as expected;

(d) Exercising due diligence regarding information provided by users about other users.[21]

67. There was broad support that these obligations could serve as a starting point for future work. It was acknowledged that some legal systems did not recognize good faith and fair dealing as a general principle of contract law, but did recognize it in international commercial contracts; other jurisdictions applied the principle to the performance of contractual obligations but did not recognize it as a stand-alone obligation or as governing pre-contractual dealings.

68. Future work could usefully clarify that the platform operator had no general obligation to supervise user-to-user interactions. A question was raised about the meaning of "due diligence", which had been cited at the Commission and during the Colloquium in the context of the functioning of the platform (para. 48 above). Due diligence could refer to the platform operator balancing the interests of users in discharging its various roles, or to the platform operator exercising care and skill, or investing adequate resources, in managing the platform.[22] Due diligence was not concerned with the distinction between a contractual obligation to achieve a specific result and a contractual obligation of best efforts (see article 5.1.4 of the UNIDROIT Principles of International Commercial Contracts).

69. Obligations regarding the functioning of the platform could also be approached from a conformity perspective, drawing on article 35 of the CISG.[23] Echoing views expressed at the Colloquium (para. 42), it was also suggested that it could be approached from a perspective of providing a "reliable" service, drawing on the requirement of reliability in the MLETR and MLIT.

[19] Cited in the Taxonomy, footnote 124.

[20] The shortcomings in the *Quoine* case were described in a note prepared by the secretariat for Working Group IV to advance work on the topic of the use of artificial intelligence and automation in contracting (A/CN.9/WG.IV/WP.179, para. 28).

[21] See also the decision of the Nagoya District Court of Japan (Taxonomy, para. 133), applying the principle of good faith and fair dealing to the functioning of an online auction platform.

[22] Compare article 14 of the Rotterdam Rules.

[23] Court of King's Bench, *Gardiner v. Gray*, Judgment, 1815, *English Reports*, vol. 171, p. 46.

(d) Data governance

70. The importance of data to the platform-user relationship, as highlighted at the Colloquium (para. 43 above), was emphasized. Data-related issues were categorized into three "clusters" for further consideration:

(a) Confidentiality: Preventing the exploitation of commercially sensitive information shared by users in doing business on the platform;

(b) Portability: Enabling users to switch between platforms by porting transaction data, as well as ranking and reputation data;

(c) Surveillance: Preventing measures against users in retaliation for making complaints or doing business with other digital platforms.

71. The "confidentiality" and "portability" clusters were more pressing. Work on the latter could mitigate the "lock-in effect". In that regard, further work could be inspired by rules on porting co-generated data found in Principle 20 of the "Principles for a Data Economy" jointly developed by the American Law Institute and the European Law Institute (ELI), as well as rules on the portability of reviews found in article 7 of the ELI Model Rules on Online Platforms. It was cautioned that portability might invoke issues related to competition and data privacy and engage third-party rights. It was therefore suggested that work could instead focus on access rights to data, as well as the right to transfer data to another user (e.g. succession of user account). Further work could also leverage ongoing work within Working Group IV on data provision contracts.

(e) Additional services

72. Experts picked up the discussion from the Colloquium on additional services (para. 39 above).[24] Three scenarios were identified, depending on whether the additional services were provided (i) by the platform operator, including a third party on behalf of the platform operator ("scenario 1"), (ii) by a third party at the behest of the platform operator ("scenario 2"), and (iii) by a third party as a user of the platform ("scenario 3").

73. There was broad support for the view that it was neither necessary nor desirable to distinguish "core" platform service when addressing additional services. Additional services represented the "sharing effect" of digital platforms which, like the "network effect", shaped the expectations of users, who did not distinguish between the platform service and additional services. The preferred approach was to focus on whether the additional services were provided under the platform-to-user contract. As such, a common regime on rights and obligations (and concomitant liability) would apply to all services in scenario 1. Such an approach minimized potential conflict with other laws regulating the provision of particular services, such as payment services, while ensuring coherence with ongoing work at UNCITRAL on platform-based dispute resolution, acknowledging that some digital platforms integrated dispute resolution mechanisms. It also signalled that future work was not intended to shape business models.

