



# The contribution of UNCITRAL texts to paperless trade

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# The mandate of UNCITRAL

- The core legal body of the United Nations system in the field of commercial law.
- A legal body with universal membership specializing in commercial law reform worldwide for over 40 years.
- UNCITRAL's business is the modernization and harmonization of rules on international business.
- UNCITRAL texts are the global benchmark for the law of electronic transactions, electronic contracting and electronic signatures.

# 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 accommodate the use of electronic means.
- General contract law is not amended.
- Needs to be first adopted at the national level.
- Those States that have adopted UNCITRAL model laws have a common legislative ground that facilitates mutual legal recognition.
- For higher certainty at the international level, countries need to adopt the United Nations Convention on the Use of Electronic Communications in International Contracts.

# General principles of e-transactions law

1. Principle of non-discrimination
2. Principle of functional equivalence
3. Principle of technological neutrality
  - Designed for commercial transactions, now widely accepted and implemented in more than 25 legal systems in Asia and the Pacific
  - Ideally, the principles should apply equally to private and public actors.

# Principle of non-discrimination

- A communication shall not be denied validity on the sole ground that it is in electronic form.
  - Once the use of electronic communications is accepted, their legal status cannot be denied because of their nature.
  - Easier to implement in the private sector than in the public sector.

# Principle of functional equivalence

- Purposes and functions of paper-based requirements may be satisfied with electronic communications, provided certain criteria are met.
  - For instance, the written form requirement is met if the electronic communications is accessible for future reference → electronic accessibility satisfies the same function as paper accessibility.
  - In practice, every time a document has to be submitted in writing and signed, this can be done electronically if other conditions are met (e.g., authentication, archival, etc.)

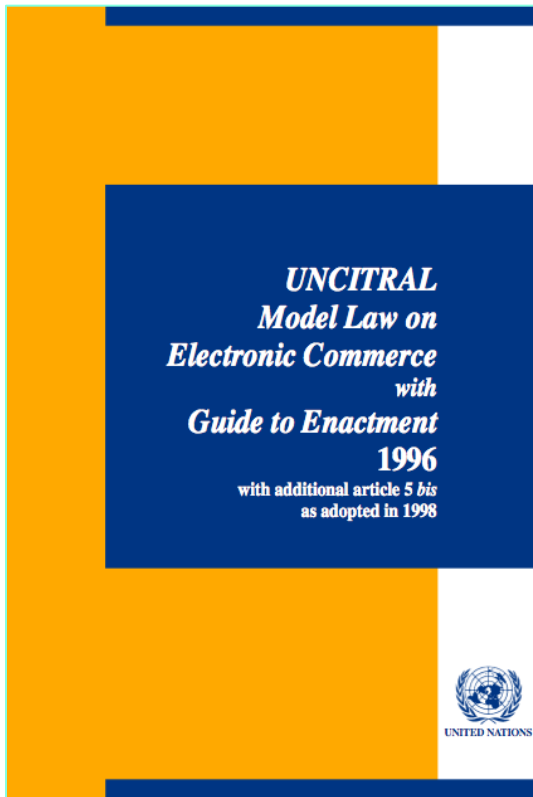
# Principle of technological neutrality

- Legislation shall not impose the use of or otherwise favour any technology (e-mail, Internet, instant messaging, fax, etc.)
  - This approach is open to future technologies;
  - Major issue: much support for PKI from public authorities due to its alleged higher security, but little interest in private sector because of costs;
  - But single window operators want better quality data from commercial documents;
  - Practical solution: the single window can use PKI, but information from private sector does not have to (i.e., B2G transactions are technology neutral).
  - Legal solution: “two-tier” approach to electronic signatures.

