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Report of Working Group II (Dispute Settlement) on the work of its eighty-second session (Vienna, 13–17 October 2025)

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I. Introduction

1. At its fifty-seventh session in 2024, the Commission mandated Working Group II to work on the recognition and enforcement of electronic arbitral awards and, subsequently, on electronic notices of arbitration.¹ After a two-day colloquium organized during the eightieth session of the Working Group to obtain perspectives to assess the issues,² the Working Group proceeded with its consideration of the recognition and enforcement of electronic awards and requested that the secretariat compile relevant information received from member and observer States on the matter.³

2. At its eighty-first session, the Working Group carried out its work based on the Note by the Secretariat (A/CN.9/WG.II/WP.240), in which reference was made to the compilation of responses received. After discussion, the Working Group requested the secretariat to prepare a revised version of: (i) the recommendation regarding the interpretation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention); (ii) the proposed amendments to the UNCITRAL Model Law on International Commercial Arbitration (MAL), including the Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006 (Explanatory Note); (iii) the proposed amendments to the UNCITRAL Arbitration Rules (UARs); and (iv) the proposed guidance text, reflecting the outcome of the deliberations (A/CN.9/1200, para. 75).

3. During this session, the Working Group continued its deliberations on the recognition and enforcement of electronic awards and commenced its deliberations on electronic notices of arbitration based on the Note prepared by the Secretariat (A/CN.9/WG.II/WP.242).

II. Organization of the session

4. The Working Group, which was composed of all States members of the Commission, held its eighty-second session from 13 to 17 October 2025 at the Vienna International Centre.

5. The session was attended by the following States members of the Working Group: Argentina (2028), Austria (2028), Belarus (2028), Belgium (2031), Brazil (2028), Canada (2031), Chile (2028), China (2031), Colombia (2028), Côte d'Ivoire (2031), Czechia (2028), Democratic Republic of the Congo (2028), Dominican Republic (2031), El Salvador (2031), France (2031), Germany (2031), Ghana (2031), Greece (2028), Hungary (2031), India (2028), Iran (Islamic Republic of) (2028), Iraq (2028), Israel (2028), Japan (2031), Kenya (2028), Kuwait (2028), Malaysia (2031), Mexico (2031), Morocco (2028), Netherlands (Kingdom of the) (2031), Nigeria (2028), Panama (2028), Philippines (2031), Poland (2028), Republic of Korea (2031), Russian Federation (2031), Saudi Arabia (2028), Singapore (2031), South Africa (2031), Spain (2028), Sweden (2031), Switzerland (2031), Thailand (2028), Türkiye (2028), Turkmenistan (2028), Uganda (2028), Ukraine (2031), United States of America (2028), Venezuela (Bolivarian Republic of) (2028) and Viet Nam (2031).

6. The session was attended by observers from the following States: Algeria, Bahrain, Cambodia, Croatia, Ecuador, Finland, Guatemala, Honduras, Indonesia, Libya, Malta, Myanmar, Namibia, Norway, Paraguay and Slovakia.

¹ *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17 (A/79/17)*, para. 285.

² A/CN.9/1193, paras. 43–63.

³ *Ibid.*, paras. 64–70. See A/CN.9/WG.II/WP.242, para. 4 for an update on the compilation of responses received.

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*: Gulf Cooperation Council (GCC) and Permanent Court of Arbitration (PCA);
- (c) *Non-governmental organizations*: Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), Beijing Arbitration Commission/Beijing International Arbitration Court (BAC/BIAC), Belgian Centre for Arbitration and Mediation (CEPANI), Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC), Center for International Commercial and Investment Arbitration (CICIA), Center for International Investment and Commercial Arbitration (CIICA), Center for International Legal Studies, China International Economic and Trade Arbitration Commission (CIETAC), China Maritime Arbitration Commission (CMAC), Club Español e Iberoamericano del Arbitraje (CEIA), Comité Français de l'Arbitrage (CFA), Forum for International Conciliation and Arbitration (FICA), German Arbitration Institute (DIS), Hong Kong International Arbitration Centre (HKIAC), Institute for Transnational Arbitration (ITA), International Association of Lawyers/Union Internationale des Avocats (UIA), International Union of Notaries/Union Internationale du Notariat (UINL), International Women's Insolvency and Restructuring Confederation (IWIRC), Japan Commercial Arbitration Association (JCAA), London Court of International Arbitration (LCIA), Madrid Court of Arbitration, Milan Chamber of Arbitration, New York International Arbitration Center (NYIAC), Organization of Islamic Cooperation Arbitration Centre (OIC Arbitration Centre), Panel of Recognised International Market Experts in Finance (P.R.I.M.E. Finance), Shanghai International Arbitration Center (SHIAC), Shenzhen Court of International Arbitration (SCIA), Singapore International Arbitration Centre (SIAC) and Vienna International Arbitration Centre (VIAC).

