
Sarah E. Smith

Sarah E. Smith*

I. INTRODUCTION

This Comment will address the proposed United Nations Convention on the Use of Electronic Communication in International Contracts (CUECIC) arguing that the Convention is the next necessary step in the evolution of the international law on e-contracts. The general background of the CUECIC as well as the specific provisions it proposes will create effective uniformity and reliability for businesses who conduct international transactions via electronic communications. The development of e-contracting over the past thirty to fifty years has led to the creation of numerous methods through which international businesses can contract. However, these new developments have left the legal community, both domestic and global, with the problem of resolving the incongruence that has arisen between business practice and legal requirements. While domestic law, as well as current UNCTRAL model laws, have made major headway in breaking down the barriers to e-contracting, there is still a major lack of uniformity which threatens to hinder the development of future methods. The CUECIC proposes to remedy these problems. The current issues arising out of electronic contracts between international parties will continue to grow so long as uniformity is absent from the law. To that end, the adoption of the CUECIC will not only resolve current issues but it will also allow for the consistent development of a beneficial international business practice, and because of this, it should be adopted.

II. THE HISTORY AND PURPOSE OF THE CUECIC

The purpose and applicability of the United Nations Convention on the Use of Electronic Communication in International Contracts (CUECIC) is best illustrated by the language of the first paragraphs of Articles 1 and 8 of the Convention. Article 1(1) reads: “This Convention applies to the use of electronic communication in connection with the formation or performance of a contract between parties whose places of business are in different States.” Further, Article 8(1) sets forth: “A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in

* Sarah E. Smith is a May 2008 candidate for Juris Doctor at Southern Methodist University Dedman School of Law.

the form of an electronic communication." Thus, the Convention upholds the principle that electronic communication used in international contracts will suffice to meet the legal standards required for contract formation and enforceability. The Convention, in essence, brings the formation of contracts through electronic means up to the same legal status as contracts done in writing. Under the CUECIC, an international sales contract will not be invalidated solely because it is electronic.

Over the past thirty years, the use of electronic communication in contracting has gone from virtually nonexistent to virtually unavoidable. Today, email communication and internet-based transactions are widely used throughout the globe in every day business to business interactions. This evolution from face to face or telephone communication to electronic communication has caused the problem of conflict between legal requirements and actual business practices. Additional problems have arisen due to the fact that it is not only contract negotiations that are taking place through electronic means, but a contract may be entirely formed without the creation of a written document. Thus, “[a]s businesses started doing without paper, lawyers began to wonder what would happen to their traditional legal rules and practices based on paper. What of “getting it in writing?” What of signatures? What of originals? How would courts deal with electronic evidence?" In response to the incongruent requirements and practices that have developed as of late, both international and domestic authorities have enacted legislation in order to reconcile the problem. In the United States, this has taken the form of two federal acts, UETA and E-Sign, as well as one model state law, UCITA. The CUECIC attempts to answer all of these questions which remain unanswered even after the development of domestic and international uniform laws on e-contracting.

In July 2001, UNCITRAL first approved the recommendations of the Working Group on Electronic Commerce to commence work on a Convention dealing with all of the issues surrounding e-contracting. After four


2. Id. at art. 8.

3. See John D. Gregory, The Proposed UNCITRAL Convention on Electronic Contracts, 59 BUS. LAW. 313, 313 (November 2003) (Explaining how the development of electronic communications in international contract formation has led to a need for "specifying and harmonizing the private law implications of using them").

4. Id.

5. See id. at 317 (noting that one argument in favor of adopting the CUECIC is that “[o]nly a convention...can bring the appropriate degree of harmony across borders.”).

years of examination and deliberation, “the E-Contracting Convention was adopted by UNICTRAL at the thirty-eighth Session of the commission in July 2005.”

That fall, on November 23, 2005, the U.N. General Assembly approved and adopted the Convention. The Electronic Contracts Convention opened for signature on January 16, 2006 and will remain open for two years at the U.N. Headquarters in New York. Once “three instruments of ratification, acceptance, approval or accession” have been deposited with the Secretariat the Convention will enter into force. This has not yet occurred.

Complying with the objectives of UNCITRAL, the “main purpose [of the CUECIC] is to promote the development of international trade, removing obstacles and uncertainties caused by the use of electronic media in the formation of international contracts.” With the overall goal of promoting uniformity in international contracts, the CUECIC attempts to resolve issues of conflicting domestic law contract requirements while ensuring that the international legal community has caught up with current technological trends. Thus, the CUECIC intends to resolve conflicts “that might arise from differing country-specific approaches to e-commerce...under existing international trade law instruments, most of which were negotiated long before the development of electronic commerce technology.” In order to accomplish this goal the CUECIC “addresses six fundamental e-commerce legal issues; 1) Legal Recognition of E-Commerce; 2) Elimination of Legal Barriers to E-Commerce; 3) [Preservation of] Freedom of Contract; 4) [Establishment of] Default Rules for Electronic Communications; 5) Recognition of Automated Contracts; 6) [Establishment of] Default Rules for Human Input Errors in Electronic Communications.” If enacted, the CUECIC will prove to