74. Obligations could nevertheless be imposed on the platform operator with respect to services provided on the platform beyond the platform-to-user contract:

(a) In scenario 2, it was suggested that the platform operator should be subject to due diligence obligations regarding the selection and integration of additional services. Various existing liability regimes were cited as possible reference points in defining the threshold for such obligations, including the liability of platform operators for defective products sold on the platform[25] or liability shields under "safe

[24] As noted in para. 17(a) of the discussion paper, additional services in the context of online marketplaces can include advertising services, ranking and reputation systems, payment services, identity management and trust services, and logistics services. At the Colloquium, fulfilment services were also emphasized, while cloud computing services were highlighted at the Madrid event.

[25] See, for example, the case of *Bolger v. Amazon.com* discussed in the Taxonomy, para. 149.

harbour" legislation for content hosted on the platform,[26] as well the liability of lessors under the UNIDROIT Convention on International Financial Leasing (1988).[27] Those regimes were concerned with influence and reliance, which were captured by the "principle of consistency of rights and responsibilities" espoused by the Hangzhou Initiative, which could be explored further;

(b) In scenario 3, as a starting point, no special obligations would be imposed on the platform operator, just as it had no general obligation to supervise user-to-user interactions (para. 69 above) and was shielded from liability for certain user activity under "safe harbour" legislation. The platform operator could nevertheless be bound by commitments and representations that it made with respect to the services.

(f) Restrictions and contract termination

75. With regard to contract termination, it was suggested that, in principle, terminating the contract should be no more burdensome to the user than concluding the contract. Attention was drawn to laws in several jurisdictions that gave users the right to terminate the platform-to-user contract whenever the platform operator exercised its right to modify the contractual terms.

76. It was pointed out that, just as the contract needed to evolve over time, so did the services, yet not every change in services involved a modification to the contractual terms. Moreover, quite apart from any right to terminate for lack of conformity arising from a change in services, a user should also have the right to terminate the contract in the event of a material change in the service.

77. With regard to restrictions, even if dispute resolution would not be a focus of future work (para. 74), there was still scope for that work to address concerns arising from the role of the platform operator as "enforcer" (A/CN.9/1258, annex, para. 17(c)) in imposing restrictions on users and in handling complaints from users. In that regard, rules could be developed that imposed minimum procedural safeguards and substantive standards for restrictions and remedies.

4. Interaction with "regulation"

78. Experts subscribed to the view, expressed at the Colloquium (para. 25 above), about the complementarity between public law regulation and private law modernization. It was acknowledged that the legal reforms cited in the discussion paper as "regulatory regimes" had private law implications and pursued principles of fairness and transparency. An example was given of the continuation of the P2B Regulation in the United Kingdom, which translated the obligations of platform operators into private rights of action.[28]

79. Broad support was expressed for including a "give way" rule, similar to that being developed by Working Group IV in its ongoing work on data provision contracts, which would give primacy to laws on matters such as data privacy and protection, the protection of consumers, or intellectual property.

IV. Way forward

80. The joint proposal by the United Arab Emirates and Spain on possible future work on legal aspects of digital trade suggested that work by UNCITRAL on the topic "would lend itself to a model law" (A/CN.9/1227, para. 24). And the Commission, when requesting the secretariat to conduct exploratory work with a focus on digital

[26] See Taxonomy, para. 140.

[27] United Nations, *Treaty Series*, vol. 2321, No. 41556. Article 8 of the Convention provides a general exclusion of liability of the lessor to the lessee in respect of equipment provided by a third-party supplier "save to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the equipment".

[28] Online Intermediation Services for Business Users (Enforcement) Regulations 2020.

platforms and private law, contemplated "an assessment of the desirability and feasibility of developing a harmonized legal text, possibly in the form of a model law".[29] In the light of these views and on the basis of the exploratory work conducted by the secretariat, the Commission may wish to proceed to prepare a legal text as outlined below.

