ESCAP – UNCITRAL – ICC – ADB webinar

Legal Aspects of Cross-Border Paperless Trade Facilitation

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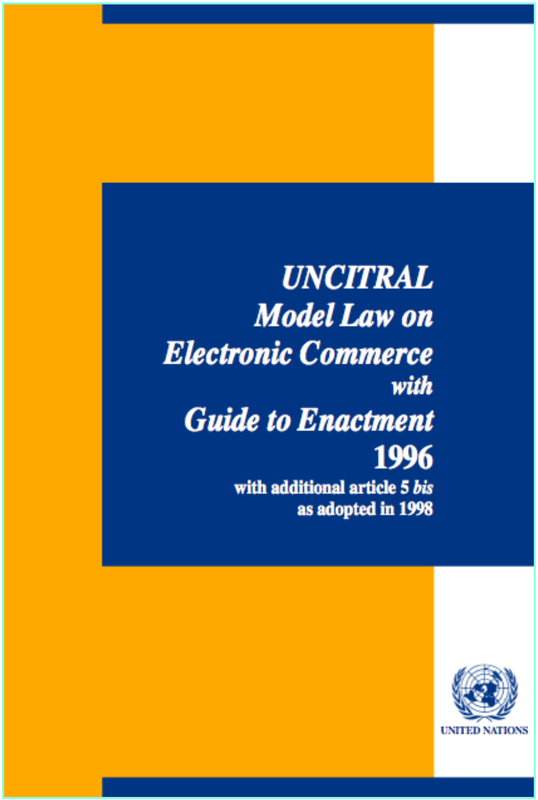
Promoting the digital economy

- High-level goals:
  - Make information available everywhere, anytime
  - Enable data reuse and analysis
- Success in the digital economy is the result of policy, technical and legal choices
- Need to have certainty and predictability on legal status and effect
- Combination of enabling and regulatory laws
- Increasing interaction with FTAs / RTAs / DEAs

UNCITRAL texts on electronic commerce

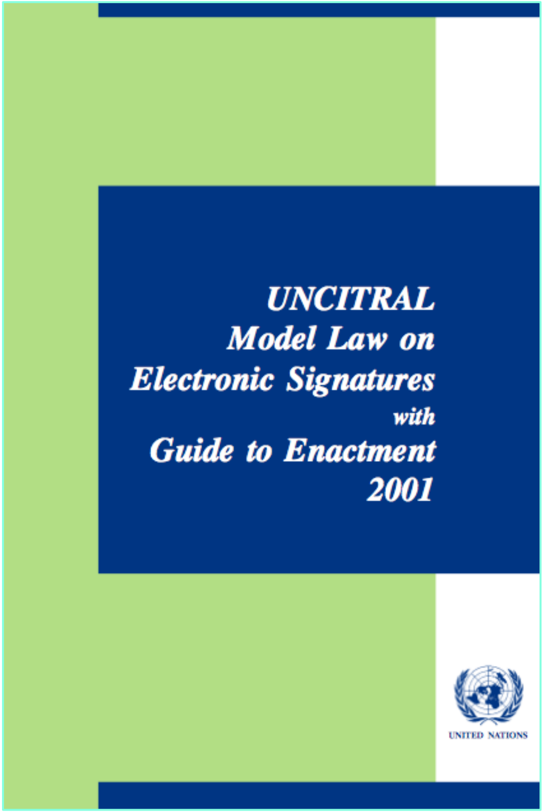
- UNCITRAL Model Law on Electronic Commerce, 1996
  - enacted in 83 States
- UNCITRAL Model Law on Electronic Signatures, 2001
  - enacted in 38 States
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
  - entered into force on 1 March 2013
  - has 15 State parties and 18 signatories
  - 20+ States have enacted domestically its substantive provisions
- UNCITRAL Model Law on Electronic Transferable Records, 2017
  - Enacted in 7 jurisdictions
- All texts with explanatory notes are available on the UNCITRAL website



• Adopted in 1996, 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.

