UNCITRAL legal texts on electronic transactions

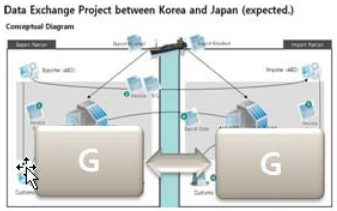
Luca Castellani
Head, UNCITRAL Regional Centre for Asia and the Pacific
Incheon, Republic of Korea

Challenge

- How to set up an enabling legal environment for national and cross-border single windows, so that the single window facility is integrated in the paperless cross-border supply chain?

Actors in electronic transactions

- Electronic transactions have all the same nature
- However, we identify three main types of users:
  - Business (B)
  - Government (G)
  - Consumers (C)
- They interact constantly



Current legal status

- In the cross-border supply chain, most transactions are:
  - Purely commercial transactions (B2B);
  - Purely governmental transactions (G2G, also called e-government);
  - B2G transactions.
- B2B exchanges fall under a general, comprehensive legislation **BUT**
- E-government often adopts different rules for each sector:
  - fragmented legislation;
  - in particular, difficulty of re-using data contained in commercial documents in single window environments.

Current legal status: consequence

E-government applications, such as single window facilities, lie at the heart of paperless trade facilitation

However, e-government may mandate the use of legal rules different from those of B2B transactions

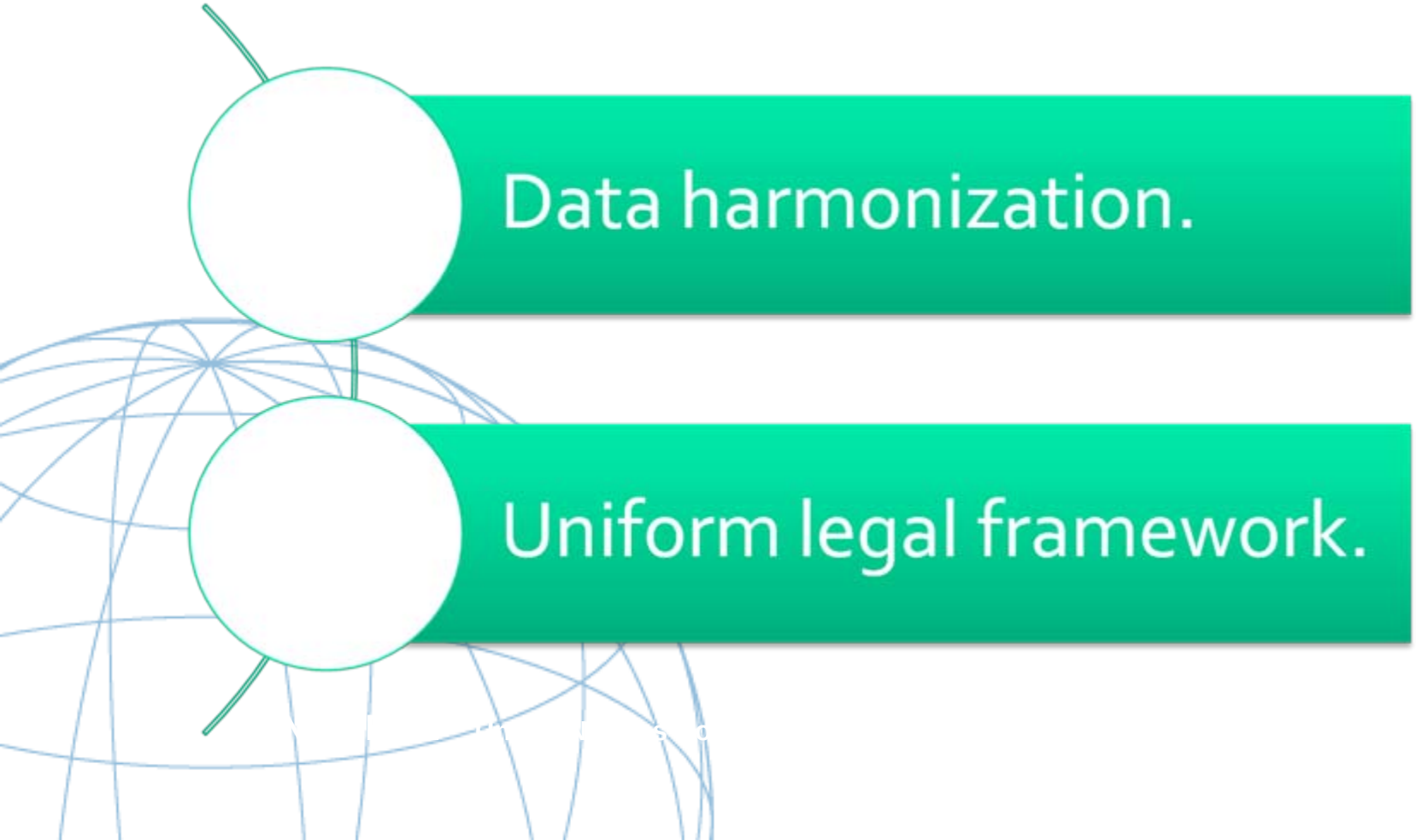
This leads to additional compliance costs and lack of clarity in applicable legislation

