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Report of Working Group II (Dispute Settlement) on the work of its eighty-first session (New York, 3–7 February 2025)

Contents

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I. Introduction

1. At its fifty-seventh session in 2024, the Commission considered the submission by the Governments of Germany, Israel, Japan, Republic of Korea and Spain with regard to possible future work on dispute resolution in the digital economy (A/CN.9/1186) and the notes by the Secretariat on the progress report and future work proposals of the stocktaking of developments in dispute resolution in the digital economy (A/CN.9/1189 and A/CN.9/1190), and mandated Working Group II to work on the recognition and enforcement of electronic arbitral awards and, subsequently, on electronic notices.

2. During the eightieth session of the Working Group, at the request of the Commission, the secretariat organized a two-day colloquium for obtaining perspectives to further assess the issues with respect to electronic arbitral awards.[1] After that colloquium, the Working Group considered the topic of the recognition and enforcement of electronic arbitral awards and requested the secretariat to prepare a note reflecting: (i) the interaction between UNCITRAL instruments on electronic commerce and international arbitration instruments, including on the possible definition and scope of arbitral awards in electronic form; (ii) a recommendation text which could clarify that arbitral awards in electronic form are covered by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention); (iii) whether and how the UNCITRAL Model Law on International Commercial Arbitration (MAL) could be supplemented or interpreted; as well as (iv) possible guidance for relevant stakeholders, such as parties, arbitrators, arbitral institutions and possibly suggesting contractual language for parties, i.e. arbitration rules or model clauses. This request was made without prejudice to any option or form, which was to be decided later by the Working Group. Furthermore, the Working Group requested the secretariat to compile information received from member and observer States on the following two questions: (1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?; (2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law? (A/CN.9/1193, paras. 70–72).

3. During this session, the Working Group continued its deliberation on the recognition and enforcement of electronic awards based on the note by the Secretariat (A/CN.9/WG.II/WP.240), in which reference was made to the compilation of responses from States and other observers on the abovementioned questionnaire.

II. Organization of the session

4. The Working Group, which was composed of all States members of the Commission, held its eighty-first session from 3 to 7 February 2025 at the United Nations Headquarters in New York.

5. The session was attended by the following States members of the Working Group: Algeria, Argentina, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Dominican Republic, Ecuador, Finland, France, Germany, Ghana, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Kuwait, Malaysia, Mexico, Nigeria, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Somalia, Spain, Switzerland, Thailand, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam and Zimbabwe.

[1] *Official Records of the General Assembly, Seventy-ninth Session, Supplement No.17* (A/79/17), para. 265 and paras. 284–285.

6. The session was attended by observers from the following States: Azerbaijan, Bahrain, Bolivia (Plurinational State of), Egypt, El Salvador, Equatorial Guinea, Guatemala, Netherlands (Kingdom of the), Norway, Paraguay, Philippines, United Republic of Tanzania and Zambia.

7. The session was further attended by observers from the following invited international organizations:

(a) *Organizations of the United Nations system*: the World Bank;

(b) *Intergovernmental organizations*: Permanent Court of Arbitration (PCA);

(c) *Non-governmental organizations*: African Arbitration Association (AfAA), Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), ArbitralWomen, Association Internationale des Jeunes Avocats/International Association of Young Lawyers (AIJA), Beijing Arbitration Commission/Beijing International Arbitration Court (BAC/BIAC), Belgian Centre for Arbitration and Mediation (CEPANI), Center for International Investment and Commercial Arbitration (CIICA), Centro de Estudios de Derecho, Economía y Política (CEDEP), Chartered Institute of Arbitrators (CIARB), China International Economic and Trade Arbitration Commission (CIETAC), Club Español e Iberoamericano del Arbitraje (CEIA), Comité Français de l'Arbitrage (CFA), European Law Students' Association (ELSA), Forum for Arbitration Practitioners of the Mexican Center for Arbitration and the Center for Mediation and Arbitration of the Mexican Chamber of Commerce (the "CAM/CANACO Forum"), Forum for International Conciliation and Arbitration (FICA), German Arbitration Institute (DIS), Institute for Transnational Arbitration (ITA), International Chamber of Commerce (ICC), International Women's Insolvency and Restructuring Confederation (IWIRC), Japan Commercial Arbitration Association (JCAA), Miami International Arbitration Society (MIAS), Milan Chamber of Arbitration, National Center for Technology and Dispute Resolution (NCTDR), Netherlands Arbitration Institute (NAI), New York City Bar (NYCBAR), New York International Arbitration Center (NYIAC), P.R.I.M.E. Finance, Russian Arbitration Center at the Russian Institute of Modern Arbitration, Scottish Arbitration Centre (SAC), Shanghai International Arbitration Center (SHIAC) and the Israel Institute of Commercial Arbitration (IICA).

