

A CRITICAL ANALYSIS OF THE UNCITRAL MODEL LAW ON E-COMMERCE

Author- Saniya Mariam Thomas

Introduction

Increased internet transactions have prompted legislative vigilance. The only reason for this is the pervasiveness of electronic transactions. The offer click may happen in Argentina, and the acceptance click could happen in Mongolia. There are no boundaries or constraints. A unified and streamlined mechanism for governing these transactions is required. The United Nations Commission on International Trade Law (UNCITRAL) took the lead in pressing governments to establish appropriate legislation¹.

Finally, UNCITRAL established model legislation on electronic commerce, which provides a set of approved international principles with the primary goal of lowering legal barriers and increasing legal predictability for electronic trade. The United Nations Commission on International Trade Law (UNCITRAL) is the United Nations Commission on International Trade Law. It will improve international commerce accuracy by providing suitable treatment or infrastructure for paper and computer-based information and increasing electronic communication.

Background

The military establishments preceded the advent of electronic commerce in such a broad sense. One is reminded of the Cold War's arms race. Following the Soviet Union's launch of Sputnik, US President Eisenhower founded the ARPA agency. The latter was interested in establishing a nationwide communications network. In 1983, ARPANET was the first such protocol.

NSFNET was established in the 1990s to connect universities across North America. Similarly, the EU Net linked Europe's scientific facilities. As a result, the Internet gained popularity in these countries. Today, many websites are exploding, and electronic commerce is spreading like wildfire.

History

¹ RYDER RODNEY D, GUIDE TO CYBER LAWS 13 (Wadhwa and Company Nagpur, 2nd ed., 2005).

The way organizations communicate has changed dramatically due to globalization and the rapid development of digitalization. It can be seen as a second means of electronic transmission that stores knowledge. The United Nations Commission on International Trade Law agreed to develop a new model of law to improve communication by making it faster and removing barriers. It gives many nations a set of approved worldwide rules to evaluate and modernize their practice and law in business relationships involving computerized modes of communication for trade.

The commission evaluated the report of the secretary-17th general's session in 1984² on several legal concerns relating to electronic commerce, such as the requirement of written authentication, general conditions, computer records, bills of lading liability, and so on. The growing issue in E-commerce for international trade law was suggested in this paper. In 1985³, the security comprehended the legal concerns that developed due to the requirement that documents be signed or be in the form of a paper by utilizing the computer in International Trade. After the rejection of that in electronic form, some rays of development emerged. In 1988, the commission proposed that the legal factors required and applicable for creating an International Electronic Contract be examined. The United Nations Commission endorsed the UNCITRAL Model of E-Commerce law on International Trade Law in 1996⁴.

The UNCITRAL Model Laws for E-commerce

The Model Law is split into two sections. *Part I* addresses general e-commerce provisions⁵, including the three principles of non-discrimination, technological neutrality, and functional equivalency. MLEC addresses, among other things, the formulation and validity of e-contracts, data message attribution, reception acknowledgment, and assessing receipt of data messages, as well as establishing uniformity in e-commerce legislation and the legal

² Report by Secretary-General on Legal issues related to Legal Value of Computer Records etc., A/CN.9/ 254.

³ Resolution 40/71, ¶ 5(b), 11th Dec 1985.

⁴ UNCITRAL Report, "Preliminary study of legal issues related to the formation of contracts by electronic means" (A/CN.9/333), 1990; UNCITRAL Report, "Electronic Data Interchange" (A/CN.9/350), 1991; Background Paper, "Possible issues to be included in the programme of future work on the legal aspects of EDI", A/CN.9/WG.IV/WP.53, 1992

⁵ KRISHNA IYER, CYBER LAWS INTELLECTUAL PROPERTY AND E-COMMERCE SECURITY 286 (Dominant Publishers and Distributors 11th ed., 2010)

relevance of data sent by electronic means⁶. **Part II** of the Model Law addresses specific e-commerce provisions in various jurisdictions.

