

Article

Framework of the United Nations Commission on International Trade Law: Bridging E-Commerce and Online Dispute Resolution

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Abstract: E-commerce is a crucial tool for businesses, enabling faster transactions, reducing hardships, and aiding global trade. Absence of a uniform legal framework creates challenges for international electronic transactions, demanding an internationally accepted framework. The United Nations General Assembly adopted the Convention on the Use of Electronic Communications in International Contracts, based on the United Nations Commission on International Trade Law (UNCITRAL) Model Laws on Electronic Commerce and Electronic Signatures. This instrument standardizes legal principles governing electronic communications in global trade, promoting legal certainty, fostering economic growth, and ensuring the smooth integration of e-commerce into the global trade system. Current research explores the significance of E-commerce, its legal challenges, and the effects of this international legal framework in aiding seamless electronic transactions on an international level.

Keywords: E-Commerce; legal framework; trade; UNCITRAL; model law

1. Introduction

The world has changed rapidly after the emergence of the internet. The internet is spreading worldwide in all areas of life (Steven 1997). To keep pace in a competitive world, electronic commerce has created a wide range of space in the commerce area. It is accelerating business transactions globally. People now deal with their business through electronic commerce to avoid difficulties which arise from traditional systems. Electronic commerce is indispensable for the development of the trade sectors. For the growth of electronic communication in international contracts, a uniformed and accepted international rule in electronic commerce is needed. Recognizing the importance of electronic communication, the United Nations General Assembly adopted a convention on the use of electronic communications in international contracts based upon United Nations Commission on International Trade Law's Model laws on electronic commerce and signatures.¹ The main reason for establishing this Convention was to enhance and promote trade and economic development and to mitigate the problem of legal uncertainty to international trade.²

This study highlights the legal framework of the United Nations Commission on International Trade Law for E-commerce. It examines the emancipation of the parties and the required validity and recognition. The article focuses on the context of developing countries and online dispute resolution (ODR) which is a better alternative to the typical alternative dispute resolution (ADR) system. It saves time and money and makes the dispute resolution process easily accessible.

2. Methods

This study uses doctrinal analysis of international legal frameworks governing electronic commerce. Primary sources such as the United Nations Convention on the Use of Electronic Communications in International Contracts and UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures were consulted. Legal principles that facilitate cross-border e-commerce were also explored. As secondary source, academic journals, legal commentaries, and reports from international trade organizations were used. The article also incorporates a policy analysis to examine the harmonization of e-commerce laws.

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¹ United Nations Convention on the Use of Electronic Communications in International Contracts. Available online: https://treaties.un.org/doc/source/RecentTexts/X-18_english.pdf (accessed on 23 November 2024).

² Ibid.

3. Electronic Commerce & its Importance

3.1 Meaning

E-commerce stands for electronic commerce. Commercial activities performed through electronic communication constitute e-commerce. "E-commerce is the production, distribution, marketing, sales or delivery of goods and services by electronic means."³ It is the transaction of selling or purchasing goods or services whether between public or private organizations, businesses, households, individuals or governments conducted over computer network but the payment and delivery of goods need not to be made online always, it can be done through offline also.⁴ Buyer and seller can complete their commercial shopping directly without any middleman. E-commerce has expanded the canvas of commercial transactions. It reduces the time and cost in transacting business online (Gupta, 2014).

