

Globalization of Law and Electronic Commerce

Toward a Consistent International Regulatory Framework

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ABSTRACT

In principle, this Article seeks to discuss some controversial issues regarding international economic cooperation in the light of new technology. The Article focuses particularly on the relation between international economic cooperation, e-commerce and technology from a legal point of view and provides an introductory roadmap of entry points into relevant issues of international e-commerce.

Categories and Subject Descriptors

J. [Computer Applications] J.1 ADMINISTRATIVE DATA PROCESSING- Business-Law. K [Computing Milieux] K.5 LEGAL ASPECTS OF COMPUTING. K.5.2 [Governmental Issues]

General Terms

Economics , Legal Aspects, Theory

Keywords

E-commerce; International Economy; Globalization; Law; WTO

1. INTRODUCTION

The world is getting smaller and trade is increasingly internationalized or globalized. There are significant indicators pointing that a process of increasing global economic integration is under way. Certain changes in technological, social, economical and, more importantly, legal systems of individual countries can be attributed to the increase in global economic integration.

Through globalization, trade, investments and governance link people together economically and socially which these links are spurred by market liberalization and developments in information and technology, communication and mainly Electronic Commerce.

E-commerce has brought into question the efficiency and sufficiency of traditional regulatory mechanisms and legal concepts. Actually, the inherently international nature of digital networks and computer technologies that comprise the electronic marketplace requires a global approach. The global network environment challenges the abilities of each country or jurisdiction to adequately address issues related to consumer protection in the context of electronic commerce. The fact is that disparate national policies may impede the growth of electronic commerce, and as such, the issues related to e-commerce may be addressed most effectively through international consultation and co-operation.

The impact of the new technological advancement and the massive convergence of e-commerce transactions have caught the attention of individual consumers, business enterprises, governments, and international organizations and at the same time have underscored the need to develop a global regulatory framework, including an effective dispute resolution mechanism, which matches the nature and fulfills the demands of this novel phenomenon. ¹ This article discusses the features of new technology and e-commerce from a global perspective. ²

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1. See Jasna Arsic, "International Commercial Arbitration on the Internet: Has the Future Come Too Early?" in, 14, *Journal of International Arbitration* No 3 P, 209 (1997).

2 The views expressed in this article are the author's alone and do not necessarily reflect the views of the Tribunal.

2. INTERNATIONAL ECONOMIC INTEGRATION

The Bretton Woods system is commonly understood to refer to the international monetary regime that prevailed from the end of World War II until the early 1970s³. In fact, the Bretton Woods System was originally designed as an integrated effort by the international community to encourage trade liberalization and multilateral economic cooperation.⁴ The work of those nations who participated in the Conference, constituted the most significant efforts to achieve international economic integration. The resulting Bretton Woods Agreements of 1944 and 1945 established the International Bank for Reconstruction and Development, which later came to be known as the World Bank, and the International Monetary Fund (IMF). At the center of the Bretton Woods plan was the idea for a comprehensive plan to govern world trade. The plan was to create a third institution to handle the trade side of international economic co-operation, joining the two "Bretton Woods" institutions. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. Consequently, in 1947 in a meeting in Geneva participant countries worked to develop the charter of the International Trade Organization (ITO), to draft "general clauses" of trade obligations, and to negotiate reciprocity in the reduction of tariff barriers. The result of those negotiations led to the Havana Charter⁵. The ITO Charter was finally agreed upon at a UN Conference on Trade and Employment in Havana in March 1948. However, the ratification by some national legislatures proved impossible. In particular, the ITO charter was never ratified by the U.S. Congress due primarily to the lack of political will.⁶

After the failure of the Havana Charter to create an International Trade Organization, the GATT that emerged from the negotiations was important since it established an institutional mechanism that made it possible for the contracting parties to address trade disputes.⁷ The General Agreement on Tariff and Trade was created at the first session of the Preparatory Committee of UN Conference on Trade and Employment in 1946 and the General Agreement on Tariffs and Trade (GATT) finally

3. See, Columbia Encyclopedia, Sixth Edition. (2001).

4 Forty-four nations attended the Conference that was held in July 1944 at Bretton Woods, New Hampshire in the United States

5. See Richard Gardner "Sterling Dollar Diplomacy: Anglo-American Collaboration in the Reconstruction of Multilateral Trade" Oxford at the Clarendon Press (1956).