8. The Working Group elected the following officers:

- Chair*: Mr. Andrés Jana (Chile)
- Vice-Chair*: Ms. Melissa Magliana (Switzerland)
- Rapporteur*: Mr. Robert Typa (Poland)

9. The Working Group had before it the following documents: (a) Annotated provisional agenda ([A/CN.9/WG.II/WP.241](#)); and (b) Note by the Secretariat on recognition and enforcement of electronic arbitral awards ([A/CN.9/WG.II/WP.242](#)).

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 topics of recognition and enforcement of electronic awards and electronic notices of arbitration.
- 5. Adoption of the report.

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

A. Recommendation regarding the interpretation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)

General remarks

11. The Working Group considered the revised version of the draft recommendation contained in [A/CN.9/WG.II/WP.242](#), paragraph 5.

12. At the outset it was recalled that the recommendation would be non-binding and would not amend the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). It was reiterated that there was significant practical importance in preparing a recommendation in line with the growing use of electronic communications and arbitral awards in electronic form to ensure the recognition and enforcement of such awards. It was also noted that the recommendation was based on the principles of non-discrimination and functional equivalence as embodied in UNCITRAL texts on electronic commerce.

Preambular paragraphs (PP)

13. Regarding PP7, concerns were expressed about the phrase “in electronic form”. It was said that the phrase was unclear and vague and might not be understood by an enforcing court. On the other hand, it was said that the text should accommodate flexibility and that the phrase “in electronic form” was considered broad and adaptable. It was added that the phrase could encompass awards made in a manner consistent with the usages of trade and was sufficient to promote harmonization of practice across jurisdictions. Concerns were also raised regarding the last sentence of paragraph 11 of [A/CN.9/WG.II/WP.242](#). It was also said that the absence of a reference to the national system in the penultimate sentence of paragraph 11 was problematic and that paragraph 11 would not imply the need to sign an award in any particular form.

14. While it was noted that the New York Convention did not explicitly refer to signature as a means of ensuring that arbitrators had approved the award, it was observed that, in 1958, the prevailing understanding of an “original” award likely implied the presence of a wet-ink signature. In response, it was said that the term “signature” had not been discussed during the drafting of the Convention and that the emphasis at the time was on the finality of the award. It was however clarified that paragraph 11 merely meant to note that the formulation “in electronic form” was neutral with respect to signature requirements.

15. With respect to PP9, it was said that including a reference to a specific article of the MAL would imply the need to reopen discussion on the recommendation if the MAL were amended. It was also noted that the PPs served primarily to provide context and framing. After discussion, it was agreed that references should be made to the relevant instruments only, and not to include references to specific articles.

16. After discussion, the Working Group approved PP1–10, subject to the deliberations.

Operative paragraphs (OPs)

17. Regarding OP1, it was said that the phrase “applicable legal requirements” was ambiguous and vague, as it was unclear whether it referred to the law of the seat, the law of the place of enforcement or general international standards. A suggestion was made to refer instead to the “domestic legal framework”. It was mentioned that if the expression “consistent with applicable legal requirements” was to be retained, the

term “consistent” might not be adequate and that the expression “in conformity with applicable legal requirements” would be preferable.

18. It was also widely felt that the phrase “regardless of the form in which they are made” did not add substantive value and could therefore be deleted.

19. Concerns were expressed regarding the reference to “modern commercial practices”, noting that the term “modern” was ambiguous, could create uncertainty, and might stifle innovation, as practices not yet considered “modern” could thereby be excluded. It was said that it would be difficult to determine what might be “fit for the future”, and preference was expressed for a legally sound and immediate approach. In that context, it was suggested to recall that the recommendation was made in the arbitration context, and that reference could therefore be made to “commercial arbitration practices regarding awards in electronic form” or to “prevailing arbitration practices”. It was further suggested that the text could refer instead to “practices or usages in international trade”.

20. Furthermore, it was emphasized that the recommendation should remain simple, with clear, understandable and concise wording.

21. It was discussed whether the text should refer to a “specific form” or to “electronic form”. It was said that a broader reference would avoid identifying a particular form, while others noted that the expression “electronic form” more directly addressed the issue the Working Group intended to consider, was easier for judges to understand, and corresponded to the immediate concern to be addressed by the recommendation. A suggestion to combine both expressions, along the lines of “in a specific form, such as in electronic form”, did not receive support.

22. After discussion, the Working Group approved the following text of OP1:

Recommends that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be interpreted in a manner that ensures arbitral awards are not denied recognition or enforcement on the sole ground that they are in electronic form.