3.2 Importance

Businesses have been influenced significantly by electronic media. Technological development, competition and globalization are the reasons for expanding electronic commerce (Kshetri,2001). Porter mentions four types of influential factors in competition namely new entrants, alternative products, suppliers and customers (Porter, 1996). It is always easy and open to access in an online business to see products and observe the review of the products. Communication via electronic media is more convenient and cheaper than the paper-based or physical communication system in domestic businesses (Grace,2004). If any company is willing to buy a product of another company of any other state, that willing buyer can observe the product and make a contract for sale of goods via electronic commerce rather than going to that country to conclude the contract (Shaw, 2012). Electronic commerce facilitates conducting and developing world trade communications. People communicate and buy products depending on the familiarity and trust (Gefen, 2000). Familiarity is the pre-condition for trust and an increased degree of familiarity will enhance the customer to inquire and purchase products from the vendor's website. Because of Amazon.com's familiarity, a customer can trust it depending on its prior transactions and reactions of the other prior customer (Isabiry, 2016). More loyalty from both the vendors and purchasers is needed to encourage the trade communication system. The payment system is now being handled through UNCITRAL Model Law on International Credit Transfers (ICT) 1992. It unifies the law of credit transfers by electronic means. Previously personal or corporate cheque had to be sent to the recipient .It was expensive to collect such instruments which has been mitigated by inter-bank computer to computer message system .This Model Law on international credit transfer is not mandatory law, the rights and obligations of the parties may be varied to a limited extent according to their agreement related to the credit transfer not to debit transfer.⁵ By the electronic means of credit transfer in electronic commerce sector is more convenient in comparison to the traditional bank draft system of transferring the funds.

4. UNCITRAL Model Law on E-Commerce

UNCITRAL's Model Law on Electronic Commerce was adopted for developing the harmonious international economic relations and facilitating the use of electronic commerce (Habibzadeh,2014).⁶ This Model Law extends to the commercial activities "arising from all relationships of a commercial nature, whether contractual or not" not to personal or household matters.⁷ Under this law, national courts has been given the power to guide in case of the interpretation. There is provision that if any matter governed but not settled under this law , it has to be settled in conformity with the general principles of law upon which it is based.⁸ This Model Law adopts "functional equivalent approach" by analyzing the purposes and functions of the traditional paper-based requirement to determine the way how these purposes or functions can be fulfilled by using electronic commerce techniques.⁹ This Model law attempts to validate and recognize contracts made by electronic communication establishing rules, set default rules for contract formation by electronic means, give the data messages as the evidential value and accept the electronic signatures (Breslin, 2001).

5. Party Autonomy in E-Commerce Model Law

The parties to a contract have power to vary many of the provisions of the Model Law according to their convenience in generating, receiving, sending, processing data messages and forming the contract. This power of the parties is limited as they are bound to recognize the legality and validity of the contract on the grounds that it is formed depending on the data messages.¹⁰ By this limitation this Model Law ensures the certainty and legality of the contract made data processes and electronic communication (Senni, 2005). If such liberty is given to the parties to choose its validity, then the purpose of this Law cannot be obtained as there

³ Work Program on Electronic Commerce. WT/L/274, para. 1.3, September 30, 1998. World Trade Organization (WTO), Available online: https://www.wto.org/english/tratop_e/ecom_e/ecom_work_programme_e.htm. (accessed on 29 November 2024).

⁴ OECD Guide to Measuring the Information Society. 2011. Organization for Economic Co-operation and Development (OECD). Available online:https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/07/oecd-guide-to-measuring-the-information-society-2011_g1g139a7/9789264113541-en.pdf. (accessed on 29 November 2024).

⁵ Model Law on International Credit Transfers, United Nations Commission on International Trade Law (UNCITRAL). Available online: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-creditrans.pdf>. (accessed on 30 November 2024).

⁶ Model Law on E-commerce, United Nations Commission on International Trade Law (UNCITRAL). Available online: <https://www.un-ilibrary.org/content/books/9789210450720s007-c001/read> (accessed on 7 December 2024).

⁷ Art. 1, Model Law on E-commerce.

⁸ Art. 3, Model Law on E-commerce.

⁹ Guide to Enactment of the Model Law on Electronic Commerce, United Nations Commission on International Trade Law (UNCITRAL), Available online:<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-elecsig-e.pdf> (accessed on 7 December 2024).

¹⁰ Arts. 4 & 5, UNCITRAL Model Law (n 131).

would be uncertainty as to the legality of the contract by electronic commerce. The parties may vary the provisions of communication of data messages by bilateral or multilateral agreements or by system rules agreed by the parties. It excludes the power of parties to rights and obligations arising as between the parties so as not to suggest any implication as to the rights and obligations of third parties.¹¹

6. Validity and Recognition

There is mandatory provision regarding the validity of the contract made by data messages. It shall be recognized legally and its validity and enforceability shall not be denied even if the information of the contract is merely referred in the data messages.¹² This is the indiscriminatory approach of the Model Law as it does not allow any disparity of treatment between data messages and paper-based system of communication. It does not override any requirements relating to writing, signature, and original form of data messages, evidential value of data messages and retention of data messages.¹³ Evidence in the form of data messages carries more weight under this Model Law. It is considered equivalent to the paper-based evidence if it is the best evidence and data messages; generated, stored or communicated come from the reliable source.¹⁴ Transport documents and carriage of goods by way of data messages are also valid under this Model Law and the provisions of article 16 and 17 of the Model Law are applicable to maritime, road, rail and air transport.¹⁵

7. Effects of Consolidating Rules of E-Commerce on Developing Countries

Developing countries have many advantages in business to business (B2B) e-commerce and the United Nations Convention on the Use of Electronic Communications in International Contracts deals with B2B electronic commerce. B2C, C2C or C2B e-commerce is not within the scope of the Convention as it does not create any rights and obligations with respect to the consumer contracts (Polanski 2006). This Convention is not confined to the sale only, as it covers transactions of services and information also (Humphrey 2003). Traditional marketing transactions are costly than the e-commerce transactions so developing countries can easily access the global market. According to UNCTAD:

“Developing countries, using existing local commodity exchanges and commodity export associations as a foundation, can use B2B online trading as a means of transforming existing commodity marketing systems to great advantages-UNCTAD 2001: XXII” (Humphrey 2003).

Buyers and sellers of developing countries can eliminate the intermediaries and strengthen their position in international trade by online marketing channels. Unfair trading practices, reduced ability of product selection and greater access of developed countries to the markets of developing countries can mitigate the benefits of the developing countries in online trading markets (Molla 2006). Developed countries can easily access the market of developing countries but it cannot be done vice versa as there is always supervision and dominance of the developed countries over the developing countries. To make a strong place in electronic commercial area, one country must have IT skill and techniques and strong infrastructure.

8. Online Dispute Resolution

Online dispute resolution is a key factor in e-commerce (Cortés 2010). In e-commerce transactions, if the feedback of the transactions does not meet the expectations, a dispute may arise. To resolve such disputes, online dispute resolution plays an important role. For example, a company purchases some products from another company's online shopping market through electronic media and after receiving the products the buyer finds some products defective then the buyer company can raise objections electronically and it may be resolved by online dispute resolution. ODR is a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology."¹⁶ ODR can be used in e-commerce to redress consumer anger, enhance trust in e-market and promote the growth of e-commerce (Cortés 2011). Being cost effective than the traditional ADR which many entities or individuals cannot afford, lack of the geographical boundaries in electronic commerce and the use of the internet unlike traditional ADR that uses the localization to determine jurisdiction, this ODR mechanism is preferred (Perritt 2000). Unlike ADR systems, disputes resolved by ODR are cheap and save time. The ODR system as a "fourth party in less complex disputes may replace the human third party by helping the parties identify common interest and mutually acceptable outcomes." The fourth party will enhance the capability of the other three parties by managing the flow of information, employing the network, creating trust, identifying interests, ascertaining facts, designing solutions, monitoring agreement, and building on experience. ODR is dependent upon the software and ODR mechanism has been extended to the off-line disputes which were supposed to be resolved by the intervention of the human mediator (Katsh 2004).

8.1 Online Negotiation and Mediation

In online negotiation process there is no third party like ADR negotiation process. The parties can negotiate without the presence of any online third party through online process. Like ADR mediation, online mediation facilitates the parties to reach a solution, remaining the mediator as neutral. If any individual or entity wants to resolve their online dispute through online mediation,

¹¹ Para. 45, Guide to the Model Law (n 134).

¹² Art 5, UNCITRAL Model Law (n 131).

¹³ Para 46, Guide to the Model Law (n 134).

¹⁴ Art 9, UNCITRAL Model law (131).

¹⁵ Para 112, Guide to the Model Law (n 134).

