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Report of Working Group II (Dispute Settlement) on the work of its eightieth session (Vienna, 30 September-4 October 2024)

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I. Introduction

1. The Commission, at its fifty-fifth session in 2022, entrusted the Working Group to consider the topics of technology-related dispute resolution and adjudication jointly and to consider ways to further accelerate the resolution of disputes by incorporating elements of both topics. [1] Consequently, the Working Group commenced its considerations of issues relating to technology-related dispute resolution and adjudication at its seventy-sixth session (Vienna, 10–14 October 2022) and continued until the seventy-ninth session (New York, 12–16 February 2024).[2]

2. The Commission, at its fifty-seventh session (New York, 24 June–12 July 2024), adopted the UNCITRAL Model Clauses on Specialized Express Dispute Resolution (SPEDR).[3] The Commission also approved in principle the draft explanatory notes contained in A/CN.9/1181, and authorized the Working Group to edit and finalize them during the eightieth session of the Working Group based on its decisions and deliberations.[4]

3. In 2020, the Commission considered a proposal on stocktaking of dispute resolution in the modern context (A/CN.9/1037) and requested the secretariat to take stock of recent trends in international dispute resolution, particularly focusing on the digital economy. [5] With ongoing financial backing from Japan, the Commission endorsed the continuation of this exploratory work by the secretariat annually. [6] In 2024, the Commission considered the notes by the Secretariat on the progress report (A/CN.9/1189) and future work proposals (A/CN.9/1190) of the stocktaking of developments in dispute resolution in the digital economy (DRDE). [7] The latter document proposed legislative options for the recognition and enforcement of electronic arbitral awards and suggested that the Commission consider mandating a Working Group to proceed with this topic.

4. After discussion, the Commission mandated Working Group II to work on the recognition and enforcement of electronic arbitral awards and, subsequently, on electronic notices of arbitration. 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. Hence, the Commission requested that the Secretariat organize a two-day colloquium during the eightieth session of the Working Group to further assess the issues with respect to electronic awards. The Commission further requested that the secretariat conduct preparatory work for the work on the recognition and enforcement of electronic arbitral awards for consideration by the Working Group.[8]

5. Accordingly, the Working Group finalized the draft explanatory notes accompanying the UNCITRAL Model Clauses on SPEDR and held a two-day colloquium, after which the Working Group preliminarily considered the topic of recognition and enforcement of electronic awards.

II. Organization of the session

6. The Working Group, which was composed of all States members of the Commission, held its eightieth session, at the Vienna International Centre from

[1] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 223–225.
[2] Ibid., *Seventy-ninth Session, Supplement No. 17* (A/79/17), paras. 79–80.
[3] Ibid., paras. 81–90.
[4] Ibid., paras. 91–92.
[5] Ibid., *Seventy-fifth Session, Supplement No. 17* (A/75/17), paras. 69–71.
[6] Ibid., *Seventy-sixth Session, Supplement No.17* (A/76/17), para. 232, *Seventy-seventh Session, Supplement No.17* (A/77/17), para. 220, *Seventy-eighth Session, Supplement No. 17* (A/78/17), para. 204 and *Seventy-ninth Session, Supplement No.17* (A/79/17), para. 278.
[7] Ibid., *Seventy-ninth Session, Supplement No.17* (A/79/17), paras. 277–283.
[8] Ibid., paras. 284–285.

30 September to 4 October 2024, with 1 and 2 October 2024 being devoted to a colloquium.

7. The session was attended by the following States members of the Working Group: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Croatia, Czechia, Dominican Republic, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kuwait, Malaysia, Mexico, Morocco, Nigeria, Panama, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, Switzerland, Thailand, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

8. The session was attended by observers from the following States: Azerbaijan, Bahrain, Chad, El Salvador, Guatemala, Haiti, Malta, Mauritania, Myanmar, Netherlands (Kingdom of the), Norway, Oman, Pakistan, Paraguay, Philippines, Portugal, Romania, Serbia, Slovakia and Togo.

9. The session was further attended by observers from the following invited international organizations:

(a) *Organizations of the United Nations system*: World Bank;

(b) *Intergovernmental organizations*: Eurasian Economic Union/Eurasian Economic Commission (EEU/EEC), Gulf Cooperation Council (GCC) and Permanent Court of Arbitration (PCA);

(c) *Non-governmental organizations*: Alumni Association of the Willem C. Vis (MAA) International Commercial Arbitration Moot, Association for the Promotion of Arbitration in Africa (APAA), Association of Young Lawyers (A.I.J.A), Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC), Belgian Centre for Arbitration and Mediation (CEPANI), Cairo Regional Centre for International Commercial Arbitration (CRCICA), Center for International Legal Studies, Chartered Institute of Arbitrators (CIARB), China International Economic and Trade Arbitration Commission (CIETAC), Club Español e Iberoamericano del Arbitraje (CEIA), Forum for International Conciliation and Arbitration (FICA), German Arbitration Institute (DIS), Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce-International Court of Arbitration, Institute for Transnational Arbitration (ITA), International Union of Notaries, International Women's Insolvency and Restructuring Confederation (IWIRC), Japan Commercial Arbitration Association (JCAA), London Court of International Arbitration (LCIA), Milan Chamber of Arbitration, Netherlands Arbitration Institute (NAI), New York City Bar (NYCBAR), New York State Bar Association (NYSBA), P.R.I.M.E. Finance, Russian Arbitration Center at the Russian Institute of Modern Arbitration, Shanghai International Arbitration Center (SHIAC), Shenzhen Court of International Arbitration (SCIA), Silicon Valley Arbitration and Mediation Center (SVAMC) and Tehran Chamber of Commerce, Industries, Mines and Agriculture (TCCIMA).

