

# THE ROLE OF UNCITRAL IN REGULATING E-CONTRACT IN THE EMERGING E-COMMERCE

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## ABSTRACT

ICT and the Internet is indeed a dynamic nature that are constantly changing and moving at a fast pace. In this environment, e-commerce has become a dominant factor in commercial transactions and business arrangements. This is a multimedia environment encompassing borderless, intangible, faceless and metaphysical world that defies traditional concepts of space and time. It converges computing, broadcasting and telecommunication with interactive capabilities. Along with the cross-border communication and global economy, is the arising of legal issue such as e-contract, that is, contracts entered into by parties via the digital networks. This paper is a study of the role of legislative implementation, in particular, the United Nations Commission on International Trade Law (UNCITRAL) in regulating e-contract in the emerging e-commerce. The realm of e-contract specifies the contracting parties dealing in a cyberspace situation. The circumstances surrounding on-line agreement (or e-contract) vary vastly to the paper-based contract function, which sometimes become a barrier to e-commerce transactions. The UNCITRAL is set up to harmonise legal contracting issues arising from contracts entered via electronics medium. Thus, this study is essential in this unchained globalisation environment. The relation between contract, e-contract, e-commerce and e-commerce law are defined before specifying legal issues pertaining to e-commerce which regulates e-contract. After a brief definition and introduction of the UNCITRAL, the main highlights will be on the role of the UNCITRAL in order to see whether it is bridging or creating the gaps between the laws of e-commerce between states and its effects on e-contract.

## KEYWORDS

UNCITRAL, e-contract law, e-commerce law, business law, technology law

## 1. INTRODUCTION

This paper focuses the role of UNCITRAL in relation to the enforceability of e-contract as a viable medium of e-commerce transactions. This issue needs to be addressed in order for the e-commerce to proliferate. The objectives of this paper are to study how the UNCITRAL deals with the existing authentication methods of electronic transactions, and what are the international initiatives that have taken place for the purpose of establishing a reliable environment for e-transactions, and whether the initiatives move towards a common legal platform on electronic authentication.

Thus, as the title connotes, the study is limited to the UNCITRAL, E-Commerce Model Law, the Proposed Electronic Commerce Directive, the United Nations Convention on the Use of Electronic Communications in International Contracts (Resolution adopted by the General Assembly on December 9, 2005) and the UNCITRAL Model Law on Electronic Signatures.

An introduction to contract, e-contract, e-commerce and e-commerce law would be the best way to start this paper. These four elements are the main focus in the set up of the United Nations Commission on

International Trade Law (UNCITRAL). Legally, contract is an agreement that can be enforced in court. It is formed by two or more parties, each of whom agrees to perform or refrain from performing some act now or in the future. Electronic Contract (e-contract) is a contract entered into in cyberspace, via the digital networks, such as the Internet, and is evidenced only by computer-to-computer communication rather than physical documents. Electronic Commerce (e-commerce) can be defined as a modern business methodology to search, retrieve, buy and sell information, products and services and addresses the needs of organizations, merchants and consumers, through the digital networks. In future, this myriad of networks will make up the "Information Superhighway" as mentioned by Kalakota & Whinston, (1997).

E-commerce law is the law that governs commercial transactions conducted via electronic mechanism. This includes e-contract. Electronic transactions are conceptually very similar to traditional (paper based) commercial transactions. Practically however, the differences from the traditional commercial transactions raise some new technical and legal challenges in the formation of e-contract. Parag & Singh (2001) remarked that these challenges include satisfying traditional legal requirements for reduction of agreements to signed documents, applying legal rules of evidence to computer based information and interpreting, adapting and complying with many other existing legal standards in the context of electronic transactions.

## **2. LEGAL ISSUES PERTAINING TO E-COMMERCE WHICH REGULATES E-CONTRACT**

Zaid Hamzah (2005) emphasized that, the nature of the borderless and global activity created legal risks in e-commerce. The Internet is a global of networks. Internet connectivity itself crosses political boundaries with no hindrances so long as the networks in two different jurisdictions are connected. Business methods that are effective and in compliance with the law and regulations in one enterprise's home market may not work in markets that operate in a totally different legal environment and might even expose the enterprises to unexpected legal liability.

From a legal perspective, one of the most significant issues in e-commerce is how to create enforceable digital contracts for the sale of goods and services or how to ensure that a digital transaction will be at least as enforceable and valid as a traditional paper-based transaction. In every business environment, whether transactions are executed in person (face to face) or over a distance, conjunction with applicable legal rules, the parties, rights and responsibilities are being questioned. In other words, the enforceability of the transactions is the main issue, which is necessary to validate e-contract transactions. Although e-commerce is expanding rapidly, the development of a legal corresponding and control mechanism has lagged behind. To create a viable e-contract equivalent to traditional contract (paper-based), it is necessary to develop legal mechanism or supportable legal analogs for the electronics commerce infrastructure. E-contract transactions in the e-commerce environment presents a number of legal technical difficulties such as:-

- The buyer has no real opportunity to negotiate the terms of the contract.
- The actual location of the parties which is necessary for the ascertainment of the applicable law and jurisdictions could not be justified.
- Automated programmes through the electronic medium may, at some point deviate from the express intentions of their owners.

E-commerce was born of electronic data interchange (EDI) and came of age with the popular use of the Internet (Gregory, 2003). As more contracts are transacted electronically, legal practitioners began to question the status of complying with the traditional rules, the legality of paper-less contract, originality, signature and electronic evidence.

## **3. UNCITRAL**

### **3.1 What is UNCITRAL?**

UNCITRAL stands for the United Nations Commission on International Trade Law. UNCITRAL was created in 1966 (December 17) by the General Assembly Resolution 2205 (XXI), and is primarily charged with oversight of international commercial law. UNCITRAL is an organization based in Vienna, Austria which develops model laws and standard documents meant to facilitate international commercial transactions (Winn, J. K. & Pullen, M. R. 1999). Among its undertakings, UNCITRAL has produced the Vienna Convention on Contracts for the International Sale of Goods, the UNCITRAL Model Law on International Credit Transfers, the UNCITRAL Model Law on International Commercial Arbitration, and the UNCITRAL

Arbitration Rules. (Hill, R. & Walden, I., 1996). (A list of its projects may be found at UNCITRAL <<http://www.uncitral.org>>).

### **3.2 What is the role of UNCITRAL in regulating e-contract?**

As a start, the basic role of UNCITRAL is to review the legal response of Member States to electronic communications and urged them to adapt their legislative regimes to the new practices. Understandably, its aim is to remove barriers that traditional legal rules tended to pose to the electronic practices of contract (Gregory, 2003), thus harmonizing e-contract law (Roos Niza, 2005). In particular, UNCITRAL urged attention to questions of electronic evidence. Its basic principle is non-discrimination on electronic communications (including data messages). UNCITRAL stressed the fact that data messages may not be denied legal effect solely because they are electronic. (Art. 8 (1) of the United Nations Resolution adopted by the General Assembly on December 9, 2005 and Art. 5 of the E-Commerce Model Law). There may be other reasons to deny them legal effect but not just on the ground of the 'medium of communication'. It then sets out the issue of electronic "functional equivalents" to traditional legal rules requiring paper, so that data messages may have the same legal effect. For example, a legal requirement that information be in writing may be satisfied if the electronic record is accessible so as to be usable for subsequent reference (Gregory, 2003). Referring to Winn, J. K. & Pullen, M. R. (1999), the global scope of electronic commerce makes UNCITRAL an obvious and logical forum for developing a consensus regarding what are the appropriate reforms that should be in the existing contract law to facilitate the continued expansion of electronic contracting. This includes the harmonizing of different legal environment that have different jurisdictions which might impose unexpected legal liability to the parties to e-contract.

Recalling its Resolution 2205 (XXI) of December 17, 1966, UNCITRAL is set up with "a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade, by adopting uniform rules to remove obstacles to the use of electronic communications in international contracts". Principally, the basic roles of UNCITRAL in regards of e-contract can be simplified in 3. They are:-

- 1) To facilitate cross border international commercial transactions,
- 2) To develop consensus on the appropriate contract law reforms and
- 3) To create harmony among different legal contracting issues (by removing barriers that the traditional legal rules tended to pose to the electronic practices of contract).

All three are to be achieved without discrimination on the laws and rules of other States. The first UNCITRAL project to address electronic contracting directly was the Model Law on Electronic Commerce (E-Commerce Model Law), which took a rigorously media-neutral approach.