8. The Working Group elected the following officers:

Chair: Mr. Andrés Jana (Chile)

Rapporteur: Mr. Fumiyasu Miyazaki (Japan)

9. The Working Group had before it the following documents: (a) Annotated provisional agenda (A/CN.9/WG.II/WP.239) and (b) Note by the Secretariat on recognition and enforcement of electronic arbitral awards (A/CN.9/WG.II/WP.240).

10. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of the topic of recognition and enforcement of electronic arbitral awards.
5. Adoption of the report.

III. Consideration of recognition and enforcement of arbitral awards in electronic form

A. General remarks

11. At the outset, it was questioned whether the terminology was clear. It was said that using the phrase “award in electronic form” instead of “electronic award” was clearer, as it emphasized the format of the arbitral award, indicating that the award existed as an electronic document rather than a physical (paper) document. It was highlighted that the phrase indicated that the award was drafted, signed, and communicated electronically, but without necessarily implying that the entire arbitration process itself was digitalized. A view was expressed that the concept of “award in electronic form” should be subject to domestic law in different jurisdictions. The Working Group agreed to return to the issue of definitions of terms.

Compilation

12. It was generally felt that, while the compilation of responses to the questions posed to States at the previous Working Group session was acknowledged as a useful source of information, the responses did not necessarily assist in fostering a common understanding regarding the recognition and enforcement of arbitral awards in electronic form. It was pointed out that the number of States that had responded to the questions was limited compared to the number of contracting States to the New York Convention. In that regard, States that had not yet responded to the questionnaire were encouraged to do so at their earliest opportunity, and it was suggested that the secretariat should continue to update the compilation as further responses were received.

13. It was mentioned that, overall, there was no developed practice regarding enforcement of awards in electronic form in different jurisdictions comparable to that of paper-based awards. Nevertheless, it was pointed out that, in some jurisdictions, courts did not face issues accepting awards in electronic form and the fact that there was no case law should not necessarily be understood as a lack of experience.

14. It was also mentioned that the compilation revealed that, in some jurisdictions, certain requirements on electronic signatures were imposed as the minimum standard and that the Working Group should bear that in mind.

15. There was acknowledgement that, in light of the compilation of responses, the Working Group could seek to facilitate the recognition and enforcement of arbitral awards in electronic form. It was expressed that the Working Group should be cautious not to unnecessarily create problems that did not exist and that the solutions to the problems should not be overly prescriptive. Preference was expressed for discussing the content prior to deciding on the form the work should take.

Interaction between UNCITRAL instruments on electronic commerce and international arbitration instruments

16. It was said that the Working Group should consider how UNCITRAL instruments in the field of electronic commerce should, as a general matter, be taken into consideration. One approach would be to look at the legal framework of UNCITRAL’s electronic commerce instruments and determine whether that framework applied to arbitral agreements and awards in the international arbitration context, and how the provisions therein could be integrated into the international arbitration framework. Another approach would be to explore the principles and concepts within the electronic commerce instruments, particularly non-discrimination and functional equivalence, and assess how they could be applied in the recognition and enforcement of arbitral awards.

17. In that context, it was observed that the number of contracting States to the United Nations Convention on the Use of Electronic Communications in International

Contracts (ECC) was significantly lower than the number of contracting States to the New York Convention, and that this imbalance needed to be considered. In response, it was said that UNCITRAL instruments in the electronic commerce context have played an important role for national courts, whether applied as a matter of national law or, when not formally implemented, providing valuable guidance for national courts in interpreting and applying principles related to electronic transactions. It was said that the Working Group should look for the simplest way possible to draw from and seek consistency with the electronic commerce instruments to facilitate recognition and enforcement of awards in electronic form in the international arbitration context to the extent appropriate. In doing so, caution was expressed that the Working Group should not potentially create any problems for Member States that had not identified difficulties regarding the recognition and enforcement of arbitral awards in electronic form, in particular as nothing in the New York Convention prevented the recognition or enforcement of an arbitral agreement or award in electronic form.