10. The Working Group elected the following officers:

Chair: Mr. Andrés Jana (Chile)

Rapporteur: Bushra Al Dashti (Kuwait)**

11. The Working Group had before it the following documents: (a) Annotated provisional agenda (A/CN.9/WG.II/WP.237); (b) Note by the Secretariat to the Commission at its fifty-seventh session on the draft model clauses as prepared by the Working Group and the revised explanatory notes (A/CN.9/1181); (c) Note by the Secretariat on recognition and enforcement of electronic arbitral awards (A/CN.9/WG.II/WP.238); and (d) Note by the Secretariat on future work proposals of the stocktaking of developments in dispute resolution in the digital economy (A/CN.9/1190).

12. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Finalization of the draft explanatory notes to the UNCITRAL Model Clauses on Specialized Express Dispute Resolution.
5. UNCITRAL colloquium on electronic awards.
6. Consideration of the topic of recognition and enforcement of electronic arbitral awards.
7. Adoption of the report.

III. Finalization of the draft explanatory notes to the UNCITRAL Model Clauses on Specialized Express Dispute Resolution

13. In considering the draft explanatory notes to the UNCITRAL Model Clauses on SPEDR, the Working Group focused on suggestions that were more than merely editorial, while bearing in mind that the Commission had already adopted the draft in principle. Aside from those changes discussed and agreed in the current session and reflected in the present report, the Working Group entrusted to the secretariat the review and editing of the draft and the finalization of the explanatory notes so that they could be published with the Model Clauses. Delegations were invited to submit editorial comments (including those on translation) in writing to assist the secretariat in preparing the publication of the Explanatory Note.

A. Introduction

14. For paragraph 4, it was agreed to add the following phrase to the end of the last sentence: “and to use only one of them or more as they wish according to their needs”.

15. It was agreed to replace paragraph 6 with the following text:

> This Model Clause focuses on adjudication to resolve disputes while also allowing for full arbitration when a party deems it necessary. It enables parties to obtain a fast and cost-efficient determination by an adjudicator with the requisite expertise, which is essential for swiftly resolving disagreements and keeping a project on track. Although the determination is contractually binding and may be enforced in the near term, any party dissatisfied with the adjudicator’s decision retains the right to refer the dispute to arbitration (under either the UNCITRAL Arbitration Rules (“UARs”) or the EARs) to obtain a final award on the same issues that were the subject of adjudication.
>
> The parties’ obligation to comply with the adjudicator’s determination – unless and until it is modified or reversed by an arbitral award – can itself be enforced in an arbitral proceeding. Such a proceeding would be narrowly focused on whether a party has abided by the determination and would be conducted quickly in accordance with clauses based on the Model Clause on Highly Expedited Arbitration.
>
> Adjudication is appropriate for parties seeking a mechanism to quickly produce a binding and enforceable result, especially in situations where long-term contracts encounter differences on specific issues. This allows for fast decisions, enabling the parties to move forward with their project without significant disruptions. Beyond these specific cases, adjudication may have broader potential in any relationship where parties wish to reserve arbitration only for

situations where the adjudicator's quick decision is found unacceptable by at least one party.

16. It was agreed that paragraph 7 would be replaced by the following paragraph:

This Model Clause provides for independent technical advisors who may assist arbitral tribunals throughout an arbitration involving complex technical matters. These technical advisors will assist an arbitral tribunal to make its own informed decisions by providing technical explanations or specialized background knowledge to help the tribunal understand the technical issues, within a procedure that maintains the principles of impartiality, fairness and due process.

B. Model Clause on Highly Expedited Arbitration

17. It was agreed to redraft paragraph 2 as follows:

Highly expedited arbitration procedures can be particularly useful in resolving disputes that arise from technology, construction, financial or other projects where failure to resolve disputes quickly may negatively impact a party's business. Shorter time frames will ensure expeditious resolution of disputes and avoid the risk, for example, that a project may be disrupted if it is suspended by a long and costly proceeding. However, parties should ensure that disputes submitted to highly expedited arbitration are suitable for such streamlined proceedings. While the highly expedited arbitration rules preserve essential procedural rights, the issues in dispute should not be disproportionately complex or extensive, as this could undermine the effectiveness of the expedited process.

18. Revision of paragraph 12 was agreed as follows:

Option I provides for a possible extension of time for the arbitral tribunal to make its award, as provided for in article 16(2) of the EARs, but which in the Model Clause should not exceed a short time limit such as a total of 90 days from the date of the constitution of the arbitral tribunal. This option gives the arbitral tribunal the further authority, in exceptional circumstances, to request additional time and then to invite the parties to express their views, in accordance with article 16(3) and (4) of the EARs. Parties will want to ensure that the extension they permit under paragraph (e) remains reasonable in light of the timeline they have chosen under paragraph (d). If parties agreed to 45 days in paragraph (d), they may wish, for example, to specify in paragraph (e) that an extension shall not exceed a total of 90 days.

19. In the last sentence of paragraph 15, it was agreed to delete the end of the sentence after the phrase "paragraph (e)".

20. In paragraph 18, it was agreed to delete the fourth sentence.

C. Model Clause on Adjudication

21. It was agreed to include an additional introductory paragraph before paragraph 1:

Adjudication is a method of dispute resolution by which, in a simplified procedure and in a very short time, an adjudicator makes a determination with which the parties have to comply forthwith. A party that is not satisfied with that determination may subsequently submit some or all of the same dispute to arbitration; but it must nevertheless comply with the determination unless and until an arbitral tribunal resolves the dispute differently. Adjudication is already well-known in certain countries and internationally in the practice of certain contracts; it is particularly useful in the context of projects of some duration (for example, substantial construction projects) where there is a need for quick resolution of disputes by an adjudicator who has expertise in the subject matter of the contract. Such disputes that may arise in the course of the parties' work are often technical (for example, the interpretation of contractual designs or the

need for a changed design). If each such dispute is submitted to a full arbitration, the lengthy disruption in the project (as well as the interruption in cash flow for the project participants) may disrupt the project. By allowing for quick, provisionally binding resolution of such disputes by an adjudicator who may have the expertise necessary to understand the project, a system of adjudication that still preserves an opportunity for full arbitration can facilitate the completion of longer-term contracts.

Experience with adjudication in certain countries and specific types of contracts suggests that it could be applied more broadly, and the present Model Clause offers a framework to support this wider application.

22. For the first sentence of paragraph 2, it was agreed that the text after "independent third party" should be replaced with "who will often be an expert in the type of work reflected in the parties' contract".

23. For the second sentence of paragraph 5, it was agreed to add a footnote to explain the linguistic differences between the English, French, Russian and Spanish text of the model clauses and that of the Arabic and Chinese texts since the notion of capitalization of letters does not exist in the Arabic and Chinese language.

24. To better explain the technicalities of Options 1 and 2, it was agreed that the second sentence of paragraph 7 be replaced by the following:

This option offers the parties to not limit the scope of adjudication, i.e. any dispute arising under the contract can be subject to adjudication without specifying particular types of disputes or excluding any categories. This approach avoids potential disagreements over the scope of the adjudicator's authority. It also relies on, first, the party that decides to initiate an adjudication and, subsequently, the adjudicator him- or herself to determine if a dispute is suitable for adjudication. If the adjudicator determines that a dispute already submitted to him or her or certain aspects of it are not suitable for adjudication, the adjudicator is expressly authorized to make that finding (see paragraph 2(g)).

25. Furthermore, it was agreed that the phrase "potential jurisdictional issues and" in the first sentence of paragraph 8 be deleted.

26. It was agreed that a text along the following lines be added in the explanations to subparagraph (a) before paragraph 9 concerning the submission of requests:

In submitting a dispute for adjudication, parties should evaluate the suitability of the chosen option and the associated time frames for the adjudicator's determination to ensure that their expectations for a timely resolution are met.

27. To clarify the meaning of "accompanying adjudicator", it was agreed to replace the last two sentences of paragraph 10 with the following:

Alternatively, parties may consider whether to retain the services of an adjudicator who remains "on call" from the outset of their project or, similarly, to establish a "dispute board" or similar body if they wish to ensure availability of particular adjudicator(s) throughout the term of the contract. Such an approach will entail additional costs (which however may be outweighed by the dispute avoiding effect of such arrangements).

28. For clarity, it was agreed to split paragraph 12 into two separate paragraphs. A new paragraph was to start from "The appointing authority may …". Also, at the end of the new first paragraph, the addition of the following sentence was agreed:

Appointing authorities in the context of adjudication could be, for example, professional bodies or institutions with knowledge and familiarity of experts in the relevant field.

29. It was agreed to add after the second sentence of paragraph 16 the following:

However, the decision that the dispute or certain aspects of it are unsuitable for adjudication may be made at a later stage of the proceedings, which could even

be when the adjudicator makes the determination on parts of the dispute that are suitable for adjudication.

30. Regarding paragraph 19, it was agreed that the first sentence should be read as follows “Opting for a non-reasoned determination contributes to a faster procedure.”, and the third and fourth sentences were to be replaced with the following text:

> Requiring an adjudicator to give reasons for a determination can lead him or her to develop a deeper understanding of the dispute, and knowing the adjudicator’s reasons for a determination may be important to the parties in deciding whether to pursue subsequent arbitration on the same dispute. Moreover, in the unlikely event that, in the course of compliance arbitration under paragraph 3, a respondent objects that the adjudicator denied it a reasonable opportunity to present its case or failed to treat the parties with equality, the compliance tribunal might have difficulty ruling on such a defence if the adjudicator provided no reasons for his or her determination.