Successful exceptions exist: e.g., Singapore

Need for same rules for B and G transactions

- As single windows move towards B2G integration, the limits of the sectoral e-government approach become clear.
- The economic operation at the core of the cross-border movement of goods is the same for B and G → the same data could be used for B and G transactions.
- This would also facilitate the deployment of cross-border applications.
- Benefits arising from such approach include:
  - cross-verification of data (e.g., e-certificates of origin);
  - early notification for integrated border management;
  - transparency and accountability in customs operations.

What is needed to implement a common B2G framework for cross-border trade?



Fundamental principles of UNCITRAL texts on electronic transactions

The UNCITRAL Model Laws implement three fundamental principles:

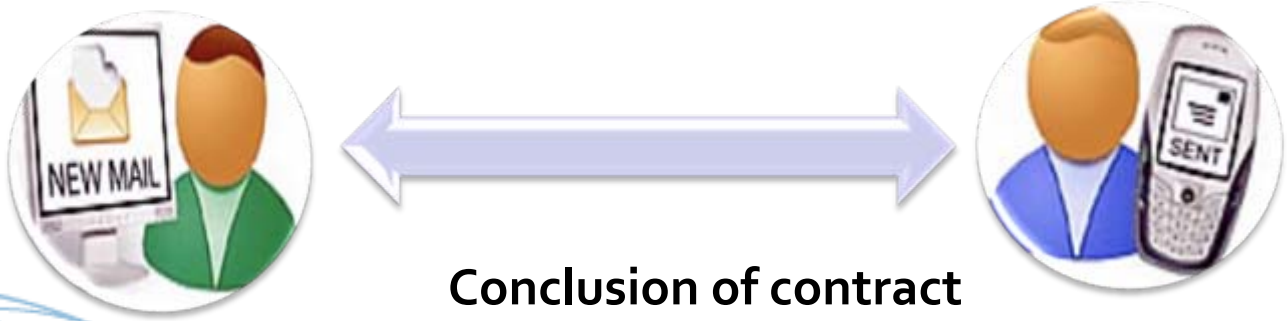
- non-discrimination of electronic transactions;
- technological neutrality;
- functional equivalence.

An additional principle applies to e-signatures:

- geographic non-discrimination

Non-discrimination

A communication shall not be denied validity on the sole ground that it is in electronic form.