## **4. E-COMMERCE MODEL LAW**

The E-Commerce Model Law was completed by UNCITRAL in June 1996 and was approved by the United Nations General Assembly in December 1996, by non-vote resolution (Richard Field, 1996). The E-Commerce Model Law has been enacted in Singapore and the Republic of Korea, and has influenced legislation in many jurisdictions, including the United States, the state of Illinois, and throughout the drafting of the Electronic Transactions Act (ETA). A brief review of the essential provisions in connection to e-contract is:

- ❑ Art. 1 of the E-Commerce Model Law applies only to data messages used in commercial transactions, and does not override consumer protection laws.
- ❑ Art. 2(a) defines data message as includes "information generated, sent, received or stored" in electronic form, including EDI messages, emails or faxes.
- ❑ The heart of the E-Commerce Model Law is found in art. 5, which provides that "information shall not be denied legal effect, validity or enforceability solely on the grounds that it is [in the form of a data message]."
- ❑ A data message may meet a legal requirement of writing, provided that the data message is in a format that may be accessed for subsequent reference. A data message meets a legal requirement of a signature if a method is used to identify a person and indicates the person's approval of the contents of the message, and that method is as reliable as is appropriate under the circumstances. A data message may also meet a legal requirement that an original document be "presented or retained." Data messages shall not be excluded from evidence in a legal proceeding solely on the grounds that it is electronic or "it is not

in its original form." Record retention requirements may be met by retention of data messages provided that the information contained may be accessed for subsequent reference, can be "demonstrated to represent accurately the information" that was stored, and if possible, the provenance of the data message can be demonstrated.

As a whole, E-Commerce Model Law supports the main aims and purpose of UNCITRAL in harmonizing e-contract and given e-contract the legal recognition that it craves for. As regards to digital signature, instead of an update to the E-Commerce Model Law, UNCITRAL decided to create a separate instrument to provide a linkage between technical reliability and the legal effectiveness that may be expected from a given electronic signature. This is to facilitate the use of electronic signatures and provide equal treatment to users of paper-based documentation and users of computer based information thereby fostering economy and efficiency in international trade. The primary objectives of functional equivalence and media neutrality as in the E-Commerce Model Law were preserved. However, it was widely felt that focusing on the functions not on any specific model might make it easier to develop a fully neutral rule media at a later stage. Singapore on the other hand, had made the paradigm shift by enacting in 1998 (before the Signatures Model Law of 2001) a comprehensive Electronic Transactions Act (ETA) which, *inter alia*, combined the best of international model law and provided for a public key infrastructure and certification authorities. The current UNCITRAL project addressing electronic contracting is the Draft Uniform Rules on Electronic Signatures (Uniform Rules), which is more technical and regulatory in its approach.

Meanwhile, the role of UNCITRAL in regulating e-contract in the emerging e-commerce has been intercepted by a proposed EC Directive, which focus on the European Union (EU). There are a few overlapping functions that raised question on the reason for the need of a different legislative regarding the same issues of e-contract between the EU and other countries. A brief overview of the proposed EC Directive would be wise.

## **5. PROPOSED ELECTRONIC COMMERCE DIRECTIVE**

In November 1998, the Commission proposed a draft directive designed to create a legal framework for electronic commerce within the European Union in order to facilitate cross border electronic commerce transactions. The draft EC Directive incorporates the fundamental principles of the internal market, country of origin, and mutual recognition.

The Commission is seeking to ensure that existing EU and national legislation is effectively enforced. The draft EC Directive would accomplish this through application of the principle of mutual recognition (Draft EC Directive, art. 3) and the development of codes of conduct at the EU level (art. 16). Furthermore, it aims to increase cross border co-operation between national regulatory authorities in the Member States by setting up an effective cross border dispute resolution system (arts. 17-19). The draft EC Directive, however, would not override the 1980 Rome Convention on Applicable Law for Contractual Obligations or the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements (art. 1). These conventions, together with the new Brussels Regulation and the proposed Rome Regulation have the effect of undermining the country of origin and mutual recognition principles.