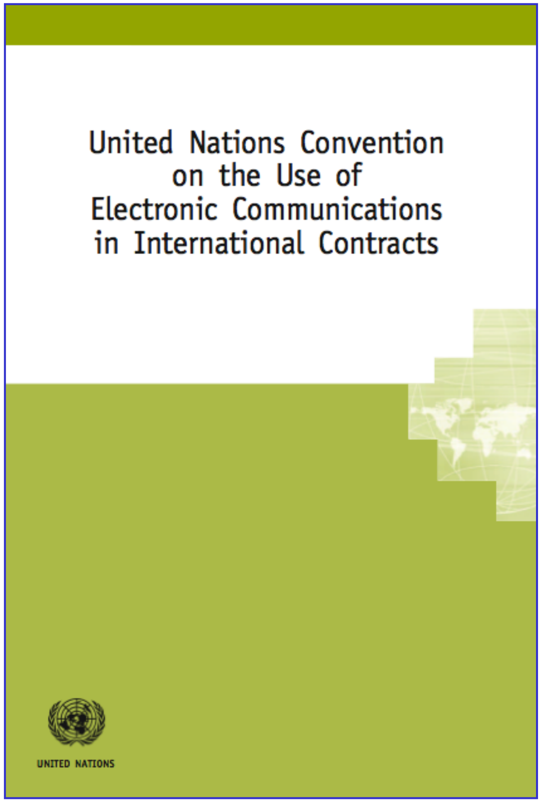


- Adopted in 2001, the UNCITRAL Model Law on Electronic Signatures (MLES) aims at bringing additional legal certainty to the use of electronic signatures

- The MLES follows a technology-neutral approach, which avoids favouring 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

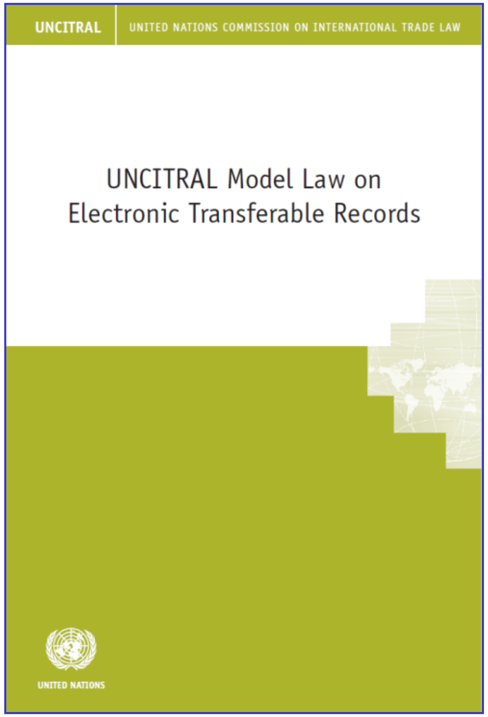
- It contains rules on the recognition of foreign signatures and certificates on the same basis as domestic ones



- Adopted in 2005, 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 functional equivalence requirements; 2) preventing medium- and technology-discrimination; 3) enabling cross-border recognition of electronic signatures; 4) giving certainty on the legal status of the use of electronic means under other treaties.



Adopted in July 2017, the Model Law on Electronic Transferable Records (MLETR) legally enables the use of transferable documents and instruments in electronic form.

Main features:

- Singularity: prevent double spending
- Control: ensure that the person disposing of the ETR is the one supposed to be able to do so
- Integrity: record all events
- Reliability: assessed on a geographic-neutral basis

UNCITRAL texts and CPTA

- The CPTA makes explicit reference to the principles underpinning UNCITRAL texts
- It also calls for the adoption of enabling texts that facilitate cross-border recognition of electronic communications
- Many parties to the CPTA have adopted UNCITRAL texts, especially the UN Electronic Communications Convention
- Adoption of UNCITRAL texts, including MLETR, is critical to legally enable cross-border electronic exchanges

How do UNCITRAL texts support cross-border recognition of e-transactions?

1. Legal harmonization favors cross-border recognition
2. Provisions in the MLES and the MLETR deal explicitly with cross-border recognition
3. The Electronic Communications Convention provides a complete legal solution for cross-border B2B exchanges

- More than 100 States have already enacted UNCITRAL texts on e-commerce
- UNCITRAL texts may also facilitate cross-border recognition of B2G and G2G exchanges