¹⁶ Art. 24, Report on the Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law, United Nations General Assembly Sixth Committee.

they need to follow some procedures that are not exactly same with the traditional ADR mediation. In the provider's website there is a confidential form to be filled by the complainant. The mediator then contacts the respondent to participate in the mediation process and communicates the parties by private session or joint session online to help them to reach an agreement (Manevy 2001). The parties can mediate their dispute by computer networks remaining in their place saving money and time. However, in online mediation the mediator cannot observe the gestures, postures or facial expressions of the parties which are important to be observed. In the West, that is low-context culture evasiveness of the parties can be expressed by keeping them silent. In eastern culture, that is high-context culture, the parties remain silent because of fear of retaliation and the non-verbal signals bear more significant meanings in the high-context eastern culture than the low-context western culture (Choudhury 2018). This meaningful matter is absent in online mediation procedure.

8.2 Online Arbitration

Arbitration is like adjudication and for online arbitration criteria, adjudicative due process is necessary. Judge Henry J. Friendly finds eleven requirements of adjudicate procedures including (i) an unbiased decision maker, (ii) cause of action for the dispute, (iii) giving opportunity to the other party, (iv) giving opportunity to present evidence and witnesses, (v) right to know opposing evidence, (vi) right to cross examine opposing witnesses, (vii) justifying the decision by the record, (viii) right to representation of counsel, (ix) preparing a record of evidence by the decision maker, (x) giving reasons supporting the decision made by the decision maker and (xi) an implied requirement that is public access to the proceedings. These eleven elements are also applicable in online arbitration.

8.3 ODR System under the UNCITRAL

There is no convention or model law for the online dispute resolution adopted by UNCITRAL. UNCITRAL has adopted the Technical Notes on Online Dispute Resolution at its forty-ninth session in 2016 to resolve the disputes arising from the online cross border transactions. These technical notes are non-binding reflecting the principles of "impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency".¹⁷ The parties are free to choose whether their dispute is to be resolved through ODR and if they agree then explicit consent of the parties must be made.¹⁸ Technical Notes are applicable in three different kinds of online dispute resolution process such as; (i) negotiation, (ii) facilitated settlement meaning mediation and (iii) a final stage that means arbitration. If negotiation procedure is failed then the administrator appoints a neutral third party to reach an agreement.¹⁹ The provisions of Technical Notes are not applicable in national e-commerce transactions. These apply only in cross-border e-commerce transactions, service contracts and sales contracts as e-commerce includes the service contracts in it.²⁰ Technical Notes are concerned about the confidentiality of the online resolution process like the off-line resolution methods.²¹ However these notes do not set forth how the internet area can be safe since hacking is also advancing. Hacking can hamper the principle of confidentiality of the online dispute resolution process.

9. Conclusions

Harmonization of laws and practices is necessary internationally. Inconsistency among different jurisdictions impedes the development and advancement of free trade. UNCITRAL's aims to mitigate the disparity between national laws to improve trade. For effective international trade, UNCITRAL has uniformed and harmonized the national laws regarding international trade so that parties can apply a single uniformed law avoiding the diversity in their legal system. Experts from different countries are not presumed to be informed and aware of the legal systems and commercial laws. Hence, UNCITRAL's approach to harmonize and unify the trade laws reduces this regulatory problem as it has made the trade laws uniformed. UNCITRAL made uniformed laws are flexible as these offer choice clauses for the parties. Developing countries are interested in applying the laws. The unification process of UNCITRAL is an effective solution instead of more than one conflicting national laws for international transactions. This paper demonstrates that UNCITRAL has contributed a lot in the growth of cross border trade and world economy by unifying and harmonizing the trade laws and these consolidated laws are mostly party favored so that every country can show its willingness to get involved in the upgrading process of global commercial sector. Like all studies, this study has its own limitations. It does not cover the prospects of international trade. Similarly, international transport of goods has not been mentioned and described in this paper. Another limitation is that it has not described the Model Law on secured transactions.

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¹⁷ Art. 4, UNGA Sixth Committee Report (n 148)

¹⁸ Sec. II, Art. 17, UNGA Sixth Committee Report (n 148)

¹⁹ Sec. III, Art. 18, UNGA Sixth Committee Report (n 148)

²⁰ Sec. IV, Art. 22 & 23, UNGA Sixth Committee Report (n 148)

²¹ Sec. XII, Art. 53, UNGA Sixth Committee Report (n 148)

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