Expert Meeting on

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INCLUDING CASE STUDIES AND LESSONS LEARNED
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Current trends in e-commerce law: the UNCITRAL perspective

By

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The views reflected are those of the author and do not necessarily reflect the views of UNCTAD
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Enabling ICT use to promote economic development

• Overarching goal: promoting economic development in line with globalisation’s requirements
• Use of ICT is the result of policy choices, legal reform and technical implementation
  – Are achievements taking place fast enough?
• Clear need to establish a legal framework enabling the use of ICT to transfer goods, services and funds
  – Nationally and internationally
Law of e-transactions and e-signatures: current status

- Legal harmonisation has made good progress, but is not yet universal
  - Significant differences among regions and legal traditions
- Issues with use of PKI for signatures
  - Technical challenges in implementation in developing countries;
  - Obstacle to cross-border recognition of electronic signatures;
  - Technology neutrality, especially for e-signatures, is being pursued also in Free Trade Agreements.
Law of e-transactions and e-signatures: e-CC contribution to harmonisation

• UN Electronic Communications Convention (e-CC) offers:
  – higher level of uniformity;
  – and much more.

• Has the e-CC delivered?
  – 18 signatories, 6 States parties (more forthcoming);
  – but 10+ States enacted provisions domestically.

• Need to adopt text as a treaty to enjoy its benefits in full.
Law of e-transactions:
electronic transferable records

- Electronic transferable records not yet widely used.
- More guidance needed on details of ETR legislation as few examples exist.
- On-going work of UNCITRAL Working Group IV
  - Possible first outcome in form of a model law.
- This may lead to full dematerialisation of all commercial documents, including bills of lading (and letters of credit).
- Developing countries are adopting laws on electronic warehouse receipts
  - but are not yet fully aware of the relevance of this UNCITRAL project.
Legal issues in single window facilities: current status

• SW are largely hailed as pivotal in paperless trade implementation, but:
  – Have piecemeal implementation;
  – Do not operate across borders;
  – Legal issues are often overlooked.

• One major challenge is the “B2G legal divide”
  – E-Government legislation not always aligned with B2B E-Commerce legislation;
  – Prevents submission of high quality data.

• Ongoing work stemming from UN ESCAP Resolution 68/3: “Enabling paperless trade”.
Other issues on the UNCITRAL agenda

• Identity Management
  – Seen also as evolution of e-signatures;
  – Technical model not ready, legislation premature?

• M-Commerce
  – Limited number of legal challenges;
  – But strong demand for guidance on M-Payments
    • Broader need for E-payments laws taking into account the use of third party platforms.

• Cloud Computing
  – Much attention, but significant regional differences, e.g. with respect to privacy and data protection;
  – Scope of work might be limited to contractual practices.