6. Havana Charter for an International Trade Organization, Mar. 24, 1948, U.N. Doc. E/CONF 2/78, reprinted in U.S. Dep't of State, Pub. No. 3206 (1948). The Havana Charter provided commitments on Tariffs, Preferences, and Internal Taxation and Regulation,.

7. See generally John H. Jackson "World Trade and the Law of GATT (1969). See Also Kenneth W. Dam "The GATT: Law and International Economic Organization" (Midway reprint, 1977) and Robert E. Hudec, The GATT Legal System and World Trade Diplomacy (1975).

was signed in 1947⁸. The GATT, as originally conceived as part of the Bretton Woods system was to play an important gap-bridging role until the economic agreements IMF- IBRD came into force. Like the Havana Charter, the GATT contained some principles such as most favored nation, non-discrimination, and national treatment clauses, as well as other obligations, but it was convened for the very specific and limited purpose of tariff reduction.⁹

With the approval of the Uruguay Round revisions to the General Agreement on Tariffs and Trade (GATT) the world entered a new stage in global economic integration. Within the legal academy, the new WTO system represents a stunning victory for international trade. The framers of the WTO specifically designed it to remedy many of GATT's organizational shortcomings. Accordingly, the WTO is a unified administrative organ for all of the multilateral agreements relating to trade in goods (GATT), trade in services (GATS), and trade related aspects of intellectual property rights (TRIPs).¹⁰

The WTO Treaties do not pertain to the behavior of private businesses. Those instruments deal only with the actions of governments, establishing disciplines on trade-policy instruments such as tariffs, quotas, subsidies, or state trading. Thus, the WTO is a mechanism of controlling the actions of members that could affect and hinder trade between member states and the conditions of competition facing imported products on domestic markets. In this regard the WTO regulates the same as the old GATT did.¹¹ In the preamble to the WTO Agreement, the "Members" resolve themselves to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all the results of the Uruguay Round of multilateral trade negotiations.¹² Thus, the WTO superseded the General Agreement on Tariffs and Trade, which had theretofore governed

8. The Protocol of Provisional Application of the General Agreement on Tariffs and Trade was signed by 23 countries. These original "Contracting Parties" were Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, the Czechoslovak Republic, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, and the United States of America. In light of the entry into force of the Marrakesh Agreement establishing the World Trade Organization as of 1 January 1995 and its ratification by almost all GATT Contracting Parties, those parties decided to terminate the GATT 1947 as of 31 December 1995. The substance of GATT rules lives on since they are incorporated, with certain understandings, in the Marrakesh Agreement as GATT 1994.

9. See generally JOHN JACKSON "WORLD TRADE AND THE LAW OF GATT: A LEGAL ANALYSIS OF THE GENERAL AGREEMENT ON TARIFF AND TRADE" (1969).

10. The agreement reached at the end of the Uruguay round (April 1994) to establish the WTO changed matters.

11. See generally Anne O. Krueger "THE WTO AS AN INTERNATIONAL ORGANIZATION" (November, (2000) ISBN: 0226454495.

12. See Uruguay Final Act.

issues related to international trade between its contracting parties.¹³

International transaction and economic activities are governed essentially by agreements between nominally equal parties, such as states, companies, or individuals, whose agreement is, consecrated either in bilateral or multilateral form. All kind of reciprocal or integral economical agreements, including GATT, WTO or EC, NAFTA, EFTA, MAI etc., have common principles to a greater or lesser degree. Trade agreements systematically determine rules and principles to facilitate and ensure flowing of trade between parties with different legal and economical systems.

