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Recognition and enforcement of electronic arbitral awards

Note by the Secretariat

Contents

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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] At the request of the Commission, to initiate discussions, the secretariat organized a two-day colloquium during the eightieth session of the Working Group to obtain perspectives to assess the issues.[2] The Working Group then 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 responses received[4] and the Note by the Secretariat (A/CN.9/WG.II/WP.240). 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). It also suggested that the secretariat continue updating the compilation as new responses were received (A/CN.9/1200, para. 12).

3. The present note is prepared in response to the request above made by the Working Group at its previous session.

II. Enhancing reliance on arbitral awards in electronic form

A. Compilation

4. The secretariat received additional responses to the questionnaire,[5] which was circulated following the eightieth session of the Working Group, bringing the total number of submissions received to 29 from member and observer States and 5 from observer institutions. The additional responses confirm the two main earlier findings regarding foreign arbitral awards in electronic form: (i) limited case law makes it difficult to assess how domestic courts handle such awards; and (ii) acceptance of the submission of foreign arbitral awards in electronic form continues to vary significantly across jurisdictions. In some jurisdictions, courts permit electronic filing of enforcement applications, including the award itself, while others still require paper-based submissions. This divergence depends, inter alia, on the extent to which court enforcement procedures have been digitized and whether States have adopted UNCITRAL texts on electronic commerce, particularly the non-discrimination and functional equivalence rules.

B. Recommendation regarding the interpretation of the New York Convention

5. The Working Group may wish to consider the following revised version of the recommendation:

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[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.
[4] A/CN.9/WG.II/WP.240, para. 5.
[5] See compilation of the answers to the questionnaire: A/CN.9/WG.II/WP.240, paras. 5–9.

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,[6] 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),[7] as subsequently revised, particularly with respect to article 7 in 2006[8] [and [articles 31 and 35] in 2026], the UNCITRAL Model Law on Electronic Commerce,[9] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[10]

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 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, regardless of the form in which they are made, are not denied recognition or enforcement on the sole ground that they are in a specific form, so long as the form is consistent with applicable legal requirements and modern commercial practices.

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[6] United Nations, *Treaty Series*, vol. 330, No. 4739.

[7] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[8] Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[9] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[10] General Assembly resolution 60/21, annex.

2. *Recommends also* that an arbitral award in electronic form constitute an "original" under article IV(1)(a) of Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, where there exists a 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 where the information can be displayed as intended.

General remarks

6. As requested by the Working Group, the recommendation has been updated to reflect the discussions. Like 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 (2006 Recommendation), this recommendation is of a non-binding nature, as its title suggests. A Contracting State's failure to implement it would not constitute a breach of the New York Convention. Instead, the recommendation offers guidance and encouragement, aiming to incentivize Contracting States to promote recognition and enforcement of electronic awards, thereby contributing to greater efficiency in arbitral proceedings (A.CN.9/1200, para. 39).

7. The recommendation could also serve as persuasive authority for courts, legislators, or arbitral institutions seeking to align their practices with international developments. As such, it is a soft law instrument aimed at harmonizing the interpretation and application of the New York Convention with respect to the recognition and enforcement of arbitral awards in electronic form (A/CN.9/1200, para. 21).

8. The Working Group may wish to confirm that, once adopted, the recommendation would be circulated to States in order to seek comments as to the impact of that recommendation in their jurisdictions, as was the case with the 2006 Recommendation (A/CN.9/1200, para. 19).

Preambular paragraphs

9. The first five preambular paragraphs (PP1–PP5) are based on A/CN.9/WG.II/WP.240, modelled on the 2006 Recommendation, with adjustments. The reference to "different levels of development" in PP2 is understood not only in economic terms but more broadly, to include legal, institutional, and technological aspects of development.

10. A reference to the *travaux préparatoires* has been added in PP6 to highlight their value as an interpretive tool to judges by providing insight into the Convention's original objectives so as to support consistent application across jurisdictions (see A/CN.9/1200, para. 39).

11. PP7–PP10 are based on the text proposed during the session (A/CN.9/1200, para. 28), with the following adjustments: throughout "electronically" has been replaced with "in electronic form" (A/CN.9/1200, para. 34). The Working Group has emphasized the need for further discussion on terminology (A/CN.9/1200, para. 11). The phrase "in electronic form" is not further defined to accommodate evolving digital practices. It also provides flexibility, for instance, so that it does not imply that an award must be signed and how the signature requirements may be fulfilled if an award is made in electronic form.

