

**REPORT ON THE 83RD SESSION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
(UNCITRAL) WORKING GROUP II (DISPUTE SETTLEMENT)**

by

Lukas Brunner

LLM Candidate at New York University School of Law

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I. EXECUTIVE SUMMARY

On 16-20 February 2026, the United Nations Commission on International Trade Law (“**UNCITRAL**”) Working Group II (Dispute Settlement) held its eighty-third session at the United Nations Headquarters in New York. During the session, the Working Group II (“**WGII**”) continued its mandate to work on enhancing reliance on arbitral awards and communications, including notices of arbitration in electronic form and to examine the use of artificial intelligence (“**AI**”) and remote modalities in arbitration and mediation.

The WGII agreed to modernize the UNCITRAL Model Law on International Commercial Arbitration (“**MAL**”) by implementing the principle of non-discrimination, which provides that a document shall not be denied validity, legal effect, or enforceability solely because it is in electronic form. The implementation of this principle includes amendments to several articles, including Articles 3 and 35 (see **Section 1**). Given the WGII’s deliberations on the MAL, it decided to reflect the principle of non-discrimination in the Notes on Organizing Arbitral Proceedings, which now expressly provide guidance on the making of arbitral awards in electronic form (see **Section 2**).

The WGII also held a colloquium on the use of AI in dispute resolution and on remote hearings and mediation. While acknowledging rapid technological evolution, participants identified key concerns regarding due process, confidentiality, equality of arms, arbitrator independence, and enforceability under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**NYC**”). The WGII concluded that further monitoring and issue identification are warranted before engaging in normative work (see **Section 3**).

The texts relating to electronic awards and notices will be presented to the Commission for finalization and adoption at its fifty-ninth session in 2026.

II. REPORT

One of the principal items on the agenda for the eighty-third session of the WGII was to continue deliberations on the modernization of the MAL to endorse the use of new technologies in the arbitral process in line with the principle of non-discrimination.

1. MODERNIZATION OF THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

The last revision of the MAL dates back to 2006. In the interim, arbitral practice has evolved considerably, with technological advancements reshaping the conduct of proceedings. In particular, new technologies have made it possible for awards to be issued and signed electronically, replacing the need for paper copies to be circulated for all arbitrators to affix their wet-ink signatures. Moreover, communication among the actors involved in arbitral proceedings has shifted almost exclusively to electronic means. To recognize these developments as legitimate and to provide a sound legal foundation, the WGII deliberated on revisions with respect to: (a.) the recognition and enforcement of arbitral awards issued in electronic form, (b.), proceedings for recourse against arbitral awards before national courts and (c.) the transmission of notices of arbitration and communication in electronic form.

a. Recognition and Enforcement of Arbitral Awards in Electronic Form: Article 35 MAL

The WGII agreed to expressly clarify that “[a]n award shall not be refused recognition or enforcement solely because it is in electronic form.” This newly added Article 35(3) MAL implements the principle of non-discrimination, pursuant to which an arbitral award shall not be denied validity, legal effect, or enforceability solely on the ground that it is in electronic form.¹

The wording of this provision was subject to debate among delegations and observers. Views diverged particularly on the term “solely”. Some delegations expressed concern that this could create ambiguity and confusion, including uncertainty as to whether the electronic form of an award could serve as a basis for refusing recognition and enforcement in combination with other grounds. Other delegations favored retaining this slightly more open language where “solely” clarifies that the electronic form of an award could not constitute the exclusive ground for refusing recognition and enforcement while performing a boundary function consistent with UNCITRAL electronic commerce instruments.² In the end, the WGII decided to retain the word “solely” in addition to Article 35(3) MAL.³

Retaining some flexibility in the language related to the recognition and enforcement of awards rendered in electronic form is sensible. Without the term “solely”, the provision could risk doing more than intended, potentially excluding any defense a party may bring regarding the electronic form of the award, including authentication, certification,⁴ or even public policy. As the Explanatory Note, however, explains this is not the WGII’s intention. Rather, this addition based on the principle of non-discrimination does not preclude the application of law that may deny an award 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

¹ A/CN.9/1237, at para. 26 providing the agreed language of the new explanatory note 5.