B. Recommendation regarding the interpretation of the New York Convention

General remarks

18. On the proposed recommendation regarding the interpretation of the New York Convention, diverging views were expressed. One view was that the proposed recommendation would be a useful means to clarify that the New York Convention embraced the non-discrimination rule and the functional equivalence rule on originality and, particularly for the latter, the provisions in UNCITRAL electronic commerce instruments should be followed to provide sufficient clarity and certainty. It was stressed that a high-level description on the principles enshrined in electronic commerce instruments would not be sufficient and that a certain level of precision would be required to better and more clearly inform practitioners and to avoid fragmentation. It was also stressed that a simple and general statement was unlikely to facilitate the enforcement of awards in electronic form by courts. It was further stressed that an aim of the work was to convince legal practitioners in various jurisdictions that awards in electronic form were enforceable, reducing uncertainty in that regard and that the Working Group should seek to achieve real uniformity, and not just a facade of uniformity.

19. Another view was that the operative paragraphs (OP) of the proposed recommendation were overly prescriptive. It was suggested that less prescriptive language be adopted, such as by generally referencing UNCITRAL electronic commerce instruments and aligning the proposed recommendation with some aspects of the Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by UNCITRAL on 7 July 2006 (2006 Recommendation). In that regard, it was recalled that the 2006 Recommendation had primarily addressed issues that stemmed from linguistic discrepancies of the different language versions of the Convention, resulting in a narrow recommendation. It was further stated that UNCITRAL did not represent the constituency of the contracting States to the New York Convention. It was also mentioned that the 2006 Recommendation had been circulated to States for comments on its impact in different jurisdictions, and that States had generally supported it as a means to promote a uniform and flexible interpretation (see A/63/17, para. 359). Support was expressed for circulating any recommendation in a similar manner. The need to avoid prescriptive language which might suggest that the recommendation was a binding instrument, or a subsequent agreement to the New York Convention was also mentioned.

20. Reference was made to article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), which provided for treaties to be interpreted in good faith, and to the relevant negotiating history of the New York Convention as possible elements to be reflected in the recommendation. In response, it was suggested that it would not

be proper to include elements concerning public international law into the proposed recommendation, as UNCITRAL instruments did not usually refer to the VCLT. It was felt that the Working Group should instead focus its work on the specifics of the interpretation of article IV of the New York Convention to be recommended.

21. Recalling that the deliberation by the Working Group on the content of the proposed recommendation was to be carried out without prejudice to the final form, it was suggested that the issue as to the form would finally be considered at a later stage. It was mentioned that courts would not refer to a recommendation that was of an exhortatory and non-binding nature and that the Working Group would need to later consider whether a binding instrument would be necessary.

Operative paragraphs

22. With respect to OP1, it was suggested that the Working Group consider how it could be made clear that the term "arbitral awards" in the provisions of the New York Convention, including article I, was intended to be interpreted in an evolving way to cover awards in electronic form and that judges in the Convention's 172 contracting States should be encouraged to apply the Convention in that way. It was further suggested that including language which accommodated future technological developments would be useful.

23. With respect to OP2, which reproduced article 9(4) and (5) of the ECC, support was expressed for subparagraph (ii), which ensured that the award remained capable of being displayed to the intended recipient, and for subparagraph (iii), which set out the criteria for assessing the integrity of an award in electronic form, as they provided clarity. However, concerns were raised that they could introduce unnecessary complications. It was suggested that subparagraph (i), which aimed to provide reliable assurance regarding the integrity of the award or its certified copy in electronic form from the time it was first generated, would be sufficient. In support, it was noted that subparagraph (ii) was largely self-explanatory, while subparagraph (iii) primarily addressed additional reliability elements. Another suggestion was to reorder them as (i), (iii), and (ii) for improved clarity.

24. A concern was expressed that subparagraphs (i), (ii) and (iii) set a threshold that was too high, potentially only being fulfilled when an electronic signature with specific requirements was used. It was nonetheless pointed out that the language in those subparagraphs was not intended to be interpreted or applied as setting a high threshold.

25. Additionally, a concern was raised that the reference to "certified copy thereof" read in conjunction with the functional equivalence rule on originality might unnecessarily treat a copy as an original, which could lead to unintended consequences.

