



A STUDY OF INTERNATIONAL LAW WITH SPECIAL REFERENCE TO ELECTRONIC-COMMERCE

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ABSTRACT

This study delves into the realm of international law as it pertains to electronic commerce (e-commerce). It investigates the legal frameworks and mechanisms governing cross-border transactions, digital trade, and online business activities. Special emphasis is placed on analyzing the implications of international agreements, conventions, and treaties on e-commerce regulations. Through a comparative analysis of various jurisdictions and case studies, this study seeks to elucidate the challenges and opportunities presented by the evolving landscape of global electronic commerce from a legal perspective.

i. INTRODUCTION:

Communication and the need for improved communication have been creating and resulting in technological advancements. Today, technology has stepped into the arena of computers, the internet, and the cyberspace. The advent of internet and related technologies has made irreversible changes to the world today and it is moving steadily towards an information society and knowledge economy; therefore, it is essential that law must contribute its inputs to promote e-commerce. The Law is an organic being which has always managed to evolve to keep up with changes¹.

The growth of e-commerce has created the need for vibrant and effective regulatory mechanism, which would further strengthen the legal infrastructure that is crucial to the success of electronic commerce. The rapid development of Information Technology presents challenges to legal systems across the globe. Transactions accomplished through electronic means have created new legal issues. The challenge before the law makers is to balance the

¹ R.K..Singh, *Law Relating to Electronic commerce*14 (Lexis Nexis, A Division of Reed Elsevier India, Pvt Ltd, New Delhi, 1stedn., 2014



sometimes-conflicting goals of safeguarding electronic commerce and encouraging technological development. It was also noted that the three major concerns for international online contracting are authenticity, enforceability and confidentiality. Authenticity involves the verification of the person that one is dealing with electronically. Enforceability includes the legal scope of the license granted or the warranty given under a national law. It also includes the provability and verification of the contractual terms of an online transaction. Confidentiality revolves around the protection of sensitive information such as payment information and trade secrets. The minimum level of due diligence pertaining to these three concerns entails a workable knowledge of the legal requirements of forming and proving a contract formed through the internet².

In the late 1980s the global organisation, the United Nations Commission on International Trade Law (UNCITRAL) was chosen to develop uniform private law standards for electronic commerce. The work resulted in the UNCITRAL Model Law on Electronic Commerce 1996. Five years later in 2001 the UNCITRAL issued the UNCITRAL Model Law on Electronic Signatures. Both Model Laws were very successful and have been adopted all around the world. Despite the fact, that they both represent a widely accepted basis for international legal harmonisation in the field of electronic commerce, calls for a binding Convention began even before UNCITRAL issued the UNCITRAL Model Law on Electronic Signatures 2001³, as it was argued, that only a binding instrument could effectively remove obstacles to electronic commerce that might derive.

In 2002 the UNCITRAL Working Group on Electronic Commerce started working on a new binding Convention concerning the electronic commerce in international contracts. After long and hard work, UN Convention on the Use of Electronic Communication in International Contracts was finalized in October 2004 and approved in July 2005, which reflects the newest development in the sector of electronic commerce.

² P.T. Josepoh, *E-Commerce: An Indian Perspective* 108 (PHI Learning Limited, New Delhi, 5th edn., 2015).

³ "UNCITRAL Model Law on Electronic Signature with Guide to Enactment 2001" available at <http://www.uncitral.org> (last visited on july19,2021).

ii. INTERNATIONAL ORGANIZATIONS AND E-COMMERCE

Outstanding contribution to the international development of the electronic commerce in particular is given by the business world by recognizing the importance of better, faster and safer conducting of the commercial activities. Electronic Data Interchange (EDI) led to a significant reduction in cost and resources. However, the intervention of international organizations was felt necessary when newer challenges emerge due to growth in Ecommerce.⁴ The organizations aimed at unification and development of the legal rules to resolve legal dilemmas. Major international organizations that contributed towards systematic development of Ecommerce laws are United Nations Commissions on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC), Committee Maritime International (CMI), Economic Commission of the United Nations for Europe - Working Party 4 (WP.4), or CEFACT and the European Union (EU), ISO, UNCTAD, WTO, OECD, WIPO, EAN, etc.

