

# Report on the 83<sup>rd</sup> Session of the United Nations Commission on International Trade Law (UNCITRAL) Working Group II: Dispute Settlement

By

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## EXECUTIVE SUMMARY:

At its 83rd Session in New York (16–20 February 2026), the United Nations Commission on International Trade Law (“UNCITRAL”) Working Group II (Dispute Settlement) (“**Working Group**”) continued its efforts to enhance reliance on arbitral awards and notices of arbitration in electronic form, building upon the progress achieved in 2024–2025 and the draft texts prepared by the Secretariat. Additionally, the Working Group convened a one-and-a-half-day Colloquium on the use of artificial intelligence in dispute resolution, as well as on remote hearings in arbitration and mediation, thereby reflecting UNCITRAL’s broader “Dispute Resolution in the Digital Economy” (“**DRDE**”) initiative and the Commission’s instruction to pursue exploratory work in these domains.

## I. INTRODUCTION AND CONTEXT:

At its 57th Session (2024), UNCITRAL authorized Working Group II to examine the recognition and enforcement of electronic arbitral awards, as well as electronic notices of arbitration. Following a two-day colloquium held during the Working Group’s eightieth Session (Vienna, 30 September–4 October 2024), the Working Group advanced deliberations through its eighty-first Session (New York, 3–7 February 2025), with the Commission expressing satisfaction with the progress achieved during its fifty-eighth Session (2025).

During the eighty-second Session (Vienna, 13–17 October 2025), the Working Group approved a recommendation concerning the interpretation of the New York Convention. Furthermore, it adopted amendments to Articles 2, 31, and 35 of the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006) (“**Model Law**” or “**MAL**”), and requested the Secretariat to prepare supplementary texts on the following topics:

- (i) revisions to explanatory and organizing notes on awards in electronic form.
- (ii) provisions concerning electronic notices (delivery and receipt) for potential inclusion in the MAL.
- (iii) the legislative history of Article 3 of the MAL.

Simultaneously, within the framework of the DRDE project, the Commission has solicited exploratory initiatives to advance:

- Artificial intelligence applications in dispute resolution.
- Platform-based dispute resolution mechanisms.

- Procedural guidance concerning remote hearings and mediation, including a colloquium to inform recommendations for potential future endeavors.

Accordingly, the 83rd Session (New York, 16–20 February 2026) addressed electronic awards and electronic notices of arbitration, as well as the colloquium on the use of AI and remote hearings in arbitration and mediation.

## **II. ORGANIZATION OF THE SESSION:**

The Working Group held its 83rd Session at United Nations Headquarters in New York from 16 to 20 February 2026. A colloquium took place on 16 February (3–6 p.m.) and 17 February (10 a.m.–1 p.m.; 3–6 p.m.).

The Session was attended by a broad range of UNCITRAL member States and observers, as well as international organizations, leading arbitral institutions, and NGOs, including (among others) ICSID/World Bank, PCA, ICC, LCIA, SIAC, CIArb, AAA/ICDR, and NYIAC.

### **DOCUMENTS BEFORE THE WORKING GROUP:**

- Annotated provisional agenda.
- Secretariat note on the recognition and enforcement of electronic arbitral awards.

### **AGENDA (ADOPTED):**

1. Opening of the Session
2. Election of officers
3. Adoption of the agenda
4. Enhancing reliance on arbitral awards and notices in electronic form
5. Colloquium on AI in dispute resolution and procedural guidance on remote hearings/mediation + Working Group discussion
6. Adoption of the report.

## **III. KEY DISCUSSION POINTS:**

### **1. AWARDS IN ELECTRONIC FORM: REINFORCING NON-DISCRIMINATION WHILE AVOIDING CONFUSION:**

A central question concerned whether to delete the phrase “*in writing*” from Article 35(1) (recognition and enforcement) of MAL. Some delegations cautioned that deletion could create confusion, including concerns that it might be misconstrued as permitting oral applications, and complicate matters for States that had already enacted the Model Law.