8. Id.

9. Id. at 3.


11. See Id.

12. See Id.

13. See Gregory, supra note 3, at 313.

14. ABA, supra note 7, at 3.

15. Id at 3-4.
achieve the harmonization and uniformity in international e-contracting that it promises to deliver.

The CUECIC was not the first attempt by UNCITRAL to unify e-commerce on the international spectrum. In fact, the Electronic Contracts Convention "complements and builds upon" previous enactments by UNCITRAL which also addressed this issue.¹⁶ Unlike the Convention, previous UNCITRAL model laws were intended to serve as a guide for domestic legislatures to "update their legislation" in order to incorporate e-commerce into the national laws on contracts.¹⁷ The Convention, on the other hand, "is conceived as an international law legal instrument."¹⁸ Upon its enactment, it will provide binding authority on the "legal validity [of] the use of electronic communications in international contracts."¹⁹ Thus, participating States will no longer have a choice to develop their own system of rules concerning international e-contracts; the CUECIC will be the governing authority and divergence will be eliminated.²⁰ The current state is one of agreement on the underlying goals of incorporating electronic communication into legislation on international contract; in fact numerous States have developed domestic law doing just that.²¹ However, there still is no settled approach on exactly how this should be done.²² In other words, the current state of the law is one of congruent goals without congruent practice.²³ Thus, the CUECIC will not only promote the goals of current law on e-contracts, it will provide uniformity in an area of law that is still very much unsettled.²⁴

¹⁶. Id. at 3; see also Martin, supra note 6, at 265 (Explaining that the substantive law from the CUECIC is derived from the MLEC).

¹⁷. See Allende, supra note 10.

¹⁸. See id.

¹⁹. See id.

²⁰. See id.; see also ABA, supra note 7, at 5 (Arguing that "the E-Contracting Convention will significantly reduce the legal uncertainty resulting from the lack of (or inconsistent) country legislation addressing e-commerce transactions, and from legal barriers created by pre-existing international treaties, by harmonizing the fundamental law governing the enforceability of e-commerce transactions in cross-border commerce").

²¹. ABA, supra note 7, at 4.

²². See id.

²³. See id.

²⁴. See id.
III. THE DEVELOPMENT OF E-CONTRACTING AND THE DIFFERENT FORMS THAT HAVE TAKEN HOLD IN INTERNATIONAL TRANSACTIONS: HOW DO THE VARIOUS FORMS OF E-CONTRACTING ILLUSTRATE THE NEED FOR AN INTERNATIONAL E-CONTRACTING CONVENTION?

A. Background

Electronic contracting, or e-contracting, is the process of contract negotiations and formation taking place entirely (or at least primarily) through electronic communication. With the advancements made in electronic communications, it is no longer necessary for contract negotiations and formation to take place face to face. In fact, "in today's electronic landscape, parties can instantly agree to, confirm, and communicate assent with just a few keystrokes."25 Electronic communication allows international contracting to take place within a matter of seconds. In addition, it has taken on numerous forms that are used on a global scale which gives businesses the option of e-contracting through multiple means.26 As a result, the definition of e-contracting spans the spectrum of electronic communications encompassing all forms of e-commerce. Businesses now have an arsenal of contractual possibilities behind them; the means negotiating and forming e-contracts are endless as "[e]lectronic commerce...may be used to describe EDI, internet communications, e-mail, and even fax."27

The issues arising from electronic contracts are not dissimilar from those arising out of their paper counterparts; however, the unique nature of electronic communications allows these contracts to be negotiated and finalized in a matter of seconds without ever requiring human interaction. As a result, new confusion arises out of set traditional contract standards concerning the "line between informal communication of an offer and formal acceptance," conflict of laws issues, and finally, the creation of default, binding contracts by merely sending an email.28 Thus, the problems that can arise from automation in e-contracts, when humans aren't communicating in real

25. Jennifer E. Hill, Comment, The Future of Electronic Contracts in International Sales: Gaps and Natural Remedies under the United Nations Convention on Contracts for the International Sale of Goods, 2 NW. J. TECH. & INTELL. PROP. 1, 2 (2003) (explaining that the effect of mistakes "originating from online transactions" are "magnified by the speed at which information is communicated to and acted upon by customers" because of the use of electronic communication in contracting).

26. See id. at 11 (describing "intangible methods of transacting business, such as fax, EDI, the Internet, e-mail, telex, and online software agreements" as business phenomena presenting new legal issues for current law on international sales).


time, where one click could form an unintentional contract, create new issues for those dealing in international business transactions. Still, e-contracting offers many advantages for business to business (B2B) transactions lending to its ever-increasing spread across the globe. E-contracting is both cost and time efficient because it allows for a single click to do the work that traditionally only numerous meetings and phone calls could accomplish. In e-contracting, "there is no face-to-face communication or negotiation between the parties." While there is still the option of the telephone, which "is the next best thing to face to face negotiations as the communication takes place directly in time between the parties without any real time lag," e-contracting still offers an even more appealing alternative. However, there are disadvantages. On the phone, or in person, "any uncertainties, ambiguities or even breaks in communication are immediately evident and can be cleared up immediately by the parties." But, in e-contracting, "there is a break in place and time between the communications of the different parties." Thus, there is no "gap" where parties can renegotiate; everything is automatic. This often leads to the unfortunate result that parties could be bound to a term that they did not necessarily agree to; no gap in time means no time to renegotiate. Thus the very time and cost efficiency that gives great advantage can also cause serious problems.

Problems of normal contract formation are thus compounded when contracts are electronically formed. "Errors are often difficult to catch and harder to rectify, particularly if one party has relied on the contract." In some cases this situation does not lead to unintended, unfortunate consequences as some human to human interaction takes place prior to the automated assent. However, some contracts are done with a complete lack of human intervention, and in these cases the problems can become even more complicated. And, "[w]hile technology makes business quicker and easier to transact, part of this speed comes from a lack of formal interaction with paper contracts." This is the root of the conflict between current law and current practice: when contracts are formed electronically, there is no need for a traditional writing and thus no need for paper. This problem is amplified by the "speed and automation" with which electronic contracting takes

29. Id.
30. Id.
31. Id.
32. Id.
33. