



UNCITRAL legal texts for paperless trade

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UNCITRAL's mandate

- The core legal body of the United Nations system in the field of commercial law.
- A UN Commission with universal membership active in commercial law reform since 50 years.
- UNCITRAL's goal is the modernization and harmonization of international business law.
- UNCITRAL texts are the global benchmark for the law of electronic transactions, electronic contracting and electronic signatures.
 - Preparation of dedicated texts
 - Introduction of dedicated provisions in other texts (e.g. on arbitration, carriage of goods by sea, public procurement, etc.)

Legal topics relevant for paperless trade facilitation

- UN/CEFACT Rec. 35 lists the legal topics relevant for paperless trade facilitation, including electronic single windows.
- Those topics include:
 - e-transactions and e-contracting;
 - authentication/security (e-signatures/IdM);
 - data protection and retention, including data archiving and sharing;
 - cybercrime, digital forensics.
- Legislative needs should be identified through a comparison of best international standard against existing legislation (“checklist”).

E-transactions and e-contracting law

- Establishes general principles on the use of electronic communications, including electronic signatures.
- A limited number of provisions are sufficient to enable the use of electronic means.
- General contract law is not amended.
- Usually first adopted at the national level.

The legal environment for paperless trade facilitation: the private side

- B2B exchanges fall under the scope of commercial law.
- Limited number of provisions needed to address technology requirements.
- The overarching principle of commercial law is “party autonomy” or “freedom of contract”.
 - Parties are free to choose the technology used in their electronic exchanges.
- Legal uniformity facilitates mutual legal recognition of electronic exchanges and “legal interoperability”.
 - The adoption of UNCITRAL model laws and of the United Nations Convention on the Use of Electronic Communications in International Contracts supports mutual legal recognition.

The legal environment for paperless trade facilitation: the public side

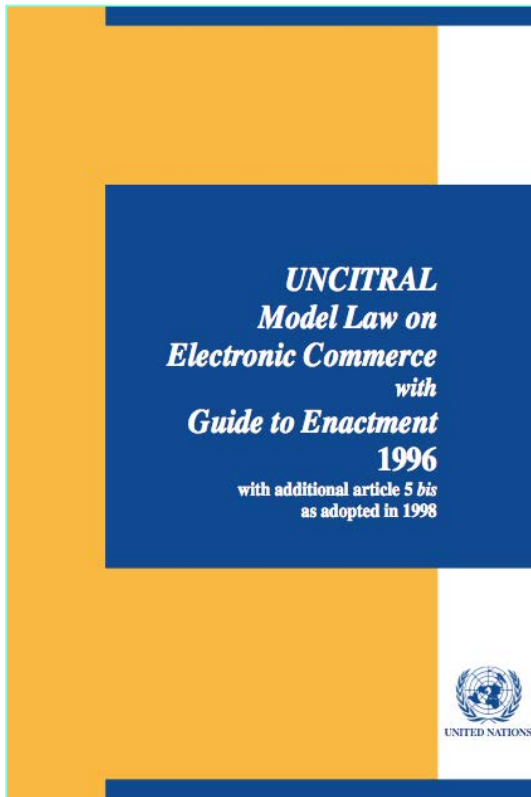
- Electronic SW performs also regulatory functions under customs law.
- Commercial operators must comply with those regulatory functions.
- One consequence is that commercial operators may be asked to adopt SW exchange formats and technologies.
 - This brings additional compliance costs that may discourage commercial operators from using SW.
- SW technical and legal standards are not uniform.
- This may hinder mutual legal recognition of electronic exchanges and, therefore “legal interoperability”.
- As a reaction, there is increasing attention in FTAs to create an enabling uniform legal environment.

General principles of e-transactions law

1. Principle of non-discrimination
 2. Principle of functional equivalence
 3. Principle of technological neutrality
- Principles first designed for commercial transactions, now widely accepted and implemented in more than 70 States worldwide.
 - Ideally, the principles could apply to both private and public entities
 - How can they apply to trade facilitation?