31. On the first sentence of paragraph 22, it was agreed to delete “it is advisable for adjudicator to enter” and replace with “parties may consider entering …”.

32. It was agreed to replace paragraph 23 with the following text to better explain that the power to grant security is an inherent power embedded within the adjudicator’s decision-making power, thereby avoiding any linkage between the issue of irreversible decisions and the granting of security:

> In granting relief and subject to specific circumstances, the adjudicator may order that the beneficiary of the determination provide security to ensure future payment or reimbursement in case of a different decision by the arbitral tribunal. At the same time, adjudication is often initiated to ensure cash flow. Therefore, any decision to order security in the context of additional monetary payments may defeat the adjudicator’s objective in a determination of ensuring cash flow and thus should be carefully weighed against the broader objective of ensuring timely contract performance.

33. Regarding paragraph 24, it was agreed to replace the second and third sentences of paragraph 24 with the following:

> This process offers an efficient means of addressing alleged non-compliance with the commitment to comply with the adjudicator’s determination. While it aligns with highly expedited arbitration, it reflects particular choices as to time limits under the highly expedited arbitration Model Clause that seem best adapted to the very narrow focus of compliance arbitration.

34. In paragraph 28, it was agreed to move the text after “under paragraph 1” to the end of the first sentence and to delete the sentence starting with “Consequently, …” as it was considered to be ambiguous.

35. It was agreed to add the following new paragraph after paragraph 28:

> While some contracts require a notice of dissatisfaction to prevent an adjudicator’s determination from becoming final, the Model Clause ensures the provisionally binding force of this determination through compliance arbitration, leaving the finality of the determination to statutory time bars.

36. In the last sentence of paragraph 29, it was agreed to replace “in parallel” with the word “concurrently”. It was further agreed to add the following texts after the last sentence:

> It is expected that, if a party is aggrieved in some respect by the implementation of a contract governed by the Model Clause, that party will likely submit the disputed point to adjudication in the first instance, taking advantage of that procedure’s short duration and the adjudicator’s specialized expertise. In such circumstance, it would also be expected that the parties will await the adjudicator’s determination before either party decides whether to initiate an arbitration (under paragraph 1) to revisit some or all of the adjudicated issues.

The Model Clause, however, also recognizes that two far less likely scenarios could arise. In particular (i) the party that does not initiate adjudication may commence arbitration on some or all of the same issues before the adjudication has been completed, or (ii) the aggrieved party may submit its dispute in the first instance directly to arbitration, while the other party (believing the same dispute should be adjudicated) initiates adjudication.

The Model Clause takes the position that if concurrent proceedings arise under either scenario (i) or (ii), the adjudication and the arbitration may both continue. This approach reflects an understanding that any period of overlapping proceedings will likely be short, since adjudication must normally be resolved within 30 days after both parties have briefed their positions, while an arbitration typically lasts much longer. Moreover, the parties may always agree to suspend one or the other of the concurrent proceedings if they believe that is sensible in a particular case.

37. It is agreed that the first sentence of paragraph 30 is replaced by the following text:

If, however, parties wish to avoid any possibility of concurrent proceedings from the outset, they may agree to insert further language in paragraph 5 of the Model Clause to forestall such an occurrence. This optional additional text aims to avoid concurrent proceedings by establishing a specific procedural sequence and interaction between adjudication and arbitration under paragraph 1.

38. Regarding paragraph 31, the addition of “and the legal and practical risks associated with conducting two proceedings on the same issue at the same time.” was agreed to be added after the words “concurrent proceedings”.

39. It was agreed that the text in paragraph 32 was to be replaced by:

However, including such a clause may carry risks, as disputes over procedural matters may emerge, leading to delays and parties may even resort to dilatory tactics. Moreover, as a practical matter, given the brief duration of adjudication proceedings, the risk of duplication in concurrent proceedings is likely to be limited even in cases where the parties do not adopt the optional addition to paragraph 5.

D. Model Clause on Technical Advisors

40. It was agreed that paragraph 1 should read as follows:

In highly specialized, technical or other types of disputes, arbitral tribunals may benefit from support provided on the technical aspects so as to better understand and evaluate the case. Paragraph 1 sets forth how technical expertise may be provided by technical advisors to accompany the arbitral tribunal in the proceedings. The role of technical advisors is different from that performed by experts appointed pursuant to article 29 of the UARs (experts appointed by the arbitral tribunal). A technical advisor assists the arbitral tribunal in the technical understanding of the dispute as the need arises. Whereas experts appointed by the arbitral tribunal prepare written reports which include opinions on issues to be determined by the arbitral tribunal, the role of technical advisors is limited to assisting the arbitral tribunal, primarily by means of explanations, to understand the technical matters that appear in the submissions and evidence received from the parties. For example, a technical advisor may be useful in cases requiring specialized expertise or in cases involving complex calculations based on advanced models and methods. Explanations provided by technical advisors should be based on generally accepted standards in the area of technical expertise.