² A/CN.9/1237, at para. 16.

³ A/CN.9/1237, at para. 18.

⁴ See Article IV(1)(a) New York Convention (“NYC”). See also Born, *International Commercial Arbitration*, Chapter §26.01[A][3], 3d ed. 2024. See also Kevin Ongenaes, *Electronic Arbitral Awards: Yea or Nay? A Glimpse Inside the Minds of Arbitral Institutions*, J. of Int’l Arb., Vol. 40 (2023), 263, 294.

accorded. Therefore, the revision of Article 35 must not be understood to address the criteria, such as accessibility, authentication, and integrity, which determine whether awards in electronic form may be considered functionally equivalent to paper-based documents, leaving these matters to domestic laws and practices.⁵ Considering the intent underlying the newly added clarification to Article 35 MAL, the term “*solely*” was rightfully retained, making clear that, under specific circumstances, the electronic form may give rise to grounds for refusing recognition and enforcement.

Additionally, the WGII deliberated whether to retain the phrase “*in writing*” in Article 35(1) MAL or whether this could undermine the principle of non-discrimination between paper-based and electronic awards. Moreover, concerns were raised that the written requirement under Article 35(1) MAL could be understood as imposing a more stringent burden than foreseen in Article IV NYC.

The WGII decided to retain the existing terminology. First, Article III NYC expressly recognizes that enforcement is subject to the rules of procedure of the territory where the award is relied upon.⁶ Thus, the interpretation of the term “*in writing*” is subject to national procedural law. Second, this language has long formed part of the text of the MAL and is understood to encompass communications in electronic form.⁷ This approach aligns with the definition of “*in writing*” set forth in Article 7, Option I, pursuant to which the requirement is satisfied by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.⁸ Deleting the term “*in writing*” could have raised questions as to whether oral applications for recognition and enforcement would thereby be permitted.

Finally, concerns that this approach would create an additional burden compared to the parallel provision under the NYC are unfounded. The requirements set forth in Article IV NYC must be understood as a ceiling rather than a floor, meaning that States may only impose less stringent requirements.⁹ Accordingly, interpreting Article 35(1) MAL as establishing a more onerous standard than the NYC would run counter to the principle underlying Article IV and should not be presumed.

b. Setting Aside Proceedings and Arbitral Awards in Electronic Form: Article 34 MAL

The WGII deliberated whether Article 34 MAL should be supplemented by a provision akin to the newly added clarification under Article 35(3) MAL, stating that an award shall not be set aside solely on the ground that it is in electronic form.

⁵ A/CN.9/1237, at para. 26.

⁶ See Article III NYC.

⁷ A/CN.9/1237, at para. 21.

⁸ It has been mentioned that this argument would merely be relevant for states that have adopted Option I, Article 7 MAL. While this might be true on its face, it does not change that fact that an interpretation of “*in writing*” taking into account all relevant national procedural law may still lead to the conclusion that writings in electronic form are encompassed.

⁹ Born, *International Commercial Arbitration*, Chapter §26.01[A][6], 3d ed. 2024.

The WGII agreed not to insert such language in Article 34.¹⁰ The prevailing view was that electronic form is not listed among the grounds for setting aside an arbitral award and that introducing a negative formulation might disturb the structure of Article 34 or imply that electronic form might otherwise be a relevant defect. Delegations agreed that the inclusion of Article 35(3), relating to the recognition and enforcement does not trigger the necessity for a parallel provision relating to setting aside proceedings.