# UNCITRAL texts on electronic commerce

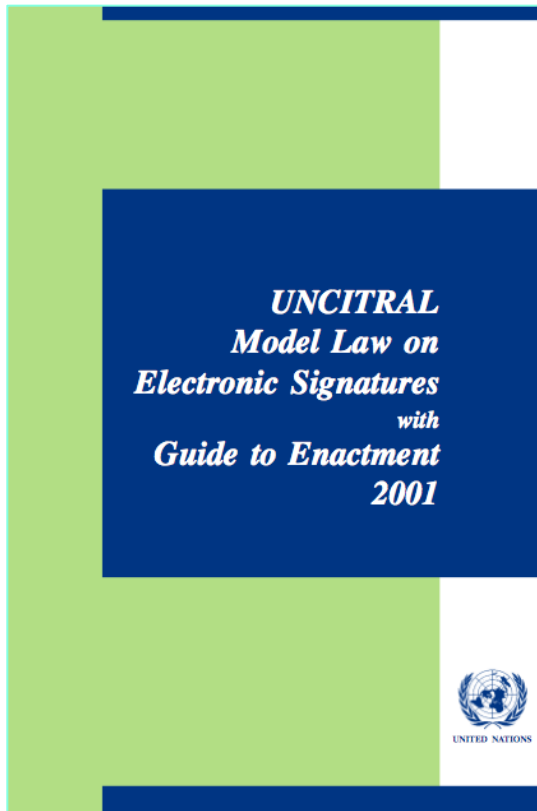
- Work started already in the 1980s
  - Electronic Data Interchange (EDI), cross-border electronic payments;
- UNCITRAL Model Law on Electronic Commerce, 1996
  - enacted in over 50 jurisdictions;
- UNCITRAL Model Law on Electronic Signatures, 2001
  - enacted in over 20 jurisdiction;
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
  - entered into force on 1 March 2013;
  - has 5 State parties and 15 signatories;
  - several other States have enacted its substantive provisions domestically;
- Current work on electronic transferable records (e.g., e-bills of lading).

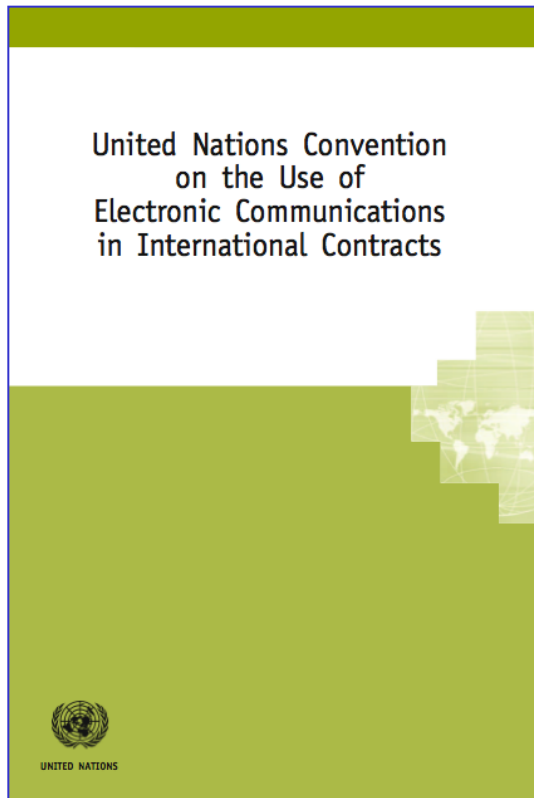




- The **UNCITRAL Model Law on Electronic Commerce** (MLEC) is intended to enable the commercial use of modern means of communications and storage of information.
- It is based on the establishment of a functional equivalence in electronic media for paper-based concepts such as "writing", "signature" 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.

## Legal topics relevant for paperless trade

- UN/CEFACT Rec. 35 lists the legal topics relevant for paperless trade and electronic single windows.
- Those topics include:
  - e-transactions and e-contracting;
  - authentication / security (e-signatures);
  - 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”).

## Building an enabling legislative environment: concrete steps

- Legal recognition of electronic communications 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 is the approach adopted in current draft article 10 of the draft arrangement.
- Standards may be global (UNCITRAL) or regional (e.g., APEC Data Privacy Pathfinder and Cross Border Privacy Rules (CBPR), EU Directives and Regulations).
- The next challenge is to coordinate those standards harmoniously in order to create a truly enabling legal environment for paperless trade.

# Building an enabling legislative environment: setting a diagnostic tool

- Identify relevant standards for establishing an enabling legal environment
  - the discussion is an occasion to share awareness on the relevance of those standards
- Establish a diagnostic tool for the review of existing legislation to identify gaps
  - this diagnostic tool needs to be adopted at an early stage
  - the review should cover both legal theory and business practice

# Building an enabling legislative environment: carrying out the legal review

- Include in the review exercise private and public stakeholders
  - The private sector should lead the transition to dematerialisation, not be forced to follow.
- On the basis of the findings, define a shared legislative reform agenda aimed at achieving a higher level of legal harmonisation and better support paperless trade
  - The law reform roadmap should take stock of best practices and lessons learned
  - It should find effective manners to enact domestically uniform standards and to ensure their actual use

## For more information

- Visit the UNCITRAL website at [http://www.uncitral.org/uncitral/uncitral\\_texts/electronic\\_commerce.html](http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html)
- Send an email to [luca.castellani@uncitral.org](mailto:luca.castellani@uncitral.org)

Thank you!