Conclusion of contract

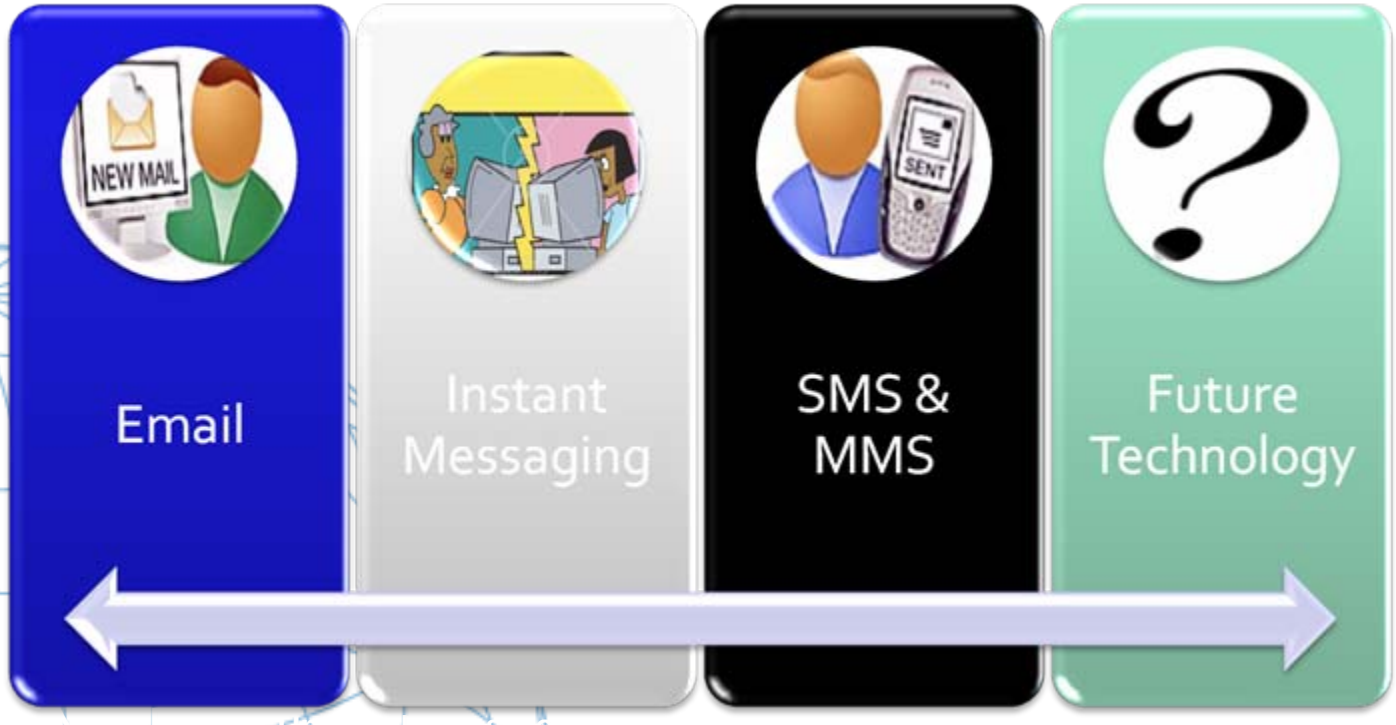
(Writing, Signature)

Functional equivalence

Purposes and functions of paper-based requirements may be satisfied with electronic communications, provided certain criteria are met.

Technological neutrality

•Equal treatment of different technologies (EDI, e-mail, Internet, instant messaging, fax, etc.)
•Possibility to have detailed provisions on technology requirement in the regulations implementing e-commerce legislation.



UNCITRAL Texts

Convention | Model Law | Legislative Guide

- Negotiated with universal participation and reflect balance of national, regional, economic, legal and other interest.
- Drafted with a view to ensure compatibility with the various legal traditions.

International harmonization of electronic transactions law

- **UNCITRAL Model Law on Electronic Commerce (1996)**

  text and list of enacting states available at:
  www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html

- **UNCITRAL Model Law on Electronic Signatures (2001)**

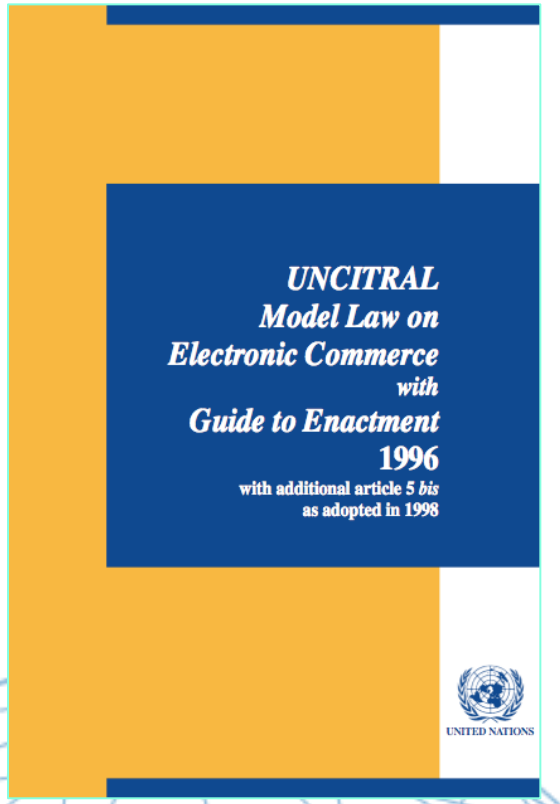
  text and list of enacting states available at:
  www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html

