



**United Nations Commission on
International Trade Law
Working Group II (Dispute Settlement)
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Recognition and enforcement of electronic arbitral awards

Note by the Secretariat

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I. Introduction

1. At its fifty-sixth session in 2023, the Commission, having considered the notes by the Secretariat on taxonomy and preliminary findings of the stocktaking of developments in dispute resolution in the digital economy (A/CN.9/1154 and A/CN.9/1155), requested the Secretariat to continue to implement the stocktaking project, including the “World Tour”, to put forward legislative work proposals with a focus on the topics on the recognition and enforcement of electronic arbitral awards (e-awards) and on electronic notices of arbitration and their delivery, and to report on further progress made overall, taking into account the discussions which took place at that session.

2. At its fifty-seventh session in 2024, the Commission considered the submission by the Governments of Germany, Israel, Japan, Republic of Korea and Spain with regard to the possible future work on dispute resolution in the digital economy (A/CN.9/1186) and the notes by the Secretariat on progress report and future work proposals of the stocktaking of developments in dispute resolution in the digital economy (A/CN.9/1189 and A/CN.9/1190) and mandated Working Group II to work on the recognition and enforcement of e-awards and, subsequently, on electronic notices. In this regard, the Commission provided the Working Group with a broad mandate to identify the issues and explore appropriate solutions to address those issues without prejudice to the final form of the outcome. The Commission further requested that the Secretariat conduct preparatory work for the work on the recognition and enforcement of e-awards for consideration by the Working Group.¹

3. In response to the request made by the Commission, this note is prepared to facilitate the deliberation of the Working Group together with paragraphs 8–62 of the note by the Secretariat on future work proposals of the stocktaking of developments in dispute resolution in the digital economy (DRDE) (A/CN.9/1190). To start the discussion, the focus is on e-awards only and does not include arbitral agreements, which, nevertheless, form the basis for the recognition and enforcement of awards and may be considered by the Working Group in relation to the current work.

II. Enhancing reliance on electronic arbitral awards

4. Enabling the reliance on e-awards is expected to play a crucial role in achieving further time and cost efficiencies, thereby complementing efforts to streamline arbitral proceedings. Furthermore, as evidenced by the impact of the COVID-19 pandemic on traditional mail and courier services, digitizing the processes in arbitral proceedings, including that relating to awards, will ensure the uninterrupted delivery of justice in the event of similar disruptions.² This will also align with the development of digital and paperless contracts and trade generally, as well as the transition of courts to fully digitalized proceedings.

5. Despite these potential benefits, e-awards are not widely used in practice yet. Findings of the DRDE stocktaking project³ reveal that the standard practice is still that awards are made in paper form, delivered to the parties and supplied to courts in that form. In many jurisdictions, there remains a perception of a lack of legal certainty and predictability regarding the enforceability of e-awards. This perception is shaped by several factors. Firstly, domestic laws implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)

¹ *Official Records of the General Assembly, Seventy-ninth Session, Supplement No.17 (A/79/17)*, Section XII A.(b) and B.2.

² A/CN.9/1189, paras. 33 and 49. See also the publication ‘COVID-19 and International Trade Law Instruments: a Legal Toolkit by the UNCITRAL Secretariat’, (United Nations, Vienna, 2024), para. 74, available at <https://uncitral.un.org/covid-impact-website>, which explains that arbitration was the preferred choice of dispute resolution mechanism during the pandemic, primarily due to its adaptability and flexibility.

³ See A/CN.9/1189 and A/CN.9/1190.

often implicitly or explicitly require arbitral awards to be in paper form and physically transmitted, despite advancements in digitalization in other areas of judicial proceedings. Secondly, enforcement procedures in many jurisdictions continue to mandate the use of paper-based documents, which poses a challenge to accepting e-awards. Thirdly, there is a certain fragmentation in laws governing electronic communications across different jurisdictions, especially due to a conservative approach that favours maintaining traditional legal processes. As a result, practices tend to remain unchanged. Even in jurisdictions where the basic principles of UNCITRAL texts on electronic commerce (e-commerce) such as functional equivalence have been incorporated into their laws, variations exist as to their applicability to dispute resolution, that contribute to uncertainty. As a result, the overarching issue is that e-awards may not be enforceable under such legal frameworks. However, the growing use of electronic courtesy copies (such as PDFs) for ease of reference suggests stakeholders' willingness to adopt electronic means for awards. This trend also highlights the disparity between practical implementation and the current legal framework.

6. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (New York Convention) provides the basic framework for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. Article IV of the New York Convention requires the party seeking recognition or enforcement to provide the original award or a duly authenticated copy, the original arbitration agreement or a duly certified copy thereof, as well as possibly a certified translation if the award or arbitration agreement is not in the official language of the country where recognition or enforcement is sought.

7. As outlined below, UNCITRAL has developed a suite of legislative frameworks aimed at enabling and facilitating the use of electronic means in commercial transactions.⁴

(a) The UNCITRAL Model Law on Electronic Commerce (MLEC) articulates three fundamental principles that underlies UNCITRAL's work in the field of e-commerce: (i) non-discrimination (electronic transactions and communications should not be treated less favourably than their paper-based counterparts solely because they are conducted electronically); (ii) functional equivalence (electronic records and signatures should be considered equivalent to their paper-based counterparts in terms of legal validity and effect, if they serve the same purpose); and (iii) technological neutrality (legal frameworks should not favour or discriminate against any particular technology). Given the high level of adoption of the MLEC, these principles are widely embraced.

(b) The UNCITRAL Model Law on Electronic Signatures (2001) provides guidance on the use of electronic signatures.

(c) The United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005) (ECC) provides for uniform rules to remove obstacles to the use of electronic communications in international contracts. Article 20(1) of the ECC expanded its application to electronic communications exchanged in connection with contracts covered by other international conventions, such as the New York Convention, unless such application has been excluded by a Contracting State. Thus, electronic communications exchanged in connection with the formation of such contracts, including those containing an arbitration agreement, benefit from the favourable regime provided by the ECC, which assures that contracts formed and other communications exchanged electronically are as valid and contractually binding as their traditional paper-based equivalent.⁵

⁴ See also the explanatory text 'Promoting confidence in electronic communication: legal issues on international use of electronic authentication and signature methods', United Nations publication, Sales No. A.09.V.4.

⁵ A/CN.9/569, paras. 73–79 reflects the discussion of the Working Group on a possible inclusion

(d) The UNCITRAL Model Law on Electronic Transferable Records (2017) (MLETR) extends these principles to facilitate the electronic use of transferable documents and instruments.

(e) The UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022) (MLIT) aims to facilitate secure and reliable electronic transactions by establishing a legal framework for identity management and trust services, both nationally and internationally.

8. Existing UNCITRAL texts on arbitration, such as the UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006 (MAL), however, only address the use of electronic means partially. For example, while the MAL, in article 31(1), outlines general requirements regarding the form and content of arbitral awards, stating that that awards must be made in writing and signed by the arbitrator(s), it does not specify how awards in electronic form can satisfy these form requirements.

9. In contrast, article 7 of the MAL, which pertains to arbitration agreements, explicitly provides for the use of electronic means. Article 7, option I, paragraph 4 of the MAL incorporates a rule for arbitration agreements in electronic form, based on the functional equivalence rule for the “in writing” requirement as provided for in article 6(1) of the MLEC. This provision ensures that arbitration agreements concluded electronically are deemed equivalent to those concluded in writing, thus promoting the use of electronic communication in forming arbitration agreements. A similar result for arbitration agreements in electronic form, through the application of treaties, may be obtained with the joint application of article 9(2) of the ECC, containing functional equivalence requirements for “in writing”, and article 20(1) of the ECC, explicitly extending the application of the ECC to the New York Convention.

10. Currently, the recognition and enforcement of e-awards is left to domestic laws, practices, and procedures to develop applicable standards, which may vary among jurisdictions.

11. Overall, while UNCITRAL texts provide some guidance on electronic arbitration agreements, as identified through the DRDE stocktaking activities, there remains a need for further development and clarification regarding the recognition and enforcement of e-awards at the international level. This gap underscores the importance of continued efforts to harmonize and update legal frameworks to accommodate electronic methods effectively in international dispute resolution so that they mirror the generalization of electronic forms in contracting and trade documents.

III. Possible norms or guidance to enhance the reliance on electronic arbitral awards

A. Preliminary remarks

12. The following section presents basic elements of possible norms or guidance that could enhance the reliance on e-awards and facilitate their recognition and enforcement. The elements are outlined to broadly cover legal bases without prejudging or prioritizing the selection of specific elements and could be selected in combination with one another. They are intended to assist the Working Group in conducting a comprehensive assessment as to the need for and content of specific elements and, subsequently, deciding on the appropriate form and content of instruments to facilitate the recognition and enforcement of e-awards.

of the New York Convention in the list of international instruments to which (at the time) the draft convention on the use of electronic communications in international contracts would apply.

B. Basic elements of possible norms

1. Definition of electronic arbitral awards

13. The definition of the term “electronic arbitral award” circumscribes the scope of the work to be carried out and legislative texts which may be developed. As this term is not defined in the existing legal framework, the term “electronic arbitral awards” needs to be understood in the context of “awards” as generally acknowledged in arbitration practice. A working definition may nonetheless be set forth as follows:

(a) “Electronic arbitral award” means an arbitral award made by means of data messages.

14. This definition encompasses an award rendered in the form of data messages and possibly maintained in this form throughout in the subsequent phases, i.e., when it is delivered to the parties and supplied to the court for enforcement. Such a comprehensive definition ensures that a wide range of scenarios is covered.

15. The term “data message” is consistently defined in UNCITRAL texts on e-commerce, including the ECC, in a technologically neutral manner. Accordingly, the term “data message” may be defined as information generated, sent, received, or stored by electronic, magnetic, optical, or similar means; and the term “electronic communication” may be defined as any communication by means of data messages.⁶

2. Elements to enable reliance on electronic arbitral awards

16. Both the New York Convention and the MAL provide that arbitral awards shall be recognized as binding and enforced (article III of the New York Convention and article 35(1) of the MAL) and that a party seeking to rely on the award shall supply the original award or a duly certified copy thereof (article IV of the New York Convention and article 35(2) of the MAL). Whereas article IV of the New York Convention does not provide specific requirements for awards, article 31 of the MAL provides that arbitral awards shall be in writing and signed by the arbitrator or arbitrators. The award shall also be delivered to each party. Article 35(1) of the MAL also presupposes that not only the award but also the application to seek recognition and enforcement of an arbitral award is made in writing. In light of the above, the Working Group may wish to consider addressing these elements to establish a functional equivalence rule for transposing the requirements from paper-based awards to e-awards: in writing, signature, original or certified copy thereof, and delivery.

17. The UNCITRAL e-commerce instruments provide frameworks for establishing functional equivalence regarding the in writing and signature requirements (see para. 7 above). Specifically, the ECC, the MLEC, the MLETR and the MLIT offer templates that can be adapted for digitized arbitration. Additionally, article 7(4) of the MAL addresses the writing requirement for arbitration agreements, while article 4(2) of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) and article 18(2) of the UNICTRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation) provide guidance on meeting the signature requirements for electronic records in the mediation context.

Written form requirement

18. The Working Group may wish to consider the following functional equivalence provision for the written form requirement:

(b) The requirement that the award shall be “in writing” is satisfied by an electronic arbitral award if the information contained therein is accessible so as to be usable for subsequent reference.

⁶ Article 4(b) and (c) of the ECC.

(c) The requirement that an application to seek recognition and enforcement be made “in writing” is satisfied by electronic means if the information contained therein is accessible so as to be usable for subsequent reference.

Signature requirement

19. The Working Group may wish to consider the following functional equivalence provision for the signature requirement:

(d) The requirement that the award be “signed” by the arbitrator or arbitrators is satisfied by an electronic arbitral award if a method is used to identify the arbitrator or the arbitrators and to indicate the arbitrator’s or arbitrators’ intention in respect of the information contained in the electronic arbitral award.

Original or certified copy

20. While the existing arbitration instruments require that paper-based awards or arbitration agreements need to be either an original or a duly certified copy, e-awards necessitate a reliable assurance as to the integrity of the information from the time it was first generated in its final form, whether as a data message or otherwise. Additionally, where information must be presented, that information needs to be capable of being displayed to the person to whom it is to be presented (see article 9(4) and (5) of the ECC and article 8 of the MLEC). The Working Group may thus consider that a functional equivalent to those notions reflecting the need for their electronic equivalents is necessary.

21. If so, the Working Group may wish to consider the following text:

(e) Where the law requires that an arbitral award [or arbitration agreement] be made available in its original form or by a certified copy, that requirement is met in relation to an electronic arbitral award 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) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

(f) For the purposes of (e)(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.