First, recognition and enforcement, as opposed to the setting aside of awards, are two different creatures. A challenge to an award takes place in the courts of the seat of the arbitration and is an attempt by the losing party to invalidate the award on the basis of the (limited) statutory grounds available under the law of the seat. In contrast, actions seeking recognition and enforcement of an award may take place in any jurisdiction signatory to the NYC. The party against whom recognition and enforcement is sought may rely on the limited grounds contained in either Article V NYC or the corresponding provisions of the MAL to seek to block the action.¹¹ Also, the outcome of successful actions to set aside an award differs from a successful challenge to an enforcement action. If an award is set aside or annulled by the relevant court, it will usually be treated as invalid, and accordingly unenforceable, not only by the courts of the seat of arbitration, but also by national courts elsewhere.¹² However, if enforcement in one jurisdiction is denied, the award creditor may still seek enforcement in different jurisdictions.

Second, Article 34 establishes the exclusive grounds for setting aside an award by the courts of the seat, reflecting the limited availability of recourse, a core advantage of international arbitration.¹³ Under Article 31 as agreed during the eighty-second session of the WGII, the MAL provides that “[i]f the parties agree, or, in the absence of such agreement, neither party objects the arbitral tribunal may make an award in electronic form.”¹⁴ If this provision is observed, then there would not be a ground for setting aside the award for its electronic form. Contrastingly, should the principle in this provision not be observed, the losing party may invoke 34(2)(iv) MAL to seek annulment of the award at the seat. This shows that there is no need for an additional clarification. Thus, incorporating language similar to Article 35(3) MAL into the framework governing setting-aside proceedings would not enhance clarity but rather create uncertainty, potentially undermining a core advantage of international arbitration.

c. Receipt of Electronic Notices: Article 3

Nowadays, email is the most common means of communication during arbitral proceedings. According to the ICC Report on the Use of Information Technology in International Arbitration,

¹⁰ A/CN.9/1237, at para. 18.

¹¹ Blackaby, Partasides and Redfern, *Redfern and Hunter on International Arbitration*, 7th ed. 2023, at para. 10.05.

¹² *Id.*, at para. 10.06.

¹³ *Id.*, at para. 10.02.

¹⁴ A/CN.9/1236, Annex.

written communication today predominantly, if not exclusively, takes place in electronic form.¹⁵ The current version of Article 3 MAL does not expressly reference electronic communications. Thus, the WGII was tasked with ensuring that notices of arbitration in electronic form are permissible and with proposing language addressing delivery and receipt of electronic transmissions.¹⁶

The delegations exchanged several drafts for a new paragraph to supplement the existing framework under Article 3 MAL. These drafts differed in the level of detail. While some merely aimed at recognizing the possibility of the use of electronic notices and communications, others addressed the conditions for delivery and receipt in more detail. Finally, the WGII agreed to implement additional wording in Article 3(1)(a) and (b) MAL, providing that:

(1) Unless otherwise agreed by the parties:

- (a) Any written communication is deemed to have been received if it is: delivered to the addressee personally; delivered at the place of business, habitual residence or mailing address; *or transmitted by electronic communication that provides a record of transmission to an electronic address that is specifically designated for this purpose*. If no such delivery or transmission can be made after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) The communication is deemed to have been received on the day it is so delivered *or electronically transmitted*.¹⁷

The guiding principle underlying the revision is again the principle of non-discrimination.¹⁸ The revised version of Article 3(1) expressly incorporates electronic communications, defined during the eighty-second session of the WGII as “*any communication that a party or the arbitral tribunal makes by means of data message*”.¹⁹ The broad scope of this definition also encompasses the notice of arbitration. Thus, the provision now clarifies that notices of arbitration may be transmitted electronically, enhancing the user-friendliness of the MAL for practitioners.²⁰

Further, the WGII recognized that many jurisdictions have adopted legal frameworks for electronic communications more generally, so rules for delivery and receipt should be addressed

¹⁵ See ICC Commission Report on Information Technology in International Arbitration (2017), at p. 2. See also K. Ongenae and M. Piers, *Procedural Formalities in Arbitration: Towards a Technologically Neutral Legal Framework*, J. of Int'l Arb., Vol. 38 (2021), 27, 29.