1. UNITED NATION ORGANIGATION ON E-COMMERCE

There are two Model Laws directly or indirectly relating to E-Commerce and subsequently a Convention adopted. These are:

- a. UNCITRAL Model Law On Electronic Commerce, 1996
 - b. UNCITRAL Model Law On Electronic Signature, 2001
 - c. United Nations Convention on the Use of Electronic Communications in International Contracts, 2005
1. UNCITRAL Model law on Electronic Commerce, 1996

On 16 December 1996, the United Nations General Assembly, the Resolution 51/162⁵, adopted UNCITRAL model law on Electronic commerce. Its purposes are to help states enhance their legislation with respect to electronic communications and to serve as a reference aid for the interpretation of existing international conventions and other instruments in order to avoid impediments to electronic commerce⁶.

⁴ The Role of the International and Regional Organisations in Regulation of The Legal Issues in The Electronic Commerce, *available at:* <http://www.eprints.ugd.edu> (Last visited on October 05, 2021).

⁵ *Supra* note4.

⁶ Glatt, C.; "Comparative Issues in the Formation of Electronic Contracts" 57 (Intel J.L.& Infor. Spring 1998).



The UNCITRAL Model Law on Electronic Commerce, 1996, instead of defining an online contract, merely states that a contract can be made by exchanging data messages and when a data message is used in the formation of contract, the validity of such contract should not be denied. However, the Article 2B of the US Uniform Commercial Code, which was later incorporated into the Uniform Computer Information Transaction Act, 1999⁷, states that an electronic contract is a transaction formed by electronic messages in which the messages of one or both parties will not be reviewed by an individual as routine step in forming the contract.

2. UNCITRAL Model Law on Electronic Signature, 2001

The increased use of electronic authentication techniques as substitutes for handwritten signatures and other traditional authentication procedures has suggested the need for a specific legal framework to reduce uncertainty as to the legal effect that may result from the use of such modern techniques. The risk that diverging legislative approaches be taken in various countries with respect to electronic signatures call for uniform legislative provisions to establish the basic rules of what is inherently an international phenomenon, where legal harmony as well as technical interoperability is a desirable objective. UNCITRAL Model Law On Electronic Signature, 2001 was approved by the UNCITRAL and came into force in 2001⁸. Its main objective was to grant legal recognition to e-signature and to bring uniformity in national laws relating to e-signature. UNCITRAL has attempted to support the functional equivalence supplied by Article 7 with the Model Law on Electronic Signatures, which was adopted from the former Draft Rules. In preparing and adopting the UNCITRAL Model Law on Electronic Signatures, the United Nations Commission on International Trade Law (UNCITRAL) was mindful that the Model Law would be a more effective tool for States modernizing their legislation if background and explanatory information were provided to executive branches of Governments and legislators to assist them in using the Model Law. The Commission was also aware of the likelihood that the Model Law would be used in a number of States with limited

⁷ “UNCITRAL Model LAW on Electronic Commerce1996” at <http://www.un.or.at/uncitral/en-index.htm>. (last visited on July28,2021).

⁸ “UNCITRAL Model Law on Electronic Signature,2001”was adopted on 5th July 2001 *available at* <http://www.uncitral.un.org>(last visited on August01,2021).

familiarity with the type of communication techniques considered in the Model Law.

3. United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

The UN Convention on Use of Electronic Communication in International Contract, 2005 was adopted in November 2005 and came into force on 1st March 2013⁹. The Convention was created to ensure the global recognition of international contracts formed using electronic means. It aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. The UN Convention on Use of Electronic Communication in International Trade was held with the objective of removing the uncertainty and legal hassles which come in the way of International Contracts carried out through electronic means. The setting up of a legal structure to govern such contracts would enhance the legal certainty and help states gain access to modern trade routes. The Electronic Communications Convention applies to the "use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States". "Electronic communication" includes any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, made by electronic, magnetic, optical or similar means in connection with the formation or performance of a contract. The word "contract" in the Convention is used in a broad way and includes, for example, arbitration agreements and other legally binding agreements whether or not they are usually called "contracts"¹⁰.