41. In paragraph 5, it was agreed to replace the first sentence with “The establishment of the terms of reference is essential to safeguard the rights of the

parties to be heard, circumscribing the type of assistance to be provided by the technical advisor and the means and manner in which the technical advisor performs his or her role."

E. Model Clause on Confidentiality

42. It was agreed that the last sentence of paragraph 3 would be revised as:

> In addition, parties could add language to uphold the confidentiality of any information that has been unintentionally or intentionally made public contrary to a confidentiality provision of the relevant applicable law.

IV. UNCITRAL colloquium on electronic awards

43. The colloquium was organized around three main topics, each addressed in a dedicated panel: (i) issues related to electronic awards from the perspectives of arbitral institutions; (ii) the experience of digitalization in national court proceedings; (iii) an overview of UNCITRAL's texts on electronic commerce and electronic communication followed by a panel analysing the interface between UNCITRAL arbitration and e-commerce texts. The event concluded with a round-table discussion on potential options and possible pathways for advancing the work.[9]

A. Panel I: Issues related to electronic awards from the perspective of arbitral institutions[10]

44. The discussions addressed the practice of arbitral institutions of making and delivering electronic awards under institution rules with: (i) express provisions on electronic awards (signing and issuing awards); (ii) provisions only on electronic signature; and (iii) no explicit provisions on electronic awards, but electronic awards having been issued in practice.

45. The panel discussion started with two panellists' endorsement of the findings contained in the Notes by the Secretariat A/CN.9/1190 and A/CN.9/WG.II/WP.238, which highlighted that paper-based awards remained prevalent due to the perception as to the lack of legal certainty of electronic arbitral awards.

46. It was mentioned that some arbitral institutions did not have an explicit reference to electronic awards in their rules and guidance documents, which was reflective of their cautious approach. It was said that this was because mandatory requirements under domestic law on signature and delivery (notification) of awards needed to be respected for awards to be enforced, and those institutions felt responsible to ensure that those requirements were met, particularly in jurisdictions where recognition and enforcement of an award could potentially be sought. It was, however, explained that, even for those institutions, the COVID-19 pandemic had accelerated the need to integrate electronic awards into their practices and the

[9] For additional information about the colloquium, consult the dedicated web page, including background information such as relevant rules of arbitral institutions: https://uncitral.un.org/en/colloquium_electronic_arbitral_awards.

[10] This panel was moderated by Nadine Lederer, Legal Officer, Division for Arbitration and International Civil Procedure Law II, Federal Ministry of Justice, Germany and included Alexander G. Fessas, Secretary General, ICC International Court of Arbitration, Director, International Chamber of Commerce Dispute Resolution Services; Evgeniya Goriatcheva, Senior Legal Counsel and Head of the Permanent Court of Arbitration Vienna Office; Nicolas Lozada Pimiento, Arbitrator and Tribunal Secretary at the Chambers of Commerce of Bogotá, Medellín and Cali, Colombia; Hamed Merah, Chief Executive Officer, Saudi Centre for Commercial Arbitration; Shinji Ogawa, Case Manager of Arbitration & Mediation Department, Japan Commercial Arbitration Association; Eliana Tornese, Registrar of London Court of International Arbitration and Tomas Vaal, Secretary General of the Netherlands Arbitration Institute.

possibility of making and delivering awards electronically had been made available when the parties agreed, though as an exception.

47. It was observed that the frequency of making electronic arbitral awards varied geographically and also depended on the practice established by different institutions. For example, one institution reported that during the period 2023–2024, 56 per cent of the awards in its offices in Latin America were made electronically, while in its Hong Kong office, only 20 per cent were made electronically.

48. For some institutions, it was reported that electronic awards were standard practice facilitated by a digitally friendly legal environment. One institution reported that awards were made electronically by default, for example, by including an image of a scanned wet ink signature in an electronically drafted award as a valid signature, unless the parties explicitly requested otherwise, which only rarely occurred. It was also pointed out that some institutions offered a more secure advanced electronic signature service for parties seeking higher levels of security.

49. Another institution pointed out that, in the jurisdiction where it was located, electronic awards were recognized in its domestic legislation, but that there was no practice of making and enforcing electronic awards as printed out copies were required in the court enforcement phase. It was also stated that a possible co-existence of an electronic award and a paper-based award could pose challenges, such as in calculating time periods for the setting aside of awards.

B. Panel II: The experience of digitalization in national court proceedings[11]

50. It was reported that the digitalization of courts was a growing trend worldwide, driven by advancements in technology and the need for more efficient judicial processes. Experience was shared on how courts in different jurisdictions were increasingly adopting electronic systems for filing, hearings, and the electronic rendering and enforcement of judgments, which was said to have significant implications for the treatment of electronic arbitral awards.

51. It was said that in those jurisdictions that had digitized the process of rendering judgments, electronic judgments would be electronically signed in accordance with the specific applicable rules, which would provide assurances as to their authenticity and seamless enforcement. Despite the trend of digitization, it was acknowledged that the court enforcement of foreign electronic awards was still not commonplace globally and enforcing an electronic award might be difficult in courts of some jurisdictions. For example, it was mentioned that those courts could interpret the signature requirement under domestic law to mean that awards need to be signed in wet ink. Another possible obstacle pointed out was that courts in some jurisdictions did not accept electronic filing for court enforcement proceedings.

52. It was explained that these digitalization processes were often long-term projects, sometimes implemented in different stages and accompanied by challenges. It was pointed out that these challenges included making systems accessible to users who lack the necessary technological means, ensuring secure communication channels between the judiciary and legal professionals, addressing the issue of accepting e-filings from non-accredited lawyers and ensuring that paper-based documents are securely transformed into digital formats.

[11] This panel was moderated by Chloé Terraube, Legal officer, Department of Judicial Cooperation, European and Private International Law, Civil Affairs Department, Ministry of Justice, France and included Gloria Chevesich, Judge, Supreme Court of Justice, Chile; Jiyong Jang, High Court Judge, Suwon High Court, Republic of Korea; Shusuke Kakiuchi, Professor, University of Tokyo, Japan; Ann Medioni, Judge, Attunda District Court, Stockholm, Sweden; Elizabeth Stong, U.S. Bankruptcy Judge, Eastern District of New York, United States of America; and Reinmar Wolff, Assistant Professor, Philipps University of Marburg, Germany.

C. Presentation on an overview of UNCITRAL's texts on electronic commerce and electronic communication and panel III: Interface between UNCITRAL arbitration and e-commerce texts[12]

53. After having heard an introduction to UNCITRAL texts on electronic commerce and electronic communication, the subsequent panel explored the interface between UNCITRAL arbitration and electronic commerce texts.

54. It was explained that established principles such as functional equivalence (which facilitated electronic transactions by giving guidance on how to fulfil existing legal requirements), technological neutrality, and non-discrimination, along with concepts such as data messages, electronic communication, and information systems, were applicable to electronic awards. Electronic awards are data messages whose "in writing" and signature requirements could be satisfied by applying electronic commerce texts (such as the United Nations Convention on the Use of Electronic Communications in International Contracts and the UNCITRAL Model Law on Electronic Commerce). However, it was noted that since these principles and concepts were originally drafted with particular regard to the contractual context, their application to electronic awards as a binding legal title might raise challenges. It was stressed that building on existing concepts and principles would prevent legal fragmentation, which was desirable as UNCITRAL texts needed to maintain coherence and consistency across legal frameworks.

55. What was identified as lacking was a legal instrument explicitly providing for the recognition for electronic awards, particularly if the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) was not viewed as sufficiently broad to cover them. Given these practical challenges, it was suggested that clarifying texts could be developed to address these gaps, with a view to promoting specifically the use of electronic awards. It was acknowledged that transitional issues could arise; for example, while the system for obtaining enforcement orders may be electronic, paper-based awards could still be required for enforcement purposes.

56. Another potential problem highlighted was the timing of delivery for electronic awards and the recognized reliable methods of delivery under the UNCITRAL Model Law on International Commercial Arbitration (Model Law on Arbitration). It was suggested that Article 20 of the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services could serve as a potential solution to this issue.

57. It was further emphasized that arbitration texts providing for electronic awards should be made future-proof, considering developments such as self-executing systems using smart contracts, the use of artificial intelligence, and the evolution of notification methods. It was noted that, in the near future, notifications were likely to shift from a traditional model of receipt of a document to one where access is granted to a communication platform. Additionally, employing blockchain technology to store and manage electronic awards could enhance their security and integrity, providing a reliable method for verification and execution while ensuring that awards remain immutable and transparent. Also, the transition from static to dynamic documents was said to become increasingly important, which could also impact awards. For instance, awards could be readily updated to reflect changes in interest rates. However, it was cautioned that, despite these advancements, careful consideration should be given to due process and fairness. For example, the dispute resolution that was self-executed on a system could later be found null and void by a court and that the use of advanced technology would not provide a self-contained solution.

58. An example of a specific jurisdiction was provided to illustrate how courts were not necessarily prepared to accommodate foreign electronic awards even in jurisdictions where UNCITRAL texts on electronic commerce had been enacted. It

[12] By José Angelo Estrella Faria, Principal Legal Officer, UNCITRAL secretariat.

was explained that courts had transitioned to fully digitizing their proceedings and were prepared to enforce electronic judgments within their system but that it was not certain that the same would apply to foreign electronic awards. This was highlighted by a report on a regional project that established a new platform designed to connect courts, arbitration institutions, and execution systems. It was explained that this platform enabled courts to directly acquire arbitration documents and awards from arbitral institutions. However, it was pointed out that this was likely only possible for courts and institutions in the same jurisdiction. As such, it was reiterated that the legal recognition of pure electronic arbitral awards potentially remained a challenge, as could be seen by the fact that no cases had been reported thus far.