- **United Nations Convention on the Use of Electronic Communications in International Contracts (2005)**

  text and list of signatory states available at:
  http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention.html

- **Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods (2007)**

  available at http://www.uncitral.org/pdf/english/texts/electcom/08-55698_Ebook.pdf



- Adopted by UNCITRAL on 12 June 1996.

- The UNCITRAL Model Law on Electronic Commerce (MLEC) is intended to facilitate commerce via the use of modern means of communications and storage of information.

- The MLEC is based on the establishment of a functional equivalence in electronic media for paper-based concepts such as "writing", "signature" and "original".

- The MLEC established rules for the formation and validity of contracts concluded with electronic means and for the attribution and retention of data messages.

Legislation implementing provisions of the Model Law has been adopted in:
Australia (1999), Brunei Darussalam (2000), Cape Verde (2003), China (2004), Colombia* (1999), Dominican Republic* (2002), Ecuador* (2002), France (2000), Guatemala (2008), India* (2000), Ireland (2000), Jamaica (2006), Jordan (2001), Mauritius (2000), Mexico (2000), New Zealand (2002), Pakistan (2002), Panama* (2001), Philippines (2000), Republic of Korea (1999),Saudi Arabia (2007), Singapore (1998), Slovenia (2000), South Africa* (2002), Sri Lanka (2006), Thailand (2002), United Arab Emirates (2006), Venezuela (2001) and Viet Nam (2005).

UNCITRAL Model Law on Electronic Commerce, articles 5 and 5 *bis*

Information shall not be denied legal effect, validity or enforceability solely because:

- it is in the form of a data message; or
- it is incorporated by reference.

UNCITRAL Model Law on Electronic Commerce, article 6

Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.

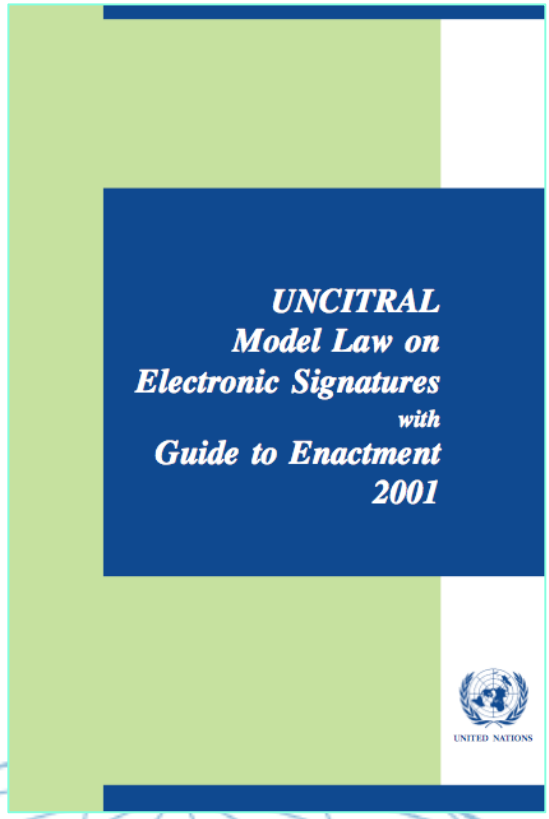
UNCITRAL Model Law on Electronic Commerce, article 8

A data message can be regarded as an "original" document if:

- There exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; an
- The information is capable of being displayed to the person to whom it is to be presented.

UNCITRAL Model Law on Electronic Commerce, article 9

In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of a data message in evidence solely because it is a data message.



- Adopted by UNCITRAL on 5 July 2001.

- The Model Law on Electronic Signatures (MLES) aims at bringing additional legal certainty to the use of electronic signatures.

