UNCITRAL texts as the backbone of a uniform legislative framework for cross-border electronic transactions

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Goal

- To set up an enabling legal environment for the paperless cross-border supply chain.

Actors in electronic transactions

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

Current legal status

- In the cross-border supply chain, consumers are end users.
- 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.

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

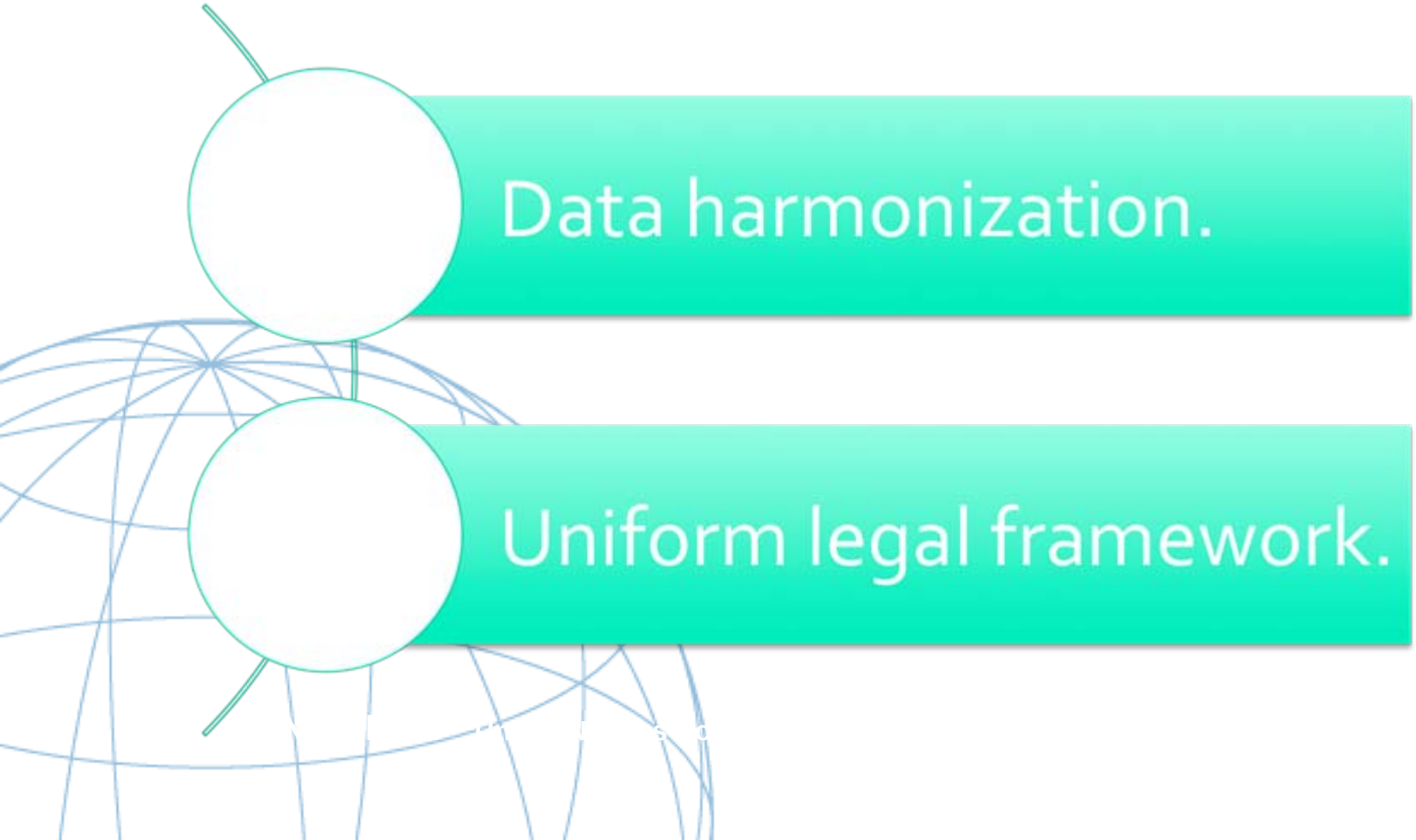
This leads to additional compliance costs and lack of clarity in applicable legislation

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?