A Model Law does not have the same legislative authority as a convention. It means that states can enact their domestic legislation by the Model Law. The Model Law has been accepted by over 132 states thus far⁷. In this vein, India established the *Information Technology Act* in 2000.

Key Provisions

General Provisions

Article 1 discusses the domain of application for information in the form of data messages in the context of commercial activity. Six definitions are provided in **Article 2** of the Law, the most essential "Data message." Electronic, optical, or similar technologies generate, send, receive, or store information. After considering future technology developments, this definition was given, so a similar term means was included. This broad definition encompasses the concept of a record and its revocation and amendment.

Article 3 of the Model Laws deals with the interpretational instruments that demand a standard of international origin and uniformity in applying general principles of law. **Article 4** mentions that by agreement of the parties, there might be variance in the communication of data messages.

Application of legal requirements to data messages

Article 5 upholds the principle of non-discrimination by saying that information delivered in an electronic medium⁸, such as data transmissions, cannot be denied legal validity and effect. Information obtained through a reference has been given legal legitimacy, so the scope of this law's applicability has been dramatically expanded. In the framework of international law, this is extremely important.

The nations demanded that the documents be written, and the handwritten signature was the only form of authenticity that was accepted. Both of the initial hurdles have been removed by

⁶ BIMAL PATEL, INTERNATIONAL CONTRACTS I: JURISDICTIONAL ISSUES AND GLOBAL COMMERCIAL AND INVESTMENT GOVERNANCE 87 (3rd ed.,2001)

⁷UNITED NATIONS: COMMISSION ON INTERNATIONAL TRADE LAW, UNICTRAL MODEL LAW ON ELECTRONIC COMMERCE 9(1st ed.,1999)

⁸ Added by UNCITRAL at its thirty-first session, in June 1998

the Model's provisions in **Articles 6 and 7**⁹. Accessibility of data communications does not necessitate the existence of a written document, and acceptance of a digital signature signifies agreement to the contract's entire structure. This clause is applicable in all circumstances, including a relevant agreement.

Article 8 defines the concept of originality, stating that data messages can meet the legal obligation of presenting and retaining information in its original form if the integrity and presentability of data messages are ensured. The ability to display information where needed is referred to as present ability. **Article 9** states that the admissibility of data messages in a court of law cannot be denied only because the information is in the form of a data message. As a result, data transmissions now have evidentiary significance. Storing of information in the form of data messages satisfies the criterion of information retention, subject to the accessibility, correctness, and originality of format, and the identity of origin mentioned in **Article 10**.

Communication of data messages

The legal validity and enforceability of an offer and acceptance of an offer transmitted in the form of data messages cannot be denied only because they are in the form of data messages as mentioned in **Article 11**. As a result, data communications allowed for the construction of a legally binding contract. Under **Article 12**, the legal legitimacy has also been accorded to acknowledgment in the form of receipt of data communications. Under **Article 13**, if the data transmission is sent by the originator or a person authorized by him, it is credited to him. The parties might also agree ahead of time on the receipt of the data communication and its acknowledgment, according to **Article 14**¹⁰. According to **Article 15**¹¹, the site of dispatch is the place of business¹², and the time is when the acceptance¹³ enters the addressee's system¹⁴.

Specific provisions

The carrying of goods and transport documentation are discussed in **Articles 16 & 17**. They ensure the capacity to transfer products using data messages while still meeting the necessity

⁹ The Indian Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

¹⁰ Ibid

¹¹ Manilal v. Venkatachalapathy AIR 1943 Mad 471 (E) ; American Pipe Co. v. The State of U.P AIR 1983 Cal.186; Pratap Chandra v. Kali Charan, AIR 1952 Cal 32; Kamiseti Subbiah v. Katha Venkataswamy AIR 1903 Mad 27

¹² Tinn v. Hoffman & Co., 29 L.T. 271, 274, 278; Cowan v. O'Connor, 20 Q.B.D 640 (Telegraph)

¹³ Entores Ltd. v. Miles Far East Corporation, (1955) 2 QB 327.