The counterview was that Article IV of the New York Convention does not impose a writing requirement and that retaining “*in writing*” might be seen as adding requirements beyond the Convention. Ultimately, the Working Group agreed to retain “*in writing*”, while expressly understanding that it includes writings in electronic form.

The Working Group has further advanced the proposed expansion of the Explanatory Note by clarifying that the 2026 revisions aim to explicitly state what the Model Law already includes, such as the use of electronic awards, while emphasizing that UNCITRAL's approach is based on the principle of non-discrimination (i.e., documents should not be denied legal effect solely because of their electronic form). Notably, the Working Group highlighted that the reform does not intend to codify national standards for authentication, integrity, accessibility, or related issues of functional equivalence, which remain governed by domestic laws and practices.

#### **KEY SUBSTANCE AGREED FOR THE EXPLANATORY NOTE OF MAL:**

- Clarification that “award” includes awards in electronic form.
- Amendments to Articles 2, 7, 31, and 35 (and related explanatory text).
- Recognition of non-discrimination, without pre-empting domestic standards for electronic documents.

### **III. ENHANCING RELIANCE ON ARBITRAL AWARDS AND NOTICES OF ARBITRATION IN ELECTRONIC FORM:**

#### **A. Electronic arbitral awards: enforcement, drafting choices, and the “non-discrimination” anchor**

The Working Group persisted in refining the compilation of texts to explicitly state that the Model Law framework permits awards in electronic form, whilst ensuring that enforceability is not compromised solely by technological format.

#### **1. ADDENDUM: ARTICLE 34 AND ARTICLE 35(3) (THE TERM “SOLELY” RETAINED):**

At the commencement of the relevant Addendum discussions, it was documented that, following deliberation, the Working Group agreed not to include the proposed sentence in Article 34 and to retain the term “*solely*” in Article 35(3). This retained drafting is of considerable significance, as it preserves the formulation that recognition and enforcement should not be refused solely because the award is electronic, while permitting denial on other appropriately substantiated grounds. This consensus reflects the reality that, following the global pandemic, numerous electronic arbitral awards have been issued by various tribunals under the aegis of diverse institutions, making uniformity on this aspect essential for both delegations and observers.

#### **2. “IN WRITING” IN ARTICLE 35(1): RETAIN THE PHRASE, CLARIFY ITS MEANING:**

A key debate concerned whether the phrase “*in writing*” in Article 35(1) should be deleted.

- **Concerns about deletion:** Several delegations contended that the term “*in writing*” does not exclusively refer to physical documents; it may also include electronic communications, as indicated by the Model Law's approach in Option I, Article 7. The removal of this phrase could lead to confusion and might be misinterpreted as allowing

oral applications, thereby causing legislative complexities for States that have already ratified the Model Law and would be required to amend their statutes. Such an action could potentially trigger a surge of litigation before national courts.

- **Arguments supporting deletion:** Other delegations argued that the definition of “*in writing*” in Option I, Article 7, would apply only if enacted, and that Article IV of the New York Convention does not specify a writing requirement. Retaining the term “*in writing*” could therefore be perceived as imposing an additional obligation beyond the Convention, whereas its removal might foster greater flexibility and consistency with the Convention’s language. Furthermore, it was noted that applications for recognition, enforcement, or setting aside are governed by domestic procedural law.
- **Outcome:** Following deliberation, the Working Group agreed to retain the phrase “*in writing*”, emphasizing that this encompasses written communications in electronic form.

## **B. Addition to the Explanatory Note to the Model Law (MAL):<sup>1</sup>**

The Working Group discussed the Swiss Delegation's suggestions regarding the Explanatory Note, with the aim of clarifying the objectives and scope of the 2026 revisions, particularly for users in jurisdictions that implement or interpret the Model Law.