A. Outline of a legal text

81. The text would be based on a concept of a digital platform as an online service that facilitates interactions between persons who interact using the service. The digital platform established and maintained by the service would thus function as an online "ecosystem" where a "community" of users interact. This concept is consistent with the concept of "online platforms" as defined in the Taxonomy.

82. The text could comprehensively address the private law aspects of digital platforms by focusing on the contract between the platform operator and platform user under which the platform operator provides that online service to the user (i.e. the "platform-to-user contract"). The text would thus assume a "centralized" operating model with an identified person managing the operation of the platform with capacity to contract.

83. Priority should be given to e-commerce platforms in the sense of digital platforms that facilitate "commercial activities" between users (as that term is understood in the MLEC). This approach would allow UNCITRAL to draw on work carried out on contracts for the international sale of goods, as well as more recent work on contracts for new types of transactions in the digital economy, including the provision of cloud computing services, the provision of identity management and trust services, and the provision of data. It also captures the essential features of digital platforms that were advanced at the Commission session in 2025 and echoed during exploratory work, namely that (i) digital platforms are fundamentally contract-based, and (ii) the significance of digital platforms to trade lies in providing the digital infrastructure that allows the user to transact with a community of other users. To avoid doubt, the nature of user-to-user relationship would refine the scope the text, but the text would remain focused on the platform-to-user relationship.

84. The text would establish rules on the rights and obligations of the parties to the platform-to-user contract. These rules would be guided by principles of international trade law, adapted to common features of digital platforms:

(a) Relevant guiding principles include the observance of good faith and fair dealing, due diligence and transparency in connection with the provision of the online service constituting the digital platform, as well as upholding the reasonable expectations of the parties to the contract. To varying degrees, these principles, which could be regarded as overlapping or mutually reinforcing, have been pursued in laws enacted in various jurisdictions to regulate digital platforms;

(b) Relevant features of digital platforms include (i) the role performed by the platform operator in governing the interactions between users on the platform, (ii) the "network effect" and "sharing effect" of digital platforms, by which the expectations of users are being shaped by the community of users and additional trade-related services that are supported by the platform (e.g. cloud computing services, fulfilment services, payment services), as well as the "lock-in effect" that results from a user's dependence on that community and those services to do business, (iii) the reliance of platform operators on contracts of adhesion to establish the legal relationship between the platform operator and each user, (iv) the ongoing nature of that relationship and thus the need for the contract to evolve over time, and (iv) the data-dependency of digital platforms and thus the importance of data governance.

[29] See footnote 1, para. 266.

85. The rules would also be guided by principles of UNCITRAL's electronic commerce texts, particularly technology neutrality.

86. The rules would address the following issues, picking up concrete suggestions put forward at the Colloquium and developed at the Madrid event, as outlined in chapter III:

(a) Formation and modification of the platform-to-user contract;

(b) Incorporation of platforms rules into the contract and modification of those rules;

(c) Rights and obligations of the platform operator and user with respect to the functioning of the platform;

(d) Rights in data related to the user's activities on the platform;

(e) Liability of the platform operator with respect to third-party services offered to users on the platform; and

(f) Rights and obligations of the parties related to non-compliance with the platform rules, as well as termination of the platform-to-user contract.

87. Consistent with the proposal and deliberations within the Commission, but without prejudice to a decision on the final form of the text, the rules would be formulated in a manner amenable to incorporation into a legislative text. The text would also address the extent to which the parties might vary or derogate from those rules based on the principle of party autonomy.

B. Next steps

88. The Commission may wish to request the secretariat to conduct preparatory work – in consultation with experts and in coordination with interested organizations, including through expert group meetings or colloquiums – to develop a legal text based on the outline above and to report back to the Commission at its next session, in 2027, with a view to the Commission taking a decision at that session on whether to refer the project to a Working Group.