12. In PP7, the scope of the recommendation is retained to avoid ambiguity and unnecessary coverage of issues not identified as concerns. In PP8, the phrase "and harmonization of court practices" has been deleted (A/CN.9/1200, para. 35).

13. PP9 has been streamlined. While articles 31 and 35 of the MAL may be considered more directly relevant, the reference to article 7 has also been retained because paragraph 4 of that article addresses the "in writing" requirement, an issue not addressed by articles 31 or 35. This reference may need to be revised depending

on how the MAL provisions are amended. The reference to the UNCITRAL Model Law on Electronic Signatures was removed, as the New York Convention requires submission of the original award, not a signature. The reference to the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC) was retained despite limited adoption, as it was part of the 2006 Recommendation and its principles are widely reflected in national laws and international instruments (see A/CN.9/1200, para. 39; and Explanatory Note, para. 19).

Operative paragraphs

14. Operative paragraph (OP) 1 calls for non-discrimination based on form and uses the broad language "regardless of the form," along with a reference to "modern commercial practices," in order to encourage the provisions of the New York Convention to be applied in a manner compatible with future developments. However, the Working Group may wish to consider whether the phrase "modern commercial practices" would appropriately encompass future technological and commercial developments, or whether the recommendation should instead be framed more narrowly to refer specifically to awards in electronic form, as the phrase "modern commercial practices" could be seen as ambiguous (see A/CN.9/1200, paras. 40–41).

15. OP2 clarifies that an award can qualify as an original, provided that there is reliable assurance of its integrity and that its text is accessible.

C. Amendments to the Model Law on International Commercial Arbitration

1. Amendments to the provisions

Article 2. Definitions and rules of interpretation

16. The Working Group may wish to consider the addition of the following subparagraphs after article 2(f) of the MAL and deleting the definition of the terms "electronic communication" and "data message" in option I, article 7(4) of the MAL:

> (g) "Arbitral award" or "award" includes an award in electronic form;
>
> (h) "Electronic communication" means any communication that the parties and the arbitral tribunal make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means.

17. Regarding subparagraph (g) above, in light of diverging views, the Working Group was generally inclined not to include subparagraph (g), particularly in light of the suggestion to address non-discrimination in article 31 of the MAL (A/CN.9/1200, para. 46, see also para. 25 below). However, not including subparagraph (g) would result in the term "award in electronic form" first appearing in article 31(1-1) without prior context. Hence, the Working Group may wish to further consider including subparagraph (g) as an introductory provision to support the understanding of related amendments, such as in articles 31 and 35, or consider other ways to address the issue.

18. As the term "electronic communication" is also referenced in the proposed amendment to article 3 of the MAL below, subparagraph (h) is newly proposed to provide a general definition of the terms "electronic communication" and "data message", which is currently provided in option I, article 7(4) of the MAL. To avoid duplication, the definition of these terms in option I, article 7(4) of the MAL would need to be deleted. Articles 1(b) of both the UNCITRAL Model Law on Automated Contracting (2024) and UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022) adopt the same definition of the term "data message" as in subparagraph (h), which does not include examples such as "electronic data interchange (EDI), electronic mail, telegram, telex or telecopy" found in article 7(4) of the MAL.

Article 3. Receipt of written communications

19. The Working Group may wish to consider adding the following subparagraph (b-1) after article 3(1)(b) of the MAL. The heading may need to be revised accordingly:

> (b-1) The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

20. Instead of including a specific provision on the functional equivalence rule with respect to the time of delivery or receipt of electronic awards, it was proposed to incorporate this rule into article 3 of the MAL (A/CN.9/1200, para. 57), as it should function more broadly as a functional equivalence rule on the time of delivery or receipt of electronic communications.

21. The Working Group may wish to recall that it was mandated by the Commission at its fifty-seventh session in 2024 to work on electronic notices after completing the current work on recognition and enforcement of electronic arbitral awards. The proposed revision of this subparagraph could be considered also in the context of that mandate.

Article 31. Medium, form and contents of award

22. The Working Group may wish to consider the addition of the following text in italics. The heading may need to be changed as above to reflect the additions.