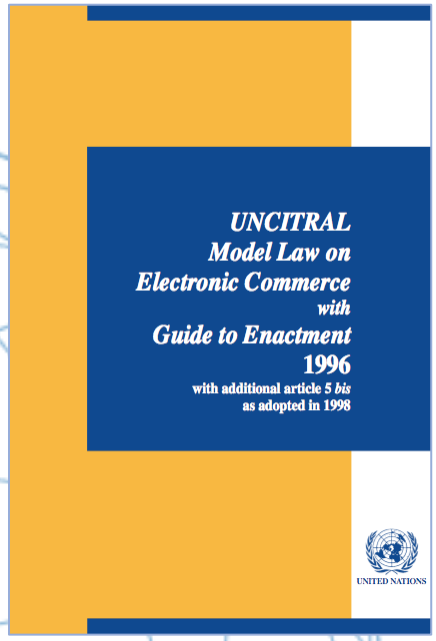


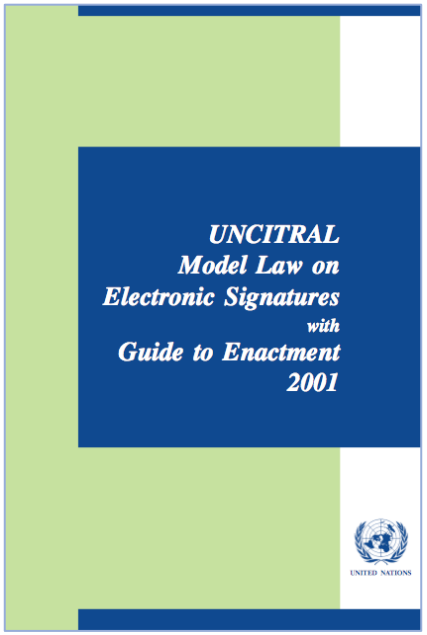
Current status of e-transactions law

Several jurisdictions enacted laws inspired by:

- the UNCITRAL Model Law on Electronic Commerce

and the UNCITRAL Model Law on Electronic Signatures





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).

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)

Principles of UNCITRAL texts on e-commerce

The UNCITRAL Model Laws implement three fundamental principles:

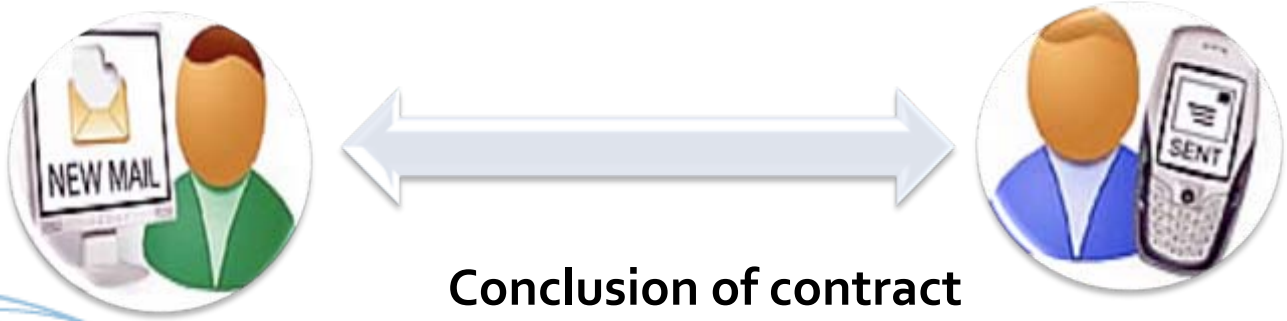
- non-discrimination of electronic transactions;
- technological neutrality;
- functional equivalence.

And an additional one for 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.

Uniform implementation of model laws

- Level of compliance with model laws and other uniform texts may vary.
- Common problem: e.g., 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.

Signatory States

State Parties

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

- State that declared its intention to adopt the Convention: Australia.
- States that adopted the substantive provisions of Convention at the national level: Ghana, Guatemala, Qatar, Rwanda, Singapore, Viet Nam, and Zambia.

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

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Many thanks for your attention!