The draft EC Directive would govern much more than electronic contracting if it is enacted. It would regulate the establishment of electronic commerce Internet service providers (ISPs), (arts. 4 & 5), electronic commercial communications, (arts. 6 & 7) and the liability of intermediaries (arts. 12-15). In fact, art. 5 highlights that, the draft directive would not only clarify the law, but would also make the operation of electronic marketplaces more transparent to prospective customers by requiring merchants doing business online to reveal the merchant's identity, physical location, email address, VAT number, and, where applicable, registration in a trade register and license to engage in a regulated trade. These articles provide an exemption from liability for ISPs if they act as mere conduits for the transmission of information, authorize temporary storage of information through systems "caching" limits the liability of the ISP for content posted by others if the ISP is not aware of the illegal activity, and states that ISPs are under no general obligation to monitor third party content placed on their sites. The draft EC Directive also attempts to reduce the current legal uncertainty surrounding the issue of establishment by providing a definition of the state of establishment in line with principles established by the EU Treaty and the case law of the European Court of Justice (ECJ). The right of establishment is the right to set up agencies, branches, or subsidiaries by nationals of any Member State in the territory of any other Member State and is guaranteed by Article 43 of the Treaty establishing the European Community as amended by the Treaty of Amsterdam.

One important principle that the draft EC Directive would establish is that Member States may not impose any requirement of prior authorization on Internet electronic commerce activities (art. 4, ¶ 1). The purpose of this Article is to reinforce the principle of freedom to provide services by facilitating access to the

supply of services on the Internet. It constitutes a "right to a site," which can be exercised by any natural or legal person wishing to provide electronic commerce services over the Internet. This provision prevents Member States from maintaining and introducing any legislation requiring prior authorization or licensing before Internet sites can be set up for electronic commerce services. It does not override existing requirements for professional qualifications or authorizations by a professional body for the provision of services, however, which are not exclusively aimed at electronic commerce services (art 4, ¶ 2).

## **6. UNCITRAL VS. PROPOSED ELECTRONIC COMMERCE DIRECTIVE?**

With respect to UNCITRAL and the proposed EC Directive, three remarks could be made. Firstly, if the main reason would be only to promote or remove legal barriers, e-contract can do well by adopting the UNCITRAL. Creating new directive is not necessary because if the role and function of the directive were the same as the UNCITRAL, it would be superfluous (for EU to have a different directive than other countries in regards of the same e-contract). On the other hand, if the role and function were totally different, it would create confusion. Secondly, it would be better to have a single body of law that applies to e-contract transactions in all mediums; paper based or electronic environment. Thirdly, if there are new issues need to be covered relating to e-contracts, adding new provisions in the UNCITRAL could be a better vehicle. Moreover, Mereu (2000) pointed out that, the European Union legal framework has only set forth the "minimum requirements" which allows the expansion of e-commerce. It does not, however, regulate all possible aspects of e-commerce and basic "old" principles of contract and international laws, as well as regulatory legislation, still apply to e-commerce transactions.

On balance, a better solution seems to be not to exclude new or unsettled issues and let the controversies be resolved under other laws. Supplementing could work better than substituting the existing laws. To date, UNCITRAL is well embarked in preparing legislative measures in facing the issues in electronic contracts. A set back seems to be from the internal application, specifically, will these measures accepted by the Member States and can it assure a common legal platform? The best that UNCITRAL has produced so far, in regards of e-contract, would be the United Nations Convention on the Use of Electronic Communications in International Contracts Resolution adopted by the General Assembly on December 9, 2005. Recalling the said Convention, the legislative measures seem to cover most of the problems created by uncertainties as to the legal value of e-contracts that constitute an obstacle to international trade law. Inevitably, the adoption of the uniform rules to remove obstacles to the use of electronic communications in international contracts would enhance legal certainty and commercial predictability for international contracts, thus may help States gain access to modern trade routes.

### **6.1 United Nations Convention on the Use of Electronic Communications in International Contracts. (Resolution adopted by the General Assembly on December 9, 2005).**

This Convention, first and foremost, is a comprehensive package to date, bearing in mind the nature of the Internet as an open network and the globalisation of the economy, in regards of e-contracts in the e-commerce atmosphere. Art. 16 (1) Chapter IV, widen the sphere of application and acceptance of the Convention by opening the Convention for signature by all States at the United Nations Headquarters in New York from January 16, 2006 to January 16, 2008. Following this, art. 16 (2) allows for ratification, acceptance or approval by the signatory States, and art. 16 (3) open the Convention for accession by all States that are not signatory States as from the date it is open for signature. All three sub-articles proved to be strong evidence of non-discriminative principle and allocation for freedom of choice. An integral part of this Convention, which its importance is not to be denied, is the Annexure. By virtue of the Annexure, the States Parties to this Convention :-

- ❖ Affirm that equality and mutual benefit in international trade is an important element in promoting friendly relations among States,
- ❖ Note that the increased use of e-communications improves efficiency in commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, and promotes trade and economic development both domestically and internationally,
- ❖ Consider the problems created by uncertainty to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade law,

- ❖ Convince that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts, thus may help States gain access to modern trade routes,
- ❖ Being of the opinion that, uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking into account the principles of technological neutrality and functional equivalences, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law, and
- ❖ Desire a common solution to remove obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems.

