

**General Assembly**Distr.: Limited  
30 August 2002

Original: English

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**United Nations Commission  
on International Trade Law**  
Working Group on Electronic Commerce  
Fortieth session  
Vienna, 14-18 October 2002

**Legal barriers to the development of electronic commerce in  
international instruments relating to international trade****Compilation of comments by Governments and international  
organizations****Addendum\*****Contents**

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\* The submission of this addendum by the secretariat of the United Nations Commission on International Trade Law was delayed due to the late receipt of the comments reproduced herein.



## II. Compilation of comments

### A. States

#### 1. United States of America

[Original: English]

[7 August 2002]

1. The United States of America welcomes the opportunity to comment on document A/CN.9/WG.IV/WP.94, and supports the conclusion of the Commission at its thirty-fifth session that the next meeting of the Working Group should concentrate on that paper and the issues raised therein.

2. An examination of existing conventions will enable the Working Group to determine the extent to which additional language, interpretations or both may be necessary to facilitate their application to transactions involving electronic commerce. A distinction may need to be made between general issues applicable to a wide range of transactional settings, issues dependent on specialized commercial practices, and issues that need to await further development of electronic commerce practices before rules are formulated.

3. The United States agrees with those who counsel that the form of any legal texts emanating from work on A/CN.9/WG.IV/WP.94 does not have to be resolved at this stage, and notes that it has been suggested that the Working Group's review, in itself, could have significant value as guidance for transacting parties or other organizations. One possibility already discussed in the Secretariat's materials is a type of "omnibus protocol". Such a protocol could provide either new provisions or agreed interpretations of existing international texts, applicable between States parties to the protocol *inter se*, and possibly only as to each instrument specified by a State party.

4. The United States also concurs with the views at the thirty-fifth session that the current draft text on formation of contracts (A/CN.9/WG.IV/WP.95, annex I), which was discussed by the Working Group at its last session, now needs a more detailed review of crossover issues in sales and contract law. The United States believes that this can proceed concurrently through the preparation of studies, meetings of expert groups and other means. It has been suggested that a future treaty on contract formation might end up being folded into a protocol based on A/CN.9/WG.IV/WP.94.

5. As to work at the next Working Group session based on the working paper, the long list of conventions might appear daunting. The United States would suggest that the Working Group's first effort might be limited to commercial law treaties formulated by UNCITRAL, which are conveniently set out in the first group of conventions in the working paper. That would permit a manageable group of conventions and issues, clearly within the jurisdiction of the Commission, which can then be expanded to other international instruments as work proceeds.

6. Four of the texts prepared by UNCITRAL that are mentioned in A/CN.9/WG.IV/WP.94 are the Convention on the Limitation Period in the International Sale of Goods (New York, 1974); the United Nations Convention on

Contracts for the International Sale of Goods (Vienna, 1980); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995); and the United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988). In the context of those four, the United States believes that the need to differentiate between specialized practices will become clear. For example, the definition of terms such as “writing” in the UNCITRAL Model Law on Electronic Commerce might work for the Sales and Limitations Conventions, but possibly not at this stage for negotiable instruments or guarantees, since recent indications are that standard practices for electronic negotiables and other instruments are still in formative stages within the banking and import-export communities, and their applications in commerce are still limited.

7. The Working Group might also consider joint efforts with Working Group III (Transport Law), which could include the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (1991), since each may be working on transferability of rights in tangibles through electronic commerce. Joint work might also be considered on transfer of rights in intangible assets, such as payment rights, which will be relevant to other Working Groups, such as Working Group VI (Security Interests).

8. Finally, the first group of treaties in the working paper also includes the Convention on Transit Trade of Land-locked States. The Secretariat has correctly pointed out that that convention, and a number of others in the working paper, essentially deals with public law matters. The United States believes that the Working Group should consider whether to extend its work to some conventions in that category, assuming the originating bodies believe that the Commission’s focus on their products would be feasible and appropriate.

9. After examining the above, the United States would suggest that regional texts might be selectively taken up in the same manner, assuming an appropriate balance between geographic regions as to those instruments. There are, for example, in the western hemisphere, private and public law conventions prepared by the Organization of American States, as well as texts of subregional bodies, such as the Common Market of the Southern Cone, the Andean Community, the Caribbean Community, the North American Free Trade Agreement and others. The United States anticipates similar recommendations from delegations in the other regions.

10. In closing, as a working matter, the United States would suggest that both the issues involved and the types of treaties might usefully be grouped into “baskets”, so that commonality among issues in different conventions could be compared, which in turn may contribute to appropriate rules or guidance.

11. Outside of particular conventions, the Working Group may wish to consider whether general electronic commerce enabling rules should be promoted, by reference to or setting out provisions of the UNCITRAL Model Law on Electronic Commerce in a separate chapter of such a protocol, so that States may agree to apply those rules in whole or in part. Promoting a common baseline may have substantial value, and the already wide application of these particular rules may justify this approach.

12. The United States looks forward to participating in the Working Group’s examination of the issues that electronic commerce presents and the opportunity to enhance that commerce for all regions.

## **B. Intergovernmental organizations**

### **1. International Monetary Fund**

[Original: English]

[19 August 2002]

1. The International Monetary Fund does not act, on a regular or ad hoc basis, as a depositary for international legal instruments. For that reason, there are no instruments deposited with the Fund that can be included in the UNCITRAL survey. Similarly, the Fund does not keep track of legal instruments deposited with its member countries and is not in a position to advise UNCITRAL of any that may create legal barriers to the use of electronic commerce internationally.

2. The Fund is very keen on extending the good working relationship between the United Nations and the Fund to the area of electronic commerce. While not submitting any comments on the preliminary conclusions, the Fund would like to stay informed on an ongoing basis of the progress being made and will gladly provide expert views on issues relevant to the Fund's activities and mandate.

### **2. Asian Development Bank**

[Original: English]

[8 August 2002]

1. The Asian Development Bank thanks the Secretariat for its letter concerning the work of UNCITRAL in the area of electronic commerce and inquiring whether the Asian Development Bank might have international trade instruments in respect of which the Bank or its member States act as depositaries that it would wish to be included in the survey being conducted by the Secretariat.

2. The Asian Development Bank appreciates very much the significance of the work that UNCITRAL is undertaking in this important area. At this point, however, the Bank does not have any such instruments to which the Secretariat's letter refers.