26. The Working Group considered the question whether the content of the proposed recommendation should address not only awards in electronic form but also arbitral agreements. It was pointed out that the New York Convention dealt with recognition of arbitral agreements, as well as recognition and enforcement of arbitral awards and that they were both subject to the originality requirement. It was further pointed out that – while arbitration agreements in electronic form were covered by the United Nations Convention on the Use of Electronic Communications in International Contracts (see article 20) and the MAL, as amended in 2006 (see article 7) – the Working Group should consider whether it would be useful to include content on arbitral agreements in electronic form in the interpretation of the New York Convention.

27. An initial view was expressed that it could be useful to address arbitral agreements, but that it should be discussed at the Commission whether doing so would fall within the scope of the Working Group's mandate from the Commission. By contrast, it was said that the MAL as amended in 2006, together with the 2006 Recommendation, was comprehensive with respect to arbitral agreements in electronic form and that, as a result, it might not be necessary to include significant content in that regard in the recommendation. It was then said that one potential

solution would be to simply refer to the relevant provisions in the preambular paragraphs of the proposed recommendation.

Text proposed in session

28. After discussion, the following text was proposed for the recommendation on the interpretation of the New York Convention:

Recalling that pursuant to article 31 of the 1969 Vienna Convention on the Law of Treaties, the New York Convention shall be interpreted in good faith, considering its purpose as well as customary practices in international trade,

Recalling also that the purpose of the New York Convention is the promotion of efficiency in international arbitration as a method of dispute resolution in international trade,

Recognizing the possibilities that technological advances present for the efficient and expedient rendering of arbitral awards, the increasing use of electronic means in international commerce, and the growing practice of rendering arbitral awards [in electronic form] [electronically] [in forms other than in hard copy paper],

Recognizing also the need for clarity and harmonization of court practices in relation to the enforcement of arbitral awards [in electronic form] [rendered electronically] [in forms other than in hard copy paper] pursuant to the New York Convention,

Recognizing further that the drafters of the Convention were focused on accommodating modern trade practices,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration, as subsequently revised, particularly with respect to article 7, the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures and the United Nations Convention on the Use of Electronic Communications in International Contracts,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that the New York Convention be interpreted in a technologically neutral manner, ensuring that arbitral awards [in electronic form] [rendered electronically] are not treated less favourably than those [rendered] in hard copy paper form;

2. *Recommends also* that the term "arbitral awards" as used in the New York Convention not be interpreted as excluding arbitral awards [in electronic form] [rendered electronically] or in any other form aligned with modern commercial usages;

3. *Recommends further* that an arbitral award [in electronic form] [rendered electronically] constitute an "original" in the sense of article IV(1)(a) of the New York Convention where there exists reliable assurance as to the integrity of the information contained in the award in electronic form from the time it was first generated in its final form, and that information is capable of being displayed to the person to whom it is intended to be made available.

29. At the outset of the discussions on the revised proposal, it was said that comments were made without prejudice to any future position of some States. After the presentation of the proposal regarding the structure, substance, and its rationale, there was general support for the revised recommendation, stating that it provided a basis to further consider the recommendation's content. However, it was noted that the exceptional circumstances justifying a recommendation in 2006 were not present. Furthermore, a concern was raised that recommending an interpretation of treaties was not a common practice in UNCITRAL's work. It was also said that UNCITRAL's record of only one prior recommendation of a treaty interpretation was prudent

because such an UNCITRAL recommendation would not qualify as any of the interpretive materials recognized under articles 31 and 32 VCLT.

30. In response, it was emphasized that the instrument in question was a United Nations convention and that UNCITRAL was a United Nations body, serving as the "guardian" of the New York Convention. Reference was made to UNCITRAL's mandate to promote "means of ensuring a uniform interpretation and application of international conventions" (General Assembly resolution 2205 (XXI), OP8(d)).

31. Furthermore, it was noted that the "friendly bridge" approach followed in 2006, which combined the recommendation with changes to the MAL and preparation of its Explanatory Note (Explanatory Note), was a useful strategy and could be followed again. Views diverged on whether to align as closely as possible with the 2006 Recommendation.

32. For preambular paragraph (PP) 1, it was noted that it included only a portion of the language from article 31 of the VCLT and that that provision should be read as a whole. It was recalled that the 2006 Recommendation did not refer to the VCLT. It was said that article 32 might be a more appropriate reference and that it might potentially be misleading to refer to article 31. It was also said that referring to the VCLT could create confusion regarding the recommendation's legal nature, in particular whether it was legally binding. After discussion, it was generally felt that it was unnecessary to refer to any article of the VCLT and that PP1 should be deleted, with reference being made instead to the purpose of the New York Convention.