This Convention consists of four Chapters and 25 Articles, all are enacted with intention to satisfy the various needs of States such as expressed in the Annex of the Convention.

- ❑ Chapter I : Sphere of application. (Articles 1 – 3)
- ❑ Chapter II : General provisions. (Articles 4 – 7)
- ❑ Chapter III : Use of electronic communications in international contracts. (Articles 8 – 14)
- ❑ Chapter IV : Final provisions. (Articles 15 – 25)

Art. 6 plays essential part in expressing that parties to e-contracts should stated the place of business [art. 6 (1)]. Failure to do so, then the place of business will be the place which has the closest relationship to the relevant contract [art. 6 (2)]. Location of the parties or the technology equipment does not create a presumption that its place of business is located in that country [art. 6 (4) & (5) respectively]. As a whole, much discussion is focused on the underlying supportive structure for contracting and how a predictable and efficient means of contracting worldwide might be achieved. The aims is to provide services to the international business community on which they can choose to base the substance of their contracts and the resolution of disputes arising thereunder. Article 5 (2) on the other hand, play it safe by stating that “questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law”. A good example would be the question of digital signature which is dealt with by the UNCITRAL Model Law on Electronic Signatures.

## **6.2 UNCITRAL Model Law on Electronic Signatures.**

Although this Model Law does not provide a clear definition of a digital signature, this authentication method is included in art. 6 (3), in addition, under art. 6 (1) & (2), when a document is digitally signed, it is legally valid as a hand-written signed document. Moreover, under art. 3, new technological developments are more than welcome, as it proclaims equal treatment of signature technologies and in relation to art. 5, the importance of market driven initiatives is recognised. Art. 8-11 set strict liabilities in establishing a reliable and fair global authentication system. Furthermore, the Model Law provides that legal efficacy of foreign certificates and e-signatures in the Member States depends on their level of reliability, which is determined either by international standards or by the contractual agreement between the parties (Spyrelli, 2002).

Spyrelli (2002) further argued that this Model Law is using the same approach that is adopted by the EU in art. 3.1, which is to provide time-resistant regulations by setting requirements for e-authentication methods, where it does not specify only one technology but leaves room for future technologies to develop and comply with extra requirements as well. The advantage is that, this Model Law provide legal neutrality by recognising most of the authentication technologies but also defines a more innovative legal environment by ratifying the freedom of choice regarding authentication systems. One aspect which would be wise to remember, however, is that, there still exist a wide divergence of international policies which could limit the uniform recognition and the operations of e-signatures and e-records with disastrous impacts on the emerging e-commerce markets. Moreover, provisions focus too narrowly on signatures as such and not on formal requirements as a whole, could create inconsistencies.

Another crucial point is that, although digital signatures are legally recognised to be equivalent to handwritten signatures and seals, their binding power depends on the relevant provisions of each Member States’s law. This adds obstacles in e-commerce instead of removing them, as it obliges businesses to follow a specific model of e-authentication, a practice against the principle of fair and free competition, freedom of choice and it confines technology industry. The recognition on e-signatures appears to be on the promoting of the implementation of digital signatures and not the backbone of the e-authentication aspect.