> (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) 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) A method is used to identify the arbitrator or arbitrators and to indicate the arbitrator's or arbitrators' intention to approve the content of the arbitral award in electronic form; and*
>
> *(b) The method used is either:*
>
> *(i) As reliable as appropriate for the purpose for which the information was generated or communicated, in light of all the circumstances, including any relevant agreement; or*
>
> *(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.*
>
> (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.

(3-1) The arbitral tribunal shall make the arbitral award in the medium(s) which the parties agree or, failing such agreement or if the arbitral tribunal is unable to make the arbitral award in the medium(s) which the parties agree, in the medium(s) that it considers appropriate, taking into consideration the parties' requests.

(3-2) An award in electronic form shall not be denied recognition or enforcement solely on the ground that it is in electronic form.

(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. *If the award is made in accordance with paragraphs (1), (1-1) and (1-2), the award in electronic form shall be delivered to each party by an electronic communication.*

23. The Working Group may wish to note that, in paragraph (1-1), the term "text" is used instead of "information" to clarify that an award in electronic form should not be an audio or video recording (A/CN.9/1200, para. 47), and that paragraphs (1-1) and (1-2) have been simplified (A/CN.9/1200, paras. 47 and 49).

24. Paragraph (3-1) has been revised to account for a situation where a medium agreed upon by the parties may not be available to the arbitral tribunal, for instance, if the parties require the award to be signed using a specific technology to which the arbitral tribunal does not have access (A/CN.9/1200, para. 52).

25. Paragraph (3-2) sets out the non-discrimination rule (see para. 17 above). While there was a suggestion to place this paragraph after article 31(1) of the MAL (A/CN.9/1200, para. 46), it has been placed after paragraph (3-1) as it specifically relates to the medium of the award. Considering that the proposed article 2(g) of the MAL read in conjunction with article 35(1) of the MAL suggests that awards in electronic form should be recognized and enforced, placing this paragraph in article 35 of the MAL is another possibility. The Working Group may wish to consider its appropriate placement.

26. The proposed second sentence of paragraph (4) clarifies that an award in electronic form should be delivered to each party by an electronic communication, as paragraph (4) in its current form could be interpreted as referring only to paper-based awards (for issues related to the time of delivery or receipt of the award, see paras. 19–20 above).

Article 35. Recognition and enforcement

27. The Working Group may wish to consider the addition of the following paragraphs in italics and deleting the words as indicated in brackets:

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application [in writing (delete)] 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.

(2-1) The requirement that the party relying on an award or applying for its enforcement shall supply the original award is met by an arbitral award in electronic form if:

> *(i) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form; and*

(ii) That information is capable of being displayed to the person to whom it is to be made available.

(2-2) For the purposes of (2-1)(i):

(i) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage, and display; and

(ii) The standard of reliability required shall be assessed in light of the purpose for which the information was generated and all the relevant circumstances.

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

28. In paragraph (1), the words "in writing" are deleted, as their inclusion may unnecessarily suggest that an application for court enforcement of an award must be paper-based and that the requirement for written form in enforcement applications is mandatory (A/CN.9/1200, para. 63). As the specific requirements of an enforcement application are generally governed by domestic laws and rules on court procedure, it may be advisable not to specify that such enforcement application must be "in writing".

29. Paragraphs (2-1) and (2-2) set out the functional equivalence rule on originality for awards in electronic form. Notwithstanding the different views expressed on whether to retain those paragraphs in whole or in part (A/CN.9/1200, para. 64), the Working Group may wish to consider retaining the functional equivalence rule on originality in its entirety to ensure that the provisions are consistent with the functional equivalence rule on originality provided in the UNCITRAL electronic commerce instruments.

30. The Working Group may wish to note that the functional equivalence rules on the signature requirement and on originality, respectively, do not overlap, as the former only requires that the signature method used be capable of identifying the signatory and the signatory's approval of the content at the time when the signature requirement has been fulfilled, whereas the latter is aimed at ensuring the integrity of the information after the signature requirement has been fulfilled. The Working Group may also wish to note that, as with all other functional equivalence rules, the functional equivalence rule on originality is designed to provide specific requirements so that information in electronic form can perform equally the functions of a paper-based equivalent but not more. Mindful that a paper-based original does not necessarily guarantee a high level of security against falsification or fabrication, the functional equivalence rule on originality is only designed to require the same level of reliable assurance as to the integrity as may be expected of a paper-based original and is not intended to impose stringent requirements that can only be fulfilled when specific technologies ensuring a particularly high level of security against falsification or fabrication are used.