33. For PP2, it was said that it contained a general statement, which should be deleted, as it was unnecessary and a departure from the language in the 2006 Recommendation.

34. For PP3, it was said that the statement appeared to be appropriate, but that use of the term "electronically" – one of the options in brackets – should be avoided. It was also suggested that "in electronic form" was the best option to be used and that consistency in terminology throughout the entire draft recommendation should be sought. It was suggested to replace the phrase "rendering of arbitral awards" with "conduct of arbitral proceedings" and the phrase "growing practice" with "growing possibility".

35. For PP4, the text was considered generally acceptable but needed to be aligned with PP3 concerning the phrases in brackets, with a view expressed that "and harmonization of court practices" should be deleted.

36. For PP5, its added value was questioned.

37. For PP6, it was questioned why reference was made to article 7 MAL, suggesting that articles 31 and 35 would instead be more relevant. Additionally, it was said that the reference to the ECC should be deleted due to the limited number of parties to that convention.

38. For PP7, it was stated that it was appropriately drafted.

39. Regarding those proposed PPs, it was understood that they would follow the first five PPs in paragraph 35 of A/CN.9/WG.II/WP.240. It was further suggested that: (i) the preamble make clear that the recommendation was a non-binding instrument, which could also be done in a subsequent General Assembly resolution; (ii) it acknowledge different levels of development and the need to bear in mind that not all States would be able to follow the recommendation; (iii) it refer to the Final Act of the United Nations Conference on International Commercial Arbitration (E/CONF.26/8/Rev.1) and the travaux preparatoires; (iv) it refer to national law and note that the concept of awards in electronic form might be defined differently among the contracting States to the New York Convention; and (v) it add a reference to the MAL, as was done in the 2006 Recommendation.

40. For OP1, it was pointed out that the relevant notion to be referenced was not technological neutrality but the non-discrimination rule, so that the New York Convention was interpreted to ensure that awards in electronic form were not denied

validity and enforceability solely on the grounds that they were in electronic form. Relatedly, it was suggested to replace the phrase "a technologically neutral manner" with "a manner that is aligned with modern commercial practices". Alternatively, it was suggested it state that arbitral awards were not treated less favourably only due to the form in which they were made. It was also suggested that both in OP 1 and 2 the bracketed alternative phrase for electronic form should be deleted and that paper-based awards should be contrasted simply with awards "in any form". Another view was expressed that the reference to the principle of technical neutrality along with the principle of non-discrimination should be retained.

41. For OP2, it was suggested that it be deleted or merged with OP1, as it was simply repeating the non-discrimination rule. Views diverged regarding the phrase "in any other form aligned with modern commercial usages". Some considered it ambiguous, while others saw it allowing for an evolving interpretation.

42. For OP3, support was expressed for deleting it or using less prescriptive language, such as by referring to the relevant MAL provisions to be amended, noting that the originality requirement was to be addressed as a matter of domestic law. However, it was pointed out that the originality requirement in the New York Convention appeared to be an obstacle to the recognition and enforcement of awards in electronic form and that guidance needed to be provided. It was suggested to revise the last part of the paragraph to "… that information is capable of being displayed as intended" or to delete that part.

C. Amendments to the UNCITRAL Model Law on International Commercial Arbitration (MAL)

Definition – article 2 UNCITRAL Model Law on International Commercial Arbitration (MAL)

43. Regarding the addition of (g), while noting as a general matter that any risk of a negative inference regarding the interpretation of the current text of the MAL should be avoided, it was mentioned that clarifying that the term "award" included awards in electronic form should not be understood to imply that the MAL did not already encompass such awards. It was further mentioned that any amendment should be considered a clarification rather than a change in substance. It was stressed that this should be made clear in the drafting and also explicitly stated in the Explanatory Note.

44. Furthermore, concerns were raised that the addition did not necessarily enhance clarity, as awards in electronic form should still meet certain conditions. In that regard, the explanation in paragraph 44 of A/CN.9/WG.II/WP.240, which referred to validity, was considered misleading. It was noted, however, that the addition of (g) served to make the non-discrimination rule explicit and that issues of validity were to be addressed in article 31 MAL. Additionally, the phrase "in electronic form" itself was not deemed sufficiently clear (see also para. 11 above). It was suggested to simply express the non-discrimination rule stating, for instance, that an award should not be denied recognition on the sole ground that it was in electronic form.