### 6.3 The diminishing role of State?

The crossing of numerous legal systems whose rules are expressed in a multitude of languages brought about a high degree of legal uncertainty. Methods employed by business community to reduce these is the unification of laws as suggested by the UNCITRAL. Amisshah (2006) in the opinion that this could be in the terms of, *inter alia* :

- 1) Use of standard contracts
- 2) Reference to uniform principles and rules
- 3) Choice of law of an acceptable state
- 4) Choice of jurisdiction of an acceptable state

However, there are a number of ways in which this paradigm is broken down in the sphere of international commerce, on grounds that it diminishes their role of a sovereign state:-

- ❑ The concept of law and legal order/model is still that of the sovereign state. Accepting other rules for the purpose of unification could tarnish this sovereignty especially those with different cultures, customs and backgrounds.
- ❑ Not all international business communities are well served by having to employ lawyers in each country in which they operate to provide specialist advice on similar areas of law.
- ❑ The result of working through international institutions to achieve substantive uniformity in a particular area of commercial law could make the individual state law becomes less important.
- ❑ The development and formulation of uniform laws takes time; for it to come into force, to be applicable, and to go through a process of ratification and accession by States. E-contract lays greater emphasis on the contract as an expression of co-operation between the parties. Both the UNIDROIT Contract Principles and EU Contract Principles display these modern features, which inevitably, adopted the concept of *lex mercatoria*. *Lex mercatoria* is an autonomous set of rules and practices accepted by the international business community as regulating their transactions. This has been actively promoted mainly in continental Europe.
- ❑ Greater trust between parties that are in less position to know of or find out about each other, than in a traditional transaction. Application of the 'loyalty' principle is necessary, meaning that a party cannot take a completely singular view of its own interests to the exclusion of others, having in some circumstances, taking into account of those of the other party.

## 7. CONCLUDING REMARKS

*"Can clear, predictable international law be made from the divergent rules of dozens of domestic legal systems, rules built with local idioms for which there are no equivalent terms in other languages? The answer, unhappily, is no, but that is not the end of the story"* (Honnold, 1992).

This is the best way to describe the role of UNCITRAL so far. Answering to the question of has UNCITRAL succeeded in its aims by fulfilling its role? To a certain extent, yes, albeit the nature of e-commerce and cross-border transactions. There are still few corners of e-contract that has not successfully tackled. For instance, contracts concluded for personal, family or household purposes [art. 2 (1)(a)], transactions on a regulated exchange [art. 2 (1)(b)(i)], foreign exchange transactions [art. 2 (1)(b)(ii)], inter-bank payment systems, inter-bank payment agreements, clearance and settlements systems relating to securities or other financial assets or instruments [art. 2 (1)(b)(iii)], or other securities transactions held with an intermediary [art. 2 (1)(b)(iv)], are excluded from this Convention. Further, the Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer to claim delivery of goods or payment of money art. 2 (2). For arts. 2 (1)(b) – 2 (2), it is interesting to note that the Convention could let the matters be dealt with by other related legislations [Article 5 (2)] such as banking law, securities law, negotiable instruments law, etc. (if that is the case). However, for art. 2 (1)(a), contracts regarding family (and such) are dealt with under contract law in the traditional contract and still is. No clear and definite grounds are given by the Convention for such exclusion. Yet, this is not the end of the story. More to come as time goes by.

E-commerce, the ability to do business anywhere and anytime, is synonymous with the growing magnitude of transactions conducted and contracts sealed online. The basic commonality between these interactions in the virtual world and those in the physical realm is that they need to be legally valid and thus,

enforceable. Without the necessary legal and policy assurances of protection, potential users will forever choose to remain in the potential category. The obvious impact to government will be the lack of support for E-Government initiatives, which depend on such assurances of propriety and equivalency with paper based transactions. To address these requirements, existing laws should be amended to support the unique requirements of online transactions.

However, hasty legislation created to avoid losing a competitive advantage in the global electronic marketplace may not support the development of electronic commerce at all. Yet, poorly thought out legislation may, on the other hand, create unnecessary inefficiencies in contracting practices if fail to correctly anticipate future developments in electronic commerce. In the face of the torrent of innovation taking place in the commercial practices through the application of new technologies and the limited resources available to legislatures to understand and respond to that innovation, it is indeed, difficult to correctly anticipate future developments in this area.

An integral element of e-commerce is that it is a developing evolution that could creep up with new types of business transactions in a totally new capacity and dimension. A general enabling of electronic transactions may not be appropriate for some types of contract, or some categories of parties or some kinds of goods, entered into at different times from different parts of the world. It seems that, the role of UNCITRAL is not only in harmonizing the private laws but also in specifying them and tend to them individually. UNCITRAL would have to be a step ahead of the globalisation process or lagged behind. Harmonizing the applicable rules internationally while assuring the rules of other States proved to be more challenging than the UNCITRAL expected.

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