3. TECHNOLOGY INFORMATION AND INTERNATIONAL TRANSACTION

Technology has fundamentally changed the way that the businesses are handled by society. Recently, computer use and e-commerce have grown at exponential rates. Network, Screen and Page, E-mail are taking the place of the telephone message, the fax, and the written letter. Now, it is estimated that North Americans will send more than 18 billion e-mail messages each day. Because electronic data transfers very easily and takes up infinitely less space than paper, information is being stored not in dusty document warehouses but on laptops, cell phones, voice-mail servers, personal digital assistants (PDAs), and backup tapes.¹⁴

Besides, technology is also advancing at such a rate that the very concept of the "office" even to some extent "Place" may become a thing of the past. In an era of "profits over people," it is inevitable that somebody will begin to wonder whether it is cost-effective to have a separate office or offices in multiple jurisdictions when the basic business can be done "on the road," as it were. Sounds unlikely? Well, consider that the Wall Street Journal published an article a few years ago on the "virtual office," which is techno-speak for "no office."¹⁵ The article profiled a series of workers who had been relieved of their offices and were now performing the same tasks at home or wandering in different countries, armed with cell-phones, laptop computers, scanners, and portable fax machines--everything but the actual office itself. Several accounting firms have made the move to a virtual office system, and one wonders if international dispute

13. See generally Thomas J. Dillon, Jr. "THE WORLD TRADE ORGANIZATION: A NEW LEGAL ORDER FOR WORLD TRADE?" in the Michigan Journal of International Law Winter, (1995) p 349.

14. See Paul.M.Robertson, "ESQ ELECTRONIC DISCOVERY" In; Massachusetts Continuing Legal Education, Inc.(2002). Massachusetts Discovery Practice Volume II, Chapter 20.

15. See, Sue Shellebarger, "Overwork, Low Morale Vex the Mobile Office", WALL ST. J., Aug. 17, 1994 at B1.

settlement bodies are next¹⁶

3.1. E-COMMERCE

The globalization process centering on production and distribution networks and on financial institutions' products and transactions is having a profound impact on a wide range of policies and practices in both the private and the public sectors. Globalization has greatly increased the international mobility of goods, services, factors particularly capital, finance, and consumers. Globalization and international factor mobility has implications for efficient transactions of firms operating in multiple jurisdictions. In this context, one thing that has become increasingly clear over the last years and attracted substantial attention is e-commerce. Because of internet and network technology, e-commerce continues to grow and spread around the world. In recent years, the potential and importance of e-commerce to the economies and industries of the developing world has become particularly evident.¹⁷ In a business sense, however, e-commerce is much more than simply buying a digital trade guide on the Internet. E-commerce also includes the computer synapses and peripheral transactions that make the arrival of a digital trade guide on the entrepreneur's computer a reality, including providing the customer support and other services vital to the efficient functioning of the electronic market.¹⁸

The entry of consumers into international e-commerce is made possible by the direct, interactive interface that the Internet or any other networks create between producers and merchants of goods and services, on the one hand, and consumers, on the other. The fact is that the international electronic commerce is one of the primary growth industries of the world economy. This reality is expected to have a number of important consequences, including a substantial reduction of transaction costs, lower prices, enhanced productivity, and more intensive competition. In view of the revolutionary nature of these consequences, international e-commerce is predicted to modify fundamentally the existing global economic, market and business structures.¹⁹ While the interest in the new medium intensifies, however, questions are being raised as to whether the existing international legal infrastructure is capable of supporting the predicted growth.²⁰

16. See, Anita Dennis, "A Firm Without Walls", J. ACCT., Dec. 1995, at 62- 63.

17. See further Yun. Zhao, Dispute resolution in electronic commerce, p 14 (2005).

18. See, David R. Kosiur, Understanding Electronic Commerce (Strategic Technology Series), , Published by Microsoft Press, May 1, 1997.

19. See, Electronic Commerce, OECD Policy Brief No. 1-1997, at 1-3.

20. See generally, Raymond T. Nimmer and Patricia Krauthouse, "[Electronic Commerce: New Paradigms in Information Law](#)", in [31 Idaho Law Review p 937 \(1995\)](#).

As e-commerce has developed into a global phenomenon, the need for rules and principles facilitating e-commerce has become increasingly evident. The global network environment challenges the abilities of each individual country or jurisdiction to adequately address issues related to the electronic commerce and the Internet. The inherently international nature of the digital networks and computer technologies that comprise the electronic marketplace requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework for electronic commerce. The search for these rules and principles is taking place in a number of different places, including the World Trade Organization (WTO).