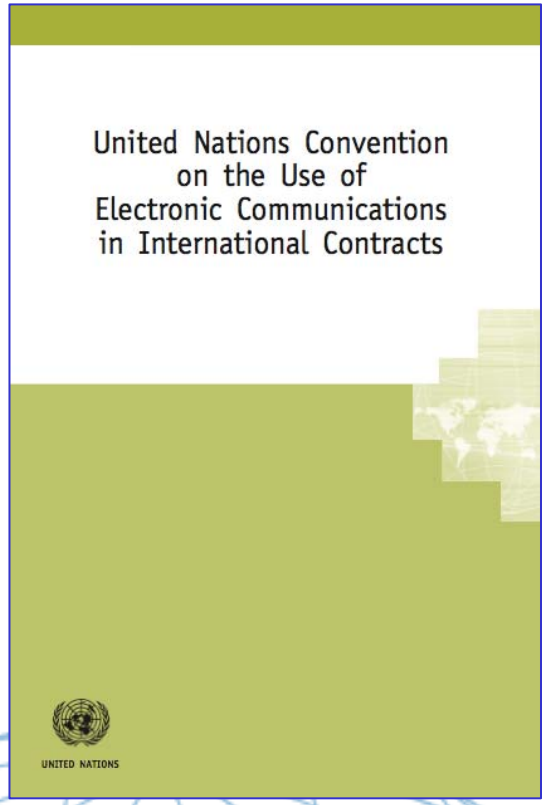
- The MLES establishes criteria of technical reliability for the equivalence between electronic and hand-written signatures.

- The MLES follows a technology-neutral approach, which avoids favoring the use of any specific technical product.

- The MLES establishes basic rules of conduct that may serve as guidelines for assessing possible responsibilities and liabilities for the signatory, the relying party and trusted third parties intervening in the signature process.

Legislation based on the UNCITRAL Model Law on Electronic Signatures has been adopted in: Cape Verde (2003), China (2004), Ghana (2008), Guatemala (2008), Jamaica (2006), Mexico (2003), Paraguay (2010), Qatar (2010), Rwanda (2010), Saudi Arabia (2007), Thailand (2001), United Arab Emirates (2006), Viet Nam (2005) and Zambia (2009).

Legislation influenced by the principles on which the Model Law is based has been enacted in: Costa Rica (2005), India (2009) and Nicaragua (2010)



- Adopted by the General Assembly on 23 November 2005.

- The Electronic Communications Convention (ECC) builds up and, in certain cases, updates the provisions of both Model Laws.

- The ECC aims at enhancing legal certainty and commercial predictability where electronic communications are used in relation to international contracts.

- The ECC addresses the determination of a party's location in an electronic environment; the time and place of dispatch and receipt of electronic communications and acknowledgement of receipt; the use of automated message systems for contract formation; and the criteria to be used for establishing functional equivalence between electronic communications and paper documents.