23. Regarding OP2, there were expressions of support, as it reproduced well-established language from the Model Law on Electronic Commerce (MLEC) and the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC). However, questions were raised as to whether it might impose an additional burden of proof on the parties to demonstrate the authenticity of an award in electronic form and, in that regard, to establish reliable assurance thereof. Concerns were expressed that such a requirement could impose a burden on the applicant seeking to enforce such an award that did not exist with paper-based awards, which undermined the purpose of the recommendation. It was also mentioned that the ECC had not been widely adopted, and, for that reason, it might not be necessary to refer to it in this context.

24. A suggestion was made to delete the reference to “electronic form” in the first line to clarify that any evidentiary burden should be the same for awards rendered in electronic and paper form. It was further suggested that, instead of including “information can be displayed as intended”, the text could refer to the information being “accessible subsequently”. It was noted that, as article IV(a) of the New York Convention referred to the “duly authenticated original award”, the notion of authentication needed to be reflected in the text. However, it was said that there was no need to reopen discussion on the concept of an “original”. Questions were raised as to how the provision would function in practice, particularly regarding who could provide reliable assurance in an ad hoc arbitration context, whereas in institutional settings a registrar would be able to do so. In that regard, a minimalistic approach was suggested, either by deleting the text after 1958, beginning with “where there exists”, or by deleting OP2 altogether, with or without adding a reference to the term “original” in OP1. It was also suggested that any text for OP2, if retained, could instead focus on the promotional objective of the recommendation, avoiding definitional complexity. In response, it was said that PP10 referred to the promotion

of the recognition and enforcement of awards in general, including awards in electronic form and that, in view of the principle of non-discrimination, awards in electronic form should not be promoted over paper-based awards.

25. It was further questioned whether, without the inclusion of OP2, OP1 would still be useful – that is, whether a recommendation was necessary at all. However, it was widely felt that OP1, which reflected the principle of non-discrimination, was particularly valuable as it provided clarity and was supportive of the recognition and enforcement of an award in electronic form. It was emphasized that the principle of non-discrimination was fundamental, although it was noted that this principle operated on the assumption that the rules of functional equivalence were in place.

26. After discussion, the Working Group agreed to delete OP2.

B. Initial discussions regarding amendments to the UNCITRAL Model Law on International Commercial Arbitration (MAL)

1. Amendments to the provisions

27. The Working Group considered amendments to the provisions of the MAL contained in [A/CN.9/WG.II/WP.242](#), paragraphs 16–36.

Article 2

28. With regard to the inclusion of subparagraph (g) into article 2 MAL, it was said that it was unnecessary as the proposed addition to article 31 already clarified that awards included awards in electronic form. Support was expressed, however, for inclusion in article 2 for reasons of legislative clarity and visibility.

29. Proposals were made to relocate subparagraph (g), noting that article 2 listed definitions partly in alphabetical order, but it was considered preferable to maintain the current order to avoid renumbering the existing provisions and given the wide adoption of the MAL. It was also suggested to add language at the end of subparagraph (g) such as “in the definition provided by the law” or “in accordance with this Law”. It was observed, however, that such additions were unnecessary, in view of the existing chapeau of article 2 reading “For the purposes of this Law”. It was further noted that the MAL already provided sufficient flexibility for States to tailor and adjust their domestic frameworks.

30. After discussion, the Working Group approved the inclusion of subparagraph (g).

31. It was widely felt that the modernization and relocation of the second sentence from option 1, article 7(4), into subparagraph (h) of article 2 was appropriate. A proposal was made to refer to “a party or the arbitral tribunal”, rather than “the parties and the arbitral tribunal”, to clarify that application of the provision was not limited to joint communications. It was also suggested to add language indicating that an award in electronic form included an award made by data message.

32. Both suggestions received support, and accordingly the Working Group agreed that subparagraph (h) would read as follows:

“Electronic communication” means any communication that a party or the arbitral tribunal makes by means of data message and an award in electronic form means an award made by means of data message; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means.

Article 3

33. Regarding the inclusion of subparagraph (b-1), it was said that it was functioning more broadly, consistent with the functional equivalence principle, concerning the time of delivery or receipt of electronic communications. However, it was also noted that the provision as drafted might go beyond functional equivalence

and the expected scope of work. Concerns were also expressed that the phrase “at an electronic address designated by the addressee” could be subject to abuse, for instance, if the mere handing over of a business card would qualify as a designation. A suggestion was made to specify that the address should be “specifically designated for this purpose”, reflecting the compromise that had been reached when the current article 2(2) of the UNCITRAL Arbitration Rules (UARs) was drafted.

34. It was noted that the rule referring to an electronic communication being received at “another electronic address of the addressee” was too broad and required further definition. It was further noted that situations in which the addressee should have become aware that a communication was sent were not covered, creating a potential risk of abuse. It was also said that the wording was too complicated.

Article 31

35. Support was expressed for (1-1), with a suggestion to expand the Explanatory Note. However, it was generally felt that (1-2) was too complicated, generic, and cumbersome and not well adapted to the arbitration context. In particular, the chapeaux beginning with “the requirement that ... is met”, which was used in the UNCITRAL electronic commerce texts, as well as references to “information”, were considered unsuitable. It was suggested that the text should be reframed to better reflect the arbitral context.

36. It was suggested that the choice of form should be left to the parties or, failing agreement, to the arbitral tribunal, taking into account applicable law. It was noted that functional equivalence rules already existed in many jurisdictions and reproducing language from UNCITRAL electronic commerce texts could create confusion rather than clarification. Reference was made to certain arbitration rules that already provided guidance on issuing awards in electronic form.

37. Caution was expressed that (1-1) and (1-2) could be read as imposing a proactive requirement on the party seeking enforcement, which might create unnecessary burdens. It was stressed that the provision should remain procedural in nature and avoid addressing substantive issues that did not typically arise in arbitration.

38. In that context, there were discussions about changing the order of the paragraphs within the article, starting with the possible choice of form (as reflected in (3-1)), and streamlining and simplifying the text on how requirements were to be satisfied.

39. It was noted that (3-2) did not belong in article 31, as it dealt with enforcement, and should be moved to article 35.

40. It was suggested to replace the term “medium” in (3-1) with “form”. It was questioned whether the parties’ agreement should cover only the form of the award or also the method of satisfying the signature requirement. In response, it was noted that this was subject to national law.

41. It was further noted that, while the text listed the functions of a signature, parties should not be allowed to choose methods of identification without specifying the intended function of those methods.

42. Regarding the proposed addition to paragraph (4), it was suggested that this should be a separate paragraph as it was unrelated to the prior sentence.

43. After discussion, it was agreed that the revisions to article 31 should: (i) acknowledge that awards could be issued in electronic form; and (ii) mention the relevant requirements in a manner tailored to arbitration, without defining them, as they remained subject to national law.

Article 35

44. Regarding the proposed revisions to article 35, it was said that both of the proposed additions for (2-1) and (2-2) seemed to be taken directly from the ECC and

the MLEC, were too abstract and needed to be tailored to the particular context. It was also said that the Working Group should be mindful not to create additional requirements or otherwise make the enforcement process more burdensome and that, to the extent necessary to discuss some of these issues, they could be addressed in the revisions to the Explanatory Note.

45. It was questioned whether it was necessary to delete the phrase “in writing” from article 35(1). However, it was agreed to delete that phrase for the reasons expressed in [A/CN.9/WG.II/WP.242](#), paragraph 28.

46. Regarding (2-1), it was said that it should include a reference to authenticity, consistent with the New York Convention. It was then said that it would be problematic to refer to the New York Convention and authentication, as the MAL did not otherwise refer to authentication. It was said that the language could be simplified and deal specifically with issuance of the award.

47. Regarding (2-2), it was said that, as it was unclear in which cases arbitral awards would be further endorsed and what this provision was intended to do, this provision could be deleted.

48. Regarding (2-3), it was recalled that (3-2) in article 31 might be moved here, and it was asked whether the latter text would fully replace (2-3). It was said that (2-3) was dealing with a different point, addressing electronic copies of an award issued in paper form, and should be retained.

2. Amendments to the Explanatory Note

49. Regarding the Explanatory Note, it was said that it should be amended to reflect what would be the revised articles 31 and 35. In particular, it was suggested that the Note should no longer refer to the incorporation of the functional equivalence rules from the UNCITRAL electronic commerce texts but rather to suggest “drawing inspiration” from them. It was also noted that the Explanatory Note should clarify the principle of non-discrimination and explain the underlying functional equivalence rules, as reflected in those texts and national laws.

C. Amendments to the UNCITRAL Arbitration Rules (UARs)

50. Regarding the proposed text in paragraph 37 of [A/CN.9/WG.II/WP.242](#), it was said that it should be for the arbitral tribunal to decide in which form to issue the award, with a reference to taking into account the parties’ requests and ensuring that the award was valid and enforceable. In response, it was noted that validity and enforceability would ultimately depend on the jurisdictions where enforcement would be sought, should not be a matter for the arbitral tribunal alone and would a responsibility of the party seeking enforcement.

51. It was also suggested that, given the possible risk that an award in electronic form might not be enforceable in certain jurisdictions, the text should, for the sake of clarity, allow for the issuance of a paper-based award, particularly during the transitional phase toward digitalization. In response, it was said that the MAL was drafted for long-term application, and that the default rule should be forward-looking – namely, that if there was no party agreement, the award should be made in electronic form. It was said that such a default rule would promote the transition toward a paper-free system, enhance efficiency in proceedings and help address situations where a party might obstruct or refuse to cooperate. Otherwise, it was also said that a majority of countries required a paper-based award for enforcement. Caution was expressed to not conflate an original award with a copy of the award, if the award were to be issued in paper-based and electronic form.

