

**A Review of the UNCITRAL Model Law on E-Commerce and its Impact on the
Contemporary World**

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ABSTRACT

United Nations Commission on International Trade Law, in accordance with its objective of improving and promoting international trade law through the practice of harmonization and unification, sought to adopt the UNCITRAL Model Law on Electronic Commerce. In order to avoid complications in international trade by way of divergence or inadequacies due to the absence of a uniform standard or internationally accepted guidelines in relation to laws concerning electronic commerce.

The objective of this paper is to try and gain a brief understanding of the significance of UNCITRAL Model Law on Electronic Commerce on the contemporary world and its contribution on bringing about uniformity and harmony. This shall be done by firstly understanding the meaning of E-commerce and then the author shall try to understand the reasons that led to the creation of the UNCITRAL Model Law on Electronic Commerce and finally look into a few noteworthy Articles prescribed in it, in order to understand the impact of the UNCITRAL Model Law on the current global economy and legal system.

INTRODUCTION

Now let us first understand what electronic commerce is; Electronic commerce is defined under the UNICITRAL as a simple exchange of data messages where it is related to electronic data interchange or commercial activities or in relation to the internet, whereby the exchange of data is less complex. But the European Commission defines the concept of E-commerce as activities that involve the electronic exchange of data related to business and management. Therefore, through a deeper interpretation of the definition of the

European Commission, we see that it can include goods and services when taken in the context of E-commerce.

The working group report, which was submitted by the Electronic Commerce coordination Institute in May 1998, stated e-commerce to be any activity that was commercial and processed, transferred, and stored through the internet or intranet. Therefore, after having a look at all the definitions, we can clearly say that electronic commerce can be defined as commercial activities conducted by an individual, business, and government institutions in the sectors of management, business, production by way of open or closed networks.

The UNICITRAL model law on electronic commerce was brought about or created in order to address the sudden shift the world was going through in the means of communication and commerce by way of networks and computers. Hence, there was an urgent need for national laws to be developed in order to keep up with this rapid growth and shift that was occurring, and the Model law was created with the intent of providing a framework for these national legislators to work with, so that they would be of internationally acceptable standards, in its final form.

The main objective of the Model Law on Electronic Commerce is to provide a framework and to promote all sorts of commerce conducted through electronic means by resolving all legal complications that may arise in this regard as well. The three main principles utilised by the UNICITRAL model law on electronic commerce are non-discrimination principle, whereby equal treatment of electronic information and paper-based data should be the mandate, the principle of technological neutrality (states the importance of adopting provisions that are neutral towards the technology that will be utilised) and the functional equivalence principle (provides the requirements that need to be met for electronic information to have the same treatment as that of paper-based information)

ANALYSIS/OBSERVATION

The United Nations took a fundamental step of adopting the UNCITRAL Model Law on Electronic Commerce in 1996. The major reason for its adoption was due to the shift in communications that took place between parties by way of computerized and other electronic means in relation to business. The UNCITRAL

Model Law was meant to provide a framework in relation to E-commerce from which member countries are meant to build their laws upon, which are in coherence with the internationally accepted standard. In this paper, Article 5, Article 6, Article 7, Article 8, and Article 11 of chapter 2 of the UNCITRAL Model Law shall be looked into.

Article 5¹, provides that the data texts and communication methods should not be discriminated against, meaning it should be seen as equally important as paper-based documents or messages. Whereby, it is to be applied notwithstanding any statutory requirements for an 'original' or a "writing". This article is meant to provide a general application and is not limited to any sort of evidence or any other criteria mentioned under chapter two. But it is to be noted that this article does not override any of the requirements that need to be fulfilled under articles 6, 7, 8, 9, and 10. So in its basic sense, article 5 states that it does not matter what form the information will take; it will all be given equal importance without any discrimination.

Article 6² states that if a recipient of electronic information or an electronic document in "writing" is valid as long as it can be accessed and used by the recipient. Whereby the information provided in data form should be usable in relation to the subsequent reference.

