



# The United Nations Convention on the Use of Electronic Communications in International Contracts: policy goals

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# Why a new international Convention?

## Facilitate the use of electronic communications across borders

Eliminate formal requirements in treaties drafted before diffusion of electronic means, thus allowing trade partners to know in advance whether electronic contracts will be upheld abroad.



## Promote further uniformity.

Despite the success of the Model Laws, enactments have seen variations on the original texts, affecting predictability.



## Update and complement the provisions of the Model Laws.

New rules have emerged in recent years whose uniform adoption is desirable.



## Provide core legislation for countries not having yet adopted any.

Several countries have no or incomplete legislation on electronic commerce.

# Facilitate the use of e-communications across borders

- Facilitate the use of electronic communications across borders, in particular:
  - in connection with treaties concluded before the wide diffusion of electronic means; and
  - with respect to cross-border recognition of electronic signatures.
- Examples of treaties:
  - New York Convention:
    - Art. II(2), “agreement in writing”;
    - Art. IV, “original or duly certified copy of the arbitral agreement [and of the arbitral award]”.
  - CISG:
    - Written form requirement;
    - No Oral Modification clause;
    - Formation of contract.

Both treaties have a large number of State parties: the procedure for their amendment is cumbersome.

# Facilitate cross-border recognition of electronic signatures

- Facilitates cross-border recognition of electronic signatures based on the “substantive equivalence” standards:
  - method used is as reliable as appropriate for the purpose for which the electronic communication was generated or communicated in the light of all the circumstances, including any relevant agreement;
- Non-repudiation of effective electronic signature:
  - method used is proven in fact to have fulfilled the functions of identifying the party and proving the party’s intention in respect of the information contained in the message, by itself or together with further evidence.

# Increase uniformity in e-commerce legislation

- The UNCITRAL Model Law on Electronic Commerce, 1996 and the UNCITRAL Model Law on Electronic Signatures, 2001 received a large number of enactments.
  - However, there are variations in their enactment due to their “soft law” nature.
- Goal of the Electronic Communications Convention: to reinforce the level of uniformity in the implementation and application of uniform texts on e-commerce.
- The Convention establishes a common legislative core for cross-border transactions.
  - Particularly important for mutual recognition of electronic signatures.

# Update UNCITRAL model laws

- Update certain provisions of the UNCITRAL model laws:
  - Location of the parties (art. 6 ECC):
    - Location of equipment, supporting technology;
    - Place from where the information system is accessed;
    - Use of country-specific domain name or email address;are not necessarily relevant for the determination of the party's place of business.
  - Party's "intention" in signing (art. 9(3)(a) ECC) better captures the various functions of signatures than the notion of "approval" (contained in art. 7(1)(a) MLEC).

# Update UNCITRAL model laws

- Update certain provisions of the UNCITRAL model laws:
  - Time and place of dispatch and receipt (art. 10 ECC):
    - Dispatch occurs when the communication leaves the information system of the originator
      - (amends art. 15(1) MLEC);
    - Receipt occurs when the communication may be retrieved and, for non-designated addresses, the addressee is aware that a communication was sent
      - (amends art. 15(2) MLEC).

# Update UNCITRAL model laws

- Introduce new provisions:
  - Invitations to make offers (art. 11 ECC):
    - A proposal not addressed to specific parties is considered an invitation to make offers
      - Gives flexibility to on-line traders in controlling stocks (see also art. 14(2) CISG: an invitation to the public is an invitation to make offers);
  - Use of automated message systems (art. 12 ECC):
    - The contract is valid and enforceable also when no natural person reviewed or intervened in the actions carried out by the automated message system.



# Update UNCITRAL model laws

Input error (art. 14 ECC)

- An input error may be withdrawn if
  - The input error is made by a natural person dealing with an automated message system;
  - The automated message system does not provide an opportunity to correct the error;
  - The party in error notifies the other party as soon as possible of the error;
  - The party in error has not received any benefit from the transaction.

## Provide core e-commerce legislation

- Certain States lack e-commerce legislation.
  - These are mostly developing countries, especially in Africa and the Pacific.
- Other jurisdictions have partial and insufficient provisions.
- See UNCTAD Information Economy Report 2015, Chapter V.
- The Convention may provide core e-commerce legislation to those countries, especially when enacted both domestically and internationally.

## Relevance for paperless trade

- The ECC creates the legal framework to promote B2B exchanges.
  - It ensures that fundamental principles of e-commerce law are recognised.
  - It helps in harmonising domestic legislation.
- Against that framework, it will be easier to establish “legal interoperability” also for B2G and G2G transactions.
- For instance, it sets the conditions for recognition of foreign electronic signatures
  - This also fulfils legal requirements contained in FTAs.

## Status of adoption of the Convention.

- Convention is useful if widely adopted and used
  - Both as a model law than as a treaty.
- As a treaty:
  - 18 signatories (including China, Republic of Korea)
  - 6 State parties (Congo, Dominican Republic, Honduras, Montenegro, Russia, Singapore)
  - Pursuing accession: Australia, Sri Lanka.
- As a model law, enacted in more than 15 States:
  - Ghana, Guatemala, Qatar, Rwanda, San Marino, Trinidad and Tobago, Viet Nam, Zambia...
- Regional endorsements and de facto adoption: EAC, ASEAN, ESCAP, etc.
- It is becoming the benchmark for the second generation of e-commerce laws.