4. TECHNOLOGY AND INTERNATIONAL LEGAL COOPERATION

Law has traditionally been the province of the nation state, whose courts and police enforce legal rules. By contrast, international law has been comparatively weak, with little effective enforcement powers. However, e-commerce is changing the contours of law and creating new global legal institutions and norms. In today's world of inter-dependence and international commerce, there is increasing importance attached to the growth of harmonization of international commercial norms and regulations. Most countries have now recognized the need for a uniform, predictable and transparent system of law to manage the international e-commerce. In fact, new technology such as the Internet and the demands of a global marketplace has severely taxed the model that had been in force since the origins of the modern state in the 16th century. As the world grows closer together, national municipal laws have become increasingly subject to a wide range of pressures and influences from abroad. There is no doubt that economic globalization, in the shape of the requirements imposed by a market economy stretching beyond national frontiers, has played a decisive role in bringing about this situation.

4.1.NATION – STATE AND E-COMMERCE

E-commerce and the Internet underscore the inadequacy of actions by individual nation states in dealing with a wide range of national and international problems. Moreover a realistic evaluation of future international relations will reveal a new form of integration radically different from the archetypal nation state. The recent developments in international transactions represent a challenge to defensive sovereignty because this process refers to the increasing economic interdependence of sovereign markets. This means that the way of conducting relations between sovereign states or even between states and private companies has dramatically changed.

In fact, the world is entering a new stage of adaptation, which makes it necessary for all countries to improve, enhance, and redefine the traditional understanding of international

relations and borders.²¹The realities of cyberspace (i.e., the internet) cause us to rethink the relevance of nation-state boundaries. In the past decade, the terms "cyberspace" and "globalization" have become buzzwords of a new generation.²² Thus, both terms have reflected a perception that territorial borders might no longer be as significant as they once were. Most significantly, some scholars argue that cyberspace cannot legitimately be governed by territorially-based sovereigns, and that the online world should create its own legal jurisdiction (or multiple jurisdictions).²³

4.2.INTERNET AND JURISDICTION

With the many advantages that the Internet provides, the number of people now using the Internet and electronic mail is rapidly growing. The Commercial adventurers must be acutely aware of flying "too close to the sun" because the law regarding commercial websites is particularly fractious. The fact is there are still few courts completely agreeing on what constitutes sufficient commercial activity so as to justify the assertion of personal jurisdiction. From an international private law point of view, a finding of personal jurisdiction often resolves what law a court will apply. Consequently, unwary users may face both jurisdiction under a foreign court and judgment under that court's laws. For example in one case, a French court assumed jurisdiction over *Yahoo!*, and ordered it to remove web pages showing Nazi memorabilia, material that is illegal to view in France but legal elsewhere.²⁴ Despite the fact that the Nazi material was available only for auction on *Yahoo!*'s U.S. auction site, the French court found that it had jurisdiction. The court ordered *Yahoo!* to restrict access to the Nazi material by French citizens, and reserved the right to issue a \$12,000 per day fine in U.S. dollars if *Yahoo!* refused to comply. This action by the French Court raises serious questions about Internet jurisdiction, and how Internet and e-commerce companies may protect themselves against liability abroad for actions that are legal under national law.²⁵

The main concern is to find out whether the virtual world is compatible with existing methods of dealing with the international commercial transactions, and whether the criteria for

21. See generally; Miguel De La Madrid H "National Sovereignty and Globalization" in; 19, *Houston Journal of International Law*, p 553 (1997).

22. See, e.g., Michael Edwards, "Future Positive: International Co- Operation in the 21st Century" p 5-6 (1999).

23. See, David R. Johnson & David Post, "Law and Borders--- The Rise of Law in Cyberspace", in, 48 *Stanford Law Review*. p1367 (1996); see also, e.g., David Post, "Governing Cyberspace", in , 43 *Wayne Law Review*. 155, 165-71 (1996).