Article 6 is nothing but the minimum standard required to be met by an electronic document or information (that may result from statute, regulation, or judge-made law), which is in "writing" to be held valid. Article 6, 7, and 8 is to be considered as a set and must be read together in order to be understood in its full effect.

¹ UNCITRAL Model Law on Electronic Commerce Article 5 - Legal recognition of data messages - Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message; Article 5 bis - Incorporation by reference (as adopted by the Commission at its thirty-first session, in June 1998) - Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.

² UNCITRAL Model Law on Electronic Commerce Article 6 – Writing -(1) Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference. (2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

Article 7³ provides the requirements needed to be met in order to be legally valid, whereby it states that as long as the “signature” can be used to verify the signatory and can display approval of the said information contained in the data message. Another criterion is that the data message should be appropriate for the purpose for which it was sent. So basically, the article states that a digital signature, if it abides by the criteria set under this article, can be used to display approval of a document's contents or even to verify a document. So, we can clearly see that the purpose of article 7 is to provide electronic signatures the same value and recognition as that of a paper-based signature. But article 7 does not state the circumstances for which the parties are connected by that specific communication agreement, and neither does state anything about their previous contractual relationship in relation to E-commerce. So, this gap in this law is meant to be filled by way of national laws. As I stated above, the model law is just meant to give a framework or a guideline in how to go about it.

Article 8⁴ basically states that an electronic document can be stated to be “original” if the authenticity of the document can be shown to the other party, and also, the document should possess valid and reliable assurance for the same. The conditions for the validity of these assurances of the document depend on the circumstances

³ UNCITRAL Model Law on Electronic Commerce Article 7 - Signature - (1) Where the law requires a signature of a person, that requirement is met in relation to a data message if: 6 (a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement. (2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

⁴ UNCITRAL Model Law on Electronic Commerce Article 8 – Originality- (1) Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if: (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented. (2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form. (3) For the purposes of subparagraph (a) of paragraph (1): (a) 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 which arises in the normal course of communication, storage and display; and (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

for which the document is utilised. It is also to be noted that Article 8 provides for the issue of integrity in relation to the information displayed in the document.

Article 8 states a few legal requirements in order to meet the standards set under it, and they are:

- There should exist a valid and reliable assurance attesting to the integrity of the information from the time when it was generated for the first time in its final form, as a data message or otherwise;
- The authorized recipient for whom it is meant should be able to access the information within the document.

Therefore, we can see not only article 8 helps shed some light on the concept of “originality” under model law but also provides clarification for the notion of “writing” as well in relation to evidence.

Article 11⁵ now talks about agreements in relation to the sale and exchange of goods, whereby it states that an offer and acceptance that is communicated via electronic messages or data messages would be held valid unless and until it was agreed otherwise by the parties involved. Therefore, it provides that agreements or legal contracts can also be formed by way of data messages as well. This can be considered the most interesting and important article among all, as there are millions of contracts being made every day online in our current market, and article 11 provides certainty on the legal validity of that contract.

Therefore, just from analysing the above-mentioned articles, it can be seen that the UNCITRAL Model Law on electronic commerce not only provides the crucial elements of E-contracts that can be easily adopted by all member countries but also facilitates trade and electronic commerce by providing a standardized structure.

CONCLUSION

⁵ UNCITRAL Model Law on Electronic Commerce Article 11. Formation and validity of contracts (1) In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

The UNCITRAL Model Law on electronic commerce, as we have seen so far, helps facilitate electronic commerce by providing guidelines for which member states or national legislators are free to fill in the requirement they feel are perfectly suiting for their socio-economic condition while adhering to the internationally set standards for the same.

The UNCITRAL Model Law also helps in removing or at least reducing a lot of legal complications and hurdles in the field of E-commerce and helps provide a sense of legal predictability as well. Due to the fact, its globally recognized and to an extent even accepted worldwide, it also helps in setting a uniform set of laws at a global scale in the context of electronic commerce. Therefore, encouraging further cooperation among nations and creating a certain level of interdependency. Hence in my opinion this move by the United Nations in order to adopt the UNCITRAL Model Law on electronic commerce, was truly a well thought move, that helped provide the fundamental shift in law of e-commerce for the better.

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