¹⁶ A/CN.9/WG.II/WP.243, at para. 6.

¹⁷ A/CN.9/1237, at para. 41 (emphasis added).

¹⁸ A/CN.9/1237, at para. 26.

¹⁹ A/CN.9/1236, at para. 32.

²⁰ A/CN.9/1236, at para. 71. See also A/CN.9/1237, at para. 42 referring to the new Explanatory Note 6.

on a principle-basis to ensure broad adoption.²¹ Moreover, the text is drafted on the basis of the principle of technological neutrality, allowing new technologies to be automatically covered by the provision without further revision. Importantly, the revised Article 3(1) lays out ground rules for when electronic communication may be deemed to have been received or transmitted.

- *First*, the presumption of receipt under Article 3(1)(a) requires electronic communications to provide a record of transmission. Similar wording is used in Article 2(1) of the UNCITRAL Arbitration Rules and is meant to include modes of electronic communication that are currently in use, such as emails which produce a record of the mail sent.²² This aligns with wording used by major institutional rules.²³
- *Second*, the electronic address must be specifically designated for the purpose of receipt of written communications within the meaning of the new definition under Article 2 MAL. This language serves as an important safeguard ensuring that fundamental rights, in particular the right to be heard, are upheld.²⁴ Thus, the mere handing over of a business card or public listing of e.g., email addresses, without any reference to a certain matter or (counter)party does not meet the standard, resulting in a presumption of receipt.²⁵ Nonetheless, the question as of when an electronic address is specifically designated for the purpose of arbitral proceedings remains subject to interpretation. Accordingly, parties are advised to address this issue when drafting the arbitration agreement by explicitly specifying the electronic addresses to be used in any proceedings initiated on the basis of the agreement. Further, the WGII decided not to adopt language allowing arbitral tribunals to designate the electronic address in the alternative to the parties, as it could create issues with notices usually submitted before an arbitral tribunal is constituted.
- *Third*, WGII decided to retain the current default rule for situations in which no delivery or transmission – as set out in the first sentence of Article 3(1)(a) – can be effected after a reasonable inquiry has been made. This approach reflects the practical difficulties associated with securing reliable electronic communications relating to the identity of the communication partner.²⁶ Moreover, most individuals and entities maintain multiple electronic addresses or communication channels. Incorporating electronic communication into the default rule would, in effect, impose an unduly stringent obligation to monitor all possible electronic addresses or means of communication that a party may maintain.

²¹ A/CN.9/1237, at para. 33. *See also* A/CN.9/1236, at para. 71 where the WGII expressed its desire create a balance between the legal framework for the receipt and delivery of paper-based and electronic communications. Thus, merely recognizing the availability of electronic communication was deemed insufficient.

²² J. Castello, *UNCITRAL Arbitration Rules, Section I, Article 2*, in Mistelis (ed), *Concise International Arbitration* 2d ed. 2015, p. 182, 183.

²³ Article 3(2) ICC Rules 2021; Article 4.2 LCIA Rules (2020); Article 4.1 SIAC Arbitration Rules (2025).

²⁴ A/CN.9/1236, at para. 72. *See also* Article 2(2) of the UNCITRAL Arbitration Rules.

²⁵ A/CN.9/WG.II/WP.244, at para. 25. *See also* A/CN.9/1236, at para. 33.

²⁶ K. Ongenae and M. Piers, *Procedural Formalities in Arbitration: Towards a Technologically Neutral Legal Framework*, *J. of Int'l Arb.*, Vol. 38 (2021), 27, 41.