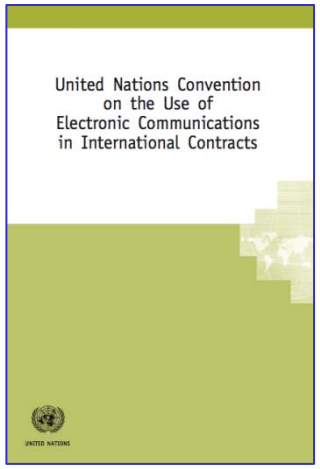
State Parties

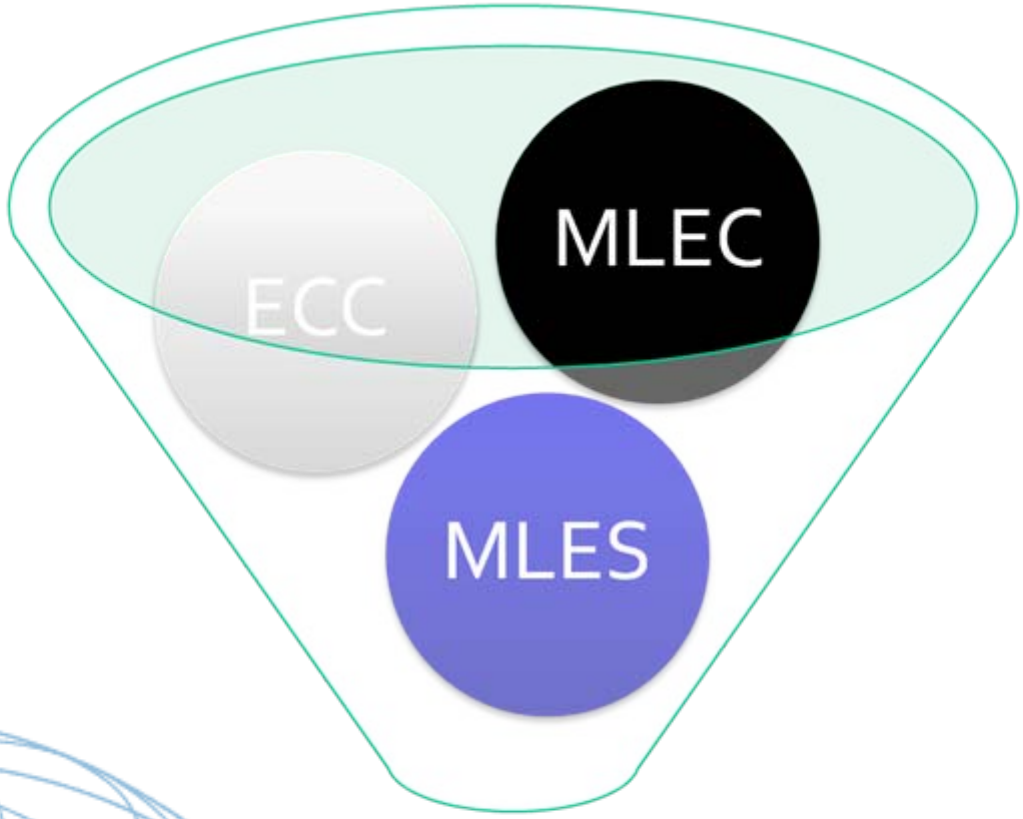
Signatory States

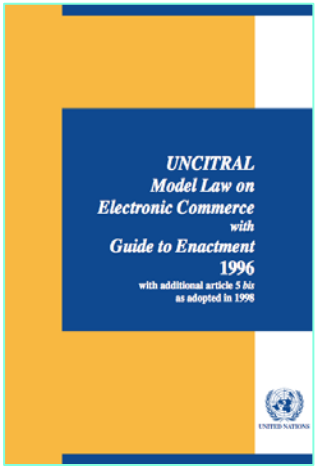
Central African Republic, China, Colombia, Iran (Islamic Republic of), Lebanon, Madagascar, Montenegro, Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka.

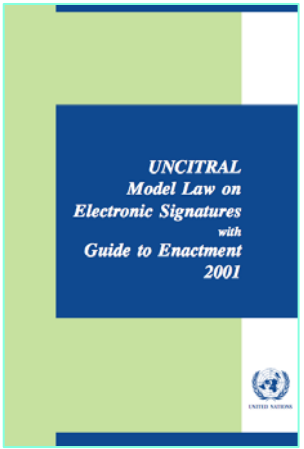
States that have declared their intention to adopt the Convention.

States that adopted domestically some or all substantive provisions of the Convention.









Comprehensive general framework for the use of electronic transactions

Uniform implementation of model laws

- Level of compliance with model laws and other uniform texts may vary.
- Common problem: for example, EU legislation follows the sectoral approach, and suffers from limited uniform implementation
  - The EU e-signature directive is under review for that reason.

Ensuring legislative uniformity

- Solution: United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
  - treaty nature ensures maximum level of uniformity in provisions and their application;
  - contains core rules to ensure legal validity of electronic communications (domestically and internationally);
  - flexible architecture of the Convention complements other international agreements, including customs treaties, and global or regional single window agreements.

Recommendations:

1) Extend the general, comprehensive and effective legislation for B2B e-transactions to G2G and B2G;
2) Promote adoption of the UN Electronic Communications Convention in conjunction with other relevant treaties
3) Use UNCITRAL texts on e-transactions to set up an enabling legal environment for single windows/cross-border supply chain;
4) Design single window facilities in compliance with the enabling legal environment.

To go further

UNCITRAL's website:

http://www.uncitral.org/

is available in all 6 UN official languages

E-mail contact:

luca.castellani@uncitral.org

Many thanks for your attention!