⁹ "United Nations Convention2005" available at <http://www.iccwbo.org/UN/Conventions> (last visited on last visited on August05,2020).

¹⁰ "United Nations Convention2005" available at <http://www.iccwbo.org/UN/Conventions> (last visited on last visited on August08,2020).



2. INTERNATIONAL CHAMBER OF COMMERCE

The International Chamber of Commerce (ICC) plays a significant role in shaping global e-commerce policies and practices. It provides guidelines, standards, and best practices to facilitate cross-border e-commerce transactions. The ICC's initiatives focus on issues like online dispute resolution, digital signatures, data protection, cybersecurity, and taxation in the e-commerce realm. Additionally, the ICC advocates for a conducive regulatory environment that promotes innovation, trade facilitation, and consumer protection in the digital economy. Its efforts aim to foster trust and confidence in online transactions while enabling businesses to leverage the opportunities offered by e-commerce on a global scale.

3. WORLD TRADE ORGANISATION (WTO)

On recognizing the growth potential in ecommerce, the ministers at the Second Ministerial Conference (May 1998) adopted the Declaration on Global Electronic Commerce. Later a working program on ecommerce was adopted in September 1998 which is periodically reviewed by the General Council based on reports from the WTO bodies which are responsible its implementation.¹¹

The organization also addresses intellectual property rights issues related to e-commerce, such as copyright protection for digital content and the enforcement of intellectual property rights in the online environment.¹² Furthermore, the WTO provides technical assistance and capacity-building support to help developing countries enhance their regulatory frameworks, build digital infrastructure, and develop the necessary skills to fully participate in the digital economy. Overall, the WTO's efforts in the realm of e-commerce reflect its commitment to promoting a rules-based and inclusive global trading system that embraces the opportunities presented by digital technologies while addressing the challenges they may entail.

4. GENERAL AGREEMENT ON TARIFFS AND TRADE(GATT)

The General Agreement on Tariffs and Trade (GATT) and the emergence of e-commerce represent significant milestones in the evolution of international trade. GATT, established in

¹¹ WTO & Electronic commerce, *available at:* <https://www.wto.org> (Last visited on May 22, 2022).

¹² The World Trade Organization (WTO) has increasingly recognized the importance of e-commerce in global trade and has been actively engaged in addressing its various facets..



1947, aimed to liberalize global trade by reducing tariffs and eliminating trade barriers. Over the decades, GATT evolved into the World Trade Organization (WTO), which continues to govern international trade agreements and resolve disputes among member countries. Meanwhile, the rise of e-commerce has revolutionized the way goods and services are bought and sold, transcending traditional borders and opening up new avenues for economic growth. However, the rapid expansion of e-commerce has posed challenges for traditional trade regulations, necessitating adaptations to accommodate digital transactions. Recognizing this need, WTO members have engaged in discussions to address e-commerce within the framework of trade agreements. Efforts to develop rules governing e-commerce aim to ensure a level playing field for businesses, protect consumer rights, and foster trust in online transactions. While negotiations continue, the intersection of GATT and e-commerce underscores the importance of updating trade rules to reflect the realities of the digital economy, thereby fostering inclusive and sustainable global trade.

iii. POSITION OF E-COMMERCE IN DIFFERENT COUNTRIES

Governments around the world, use more than one approach to select type of rules needed in the electronic environment. The first approach is to enact facilitative laws intended to make online commerce as legally effective as it in the traditional way of contracting normal one. This 'functional equivalent' approach, aims to identify how the same function could be achieved in electronic transactions, and extend the existing rules by analogy to cyberspace. Therefore, this approach attempts to fit cyberspace within the ambit of familiar legal rules through an examination of the role currently played by a particular legal rule in the non-digital commercial world, identification of the way in which the same function can be achieved in electronic transactions and extending the existing rule by analogy to electronic transactions. The second approach would be through establishing a new set of rules that is better suited to the nature of the new environment. This approach intends to choose out the best rules existing in a non-digital context and import them into cyberspace. Although this approach aims to set new rules in the electronic contracting, it stresses the need for identifying the fundamental principles that govern non- digital transactions and re-examines how those principles could be best placed in the

uniquely different sphere of cyberspace¹³.