31. Regarding paragraph (2-3), there was a suggestion to delete it, stating that the notion that an electronic copy could be produced and supplied from a paper-based original award was sufficiently captured by the terms "original award or a copy thereof" (A/CN.9/1200, para.66). The Working Group may, however, wish to further consider whether to retain that paragraph, as article 35(2) of the MAL might not be sufficiently clear if scanned original awards may be supplied in enforcement proceedings. Unlike the other proposed amendments to the MAL, which relate to the whole process – from the making of awards in electronic form to their recognition and enforcement – this paragraph is not directly related to the making of awards in electronic form. Nevertheless, this paragraph may contribute to facilitating digitalization of the phase of recognition and enforcement of awards overall and be relevant for the current work.

32. Relatedly, the Working Group may wish to recall a discussion from 2006 regarding the 1985 version of article 35(2), which required a party relying on an award or applying for enforcement to provide the duly authenticated original award or a duly certified copy thereof. In 2006, the Commission decided to delete the reference to "certified" because it created uncertainty about who could certify and what certification entailed, potentially hindering enforcement. It was agreed that issues of certification or authenticity are better addressed through general rules of evidence, court procedures, and judicial discretion, rather than strict formal requirements that could be cumbersome or inconsistently applied (A/61/17, paras. 171–173).

2. Amendments to the Explanatory Note

33. The Working Group may wish to consider adding after paragraph 4 of the Explanatory Note the following paragraphs. This paragraph may need to be revised depending on the decision taken by the Working Group on whether to adopt the proposed amendments to the provisions of the MAL above.

> The revision of the Model Law adopted in [20xx], specifically on articles [2, 3, 31 and 35], aims to enhance clarity and thereby legal certainty regarding reliance on arbitral awards in electronic form, particularly in relation to recognition and enforcement of such awards. Considering that the provisions of the UNCITRAL electronic commerce instruments, such as the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC) and the UNCITRAL Model Law on Electronic Commerce (MLEC), do not necessarily directly apply to arbitral awards in electronic form, the revision seeks to fill this gap. It does so primarily by incorporating into the provisions of the MAL the relevant definitions and functional equivalence rules developed under those instruments.
>
> The revision draws upon the following principles and rules: the non-discrimination rule,[11] which provides that information in electronic form not be denied validity or enforceability solely on the ground that it is in electronic form, and the functional equivalence rules on originality,[12] written form,[13] signature[14] and time of receipt of communications,[15] which stipulate the requirements so that information in electronic form performs the same functions as its paper-based equivalent. Recognizing that, unlike paper documents, electronic information requires a device and software to be read, the non-discrimination rule affirms that the fact that the information is in electronic form alone should not be a basis for disregarding such information. The functional equivalence rules support this principle by ensuring that electronic communications can reliably fulfil the same legal functions as their paper counterparts.
>
> The revision of article 2 clarifies that the terms "arbitral award" or "award" include awards in electronic form and adds a definition for "electronic communication". Article 3 is revised to establish the functional equivalence rule regarding the time of receipt of communications, which applies not only to electronic awards but also to notices and other communications in arbitral proceedings. The revision of article 31 primarily introduces the non-discrimination rule, ensuring that awards in electronic form are not treated differently solely based on their medium, and sets out the functional equivalence rules for the written form and signature requirements. Article 35 is revised to provide the functional equivalence rule on originality for awards in electronic form.

34. The Working Group may wish to consider replacing the first sentence of paragraph 43 of the Explanatory Note with "The arbitral award must be in writing, be

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[11] See, for example, article 8(1) of the ECC and articles 5, 11 and 12 of the MLEC.
[12] See, for example, article 9(4) and (5) of the ECC and article 8(1) and (3) of the MLEC.
[13] See, for example, article 9(2) of the ECC and article 6(1) of the MLEC.
[14] See, for example, article 9(3) of the ECC and article 7 (1) of the MLEC.
[15] See, for example, article 10(2) of the ECC.

signed by the arbitrator or arbitrators and state its date" and adding after paragraph 43 the following paragraphs:

> Following article 2 (g), which stipulates that the term "award" includes an award in electronic form, article 31 (3-2) provides for the non-discrimination rule, namely that an arbitral award in electronic form should not be denied recognition or enforcement on the sole ground that it is in electronic form. Article 31 (3-1) provides the general rule regarding the medium in which the award should be made. If an award is made both in paper and electronic form, the award in electronic form may be delivered by an electronic communication while a paper-based award is delivered by physical mail. The time of receipt of the award made both in electronic and paper form will be determined based on which of them is received by the party first and, if the time of receipt is contested, it will need to be substantiated and determined as a factual issue.
>
> Article 31 (1-1) provides that 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. Article 31 (1-2) provides, inter alia, that the requirement that the award be signed by the arbitrator or arbitrators is met by an award in electronic form if a method is used to identify the arbitrator or arbitrators and to indicate the arbitrator's or arbitrators' intention to approve the content of the arbitral award in electronic form. Article 31 (4) provides that the award in electronic form should be delivered to each party by an electronic communication.

35. The Working Group may wish to consider adding at the end of paragraph 53 of the Explanatory Note the following sentences:

> The Model Law was further amended in [20xx] to enhance reliance on arbitral awards in electronic form. Specifically, Article 35 (2-1) addressing the functional equivalence rule on originality provides, inter alia, that the requirement for the party relying on an award or applying for its enforcement to supply the original award is met by an arbitral award in electronic form, provided there exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form.

36. In the event of an amendment to the MAL and subsequent revision to the Explanatory Note, the Working Group is reminded that it would also need to update the title and the reference to the history of the adoption and amendments to the MAL at the beginning of the Explanatory Note.

D. UNCITRAL Arbitration Rules

37. The Working Group may wish to consider the addition of the following revised paragraph after article 34(1) of the UARs, which has been proposed to align that article with article 31(3-1) of the MAL (A/CN.9/1200, para. 70):

> The arbitral tribunal shall make the arbitral award in the medium(s) agreed upon by the parties or, failing such agreement, or if the arbitral tribunal is unable to make the arbitral award in the medium(s) which the parties agree, in the medium(s) that it considers appropriate, taking into account the parties' requests.

38. The Working Group may wish to consider the addition of the following sentence after the first sentence of article 34(2) of the UARs:

> The requirement that the award be made in writing is met in relation to an arbitral award in electronic form if the information contained therein is accessible so as to be usable for subsequent reference.

39. The Working Group may wish to consider the following revised paragraph for addition after article 34(4) of the UARs:

> The requirement that the award be signed by the arbitrators is met in relation to an award in electronic form if:
>
> (a) A method is used to identify the arbitrators and to indicate the arbitrators' intention to approve the content of the arbitral award in electronic form; and
>
> (b) The method used is either:
>
> (i) As reliable as appropriate, in light of all the circumstances, including any relevant agreement; or
>
> (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

40. In subparagraph (a) above, the terms "finalize and" have been deleted. In subparagraph (b)(i), the phrase "for the purpose for which that information was generated or communicated" has been deleted (A/CN.9/1200, para. 70). The Working Group may wish to consider if the same phrase that appears in article 31(1-2) of the MAL should also be deleted (see para. 22 above).

E. Notes on Organizing Arbitral Proceedings

41. The Working Group may wish to consider the addition of the following revised text after paragraph 144 of the UNCITRAL Notes on Organizing Arbitral Proceedings (2016) (A/CN.9/1200, para. 74):

> Awards have traditionally been made on paper with wet-ink signatures, but they can also be made in electronic form. The parties and the arbitral tribunal should note, however, that some jurisdictions require awards be made on paper, in light of the requirements of originality, written form, or signature. Some arbitral institutions retain the practice of making awards on paper and issue electronic versions only as courtesy copies. Others facilitate awards made in electronic form, subject to the parties' agreement. Certain arbitral institutions have an established practice of having the arbitral tribunal make awards only in electronic form, unless the parties agree otherwise, or the arbitral tribunal decides otherwise. When making the award in electronic form, it is advisable for the arbitral tribunal to consult the parties beforehand whether there are any particular requirements under the applicable law(s) or for enforcement in a particular jurisdiction, including whether certified copies of the award, or an award with wet-ink signatures, are needed. In the absence of an agreement, the arbitral tribunal may also make the award in both electronic and paper form if requested by the parties or if deemed appropriate. In determining the form in which the award is to be made, relevant considerations, alongside the applicable law(s) or the law(s) in the jurisdictions where enforcement is envisaged, may include how the form affects the triggering of relevant timelines, whether an award in electronic form qualifies as an "original" award under article IV of the New York Convention in a jurisdiction in which enforcement may be sought, and if so, under what conditions. In this regard, the [recommendation regarding the interpretation of the New York Convention] provides useful guidance. If the award is made in both electronic and paper form, the time of receipt of the award will be determined based on whichever is received by the other party first. If the time of receipt of the award is contested, it will need to be substantiated and determined as a factual matter. The arbitral tribunal may discuss issues associated with making the award in both paper and electronic form with the parties to ensure clarity and seek agreement on the matter, particularly to avoid confusion in connection with an electronic courtesy copy