¹⁴ Bhagwandas v. Girdhari Lal & Co. (1966) 1 SCR 656.

for transport documentation. It is necessary to achieve the goal of increased international trade.

Implementation & Judicial Interpretations across the globe

The Model Law of Internet Commerce was created to make international trade more convenient through electronic communication. Its goal was to persuade national legislatures to embrace a set of internationally accepted e-commerce regulations. As a result, the Model Law is supported by a guide that gives background and explanations to assist governments in drafting the appropriate legal requirements. Different states passed laws based on the Model Law's ideas. As a result, the courts have applied the Model Law to the provisions of their domestic legislation.

The Singapore High Court heard the case of *Chwee Kin Keong and others*¹⁵, and in this example, there was a unilateral mistake since the wrong price for a product was quoted on the seller's website. When the purchasers place an order, the seller's server automatically issued a confirmation email. All of the contract's elements were formed; however, a blunder prevented unanimity ad idem. The court held that human errors, system problems, and transmission errors could void a contract based on the Singapore Electronic Transactions Act based on Model Laws.

The Supreme Court of Justice of Columbia heard the case of Martha Helena Pilonieta v Gabriel Humberto Pulido Casas. In this case, due to evidence thresholds, the court determined that an electronic message sent by a spouse was irrelevant.

The Texas Court of Appeal in *Khoury v. Tomlinson*¹⁶ ruled that the facts of this case show that an agreement was reached by email, but it was not signed, and just the originator's name appeared in the "from" area. The court concluded adequate proof that the name establishes the sender's identity in the "from" part, centered on Article 7 of the Model Law.

Suggestions

The Model Laws served as the foundation for several legal documents issued by countries around the world, bringing uniformity to the laws governing the transmission of information via electronic means of communication.

¹⁵ [2004] 2 SLR 594; [2004] SGHC 71

¹⁶ 518 S.W.3d 568 (2017)

The evolving technological era necessitates a fresh approach to address the new difficulties. The UNCITRAL has ushered in a new era in the paradigm of E-commerce law by recommending several legal models to various countries. India is at par with the United States in passing similar laws. However, there is a difficulty with the technology neutrality envisioned in this model law. This E-commerce model law includes a technical stipulation. We can say that UNCITRAL plays a critical role in the development of a framework that will promote and raise awareness about the model law of E-commerce and the benefits of its application and that it will recommend that various countries adopt it in both legislative and non-legislative systems for their development in various areas of electronic trade. The many nationalities participating in the international procedure will negotiate the framework.

As a result, UNCITRAL is widely recognized by various countries as a means of resolving issues that may emerge throughout the electronic contract and commerce transactions. By giving a set of acceptable rules to too many countries, it was able to validate and recognize E-contracts and validate the originality and retention of documents via electronic media. It also ensures that electronic signatures are valid in business and trade. It represents the idea of commerce transitioning from a paper-based to an electronic format. As a result, we can conclude that such legislative texts that reflect the needs and importance of many laws and principles for international trade and commerce are required. This in turn mandates the legislation to be changed to close the loopholes and allow commercial prudence to thrive.

Conclusion

The United Nations Commission on International Trade Law took the initiative to draught a set of internationally acceptable rules regarding the legal validity and enforceability of information communicated via electronic modes of communication, citing the ambiguity and heterogeneity in the law regarding contracts formed via electronic modes of communication and the threats it posed to international trade. This Model Law has gained widespread acceptance and has successfully implemented the principles of non-discrimination, technological neutrality, and functional equivalency in the context of data transmissions. This has aided in advancing international trade and the harmonization of numerous legal perspectives on the subject. The accomplishments of MLEC includes validation and acceptance of electronic contracts, validation of originality and retention of electronic documents, acceptability of electronic signatures for legal and commercial reasons and support for the admission of computer evidence in courts and arbitration processes.

This Model Law has greatly helped the transition from traditional paper-based contracts to e-commerce. The necessity of legislation based on uniform principles for international trade has been demonstrated by the need for and acceptance of such legislative text.

