

Lecture- 26



The UNCITRAL Model Laws for E-commerce

The Model Law has been divided into two parts. The Part I relates to the general provisions relating to e-commerce, it legislates the three principles of non-discrimination, technological neutrality, and functional equivalence. Besides establishing uniformity in the laws regarding e-commerce and legal relevance for data communicated through electronic mode, MLEC also establishes rules for formation and validity of e-contracts, for data message attribution, for receipt acknowledgement and for determining receipt of data messages, etc.

The Part II of the Model Law deals with specific provisions for e-commerce in certain areas.

Key Provisions

General Provisions

Article 2 of the Law provides six definitions, the most important one is of "Data message". It is defined as information generated, sent, received, or stored by electronic, optical, or similar means. This definition has been attributed after taking into consideration the future technological developments as well, which is the reason for inclusion of the term similar means. This wide definition includes the notion of a record and even revocation and amendment. The sphere of application that Article 1 talks about, is for the information in the form of data messages, in the context of commercial activities.

The Model Laws give the interpretational tools (Article 3) which call for a standard of international origin and uniformity in application of general principles of law. There can be variation in the communication of data messages by the agreement of the parties (Article 4).

Application of legal requirement to data messages

The principle of non-discrimination has been enforced by the means of Article 5 which specifies that the information communicated via electronic mode, i.e., in the form of data messages cannot be denied legal validity and effect. Information by the way of reference has also been given legal validity(Article 5 bis) and thus, the application of this law has been considerably widened. This is of utmost importance in the context of international law.

The nations required the documents to be in writing and validation was only given to the hand written signature as a form of authentication. By the means of provisions in Articles 6 & 7, the Model has done away with both of the above obstacles. Accessibility of data messages does not require the document to be in writing, and recognition of digital signature marks the approval of the full structure of the contract. This provision is termed relevant for every circumstance including a relevant agreement.

The notion of originality is defined in Article 8 which provides that data messages can fulfill the legal requirement of presentation and retention of information in its original form subject to the assurance of integrity and presentability of data messages. Presentability meaning the ability to display the information where required. Article 9 specifies that the data messages cannot be denied admissibility in the court of law solely on the basis that the information is in the form of a data message. Thus, evidentiary value has been granted to data messages. The requirement of retention of information is also met by retention of information in the form of data messages subject to the accessibility, accuracy and originality of format and identity of origin(Article 10).

Communication of data messages

Offer and acceptance of offer, when communicated in the form of data messages, cannot be denied legal validity and enforceability solely on the grounds that they are in the form of data messages. Thus, the formation of a valid contract was made possible through the means of data messages.(Article 11)

Acknowledgement in the form of receipt of data messages has also been granted legal validity. (Article 12)

The data message is attributed to the originator if it is sent by him or by a person authorised by him(Article 13).

Article 14 provides that the receipt of the data message and its acknowledgement can also be agreed upon by the parties beforehand.

The transaction ensues when the information goes out of control of the sender. The place of dispatch is the place of business and the time is when the acceptance enters the system of the addressee(Article 15).

Specific provisions

Articles 16 & 17 talk about carriage of goods and transport documents. They enforce the ability to achieve carriage of goods by the means of data messages and fulfillment of the requirement of transport documents through the same as well. It is imperative for the objective of furtherance of international trade. This part has been complemented by other legislative texts

such as the Rotterdam Rules and it may be the object of additional work of UNCITRAL in the future.