59. Furthermore, a jurisdictional survey was presented to illustrate the legislative disparities regarding electronic signatures across different jurisdictions It was noted that there was a significant degree of variance in how electronic signatures were treated when applied to arbitral awards. This ranged from a jurisdiction that was electronic-friendly, where the law recognized both an image of the wet ink signature and a digital signature, to a jurisdiction that rejected both, accepting only the wet-ink signature. One jurisdiction considered an image of a wet-ink signature invalid, accepting only a qualified digital signature issued by a trusted service provider. Yet in another jurisdiction, the law specified that for domestic awards only a wet-ink signature was valid, but left the status of foreign awards ambiguous.

D. Round-table discussion – exploring desirable approaches[13]

60. At the outset, it was mentioned that the New York Convention did not explicitly address electronic awards, leading to uncertainties and preventing the widespread use of electronic awards. It was suggested that the goal of the Working Group should be to establish near-term certainty regarding the recognition and enforcement of electronic awards in a majority of Contracting States to the New York Convention. To achieve that goal, it was mentioned that there were four options: (i) to revise the New York Convention to provide for the obligation of Contracting States to accept electronic awards: (ii) to make a recommendation on the interpretation of article IV of the Convention, clarifying that the Convention did oblige Contracting States to accept electronic awards; (iii) to develop a protocol complementing the New York Convention so that Contracting States could take on the additional obligation to accept electronic awards; and/or (iv) amend the Model Law on Arbitration. The general view was that option (i) was not practically feasible, particularly due to the time it would take to agree on any amendment to the New York Convention, and it was acknowledged that other issues would likely arise during such a long-term project.

61. Regarding option (ii), it was mentioned that although UNCITRAL had issued in 2006 a recommendation regarding the interpretation of article II(2) and article VII(1) of the New York Convention, the underlying circumstances were not applicable to the issue on electronic awards. Concerns were raised that the recommendation might not be accepted and followed by courts and interpreting the New York Convention in a way that Contracting States were bound to enforce electronic awards would be problematic, while there were also views that acknowledged the value of providing guidance possibly in other ways. Developing guidelines was also considered as a possibility.

62. Views diverged significantly on option (iii), which proposed the development of a public international law obligation on States to ensure certainty regarding

[13] This panel was moderated by Mr. Andrés Jana, Chair of Working Group II at the 80th session and included Gaston Kenfack, Magistrate in Cameroon, the Director of Legislation, Ministry of Justice, Cameroon; Lars Markert, Partner, Nishimura & Asahi (International Dispute Resolution Group), Japan; Pietro Ortolani, Professor of Digital Conflict Resolution, Radboud University, the Kingdom of the Netherlands; and Marike Paulsson, Professor, Strategic Advisor, Bahrain Economic Development Board.

electronic awards. On one side, it was noted that this option could be achieved in the near term compared to amending the New York Convention and would contribute to providing the desired certainty. It was asserted that, as a matter of treaty interpretation under the Vienna Convention on the Law of Treaties or customary international law, the development of a protocol could not affect the interpretation of the New York Convention, and that a pro-enforcement divergence would be a feature in line with Article VII(1) of the Convention. It was stressed that, in relation to Article IV of the New York Convention, the core value of a protocol would be to enable States to commit to removing the requirement to supply a paper-based award during the enforcement phase. Furthermore, preparing a multilateral binding instrument was viewed as a welcome move for the African region, where arbitration and the enforcement of awards in 17 States were governed by the regime of the OHADA – Organization for the Harmonization of Business Law in Africa. Conversely, some expressed the view that electronic arbitral awards were already encompassed within the meaning of "arbitral awards" in the New York Convention and cautioned against creating fragmentation. It was underscored that the New York Convention was designed to adapt to modern trade practices, intended to allow for flexible interpretation while recognizing that customary trading practices would evolve over time. Additionally, concerns were raised about the length of time it would take for Contracting States to the New York Convention to become parties to the proposed protocol, which was deemed unreasonably long.

63. As for option (iv), a view was expressed that the issue of electronic signatures should be addressed in the Model Law on Arbitration, noting that article 7 provided for requirements for arbitration agreements formed electronically but that no requirements were set forth for awards made electronically. It was mentioned, however, that updating the Model Law on Arbitration and seeking States to enact the updates to the Model Law on Arbitration was not necessarily a quick process. Another view expressed was that updating the Model Law could lead to an interpretation of the current text of the Model Law as precluding the recognition of electronic awards in model law jurisdictions.

V. Consideration of the topic of recognition and enforcement of electronic awards

64. The Notes by the Secretariat (A/CN.9/WG.II/WP.238 and A/CN.9/1190) and the colloquium served as the basis for the Working Group deliberations on the recognition and enforcement of electronic arbitral awards.

65. At the outset, it was observed that the discussion on enabling reliance on electronic awards was closely tied to the broader context of digitalization development and that it would be difficult to mandate States to recognize and enforce electronic awards if they lacked the necessary digital infrastructure.