- *Lastly*, also with respect to the transmission of electronic communications, the WGII decided not to adopt the principle of functional equivalence but to leave the criteria, such as accessibility, authentication, and integrity upon which electronic communications may be considered the functional equivalent of a paper-based document to the domestic laws and practices in the relevant jurisdiction.²⁷

2. AMENDMENTS ON THE NOTES ON ORGANIZING ARBITRAL PROCEEDINGS

The UNCITRAL Notes on Organizing Arbitral Proceedings provide practitioners with guidance on key procedural decisions, including rules, language, seat, confidentiality, hearings, evidence, and now the form of the award. The WGII added a new Note, “*Paper or Electronic Form of Awards*,” recognizing that awards have traditionally been issued on paper with wet-ink signatures but now also be rendered electronically. Electronic awards may enhance efficiency, speed, distribution, and storage.

The Note advises practitioners to consider domestic laws and institutional practices, as some jurisdictions still require paper awards, certified copies, or wet-ink signatures, while others permit or default to electronic awards. Tribunals are encouraged to consult parties on applicable legal requirements, enforcement considerations, and any specific formalities before issuing an electronic award.

3. COLLOQUIUM ON THE USE OF AI AND REMOTE HEARINGS IN ARBITRATION AND MEDIATION

The WGII held a colloquium on the use of AI and remote technologies in arbitration and mediation, aiming to develop recommendations for the UNCITRAL Commission’s fifty-ninth session in 2026. In arbitration, discussions distinguished administrative AI tools (e.g., case management) from analytical and generative applications, noting low risk in administrative uses but concerns over adjudicative delegation, arbitrator independence, and algorithmic influence. Key considerations included due process, equality of arms, transparency, confidentiality, cybersecurity, and compatibility with the NYC as AI becomes more autonomous.

In mediation, AI’s consensual nature raises distinct issues. Administrative tools may improve efficiency and access, while predictive analysis, automated proposals, or emotion recognition create concerns over reliability, confidentiality, and perceived empathy, particularly in relation to the Singapore Convention on Mediation.

The colloquium also examined remote and hybrid proceedings, widely adopted since the COVID-19 pandemic. While generally effective, challenges remain regarding due process, equality of arms, access to technology, cybersecurity, and witness credibility. Participants debated guidance: some favored high-level non-binding recommendations, while others warned against overregulation, noting many issues are organizational rather than legal. In the end, the

²⁷ A/CN.9/1237, at para. 26.

WGII formalized a request to the Secretariat to compile the different options available for consideration regarding possible future work in this area.²⁸

III. CONCLUSION

The eighty-third session of WGII marked an important step in UNCITRAL's ongoing efforts to modernize the legal framework governing international arbitration in light of technological developments.

In particular, the WGII agreed on targeted amendments to the MAL to ensure that arbitral awards and communications, including notices of arbitration, in electronic form are treated in accordance with the principle of non-discrimination. The revisions clarify that an arbitral award shall not be refused recognition or enforcement solely because it is rendered in electronic form and expressly accommodate the use of electronic communications for the transmission and receipt of notices. Moreover, the WGII adopted language clarifying that notices of arbitration may be transmitted electronically while balancing the risk of fundamental rights, particularly the right to be heard.

Complementing these amendments, the WGII also updated the UNCITRAL Notes on Organizing Arbitral Proceedings to recognize that awards may be rendered in electronic form and to encourage tribunals and parties to consider relevant legal and practical issues when doing so.

The WGII further held a colloquium examining the growing use of artificial intelligence and remote modalities in arbitration and mediation. While these technologies may enhance efficiency and accessibility, participants also identified a range of legal and policy concerns, including due process, arbitrator independence, confidentiality, cybersecurity, and enforceability of outcomes. In light of the rapidly evolving nature of these technologies, the WGII concluded that it would be premature to undertake normative work at this stage and instead requested the Secretariat to continue monitoring developments and identifying issues for future consideration.

Finally, the Working Group agreed that the revised instrument should be titled *Model Law on International Commercial Arbitration (1985, with amendments in 2006 and 2026)*, with the Explanatory Note renumbered accordingly. The package of amendments concerning electronic awards and communications will be submitted to the UNCITRAL Commission for consideration and possible adoption at its fifty-ninth session in 2026.

²⁸ A/CN.9/1237, at para. 71.