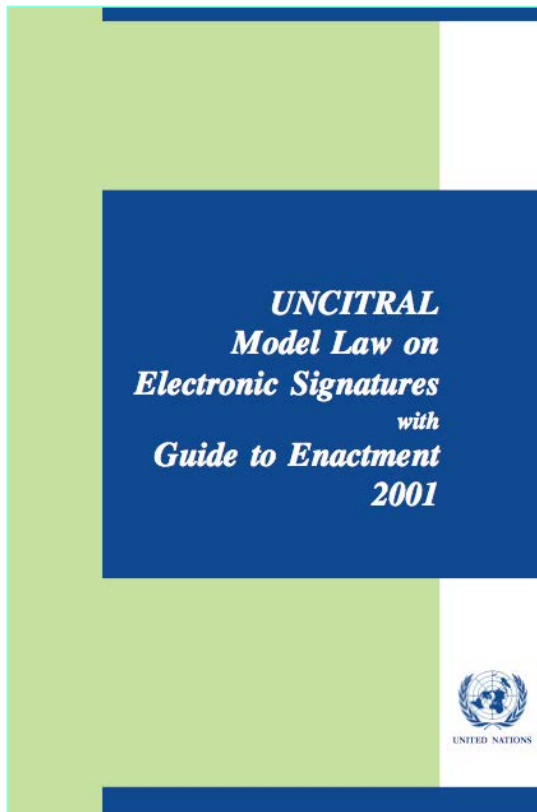
UNCITRAL texts on electronic commerce

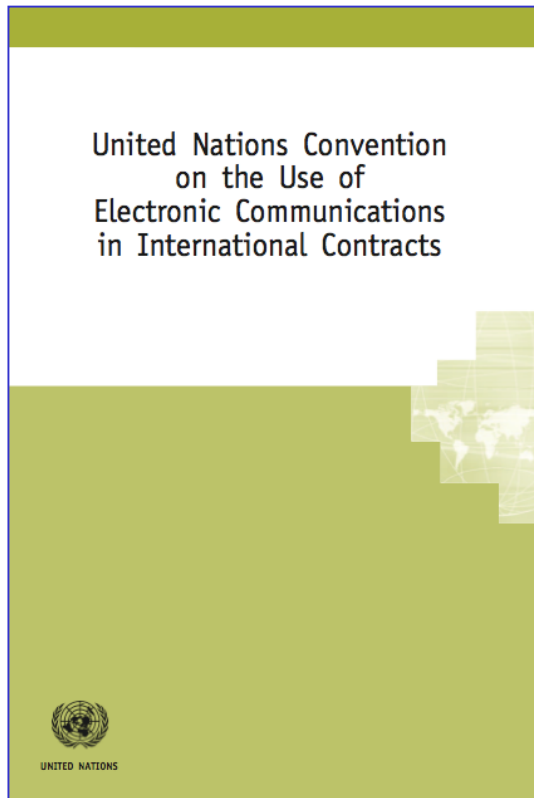
- Work started already in the 1980s
 - Electronic Data Interchange (EDI), cross-border electronic payments;
- UNCITRAL Model Law on Electronic Commerce, 1996
 - enacted in about 70 jurisdictions;
- UNCITRAL Model Law on Electronic Signatures, 2001
 - enacted in over 30 jurisdictions;
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
 - entered into force on 1 March 2013;
 - has 7 State parties and 18 signatories;
 - More than a dozen States have enacted its substantive provisions domestically.



- The **UNCITRAL Model Law on Electronic Commerce** (MLEC) aims to enable the commercial use of modern means of communications and storage of information.
- It is based on the establishment of a functional equivalence in electronic media for paper-based concepts such as "writing", "signature" and "original".
- It also establishes rules for the formation and validity of contracts concluded electronically and for the attribution and retention of data messages.

- The **UNCITRAL Model Law on Electronic Signatures** (MLES) aims at bringing additional legal certainty to the use of electronic signatures.
- It establishes criteria of technical reliability for the equivalence between electronic and handwritten signatures.
- It follows a technology-neutral approach, which avoids favoring the use of any specific technical product.
- It establishes basic rules for assessing possible responsibilities and liabilities for the signatory, the relying party and trusted third parties intervening in the signature process.





- The **Electronic Communications Convention** (ECC) builds up on and updates the provisions of both Model Laws.
- It aims at enhancing legal certainty and commercial predictability where electronic communications are used across borders.
- The ECC contributes to enabling paperless trade by, among others: 1) validating the legal status of electronic transactions by setting general functional equivalence requirements of “writing”, “original” and “signature”; 2) preventing medium and technology discrimination; 3) enabling cross-border recognition of electronic signatures; 4) permitting the use of electronic means in alternative dispute resolution mechanisms.

ECC 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 harmonising domestic legislation.
- Facilitates the establishment of “legal interoperability” also for B2G and G2G transactions.
- For instance, article 9(3) sets the conditions for recognition of foreign electronic signatures
 - It also fulfils legal requirements contained in FTAs.
 - For that reason, referenced in TPP and FA-PT.



- The **UNCITRAL Model Law on Electronic Transferable Records** (MLETR) replaces and expands the provisions of the MLEC relating to electronic transferable records (ETR).
- ETR are electronic equivalents of documents or instruments incorporating the right to delivery of goods or payment of sums of money (bills of lading; bills of exchange; warehouse receipts; promissory notes).
- The MLETR is based on the notion of exclusive control as functional equivalent of possession in order to ensure singularity of the claim.
- To be adopted by UNCITRAL in July 2017.

Draft UNCITRAL Model Law on Electronic Transferable Records

- Fundamental principles of the draft MLETR:
 - Limited to establishing functional equivalence rules
 - does not affect substantive law
 - Technology neutral: compatible with registry-, token- and distributed ledgers (block-chain) systems.
 - Recognises party autonomy.
- Current text is a model law for functional equivalent records
- For the purpose of trade facilitation, it allows to input and reuse trade-related electronic data of best quality (accurate, updated, complete).

Building an enabling legislative environment: a summary

- Cross-border legal recognition of electronic communications (“legal interoperability”) at the international level may be achieved:
 - Through the adoption of treaties;
 - Through the harmonisation of national laws on the basis of uniform legal standards, when they exist.
- This approach is increasingly adopted in FTAs.
- Need to promote the adoption of uniform legislative texts in order to create a truly enabling legal environment for paperless trade.