24. See, Mahasti Razavi & Thaima Samman, "Yahoo! And Limitations of the Global Village", in, 19 *SPG Comm. Law* 27, p27 (2001).

25. Id. at 27.

allocating competence are adequate to resolve disputes arising from the commercial use of the Internet and E-commerce.

From a legal point of view, private international law still uses essentially the same method developed by the great German jurist, *Savigny*, over a hundred years ago. Each relation has its "definite seat," a "legal territory to which, in its proper nature, it belongs or is subject."²⁶ In a contractual relation, for instance, reference is made to the place where the contract is performed, and in a tort claim, to the place where the infringement is committed. To that end, a basic premise should be acknowledged: there is no cyberspace without real space as far as private international law is concerned.

Recently, however, it has been argued that this approach is not easily adapted to the context of the Internet; that in a digitalized world, courts will no longer be able to play the game of localizing legal relations under the protection of one or another national law.²⁷ It has been said that we face today a non-geographical and non-territorial means of communication, where the notion of "place" matters less and less.²⁸ Where activities occur might not be the right question to ask in order to allocate jurisdiction and choose the applicable law in international Internet-related disputes.

To say the least because of the current situation in international economic relations, the notion of international and even national law looks very different today. We appear to be in the midst of a sweeping away of foundations that have been in place at least for several centuries.²⁹ Increasingly, international law is no longer simply the preserve of nation-states, effective over a narrow range of issues. Rather, we have seen the creation of regional and global institutions, treaties, and other international obligations that have established limits on the sovereign autonomy of the states.³⁰

26. See, Friedrich Carl von Savigny, "Private international law, and the retrospective operation of statutes: a treatise on the conflict of laws, and the limits of their operation in respect of place and time" p 133 (translated, with notes, by William 2d ed. 1880).

27. See, Paul E. Geller, "Conflicts of law in Cyberspace: International Copyright in a Digitally Networked World, in *The Future of Copyright in a Digital Environment*" p 30 (P. Bernt Hugenholtz ed., 1996).

28. See, Matthew Burnstein, "A Global Network in a compartmentalised Legal Environment" in, *Internet, Which Court Decides? Which Law Applies? Quel Tribunal décide? Quel droit s'applique?* p 23-26 (Katharina Boele-Woelki & Catherine Kessedjian eds., 1998).

29. See, Peter J. Spiro, "Globalization, International Law and the Academy" in, 32, *New York University Journal of International Law and Politics*, p 567 (Winter 2000).

30. See, Michael Byers, "The Law and Politics of the Pinochet Case" in, 10, *Duke Journal of Comparative and International Law Spring/Summer*, at 415 (2000).

5. WORKING TOWARD A CONSISTENT GLOBAL REGULATORY FRAMEWORK

At present, much existing national legislation -- in diverse areas such as; encryption, digital signatures, data protection and privacy, contract law, new electronic means of payments -- can create trade barriers that will hamper the development of electronic commerce at a global level. Solutions need to be found to provide for a consistent international regulatory framework for electronic commerce. It is thus imperative that individual countries and the international community develop uniform legal norms for Electronic commerce and electronic documents. As yet, there has been little international movement to undertake such a comprehensive project. The difficulty of the matter is compounded by the variety of ways the law now treats electronic issues in different countries.

Important steps have already been taken in a variety of different international forums such as, WTO, UN/CEFACT, ICC and UNCITRAL, OECD (Organization for Economic Cooperation and Development), the World Customs Organization, UNCTAD (United Nations Conference on Trade and Development). Besides the two international treaties adopted in December 1996 under the auspices of WIPO, the World Intellectual Property Organization (the WIPO Copyright Treaty³¹ and the WIPO Performances and Phonograms Treaty³²) are also essential to stimulate and facilitate electronic commerce internationally. Relevant to this part is the question of the possibility of introducing some common norms for e-commerce. In other words, is it possible to create a consistent global regulatory framework that will enhance financial development by setting standards for global e-commerce?