III. Electronic notices of arbitration

General remarks

42. Notwithstanding that, in practice, communications during the course of arbitral proceedings take place predominantly by electronic means, the initial phase of arbitral proceedings, namely the phase of one party delivering the notice of arbitration to the other party, remains largely paper based. A flaw arising in that phase of the arbitral process may affect the enforcement of an arbitral award made as a result of that process.

43. At its fifty-seventh session, in 2024, the Commission mandated the Working Group to work on electronic notices after the completion of the work on recognition and enforcement of electronic arbitral awards and the following content has been prepared so that the Working Group can explore the topic at its eighty-second session, time permitting.

Relevant findings of exploratory work

44. The exploratory work carried out by the secretariat, through the project on the stocktaking of developments in dispute resolution in the digital economy, has yielded two relevant findings regarding electronic notices (A/CN.9/1190, paras. 63–82).

45. One relevant finding is that the approaches taken by courts in determining whether a notice of arbitration delivered to the respondent by electronic means qualifies as proper delivery vary significantly across jurisdictions. In some jurisdictions, courts have found that, notwithstanding the fact that an electronic address was designated by the respondent, whether in the arbitration agreement or by other means, if the respondent did not actually receive the notice of arbitration, the respondent was not given proper notice of the arbitration, constituting a ground for refusing enforcement under domestic law or under the New York Convention (A/CN.9/1190, paras. 67–68). In some other jurisdictions, however, courts have found that, even in the absence of a designated electronic address, a notice of arbitration sent to a general company email address could be considered effective (ibid., para. 69).

46. The other relevant finding is that some institutional rules provide that, in the absence of a designated address, notices can be communicated to the electronic address that the recipient holds out to the public at the time of such communication.[16] Similarly, certain institutional rules provide that electronic notices may be considered as delivered to an electronic address that the recipient holds out to the public, if delivery cannot be effected, after reasonable efforts, through methods more certain to bring the content of the notice to the other party's attention (A/CN.9/1190, paras. 78 and 79).

Exploring solutions

47. The Working Group may wish to discuss the possible causes of the diverging approaches taken by courts in different jurisdictions and to consider whether, and how, such approaches could be harmonized.

48. To enhance certainty that a notice of arbitration communicated by an electronic means to a designated electronic address will be found effective by courts without any other conditions, the Working Group may wish to consider adding the following subparagraph after article 3(b) of the MAL (before subparagraph (b-1) proposed above, see para. 19):

[16] For example, article 3.1(c) of the 2024 HKIAC Administered Arbitration Rules and article 2(4)(c) of the CRCICA Arbitration Rules (2024); article 3.1 (c) of the IDRC Domestic Arbitration Rules (2019); article 5 (3) (c) of the AFSA International Arbitration Rules (2021); article 2 (3) (e) of the Arbitration Rules of the Lusaka International Arbitration Centre (2024).

Any electronic communication is deemed to have been received if it is delivered to the electronic address designated by the addressee.

49. The Working Group may wish to also consider whether it would be necessary to include in the MAL a provision to allow for the delivery of notices by electronic means in the absence of a designated electronic address, for instance, if there is an email address which the addressee holds out to the public.

50. In the same vein, the Working Group may wish to also consider whether it would be necessary to include a provision in the UARs enabling a notice by an electronic means to be sent to an electronic address held out to the public by the addressee.

51. The Working Group may also wish to note that the proposal with respect to the Explanatory Note to the MAL (see para. 34 above) already includes a reference to notices of arbitration in relation to the newly proposed additions to article 3.