45. It was stated that the most straightforward solution would be to adopt the suite of UNCITRAL electronic commerce instruments more broadly. However, in response, it was observed that the scope of existing electronic commerce instruments did not necessarily encompass arbitral awards – e.g. the ECC being limited to international contracts.

46. After discussion, it was generally felt that, while the proposed addition was not strictly necessary, it was still useful to clarify the non-discrimination rule. It was agreed that the Explanatory Note be updated to make clear that the addition was a clarification intended to avoid ambiguity and making that rule explicit. It was further said that the aim of the proposed paragraph 2(g) might be better addressed by introducing a paragraph after article 31(1), which – in order to both clarify and avoid suggesting that awards in electronic form were not within the scope of existing MAL

provisions – could state: “An award in electronic form shall not be denied validity or enforceability on the sole ground that it is in electronic form.”

Medium, form and delivery or receipt of award – article 31 UNCITRAL Model Law on International Commercial Arbitration (MAL)

47. Regarding (1-1), it was noted that it enshrined the functional equivalence rule concerning the writing requirement, as reflected in article 7(4) of the MAL, which was considered appropriate. Several drafting suggestions were made: the opening phrase of (1-1) should read “An award is made in writing if…” and, similarly, (1-2) should read “An award is signed if…”. Additionally, it was proposed to replace “in relation to” with “by an” and to substitute “information” with “text” to ensure that an audio recording of the award’s content would not qualify as an award in electronic form.

48. It was also questioned whether (1-1) introduced a different standard for awards compared to arbitration agreements, which could be recorded “in any form”. In response, it was noted that awards were not contracts and, therefore, consistency between these standards was not necessary. It was said that the question of preservation of awards in electronic form, which aimed at guaranteeing accessibility by any reliable technical means, should be included in the Explanatory Note.

49. As for (1-2), it was mentioned that it could create issues in jurisdictions that applied a different standard, as the purpose of the signature was not only to identify the person signing but also to certify the document. There was a suggestion to delete subparagraph (ii), stating that the language, which was reproduced from article 9(3)(b)(ii) ECC, was only relevant in the context of international contracts. In response, preference was broadly expressed to follow the language used in the UNCITRAL electronic commerce instruments to the extent possible. It was said that that article in the ECC was reproduced as article 4(2) of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) and article 18(2) of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (MLM) and that it would be necessary for the Working Group to provide justification were it to take a different approach. In response, it was noted that the Working Group was engaged in different work than with respect to the instruments noted above, as the current work aimed to clarify that an award in electronic form could be recognized and enforced under the New York Convention and the MAL. It was nonetheless mentioned that subparagraph (ii) would serve as an important safeguard where the reliability test in subparagraph (i) was not met. In (1-2)(a), it was pointed out that the terms “to finalize and approve” were not consistent with the language in the UNCITRAL electronic commerce instruments and that the term “finalize” should be removed.

50. Views on (3-1) diverged. On the one hand, it was noted that the paragraph helpfully clarified that the tribunal should be empowered, in the absence of an agreement by the parties, to decide the medium in which an award was to be made. It was also noted that the paragraph reflected the reasonable proposition that the tribunal should consult the parties on this issue and aim to align with the parties’ preferences. It was further said that the possibility of the award being made in two mediums was important, because parties who received an award in electronic form might request, at a later stage, an award in paper form with wet-ink signatures. This flexibility was seen as providing reassurance to the parties. It was questioned how this flexibility could be provided in the ad hoc context, where the tribunal might be *functus officio*.

51. On the other hand, an opposing view was expressed, suggesting that (3-1) seemed to micromanage the tribunal’s conduct of the proceedings and should therefore be deleted. Concerns were expressed regarding which version would prevail in the event of a conflict and which version would trigger the running of time for applicable time limitations. It was said that it was not the role of the MAL to address

that issue and that, if needed, it could be dealt with in the Explanatory Note or the UNCITRAL Notes on Organizing Arbitral Proceedings (Notes).

52. Several drafting suggestions were made that (3-1): (i) include a reference to applicable law; (ii) be revised to account for a situation in which a medium agreed by the parties might not be available to the tribunal, such as if the parties agree that the award must be signed using a certain security key technology, but the tribunal would not have access to it; and (iii) be linked to the proposed (4-1) as it related to the delivery and receipt of the award.