5.1. WTO AND E-COMMERCE

The WTO is the exclusive forum for negotiating and enforcing global rules governing cross-border trade in goods and services. The main function of the WTO is to lower trade barriers reducing tariffs and dismantling non-tariff barriers to ensure that international trade flows as smoothly, predictably and freely as possible. E-commerce poses major new challenges because it transforms the entire international transaction system. The new economy emerging on electronic networks is currently highly unregulated and is developing very rapidly. Products that are bought and paid for over the Internet, but are delivered physically, are subject to existing WTO rules on trade in goods and services. In contrast, with respect to products that are delivered digitally over the Internet-- such as, computer software, music, video and related kinds of new media -- a variety of issues arise concerning

31. At ;
http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html

32. At;
http://www.wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html

the appropriate policy regime and regulation.³³ Both the supply of Internet access services, as well as many of the products delivered over the Internet, fall within the ambit of the General Agreement on Trade in Services. There is, nevertheless a need to clarify to what extent particular activities are covered by the members' market-access commitments.³⁴

WTO members are exploring how electronic commerce should be dealt with in the context of the Uruguayan Round Agreements and the WTO. The growing importance of electronic commerce in global trade led WTO members to adopt a declaration on global electronic commerce on 20 May 1998 at their Second Ministerial Conference in Geneva, Switzerland.³⁵ The September 25, 1998 WTO Declaration on Global Electronic Commerce adopted a Declaration to commence a work programme on the subject in the General Council of WTO, to propose recommendations to the next Ministerial Conference.³⁶ In the meanwhile, it was decided to continue with the current practice of not imposing customs duty on electronic transmissions, a decision which was also to be reviewed at the Third Ministerial Conference. The work programme involving and empowering the relevant WTO bodies³⁷ to take into account "the economic, financial and development needs of developing countries", and the work being undertaken in other international fora on this subject.³⁸

At the Fourth Ministerial Conference in Doha in 2001, ministers agreed to continue the work programme as well as to extend the moratorium on customs duties. They instructed the General Council,³⁹ to report on further progress to the Fifth Ministerial in Cancún, in 2003. Under the work programme, issues related to electronic commerce were examined by the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPS, and the Committee on Trade and Development. During the course of the work programme, the

33. The term "E-Commerce" is used here the same way that it is used within the WTO to refer to the production, distribution, marketing, sale, or delivery of goods and services by electronic means. General Council, Work Programme on Electronic Commerce: Adopted by General Council on 25 September 1998, WT/L/274 (30 Sept. 1998) [General Council Work Programme on Electronic Commerce] at para. 1.3. Note, all WTO documents referenced in this paper can be found on the WTO's website by searching for the document number in the "Documents Online Search Facility" at www.wto.org/english/into_e/search_e.htm.

34. See, Deutsch, Klaus Günter Speyer, Bernhard, "The World Trade Organization Millennium Round: Freer Trade in the Twenty-first Century" p 126-135(2001) .

35. WORLD TRADE WT/MIN(98)/DEC/W/1.

36. The WTO General Council on 25 September 1998 adopted a Work programme on electronic commerce.

37 The Bodies include ; the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPs, and the Committee for Trade and Development.

38. Id para 2-5.

39 Paragraph 34 of the Doha Declaration.

WTO Secretariat produced a number of background notes on the issues and many member governments submitted documents outlining their own thoughts. The Doha Declaration, issued in 2001, committed to addressing the problems facing developing countries. It provides another opportunity for the consideration of e-commerce issues within the WTO. Although the Doha negotiations are not specifically designed to cover e-commerce, trade in electronic goods and services could nonetheless be included in negotiations on market access for non-agricultural products and services covered by the GATS. Thus, Doha offers an opportunity for a new vehicle to overcome some of the obstacles confronting the Work Programme.⁴⁰

Although the Fifth Ministerial Conference in Cancún, Mexico 10-14 September 2003, ended without any achievements, the final declaration of the Sixth WTO Ministerial Conference in Hong Kong, China, 13–18 December 2005, took note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and noted that the work is not yet complete. The conference agreed to reinvigorate the Work Programme, including the development-related issues under the Work Programme and discussions on the trade treatment, *inter alia*, of electronically delivered software. In addition, the Conference declared that, "Members will maintain their current practice of not imposing customs duties on electronic transmissions until our next Session."⁴¹