66. The Working Group agreed and recognized that party autonomy was a fundamental principle enshrined in UNCITRAL arbitration texts, however, there were views that party autonomy had a minimal impact on removing the obstacles faced by electronic awards, as the primary issue arose at the enforcement stage, which was ultimately a matter for courts. It was noted that, in certain jurisdictions, parties' agreement would have no weight in determining the validity of electronic awards. In response, a view was that party autonomy could solve certain aspects of the problem faced by electronic awards. For instance, as a starting point, arbitral rules could enhance the reliance on such awards. If parties agreed to the use of electronic awards, it might provide a stronger foundation for recognizing and relying on them within the arbitral process, though challenges at the enforcement stage would remain a concern.

67. It was stated that the issue needed to be clearly defined before the situation could be remedied. Key questions were whether: (i) courts were rejecting electronic awards on the grounds that they were not covered by the New York Convention; (ii) courts were generally unprepared, from a legal and technical standpoint, to accept and

enforce electronic awards; (iii) a restrictive legislation prescribing wet-ink signatures and paper-based awards was a source of the problem; (iv) there were other reasons contributing to the reluctance to adopt electronic awards. It was said that addressing these questions would provide a clearer understanding of the barriers to the acceptance and enforcement of electronic awards and guide the development of effective solutions, which led to a proposal to request the secretariat to conduct a survey to gather and compile information, providing insight into the exact nature of the challenges. However, it was pointed out that the findings from the DRDE stocktaking project highlighted a notable concern: parties tended to avoid relying on foreign electronic awards due to fear of complications at the enforcement stage. This perceived risk already represented a lack of legal certainty and a significant barrier to the broader acceptance of electronic awards. Hence, it was mentioned that electronic awards rarely reached the courts for enforcement and seeking information on how courts would treat electronic awards in different jurisdictions would not yield useful results.

68. Regarding the form that the work should take, support was expressed for working on an amendment to the Model Law on Arbitration or preparing a guidance text for arbitral institutions and courts. It was cautioned that any exercise to amend or supplement the New York Convention would send a negative signal that the Convention did not accommodate a liberal interpretation enabling the enforcement of electronic awards and risked undermining the role it played in international arbitration. Another view was that, as the form would be guided by the issues identified and the solutions to be provided, none of the legislative options under consideration, including the preparation of a protocol to the New York Convention, should be ruled out without considering the specifics. In light of the difference of views, a suggestion was made to proceed incrementally to work on soft law texts first and later contemplate the need to prepare a hard law, where the assessment could be made as to whether soft law texts were sufficient to solve the issues (for a discussion regarding the different options at the colloquium, see paras. 60–63 above).

69. It was said that the definition of an “electronic award” was unclear because of the phrase “made of”. It was also suggested that defining the term might not be necessary, as “electronic award” could be seen as not aligning with to UNCITRAL terminology. Therefore, it was recommended to speak of an “award in electronic form” rather than using the phrase “electronic award”. The usefulness of the term “electronic” was also questioned, but it was said that it helped distinguish between awards issued in paper form and those created digitally. In this context, it was explained that an award issued as a PDF document could qualify as an original award in electronic form, but that a PDF created by scanning a paper arbitral award was usually an electronic copy of a paper-based award, rather than an original award made in electronic form. It was, however, also suggested that the scanned paper-based award could be considered the original award, if the will of the arbitral tribunal was to issue an award as such. It was explained that the veracity of the award was key, rather than the form. It was said that what mattered was whether the document, regardless of its form, could be trusted as a true and accurate representation of the arbitral decision. With regard to awards in electronic form, this required the use of reliable methods to fulfil functional equivalence requirements. Additionally, it was emphasised that an award should not be denied recognition and enforcement on the sole ground that it was in electronic form.

VI. Way forward

70. After discussion, the Working Group requested the Secretariat to compile information received from member and observer States on the following two questions:

(1) What is the status of foreign arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

(2) What is the status of domestic arbitral awards (a) in electronic form or (b) with digital signature for enforcement by courts? How would they be submitted to and treated by courts, including relevant practice and case law?

71. On the way forward, it was mentioned that the Colloquium and the discussions of the Working Group provided sufficient guidance on the note to be prepared by the Secretariat for the upcoming Working Group session. It was reiterated that, to enable members and observers to reflect on the inputs at the Colloquium, none of the legislative options discussed should be ruled out at this stage. It was also mentioned that a text to be prepared by the Secretariat should refrain from recommending best practices.

72. After discussion, the Secretariat was requested to prepare a note reflecting: (i) the interaction between UNCITRAL instruments on electronic commerce and international arbitration instruments, including on the possible scope of arbitral awards in electronic form; (ii) a recommendation text which could clarify that arbitral awards in electronic form were covered by the New York Convention; (iii) whether and how the Model Law on Arbitration could be supplemented or interpreted; as well as (iv) possible guidance for relevant stakeholders, such as parties, arbitrators, arbitral institutions and possibly suggesting contractual language for parties, i.e. arbitration rules or model clauses. This request was made without prejudice to any option or form, which was to be decided later by the Working Group.