Delivery to Each Party

22. The MAL requires the delivery of arbitral awards to the parties, which triggers deadlines such as those outlined in its article 34(3) for setting aside awards. In an electronic environment, the two elements that may be worth reproducing from UNCITRAL e-commerce texts are the determination of the moment of receipt of the e-award and the assurance of the delivery. The Working Group may wish to consider whether they should be integrated into the arbitration framework.

23. If so, the Working Group may wish to consider the following provision for the delivery of an e-award, which is modelled on article 20 of the MLIT:

(g) An electronic arbitral award is delivered, if a reliable method is used to:

(i) Indicate the time and date when the data message was received for delivery and the time and date when it was delivered;

(ii) Detect any alteration to the data message after the time and date when it was received for delivery to the time and date when it was delivered, apart from the addition of any endorsement or information required [by this provision], and

any change that arises in the normal course of communication, storage, and display; and

(iii) Identify the sender and the recipient.

24. Reference may also be made to article 15(2) of the MLEC and article 10(2) of the ECC, which address receipt of electronic communications. In an arbitral setting, nonetheless, parties should generally have designated an electronic address unless, possibly, a party is non-participating or in default and such designation has not been validly made elsewhere (e.g., in the arbitral clause).⁷ In such cases, the delivery of the e-award may be carried out by using electronic registered delivery services, which are a dedicated type of trust service.

Reliability

25. The Working Group may wish to consider the following reliability provisions:

(h) The method used is as reliable as appropriate for the purpose for which the electronic arbitral award was generated or communicated and signed, in light of all the circumstances, including any relevant agreement.

(i) The method used is proven in fact to have fulfilled the functions above, by itself or together with further evidence.

(j) A method is presumed reliable if ...

26. To fulfil the requirements of functional equivalence rules, UNCITRAL e-commerce texts typically require the use of a method that needs to be qualified as “reliable” to provide additional legal predictability and certainty. The reliability of the method may be ascertained in three manners: *ex post*, including in accordance with a safety clause, or *ex ante*, as reflected in the three options outlined in the preceding paragraph.

27. *Ex post* evaluation of the reliability of electronic methods is an evaluation of the reliability of methods after they have been used. This evaluation is to be conducted specifically in the context of a dispute or enforcement proceeding, on the basis of predefined standards. This approach determines whether the electronic methods employed have met the necessary standards in a given case (see for example, article 22 of the MLIT and article 12 of the MLETR).

28. The safety clause, which was first introduced in article 9(3)(b)(ii) of the ECC and forms a part of the standard for *ex post* evaluation of reliability, is a provision designed to protect the validity of a method used in electronic communications or transactions, ensuring that it may not be denied validity solely on the basis of hypothetical or theoretical concerns about potential unreliability. In the context of e-awards, the safety clause ensures that if the method used for creating, storing, or transmitting the award has been proven to work effectively in practice, or the reliability of the method is undisputed, it will be accepted and enforced.

29. *Ex ante* designation of reliability presupposes the existence of a mechanism whereby entities that provide assurances of certain qualities of a data message are designated and presumes the services provided by those entities upon prior designation as reliable in a general manner (an example is article 23 of the MLIT). In the arbitral setting, for instance, arbitral institutions wishing to issue an enforceable e-award may seek to comply with pre-determined technical standards, or use the services of certain providers that have already been designated in a given jurisdiction. An *ex ante* approach could provide the necessary assurance by establishing clear criteria and technical standards that must be met before the electronic methods are used. This approach ensures that all parties involved can rely on the designated reliability of these methods from the outset, facilitating smoother enforcement processes.

⁷ See article 2(2) of the UNCITRAL Arbitration Rules.

30. The Working Group may wish to discuss which standards, or whether a cumulative combination thereof, would be most appropriate given the nature of the arbitral award. The Working Group may consider applying a rather stringent reliability standard to ensure sufficient clarity and enforceability of e-awards.

Next steps

31. The Working Group may wish to consider including into the arbitration framework a provision setting forth that e-awards shall not be denied recognition and enforcement on the sole ground that they are in the form of data messages, including when they are being supplied via electronic means, and further assess whether there is a need to develop tailored provisions as outlined above to enhance clarity and explicitly enable the reliance on e-awards, thereby ensuring their enforceability. This assessment could include determining whether these provisions should be integrated within existing legal instruments, and what other form this work should take.