52. It was further suggested that any such default rule should also be reflected in the MAL, given its broader scope compared to the UARs (see para. 67 below for the conclusions regarding the proposed text in paras. 37–39 of [A/CN.9/WG.II/WP.240](#)).

D. Further discussions regarding the amendments to the UNCITRAL Model Law on International Commercial Arbitration (MAL)

53. In light of the foregoing discussion, the Working Group proceeded to consider revised proposals for articles 31 and 35, with the proposed additions in italics.

Article 31

(New 1) The arbitral tribunal shall make the award in the form agreed upon by the parties. If the parties do not agree, or if the tribunal is unable to use the agreed form, the tribunal shall make the award after consulting the parties, in [electronic form] [the form it considers appropriate], [taking into account the parties' preferences] [provided that any party may request an award in paper form or a paper copy of an award in electronic form].*

(1) Unchanged.

(1-1) The requirement that the award be in writing is met by an arbitral award in electronic form if the text contained therein is accessible so as to be usable for subsequent reference.

(1-2) The requirement that the award be signed by the arbitrator or arbitrators is met by an award in electronic form if a reliable method is used to identify the arbitrator or arbitrators and to show their intention to approve the content of the electronic award.

(2) Unchanged.

(3) Unchanged.

(4) Unchanged, with addition at the end: *An award in electronic form shall be delivered to each party by an electronic communication.*

Article 35

(1) Unchanged.

(2) Unchanged.

(2-1) An award in electronic form shall not be denied recognition or enforcement solely on the ground that it is in electronic form.

(2-2) The requirement that the party relying on an award or applying for its enforcement shall supply the original award is met by an award in electronic form if:

(i) There exists a reliable assurance that the award has remained complete and unaltered from the time it was finalized; and

(ii) That award can be displayed to the person or authority to whom it is submitted.

(2-3) A copy of the original award in paragraph (2) may be produced and supplied in electronic form.

54. Regarding the revised amendments to article 31, a number of comments were made, suggesting that:

- The paragraphs be reordered, with the sequence to read as paragraph 1, followed by (new 1*), (1-1) and (1-2);
- Paragraph (new 1*) be ended after the phrase “in electronic form”, and that the following sentence be added: “If a party has so requested, the tribunal shall also make an award in paper form, which shall also constitute an original.”;
- The phrase “taking into account the parties’ preferences” be deleted, as the text already referred to consulting the parties;

- In the last set of brackets, the reference to a paper copy of an award made in electronic form be deleted;
- Clarification be provided as to when a party could request a paper-based award, particularly in the context of ad hoc arbitration;
- A reference be included that the tribunal should “take into consideration the need for validity and enforceability” when determining the form of the award;
- The phrase “in the form it considers appropriate” be retained instead of “electronic form”, and that it be clarified that parties could waive their right to receive the award in either form;
- It be decided whether to allow the tribunal to issue the award in electronic form by default after consulting the parties or to require the tribunal to determine the appropriate form after consultation, taking into account the parties’ preferences;
- In paragraph (1-2), the phrase “electronic award” be replaced with “award in electronic form”;
- Having both an electronic and a paper award might create uncertainty as to which version was delivered first, potentially affecting time limits, for example, for an application for setting aside; and
- The addition to paragraph (4) be retained to clarify that electronic service was permissible, but that the word “shall” be replaced by “may” to address cases in which electronic delivery was not possible. On the one hand, it was suggested that it would be preferable to delete this provision and address these issues in the Explanatory Note.

55. Regarding the revised amendments to article 35, a number of comments were made, including that:

- The proposed (2-2) should not be drafted in a way which might make it more burdensome for a party seeking enforcement of an award in electronic form;
- It was unnecessary to use the term “reliable” before “assurance” because it was redundant and keeping the term “reliable” might risk making the process more burdensome;
- The word “finalized” should be changed to “made” or “issued”, with it being observed that the latter better captured what was intended;
- It might not be necessary to state that an award needed to remain both “complete” and “unaltered” and it was suggested that referring instead to the integrity of the award, that the award had not been tampered with or that it remained substantively the same might be preferable. In particular, that phrasing could allow changes in the normal course of electronic storage and transmission, as well as any certification added to the award, which were expressly accepted in the article 8(3) MLEC;
- Completeness referred to the award having all its parts and unaltered referred to no part having been amended, and it was questioned whether both were necessary in the context of an enforcement proceeding; and
- The proposed (2-2) could be further revised to reverse the burden (e.g. “unless there was evidence that”).

56. After discussion, further revised proposals were introduced for articles 31 and 35, with the following two paragraphs to be inserted after article 31(1):

(1-1) The arbitral tribunal may make the award in electronic form.

(1-2) After having consulted with the parties and unless otherwise agreed by them, the arbitral tribunal may issue awards in electronic form.

and an additional paragraph to be inserted at the end of article 35:

An award in electronic form shall not be denied recognition or enforcement solely on the ground that it is in electronic form.

57. It was emphasized that, to ensure a harmonized approach consistent with the UNCITRAL electronic commerce texts, article 31 should establish only that awards may be issued in electronic form, thereby leaving the detailed application of that provision to the relevant State's domestic electronic commerce framework. It was said that the purpose of the proponents of the project was to remove obstacles to the recognition and enforcement of awards in electronic form, rather than to promote use of such awards. It was also said, however, that the work should promote the use of such awards.

58. It was said by one delegation that the simplified proposal was not based on the deliberations but on informal consultations and that no decisions on the revised draft should be taken in the latter. It was explained that this was not the case. There was full agreement that informal consultations were an important method to advance the work of the Working Group. It was underlined that the provisions drawn from the UNCITRAL electronic commerce texts in the original proposals were originally designed for different general contexts and were not necessarily tailored to arbitral awards but that it would be preferable not to introduce new definitions or alter existing approaches under the UNCITRAL arbitration framework. It was further noted that digital signature regimes varied by jurisdiction, and it was widely felt that any specific reference to signatures should be avoided so as to prevent possible creation of new barriers. It was also noted that the MAL would simply recognize that electronic and paper-based awards would have equal validity and that neither form would be considered superior.

59. Various drafting suggestions were made, including:

- To delete (1-1) as unnecessary, or merge it with (1-2);
- To refer in (1-2) to an award in the singular;
- To provide that any party could request a paper-based award;
- To ensure the Explanatory Note clarified that the form of the award should not affect its validity or enforceability;
- To note that the arbitral tribunal should raise the issue of form with the parties so they could make an informed decision because the form of the award could affect validity and enforceability in different jurisdictions, particularly while awards in electronic form were not yet universally recognized; and
- To address potential issues where a jurisdiction did not yet accept awards in electronic form, possibly by issuing an award in both electronic and paper forms.

60. It was said that the delivery of two versions of the award would not pose difficulties, as deadlines would be triggered by whichever form of the award was received first. It was stated that it was necessary to consider how a party that received an award in electronic form could subsequently request a paper-based award should one be needed for purposes of enforcement. On the other hand, the challenges of regulating this matter were discussed, in which context reference was made to other post-award functions of the tribunal (for example, under article 33 MAL). It was said that issue could be addressed in practice if parties required a paper-based award, without further amendment to the MAL.

61. It was widely felt that the agreement of the parties regarding the form of the award should prevail, while also granting discretion to the arbitral tribunal and acknowledging the possibility of issuing awards in electronic form. It was also said that no party should have the right to prevent the issuance of awards in electronic form.

62. After discussion, the Working Group approved the inclusion of the following paragraph after article 31(1):

If the parties agree or, in the absence of such agreement, neither party objects, the arbitral tribunal may issue an award in electronic form.

63. One delegation expressed its reservation to this approval.

64. It was said that the reasons for which this language was agreed should be clearly explained in the Explanatory Note, which should elaborate on the key issues raised during the discussion, including the principles of non-discrimination and functional equivalence, the applicable law, and the consultation process between the arbitral tribunal and the parties regarding the form of the award.

65. The Working Group then considered and approved as the last paragraph of article 35:

An award in electronic form shall not be denied recognition or enforcement solely on the ground that it is in electronic form.

66. One delegation said that its agreement on the whole revised text depended on the content of the Explanatory Note. Its concern was that the Explanatory Note should reflect the consensus, as understood by that delegation, of the importance of the functional equivalence principle implied by the non-discrimination principle, as well as the importance for users to consider the various requirements of validity and enforceability of an award in electronic form and the applicable law.

67. Consistent with these approvals, the Working Group also agreed that the paragraph proposed in paragraph 37 of [A/CN.9/WG.II/WP.242](#) would be adapted to reflect the newly added paragraph to article 31 (see paras. 50–52 above), and that the proposed provisions in paragraphs 38 and 39 of [A/CN.9/WG.II/WP.242](#) would be deleted. It was proposed to include more detail into the UARs, for example, that the arbitral tribunal, in consulting the parties, should address issues of validity and enforceability. However, it was said that such points could be addressed in the Notes on Organizing Arbitral Proceedings which, although a stand-alone instrument, provided guidance relevant to the UARs as well (see para. 70 above).

68. Also in light of the approvals (see paras. 62–65 above), it was suggested to delete the reference in PP9 of the recommendation (see para. 15 above) to the UNCITRAL electronic commerce texts. In response, it was said that the principle of non-discrimination was based on those texts, and it was decided to keep PP9 as approved (see para. 16).

69. A proposal for revision of the Explanatory Note on the modified articles 31 and 35 MAL was circulated. It was explained that the intention was to clarify the rationale behind the revisions to the MAL agreed by the Working Group. While the proposal was welcomed and there was agreement on the importance of the Explanatory Note, it was widely felt that a discussion of its contents was premature and should take place in conjunction with the agreed texts of the revised articles 31 and 35, once available. It was also stated that additional issues had been discussed and should also be covered, that the text placed too much emphasis on paper-based versions and could be read as overly negative towards awards in electronic form. On the other hand, it was indicated that the non-discrimination principle was only to ensure that awards were treated equally whether in paper or in electronic form. To allow for further exchanges in advance of the next session of the Working Group, it was felt that informal discussions might be helpful.

E. Amendments to the Notes on Organizing Arbitral Proceedings

70. It was stated that the proposed text to be added to the Notes needed to be adapted in light of the Working Group's deliberations. It was emphasized that the principles of non-discrimination and functional equivalence should be mentioned, along with the applicable law, and that the Notes should explain why a harmonized approach was

not included in the MAL (see also para. 57 above). It was also said that the last portion beginning with “[i]f the award is made in both electronic and paper form...,” should not be included. Caution was also expressed that the Notes should not impose any additional burden on the arbitral tribunal.

IV. Consideration of electronic notices of arbitration

71. At the outset and building on the discussion of the proposed addition of (b-1) to article 3 MAL (see paras. 33–34), it was said that the possibility of allowing the use of electronic notices should be explicitly noted, as this would reduce the burden in practice. It was suggested that a simple solution would suffice, for example, to state that electronic notices of arbitration were permissible and that the receipt of such notices could be determined in accordance with the applicable law.

72. It was stated that, as a second step, the issue of appropriate addresses for sending electronic notices should be covered in the MAL, consistent with what was covered in article 2(2) of the UARs, in particular an address specifically designated for this purpose or as authorized by the arbitral tribunal. It was also said that effectiveness could alternatively depend on a sender demonstrating an email address was actively used and regularly monitored, which would be determined as a matter of fact in a particular case. It was emphasized that the question of which address could be used required careful consideration, as an overly broad approach could raise due process concerns and affect the right to be heard. It was suggested that a specifically designated address and an explicit agreement by the addressee to its use should be required.

73. It was questioned, if provisions on electronic communications were to be included in the MAL and were not subsequently enacted in a particular jurisdiction, for instance because it already had a comprehensive electronic communications framework in place, whether that would have a negative impact on the assessment of that jurisdiction’s compliance with, or adoption of, the MAL. It was noted that provisions on electronic communications, including delivery and receipt, if included as part of a revision to the MAL should not be considered so crucial that a jurisdiction’s failure to adopt them would result its being characterized as non-compliant with the new version of the MAL 2026.

74. The Working Group discussed in greater detail the possible approach to delivery and receipt of electronic communications generally and notices of arbitration specifically, in connection with both the proposed (b-1) and the addition proposed in paragraph 48 of [A/CN.9/WG.II/WP.242](#), which would be added after the existing article 3(1)(b) MAL and before the proposed (b-1).

75. The relationship between article 3 and other provisions of the MAL, in particular with article 21, was noted. It was said that there was a difference in approach to delivery between the addition proposed in paragraph 48 and article 2(5) UARs, with the former approach being deemed receipt if it was delivered to the addressee’s address and the latter approach being, generally, deemed receipt on the day it was sent, with a special rule of deemed receipt when a notice of arbitration was received at the addressee’s address. It was questioned whether it would be desirable to have different approaches in two UNCITRAL arbitration texts, even though the UARs generally superseded non-mandatory national law. It was also said that there was a difference in approach between the addition proposed in paragraph 48 and the proposed (b-1), including because the latter proposed to establish actual rather than deemed (and therefore rebuttable) times of receipt. It was also stated that the proposed additions should take into account UNCITRAL electronic commerce texts, such as the MLEC, which was widely enacted and contained useful provisions (e.g. articles 14–15).

76. It was said that the second sentence of the proposed (b-1), which foresaw receipt at an alternative electronic address, should either be deleted so as to clarify that communications could only be received at an address specifically designated for that purpose or, if retained as a default solution in cases where the specifically designated

address was no longer available, should be more narrowly defined. It was also suggested that a fallback solution might be required and could involve a paper-based alternative (e.g. a mailing address).

77. It was repeated that a simple approach stating only the non-discrimination principle, with detailed application of that principle being subject to the relevant State's applicable domestic electronic commerce framework (see para. 57 above), would suffice to address electronic communications, including electronic notices and that this would be in line with the approach taken for awards in electronic form. It was that, when article 3 MAL was drafted, some delegations questioned the necessity of including a detailed provision on notification as this was a matter for national civil procedure law. On the other hand, it was stressed that the MAL would not be complete if receipt of electronic communications was not addressed. It was noted that merely stating that electronic notifications were permissible, while having detailed provisions for paper-based communications in article 3 MAL, would create an imbalance and leave a gap for jurisdictions lacking a comprehensive framework for electronic communications. In this connection, it was noted that having clarity regarding the date of receipt of a notice of arbitration was critical. It was also observed that awards in electronic form and notices of arbitration were not fully comparable, as the former concerned the form and authentication of a final instrument, whereas the latter related to procedural steps and the establishment of legal effect through delivery and receipt. It was suggested that the MAL version to be adopted could include optional provisions for States which would opt not to adopt regulation of the time of receipt of electronic notices but only the non-discrimination principle.

78. The Working Group then considered whether it would be necessary to include a provision in the UARs enabling a notice by electronic means to be sent to an electronic address held out to the public by the addressee. It was widely felt that, in view of articles 2(2) and 2(5) UARs and the deliberations, there was no need for further work on electronic notices in the context of the UARs.

V. Way forward and other business

79. It was also recalled that the Commission had requested the Secretariat to circulate a questionnaire to seek input on certain topics related to the exploratory work on dispute resolution in the digital economy, namely: (a) the use of artificial intelligence in dispute resolution; (b) platform-based dispute resolution, in collaboration with the Inclusive Global Legal Innovation Platform on Online Dispute Resolution; and (c) the development of procedural guidance on remote hearings in arbitration and the conduct of mediation ([A/80/17](#), para. 237) and delegations were reminded to submit their responses thereto.

80. After discussion, the Working Group requested the secretariat to prepare: (i) regarding awards in electronic form, a revised version of the relevant part of the Explanatory Note and the Notes on Organizing Arbitral Proceedings; (ii) regarding electronic notices, a provision specifying that electronic notices of arbitration were permissible, consistent with the principle of non-discrimination, as well as proposals for language addressing delivery and receipt issues, taking into account relevant UNCITRAL texts, in particular the UARs and the electronic commerce texts, for consideration for inclusion into the MAL; and (iii) additional information on the legislative history of article 3 MAL.

81. It was also agreed that delegations would provide the secretariat with information on their existing legislation or other legal authorities concerning the delivery and receipt of electronic communications or notices of arbitration, as well as on how such legislation was applied, and that the secretariat would compile such information. Furthermore, the secretariat was encouraged, resources permitting, to hold informal consultations prior to the eighty-third session to further discuss and refine these issues, in view of the limited time available to finalize the texts for presentation to the Commission.

Annex

Approved texts

Recommendation regarding the interpretation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done in New York, 10 June 1958

The United Nations Commission on International Trade Law,

Recalling the General Assembly, in its resolution [2205 \(XXI\)](#) of 17 December 1966, established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958, has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution which states, inter alia, that the Conference “considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes”,

Noting that the *travaux préparatoires* of the Convention provide valuable insight into the context in which it was adopted and its object and purpose,

Recognizing the possibilities that technological advancements offer for increased efficiency and expediency in making of arbitral awards as well as in recognizing and enforcing such awards, the increasing use of electronic means in international commerce and the growing practice of making arbitral awards in electronic form,

Recognizing also the need for clarity in relation to the recognition and enforcement of foreign arbitral awards in electronic form pursuant to the New York Convention,

Taking into account international legal instruments, such as the UNCITRAL Model Law on International Commercial Arbitration (1985), as subsequently revised, the UNCITRAL Model Law on Electronic Commerce, 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,

Recommends that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be interpreted in a manner that ensures arbitral awards are not denied recognition or enforcement on the sole ground that they are in electronic form.

Amendments to the MAL (approved additions are shown in italics)

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) “Arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “Court” means a body or organ of the judicial system of a State;
- (d) Where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) Where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) Where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim;
- (g) *“Arbitral award” or “award” includes an award in electronic form;*
- (h) *“Electronic communication” means any communication that a party or the arbitral tribunal makes by means of data message and an award in electronic form means an award made by means of data message; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means.*

Article 31. Medium, form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(1-1) If the parties agree, or, in the absence of such agreement, neither party objects, the arbitral tribunal may issue an award in electronic form.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.

(3) An award in electronic form shall not be denied recognition or enforcement solely on the ground that it is in electronic form.