5.2. UNITED NATION CENTER FOR TRADE FACILITATION AND ELECTRONIC BUSINESS (UN/CEFACT)

UN/CEFACT is the United Nations Centre for Trade Facilitation and Electronic Business. UN/CEFACT encourages close collaboration between governments and private business to secure the interoperability for the exchange of information between the public and private sector. It is open to participation from Member States, intergovernmental organizations, and sectoral and industry associations recognized by the Economic and Social Council of the United Nations (ECOSOC). The Center's objective is to be "inclusive" and it actively encourages organizations to contribute and to help develop its recommendations and standards. The mission of UN/CEFACT is to improve the ability of business, trade, and administrative organizations, from developed, developing, and transitional economies, to exchange products and relevant services effectively - and so contribute to the growth of global commerce.⁴²

40. The 2001 ministerial conference of the World Trade Organization (WTO) adopted a declaration concerning the question of access to medicines in the context of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This constitutes a response to widespread debates concerning the impacts of the TRIPS Agreement on access to drugs in developing countries.

41. WT/MIN(05)/DEC 22 December 2005. DOHA WORK PROGRAMME, Ministerial Declaration, Adopted on 18 December 2005.

42. At; <http://www.unece.org/cefact/>

5.3. THE INTERNATIONAL CHAMBER OF COMMERCE (ICC) AND E-COMMERCE

The ICC is an internationally renowned institution that continues to provide insightful contributions to the promotion of Alternative Dispute Resolution “ADR” and Online Dispute Resolution “ODR” with respect to e-commerce transactions. As a global business organization, the ICC has worked closely with other international organizations and groups including the OECD and the Global Business Dialogue on Electronic Commerce (GBDe) for the development of e-commerce strategies. The ICC is working with the UN and has provided insightful comments on the United Nations Commission on International Trade Law (UNCITRAL) works and issued a report on the draft UNCITRAL Convention on Electronic Contracting.⁴³

The ICC prepared a 'Global Action Plan for Electronic Business' (July 2002), which laid down some policy principles for global e-commerce. These principles include promoting the development of e-commerce through private sector initiatives in response to market forces; encouraging a fair and competitive open market; transparency, non-discrimination, proportionality, and flexibility; harmonizing governmental electronic business policies; protecting users, in particular with regard to privacy and confidentiality.⁴⁴ This plan addresses ODR issues and recommends that businesses and organizations should develop and implement effective ODR systems for Business to Consumer (B2C) transactions, which meet certain minimum standards with respect to accessibility, transparency, low cost, and flexibility. Governments are advised to refrain from imposing mandatory national or regional accreditation systems and from creating legal and technical obstacles to the development of e-commerce transactions and the innovative use of technology in ODR mechanisms in B2C transactions. Furthermore, governments are urged to promote the development of international self-regulatory principles, guidelines and rules, and provide a legislative framework for jurisdiction and applicable law in e-commerce that accounts for and recognizes the importance of ODR systems to e-commerce transactions.⁴⁵

The ICC has also released a policy statement on 'Jurisdiction and Applicable Law in Electronic Commerce', which sets out general business views on online transactions and consumer

43. Report on draft UNCITRAL Convention on electronic contracting (December 5, 2001), available at http://www.iccwbo.org/home/e_business/uncitral_convention_report.asp.

44. The Global Action Plan for Electronic Business, 3rd edition July 2002, available at http://www.iccwbo.org/home/e_business/word_documents/3rd%20Edition%CC20Global%CC20Action%CC20lan.pdf

45. Id.

protection in the context of jurisdiction and applicable law.⁴⁶ Several recommendations provided by the ICC include: a systematic approach to resolving consumer disputes through providing easy and cost effective means of resolving disputes; avoiding expansive jurisdictional claims; advocating parties' autonomy as the general principle in the context of e-commerce transactions and keeping governmental limitations to a minimum; and, allowing self-regulation to demonstrate its efficacy.⁴⁷

5.4. UNCITRAL MODEL LAW ON ELECTRONIC SIGNATURES (2001)

E-signatures raise several legal issues: laws and regulations issued before the digital age do not take into account these new technologies. As a result, according to the laws and regulations in force, many documents are required to be “written” and “signed”. Would e-signatures comply with these requirements? Should we trust an electronic signature? The signing party should feel bound by the signature while the other party should be able to trust it and feel legally protected. Moreover, both parties must know the “rules” such as which party is liable or which requirements need to be fulfilled. Therefore, specific regulations are necessary.