### **1. Proposed “New 5” by the Swiss Delegation:**

The proposed explanatory paragraph by the Swiss Delegation (“New 5”) articulated that the revision seeks to improve clarity and legal certainty by explicitly stating that the Model Law accommodates awards in electronic form (and potentially notices/communications). It also emphasizes drawing inspiration from UNCITRAL e-commerce instruments while upholding the principle of non-discrimination, which includes the assertion that validity, legal effect, or enforceability should not be denied solely based on electronic form. Furthermore, the proposal clarified that the revision does not presuppose or formalize technical criteria such as accessibility, authentication, and integrity, thereby leaving these matters to national laws and practices.

### **Multiple Drafting Refinements Were Suggested, Including:**

- Replacing “*as currently formulated*” with an express reference to the MAL 1985 as amended in 2006;
- Reconsidering references to “*notices*” (given coverage under “*written communications*” but acknowledging the MAL separately refers to notices of arbitration);
- adding a reference to Article 7, deleting the reference to Article 34, and refining how non-discrimination is referenced;
- changing “*communication*” to “*written communication*”; and
- deleting the word “incorporates” in the relevant sentence.

### **2. “New 6” and the Deletion References:**

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<sup>1</sup> [A/CN.9/1237](#).

It was proposed that in “New 6,” the initial bullet point should be subdivided, and references to (i) the removal of “in writing” and (ii) Article 34 should be removed.

### **3. “New 7” suggestion: electronic form requirements in some jurisdictions:**

It was proposed that “New 7” should specify that certain jurisdictions may impose specific requirements for an award to be acknowledged in electronic form.

### **4. Agreed Text For “New 5” And “New 6”:**

Following discussions, as documented in the annex, the Working Group concurred on “New 7” and endorsed the revised agreed texts for “New 5” and “New 6” under the MAL. Substantively, the agreement is maintained framing:

#### **New 5 (Agreed Framing):**

*“New 5. The revision of the Model Law adopted in [202x] aims to enhance clarity and legal certainty by making explicit what the Model Law (1985), with amendments as adopted in 2006, already accommodated, namely the use of arbitral awards in electronic form, particularly in relation to their recognition and enforcement [, as well as regarding notices of arbitration [and written communications] in electronic form]. It includes amendments to articles 2, [3], 31[, 34] and 35. The revision drew inspiration from UNCITRAL texts on electronic commerce, such as the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005) and the UNCITRAL Model Law on Electronic Commerce (1996) and incorporates the principle of non-discrimination, which provides that a document should not be denied validity, legal effect or enforceability solely on the ground that it is in electronic form. The principle of non-discrimination does not preclude the application of laws that may deny an award [, a notice of arbitration, or a communication] validity, legal effect, or enforceability on other grounds, nor is it concerned with or does it predetermine the requirements based upon which validity, legal effect, or enforceability must be accorded. The revision thus does not address the criteria, such as accessibility, authentication, and integrity, based upon which awards [, notices of arbitration and communications] in electronic form may be considered the functional equivalent of a paper-based document, and instead leaves such matters to the national laws and practices in the relevant jurisdiction.”<sup>2</sup>*

#### **New 6 (Agreed List of Amendments):**

- Article 2 (g)–(i): Clarifies that “award/arbitral award” includes an award in electronic form.
- Article 3, paragraph (1-1): Includes bracketed language regarding electronic delivery of notices, valid delivery to a specifically designated address, or as authorized by the tribunal, with potential default options under consideration.

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<sup>2</sup> [A/CN.9/1237, p-6.](#)

- Article 7 (Option I, paragraph 4): Amends and incorporates definitions of “data message” and “electronic communication” as part of Article 2.
- Article 31(5): Allows for an award to be issued in electronic form if the parties agree; in the absence of agreement, if neither party objects; clarifies that objections must be made prior to the issuance of the award.
- Article 35(3): States that recognition or enforcement of an award in electronic form shall not be refused solely on the grounds that it is electronic.<sup>3</sup>

#### **IV. ELECTRONIC NOTICES OF ARBITRATION: DELIVERY, SAFEGUARDS, AND INTEGRATION INTO ARTICLE 3 MAL:**

The Working Group then addressed how the Model Law should treat delivery of notices (including notice of arbitration) in electronic form, especially given due process concerns and variation across domestic systems.