Electronic signature with specific requirements

53. Views diverged on whether the MAL revisions should refer to or require electronic signatures with specific requirements. It was noted that such a signature would ensure a high level of security and verification. Some argued that that issue could not be left to the parties' agreement, as States, specifically the courts, would require, for awards, that the level of security of an electronic signature be high. Additionally, it was suggested that the reluctance to rely on awards in electronic form might stem from the current standard being too low, thereby undermining confidence in their use. A suggestion was also made to provide guidance on reliable methods, drawing inspiration from article 6(3) of the UNCITRAL Model Law on Electronic Signatures.

54. On the other hand, it was argued that there was no justification to impose stricter signature requirements for awards in electronic form than those for paper-based awards. It was said that paper-based awards if challenged, could be litigated, including in cases of forgery. Requiring higher standards was also seen as unnecessarily complicating the process. If parties wished to enhance security, they could do so by agreeing on additional measures before or during the proceedings.

55. Furthermore, the need for consistency across UNCITRAL instruments was reiterated, including on providing justification if there were to be a departure from existing standards. It was noted that paper-based awards did not require an electronic signature with specific requirements, notarization, or an equivalent form of authentication. It was also questioned why such a requirement would be necessary for awards in electronic form but not for mediated settlement agreements, given that neither the Singapore Convention nor the MLM imposed such higher requirements.

56. After discussion, there was broad support not to introduce more stringent signature requirements.

57. On (4-1), diverging views were expressed. Some found the provision useful in providing guidance. Others observed that it related to the administration of proceedings and should not be regulated in the MAL. It was said that there were no specific requirements for the delivery of a paper-based award. It was, however, pointed out that article 3 MAL dealt more broadly with written communication and functional equivalence could be provided. In that context, it was suggested that the matter be addressed comprehensively within article 3, rather than being limited to awards.

58. It was observed that the discussion should remain preliminary to ensure alignment with future work on notifications and that consistency should be maintained with relevant international instruments and regulations on the service of judicial and extrajudicial documents.

59. Some suggested that (4-1) be broadened to accommodate future developments, including retrieving awards from platforms. In response, it was said that an "electronic address" was already sufficiently inclusive to cover platforms. Another proposal was to introduce the phrase "last known" before "electronic address" in the final sentence. Concerns were expressed about relying on a party's awareness of an award being sent, as this could potentially lead to disputes. It was also suggested to delete the last sentence, given that the presumption it contained might not be applicable in all jurisdictions. Additionally, it was proposed that the reference to

"electronic communication" be replaced with "award in electronic form". It was suggested that electronic delivery should only be possible when there were designated addresses.

60. Concerns were raised regarding connectivity issues in certain jurisdictions and the replacement of paper-based awards. In response, it was clarified that the work was intended to facilitate reliance on awards in electronic form and not to replace existing regimes.

61. After discussion, it was said that delivery remained an important issue, though views differed on the appropriate means of addressing it – whether through article 3 MAL, the Explanatory Note, or the UNCITRAL Arbitration Rules (UARs). Hence, it was suggested the secretariat explore available options to address the various views expressed.

Recognition and enforcement – article 35 UNCITRAL Model Law on International Commercial Arbitration (MAL)

62. Some support was expressed for the inclusion of (1-1) as drafted. Views were also expressed in support of retaining only the idea contained in the first half of (1-1) on the notion that it was sufficient to cover the points made, while there were other views in support of retaining only the second half of (1-1) aimed at clarifying the functional equivalence rule for the written form requirement to which the application for the enforcement of an award was subjected under article 35(1) MAL. It was reiterated that information in that context should be limited to avoid including audio recordings. While acknowledging the usefulness of confirming that an application for enforcement of an award in electronic form could be submitted electronically, concerns were raised that (1-1) might be overregulating court proceedings. Different views were expressed regarding whether the content of (1-1) should be included as a provision in the MAL or as part of the Explanatory Note.

63. After discussion, a suggestion was made to delete the term "in writing" in article 35(1) MAL, for which some support was expressed, as that suggestion seemed to achieve medium neutrality and refrain from regulating the medium in which an application should be made. It was also suggested that the functional equivalence rules, including for the term "in writing", could instead be addressed in article 2, the result of which would be to avoid having to spell out the functional equivalence rules in various paragraphs.

64. Regarding (2-1) and (2-2), it was proposed to delete both paragraphs because, if the functional equivalence rule on signature was satisfied, the functional equivalence rule on originality would presumably also be satisfied. It was also proposed to delete just (2-2). Another view was that (2-1) and (2-2) should be retained. It was mentioned that the criteria on integrity and reliability in the functional equivalence rule on originality were essential to ensure that the content of an award in electronic form remained unaltered after it was signed electronically, and that those criteria were not addressed in the functional equivalence rule on signature.