This approach conceivably has the merit of leading to a much more healthy development of the law in the long term, because taking a deeper consideration of principles would probably lead to the discovery of *sui generis* rules for electronic transactions that takes into account the unique features and potential of computer-based communications systems. While both approaches have been used in developing regulatory regimes for electronic transactions, it is noteworthy that the functional equivalency approach has dominated proposals for regulating electronic commerce¹⁴.

1. In United State of America

In the absence of real prospects of codification, the US law of electronic contracting is developing in fits and starts through the development of judicial precedent, but this does not yet provide very consistent guidance. Because, there are not yet many reported cases dealing with electronic contracts, most lawyers in the US look to older cases interpreting the significance of 'shrink-wrap' software licenses, and telephone order sales of goods. Many of the cases involve the efforts of the vendor to enforce mandatory arbitration terms in consumer contracts, terms which would not be enforceable in a consumer contract in the European Union over the objection of the consumer¹⁵. The lack of a consistent body of case law analyzing the rights and responsibilities of the parties to distance contracts, software licenses and by extension, electronic contracts, seems to reflect the absence of any broad consensus regarding how US contract law should be adapted to apply to new forms of transactions. There is considerable support for a laissez-faire approach that would limit many forms of government intervention in markets by failing to revise law that by their current terms do not apply to electronic commerce. However, there is also considerable support preserving a role for government oversight in online markets; the degree of popular support in the US for government regulation of new technologies became apparent following the terrorist attacks on September 11. Until some progress is made in

¹³Diwan and Kapoor, *Cyber and Commerce Law*75 (Authors Press, New Delhi, 2010).

¹⁴ Pavan Duggal, *Cyber Law-The Indian Prospective*389 (Saakshar Law Publication, New Delhi 2nd edn., 2004).

¹⁵ B.Bhasker, *Electronic consumer: Framework technologies and Applications*483 (Tata MCGraw Hill, New Delhi 2003).



resolving this political controversy, it is unlikely that either a new federal law or a uniform state law addressing these issues will make much headway¹⁶.

In early shrink-wrap cases, US courts showed a reluctance to enforce strictly standard form contracts. For example, in *Arizona Retail Systems, Inc. v. Software Link, Inc.*¹⁷ case, the court held that the shrink-wrap license might be part of the contract with regard to the first sale of a copy of software. When the licensee placed an order by telephone after having inspected that first copy and the licensor did not insist in that phone call that the terms in the form contract were part of the agreement, the shrinkwrap license terms were deemed not to be included in the subsequent telephone order contract. In later shrinkwrap cases, however, courts have been more willing to enforce all the terms in shrinkwrap licenses. In *Mortenson Company, Inc. v. Timberline Software Corporation*¹⁸, the Supreme Court of Washington held that the limitation on consequential damages contained in a shrinkwrap license was enforceable against a licensee who submitted a construction bid \$1.95 million less than it should have been due to a malfunction by the software. The software license limited the software developer's liability to the purchase price of the software. While preparing the bid, the software malfunctioned repeatedly, each time displaying the following error message: Abort. Cannot find alternate. Mortenson submitted the bid generated by the software notwithstanding the repeated error messages, and learned after being awarded the contract that its bid was much lower than intended¹⁹.

To bring legal certainty of electronic transactions, the National Conference of Commissioners on Uniform State Laws (NCCUSL) of United States has developed two uniform state Acts. These two uniform acts are the Uniform Computer Information Transaction Act, 2002²⁰ (UCITA) and the Uniform Electronic Transaction Act, 1999²¹ (UETA).

