

United Nations Commission on International Trade Law (UNCITRAL)

UNCITRAL'S PROPOSALS FOR THE DECLARATION OF PRINCIPLES AND THE DRAFT PLAN OF ACTION OF THE WORLD SUMMIT ON THE INFORMATION SOCIETY

A. Introduction

1. UNCITRAL's proposals for elements to be included in the Declaration of Principles and the Plan of Action to be adopted by the World Summit on the Information Society are based the Commission's mandate, pursuant to resolution 2205 (XXI) of the United Nations General Assembly, to promote the harmonization and unification of the law of international trade.
2. Use of electronic commerce offers significant opportunities for developing countries to reduce transaction costs and facilitate penetration in new markets. Electronic commerce benefits all, but is particularly apt to benefit small and family enterprises. Women working from home are notable beneficiaries of this trend. Empirical information on the use of electronic commerce has demonstrated its unique potential for generating wealth by securing the access of small businesses even the most remote regions to foreign markets. Promoting electronic commerce helps bridging the digital divide.
3. However, electronic commerce cannot prosper without the adaptation of national as well as international laws, which were largely written against the background of paper-based commercial communications.
4. Consistent with its mandate, UNCITRAL promotes the adoption of a modern legal framework to enable the use of electronic communications and electronic authentication methods in business transactions. UNCITRAL advocates the adoption of laws based on harmonized and balanced standards elaborated by the United Nations.

B. Proposals

WSIS Proposed theme:

[[Enabling [a national and international] environment notably] [policies and regulatory frameworks][and establishing codes of conduct for business and enterprises]]

UNCITRAL's contribution for further considerations:

To promote the adoption of internationally harmonized legal and regulatory framework to enable the use of electronic communications and electronic authentication methods in business transactions

5. While private law reform does not appear among the priority items for the Summit, we note that the supportive role of the law for the use of modern information technologies has not been neglected in the preparations for the Summit. Thus, for example, the declaration adopted at the Pan European regional meeting (Bucharest, 7-9 November 2002), states that “issues such as privacy protection, consumer trust, management of domain names, facilitation of e-commerce, protection of intellectual property rights, open source solutions etc. should be addressed with the active participation of all stakeholders.”

6. More recently, the Outcome of the informal meeting of sub-committee 2 of Preparatory Committee I of the WSIS, dated 18 September 2002, refers to the promotion of development-oriented ICT applications for all (e.g. education, health, culture, poverty eradication, e-government, employment, business, e-commerce, local content, environment, prevention and early warning systems, vocal and tactile applications) as a topic for further consideration in the preparations for the Summit. That same document also refers to the establishment of enabling national and international legal and regulatory frameworks.

7. Business and e-commerce require a favourable legal framework that enhances legal certainty and confidence in the new technologies being used. Given the inherently borderless character of international trade and the information society, such a framework should be the result of and reflect international harmonization efforts. Important international standards are set forth in the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures.

8. In its resolution 51/162, of 16 December 1996, the United Nations General Assembly expressed its belief that the establishment of a model law facilitating the use of electronic commerce that is acceptable to States with different legal, social and economic systems, could contribute significantly to the development of harmonious international economic relations. The General Assembly further took the view that the adoption of the UNCITRAL Model Law on Electronic Commerce would assist all States significantly in enhancing their legislation governing the use of alternatives to paper-based methods of communication and storage of information and in formulating such legislation where none currently exists. The General Assembly recommended that all States give favourable consideration to the Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information. A similar recommendation was expressed in respect of the UNCITRAL Model Law on Electronic Signatures, of 2001.

9. The UNCITRAL Model Law on Electronic Commerce has already been enacted in various jurisdictions from both developed and developing countries and is widely regarded as the most authoritative set of international legal standards for electronic commerce. Implementation of the Model Law by developing States would foster confidence in e-commerce with business entities established in those States thus helping them keep pace with the globalization of international trade.

C. Follow-up actions

10. The UNCITRAL secretariat stands ready to provide technical assistance to developing countries implementing domestic legislation to facilitate electronic commerce. UNCITRAL further proposes that all international organizations capable of providing technical assistance to developing countries in the IT area should be called upon to develop integrated programmes combining financial, technical, capacity-building, legal, regulatory and other types of assistance to the development of information society.