65. On (2-1), a proposal to add "or a copy thereof" was made, in order to ensure that an electronic document was functionally equivalent with a paper document, but it was noted that paper copies were not subject to specific requirements, and so stricter rules for electronic copies were unnecessary. A suggestion to use "certified copy" was also rejected, as the term was removed in the 2006 MAL revision.

66. Regarding (2-3), it was clarified that that paragraph referred to paragraph 2, covering the situation where a copy in electronic form could be made from a paper award. It was suggested that (2-3) be deleted, as "original award or a copy thereof" in paragraph 2 already addressed that.

67. Regarding (2-4), it was considered unnecessary to include such clarification in a separate paragraph, as it could be implicitly understood.

D. Guidance – arbitration rules, model clauses and guidance notes

Amendments to the UNCITRAL Arbitration Rules (UARs)

68. At the outset, it was stated that frequent revisions of the UARs should be avoided, given that multiple versions already existed due to the revisions of the UARs in the past fifteen years.

69. Regarding the addition to article 34(1), it was suggested that it warranted a separate paragraph, as it provided an important clarification. However, it was said that the addition was unnecessary, as the arbitral tribunal inherently possessed the power to issue the award in either electronic form or on paper. Doubts were raised whether this power was truly inherent. It was also stated that if one party objected to the award's issuance in electronic form, a paper-based award should be issued. In response, concerns were expressed that this approach would send the wrong message in light of the Working Group's mandate and contradict the principle of non-discrimination.

70. It was further suggested to align the language with the corresponding text of (3-1) for article 31 MAL. Regarding article 34(2), it was proposed that an integrity requirement be added. Regarding article 34(4), it was suggested to delete "finalize" (see para. 49 above). Additionally, it was recommended to remove "as for the purpose … was generated" in subparagraph (b)(i), as it envisaged different document types and was not relevant for awards.

Additional clauses for the model arbitration clause

71. With respect to the clause on identification of the medium, it was said that such clause did not sufficiently flag important considerations, such as the law applicable to the proceeding. It was also said that this issue would be better addressed not when forming an arbitral agreement, which could be a significant amount of time before an arbitration would actually commence, but during the case management conference. After discussion, it was generally felt that this matter was better addressed in the Notes.

72. With respect to the proposed model clause on signature, it was said that it might be problematic to suggest to parties that that issue should be addressed potentially well in advance of a dispute and absent further explanation of what potential options were for signature. After discussion, it was generally felt that this matter was also better addressed in the Notes.

Guidance notes

73. Concerns were expressed with respect to the penultimate sentence, in particular that it might be read to suggest that there could be two originals of the same award. It was also suggested that the penultimate sentence be modified to take into account not only triggering of relevant timelines, but also applicable law, with respect to the seat of the arbitration and the reference of the New York Convention to an original award for purpose of recognition and enforcement. It was further suggested that sentence might need to be broadened to reflect the content of the proposed recommendation regarding how the New York Convention should be construed.

74. It was said that some of the issues addressed in the proposed modifications to the MAL should be dealt with in the proposed addition to the Notes, alongside further relevant technical suggestions.

IV. Way forward and other business

75. After discussion, the Working Group requested the secretariat to prepare a revised version of the recommendation, the articles in the MAL (including the

Explanatory Note), the UARs, and the guidance text, reflecting the outcome of the deliberations.

76. Concerns were widely expressed about the discontinuation of providing remote access to Working Group sessions, as such access was considered crucial for accommodating participants facing financial constraints to engage effectively in the deliberations of the Working Group. It was mentioned that fostering inclusivity and ensuring proper outreach of the work of the Working Group was essential and, hence, the Working Group requested the seeking of resources to permit remote participation or to at least provide live streaming services. The Working Group asked that this request be conveyed to the Commission.

77. The Working Group was informed that the Government of Japan, represented by the Ministry of Justice of Japan, had signed a "Memorandum with the United Nations on the financial contribution to the UNCITRAL Trust Fund for the programme activities of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific" to make an initial contribution of US$ 196,410, with the possibility of making further contributions in subsequent years. It was explained that Japan intended to support technical assistance activities carried out by the Secretariat to promote and implement UNCITRAL instruments, particularly the instruments that were currently being deliberated by the Working Group once they were finalized.