2. In European Union

¹⁶ L.Kleinrock, *Communication Nets: Stochastic Message Flow and Delay*254 (Mcgraw-Hill, New York, 2016).

¹⁷ 831 F. Supp. 759 (D. Ariz.1993)

¹⁸ 140 Wash. 2nd 568.

¹⁹ NR Adam, *Electronic Commerce: Business and Legal Issues*74 (Prentice Hall, New York, 1998).

²⁰ Act no. 364 of 2002.

²¹ Act no.74 of 1999.



The European Union has created a coherent regulatory framework for electronic commerce. This framework comprises many Directives including Electronic Commerce Directive, the Distance Contracts Directives²² (e.g. Directive Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, Council; Directive Concerning the Distance Marketing of Consumer Financial Services; Directive on the Protection of Consumers in Respect of Distance Contracts, etc.), Unfair Terms in Consumer Contracts Directive, and the Community Framework for Electronic Signatures. In addition, a number of horizontal directives have been adopted, such as Privacy and Intellectual Property Rights in Cyberspace. Several sectoral directives have also been adopted. These include the Directives on Consumer Credit (including Directive for the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Consumer Credit, amended by Council Directive 90/88 and European Parliament and Council Directive 98/7²³); the Directive on Package Travel, Package Holidays and Package Tours; the Timeshare Directive, etc²⁴.

These electronic commerce directives have been designed to facilitate the provision of electronic commerce services. and adopted a minimalist approach, requiring a service provider to set out all the necessary steps so that consumers can have no doubt as to the point at which they are committed to an electronic contract. For a free and fare online contract, consumer's consent has to be expressed in a way that 'reasonably demonstrates' that the consumer is able to access the information in the electronic form, which will be used to provide the information that he/she is the subject of the consent. If there is any change in the hardware or software requirements needed to access or retain electronic records or if the change will create a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the consumer's consent must be re-obtained²⁵.

3. In United Kingdom

²² European Council Directives 2000/31,2000.

²³ EU; Report from the commission to the European Parliament, the Council and the European Economic and Social Committee”, (Commission of the European Communities, Brussels).

²⁴ Norris, Mark, and Steve West, *E-Business Essentials: Technology and Network Requirements for Mobile and Online Markets*(John Wiley & Sons, Ltd.,Chichester, England, 2001).

²⁵ Joseph,K.J. Structure and Growth of India’s IT Exports”, *Economic and Political weekly*”2009.



By the implementation of the Electronic Signature Directive and Distance Selling Directive, UK has made some unification between online and traditional transactions. Many steps have been taken towards applying the same rules on the electronic environment before the European parliament initiatives towards regulation of e-commerce. The Distance Selling Regulations are the best example in that side. These regulations are applied to contracts for goods and services to a consumer where the contract is made exclusively by means of distance communication including electronic mail. In other words, these regulations concern transactions carried out at distance, by post, telephone, email in which similar rules apply in this type of contracting whatever the method of communication used²⁶.

Electronic Communications Act, 2000 proposes to extend legal recognition to electronic signatures which meet certain general and functional equivalence criteria. However, individual statutory instruments are necessary to change requirements under existing statutes that do not recognize such communications. Part II of the ECA provisioned that the electronic signatures incorporated into or logically associated with a specific electronic communication and any certificate in respect to that signature are admissible as evidence in any court proceeding in order to establish authenticity or integrity of the communication. However, the ECA does not create a presumption that electronic signatures are equivalent to handwritten signatures. Therefore, in order for electronic documents and signatures to fulfill statutory writing requirements, special statutory instruments, effected under section 8 by the appropriate minister, are needed to modify individual Acts. Critics of the system created by section 8 argue that there is now a risk that the Government will update only a few statutory definitions which it considers to be a priority, leaving many others unreformed²⁷.

4. In Malaysia

General law on contracts and sale of goods contracts can be found in the Malaysian Contract

²⁶ Faye Fangfei Weng(ed), *Law of Electronic commercial transaction*159 (Rautledge Publication Ltd, London, 2010).