The UNCITRAL Model Law on Electronic Commerce aims at bringing additional legal certainty regarding the use of electronic signatures. Building on the flexible principle contained in article 7 of the UNCITRAL Model Law on Electronic Commerce, it establishes criteria of technical reliability for the equivalence between electronic and hand-written signatures. The Model Law follows a technology-neutral approach and avoids favoring the use of any specific technical product. The Model Law further establishes basic rules of conduct that may serve as guidelines for assessing possible responsibilities and liabilities for the signatory, the relying party and trusted third parties that might intervene in the signature process. The model Law reflects the most modern trends in comparative law regarding electronic commerce, which makes it very reliable in situations where parties opt to use the new available technologies in their international transactions. Furthermore, the model law may become a useful tool in the interpretation of existing international conventions and other international instruments.

46. Jurisdiction and Applicable Law in Electronic Commerce, Electronic Commerce Project (ECP)'s Ad hoc Task Force, 6 June 2001. Available at http://www.iccwbo.org/home/statements_rules/statements/2001/jurisdiction_and_applicable_law.asp.

47. See, Mohamed Wahab “ Globalization and ODR: Dynamics of Change in E- Commerce Dispute Settlement” in, 12, International Journal of Law and Information Technology p 138-140 (2004).

6. CONCLUSION

The explosive growth of electronic commerce is leading to changes in the ways that people conduct their lives, and is provoking interest by businesses and governments alike. The digital trade guide is a miracle of modern computer code and technological infrastructure. It is also a great enigma because the international economic organization such as WTO knows only goods and services, not hybrids or even unknown classifications of products. A key factor in this growth has been the relative lack of regulatory barriers. In the absence of a world government, cross border trade is always subject to rules that must be politically negotiated among nations that are sovereign in their own realm but not outside their borders.⁴⁸ Not surprisingly, the sheer magnitude of these developments has begun to attract the attention of some policymakers who have raised concerns about the implications of an unregulated marketplace such as the internet, and in certain instances, suggested new legislation. The international community is delighted about the possibilities of the Internet, but vis-a- vis the realities, it can not afford to be quite as liberal.

To say the least, because of new technology and economic cooperation, internal and international policies are no longer divisible. Economic integration and the way that the people around the world conduct their business through internet, blur the artificial boundaries between different national political communities⁴⁹. In addition, the traditional distinction between 'domestic' and 'foreign' or definition of "place", often does not adequately capture the relevant political origins, legal content, cultural understandings, economic assumptions, and social practices. To this end, many scholars argue in favor of having a set of international trade standards that would serve as the core of a global constitutionalism.⁵⁰ The solution for achieving this process is deregulation at a national level, and a decrease in the political control of states over their economic activity, as has been done in the European Community. At the international level, the WTO can play an important role in this effort. But before acting, WTO Members should reflect on the wide range of benefits that electronic commerce generates for consumers, companies, and governments, and recognize the need for a "light handed" and internationally consistent regulatory approach. The global network environment challenges the abilities of each country or jurisdiction to adequately address issues related to consumer protection in the context of electronic commerce. The fact is that disparate national policies may impede the growth of electronic commerce, and as such, the issues related to e-commerce may be

48. See, David A. Balaam & Michael Veseth "Introduction to International Political Economy" p 104 (Prentice Hall 1996).

49. See, Miguel Poiaras. Maduro "The constitution of the global market" in, Regional and global regulation of international Trade, Edited by F. Snyder . Oxford- Portland Oregon-(2002).

50. See. Ernst-Ulrich Petersmann, "Constitutionalism and International Adjudication: How to Constitutionalize the U.N. Dispute Settlement System?" in 31, New York University Journal of International Law and Politicsp 753 (1999).

addressed most effectively through international consultation and co-operation.

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