##### **1. Threshold View: Keep It Principled, Avoid Over-Regulating Domestic Delivery Rules**

Initially, it was stated that delivery issues are generally governed by domestic procedural law and that the MAL should not overly regulate. It was also pointed out that practices vary among jurisdictions. Therefore, it was recommended that any addition should stay at the principle level, simply affirming the legality of electronic communications without specifying detailed deemed-receipt mechanics.

##### **2. Proposal Aligned with UNCITRAL Arbitration Rules:**

An alternative text for “(1 bis)” was proposed by the United States Delegation.

*“Delivery includes transmission by electronic communication that provides a record of sending to an electronic address (1) designated by the addressee for this purpose, or (2) for communications other than notices of arbitration, as authorized by the tribunal.”*

This was explained as removing language that could be interpreted as indicating receipt upon delivery and as being modeled after Article 2 of the UNCITRAL Arbitration Rules (UARs). Emphasis was placed on the safeguard of an address “designated by the addressee”, especially because the notice of arbitration triggers timelines and formally starts proceedings.

##### **3. Questions: “Specifically,” Tribunal Authority, Institutions, and Timing (Tribunal Not Yet Constituted):**

Discussion followed on:

- Whether “specifically” should be included for consistency.
- The fact that the tribunal may not yet exist at the notice-of-arbitration stage, though standing tribunals or pre-designated tribunals may exist (e.g., long-term contracts).
- Whether an arbitral institution (not just a tribunal) could authorize an address.

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<sup>3</sup> [A/CN.9/1237, p-7.](#)

#### **4. Simpler Proposal: One-Sentence Permissibility:**

A simpler proposal was advanced:

*“For purposes of paragraph 1, delivery includes transmission by electronic communication;”* under which the delegations had emphasized technological neutrality and that the MAL is legislative (not contractual), so it need not mirror the UARs.

#### **5. Support for Default rules, but with strong caution against presumptions of receipt:**

The bracketed default rules garnered some support, particularly an option referencing an electronic address used in the parties’ previous dealings, yet concerns were raised about potential ambiguity and due process risks associated with such default rules. A prominent viewpoint was that no default rule should establish a presumption of receipt solely upon transmission of a notice of arbitration. It was proposed that a default rule might alternatively specify an address listed in an official register.

#### **6. Incorporation of electronic transmission into Article 3(1)(a) MAL**

It was suggested to directly include the concepts of *“record of transmission”* and *“specifically designated electronic address”* in Article 3(1)(a), while keeping the current structure of deemed receipt and maintaining the same fallback rule if no such address can be identified after a reasonable inquiry.

The integration logic was elucidated as establishing a single, unified framework for deemed receipt, thereby fostering coherence and simplicity while modernizing transmission methods.

### **V. DECISIONS TAKEN AND WAY FORWARD:**

The Working Group requested the Secretariat to present the finalized texts on awards and notices under the DRDE project in electronic form for finalization and adoption by the Commission at its fifty-ninth Session in 2026, with sufficient time allocated for discussion.

### **VI. CONCLUSION:**

The 83rd Session advanced the Model Law to better suit electronic awards and communications, safeguarding due process and neutrality. The Working Group’s methodology, based on non-discrimination and avoiding strict technical standards, aims for enforceability across jurisdictions, leaving functional standards to local systems. For me, participation was personally meaningful, given my experience with foreign and domestic awards and set-aside proceedings in Indian courts. It was compelling to see discussions on recognizing and enforcing electronic awards, highlighting the challenge of balancing cross-border legitimacy with domestic procedural autonomy. The diverse views underscored the difficult balance in international arbitration between innovation, procedural integrity, and sovereignty.