²⁷ Hedley,Steve,*The Law of Electronic Commerce and the Internet in the UK and Ireland*(CAVENDISH Publishing, Ireland, 2008).



Act 1950²⁸ and the Sale of Goods Act 1957²⁹ of Malaysia. Nonetheless, these pre-independence laws are rather outdated and have not been amended to suit modern business transactions. Malaysia has also developed a set of laws that regulates activities that take place in the cyberspace generally. These cyber laws include the Computer Crime Act 1997³⁰ and Digital Signature Act 1997³¹. The Computer Crimes Act 1997 (CCA) primarily makes unauthorized access to computers, programs, data and other IT information an offence. Other offences categorized under the CCA include unauthorized access to computer material, unauthorized modification to the contents of any computer, unauthorized access with the intention of committing or facilitating further offence and wrongful communication of the means of access. Those acts are criminalized and punishments are provided for such acts. This law is deemed important due to the increase in computer related transactions especially financial transactions. In the context of online shopping, the CCA to some extent protects e-consumers' interest with regard to a security of online payment. Another Act that could protect e-consumers in terms of securing payments in online shopping is the Digital Signature Act 1997 (DSA). The Act facilitates the development of e-commerce by providing a means for secure online transactions by using digital signatures³².

Personal Data Protection Act, 2010 provides e-consumers concern with the issue of privacy and data protection. The Act aims to regulate the processing of personal data of individuals involved in commercial transaction by data user. It provides protection to the individual personal data from being processed or disclosed without the person's consent. The act also imposes on a data user to take practical steps to protect the personal data from loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction. Any

²⁸ Act no.14 of 1950.

²⁹ Act no.382 of 1957.

³⁰ Act no.563 of 1997.

³¹ Act no.562 of 1997.

³² Amin, Naemah and Mohd nor, Roshazlizawati; *"Online shopping in Malaysia:Legal Protection for E-Consumers"*24, (European Journal of Business and Management,2013).

infringement of the individual personal data rights under the Act is an offence³³. Although these cyber related Acts were not designed to specifically deal with e-consumer protection in sales of goods transactions, they can be considered as importance pieces of the regulatory framework which is vital and essential in promoting the e-commerce in Malaysia and thus very helpful in the growth of e-industry.

iv. JURISDICTIONAL ISSUES IN E-COMMERCE: INTERNATIONAL CONVENTIONS AND TREATIES

The three important pre-requisites of jurisdiction for a judgement to be valid and enforceable are:

1. The jurisdiction to prescribe
2. The jurisdiction to adjudicate
3. The jurisdiction to enforce³⁴

Any sovereign state has the exclusive jurisdiction, power and authority over the persons and property only within its territorial jurisdiction and not on outsiders or persons who do not fall within their territorial jurisdiction. In *Pennoyer v. Neff*³⁵ it was held that only in case a person was served process when he was physically present within the territory of the state, the court would have personal jurisdiction over a person. The court would attain "in rem jurisdiction" over a non-resident who owned a property situated within the State's territory. The State in this case would be required to satisfy that the plaintiff had duly served the process and then it would attach the property before entry of judgement. On enactment of the 13th amendment, the non- resident defendant could claim that asserting such jurisdiction "the jurisdiction in rem" by a foreign State clearly violated the due process rights³⁶.

a. Brussels Regulation 1968

The 1968 Brussels Convention dealt with the issues of jurisdiction and the enforcement of

³³ Legal Aspect of E-Commerce in Malaysia available at <http://www.conventuslaw.com> (last visited on (last visited on September05, 2020).

³⁴ Seth,kanika. "Computers,Internet & New Technology Laws 57 (LexisNexis Butterworths Wadhwa and co. Nagpur 1st edn., 2012).

³⁵ 1995 US 713 (1877).

³⁶ Dr. Jyoti Ratan, *Cyber Laws & Information Technology* (Bharat Publishing House, New Delhi 6th edn., 2017

foreign judgments. Instead of the legislation becoming automatic, member states to the Convention were required to enact laws in their own countries that gave effect to the objectives of the Convention. Brussels Convention has provided general and specific grounds of jurisdiction for civil and commercial matters, including provisions for consumer contracts. According to the Brussels Convention, in a typical commercial transaction, the plaintiff would sue in the 'place of performance of the obligation in question' or where the transaction is or should have been completed³⁷.

b. Convention on the Law applicable to Contractual Obligations (Rome Convention 1980)

The Rome Convention on the law applicable to contractual obligations of 1980 was concluded by the EC Member States in order to harmonize the conflict rules of the Member States applicable to the contracts. It came into force on the 1st April 1992. The scope of the Rome Convention as defined by the Article 1 includes 'all contractual obligations in any situation involving a choice between the laws of different countries', except those explicitly excluded in the paragraph 2. The provisions of the Article 2 approve the universal application of the Rome Convention³⁸, saying, that any law designated according to its provisions should be applicable 'whether or not it is the law of the Contracting State.

c. Hague Convention on Private International Law (2001)

Since its first session, in 1893, the Hague Conference on Private International Law has drawn up numerous multilateral conventions, covering family law, commercial law, civil procedure and other areas. In October 1999, a preliminary draft Convention was adopted by the Special Commission of the Hague Conference on Private International Law. A new version of this interim text was produced after the 19th Diplomatic Conference (Part I) held in June 2001. Article 1 of the Hague Convention on Private International Law, 2001, applies to civil and commercial matters that may arise between two contracting States that have ratified the

³⁷ Lindberg, A., *Jurisdiction on the Internet-the European Perspective* available at <http://www.adanet.org>, (last visited on April 22, 2020)

³⁸ Agreement between the European Community and the kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters *available at* <http://www.advocatekhoj.com>, (last visited on (last visited on September28, 2021).

Convention. The Convention aims to harmonize rules, determine jurisdiction in case of cross border disputes between the parties and cover disputes relating to contracts Intellectual property, defamation etc³⁹. This is analogous with Brussels Convention

d. Hague Convention on Choice of Court Agreement (2005)

The Hague Convention⁴⁰ on Choice of Court Agreements is aimed at ensuring the effectiveness of choice of court agreements between parties to international commercial transactions. By doing so, the Convention provides greater certainty to businesses engaging in cross-border activities and therefore creates a legal environment more amenable to international trade and investment. The Hague Convention on choice of Court presents alternatives to articulation to resolve cross border disputes. This is a Multilateral Treaty which embodies the Private International Law principles of fairness, comity and good faith⁴¹.

v. CONCLUSION

Advancements in the field of information technology have had an impact on the economy of a country and also on the quality of human life. The technological developments have created tremendous opportunities as well as challenges for both the developed and developing countries. One of the chief areas wherein the information technology has made a tremendous impact is – 'business and commerce'. The speedier means of communication has abridged the time and distance factor in transacting business. The information technology has brought forth an incredible revolution in the field of contract-formation.

Among the most fundamental challenges any legislator will face in assessing the relevance and efficacy of traditional contract law doctrine in the light of technological innovation will be finding an appropriate response to the development of more powerful systems for negotiating and forming contracts. Competitive pressures will encourage businesses to seek to replace humans with automated contracting processes, but automated processes may embody

³⁹ Hague conference on Private International Law available at <http://www.jus.uio.org>, (last visited on (last visited October17, 2020)

⁴⁰ 30 June of 2005.

⁴¹ Pribetic, Antonin I., Hague convention of a choice Agreements available at <http://www.nortonrosefulbright.com>, (last visited on (last visited October24, 2020)



technical norms that are not altogether consistent with law or public policy. The turmoil in the realm of information privacy law and practice may be an indication of the kind of controversy that will arise in the realm of contract law as new, more powerful electronic commerce technologies come into widespread use. Mechanisms to keep the development of technical standards in tune with both competitive market forces and the requirements of law and public policy will have to be found.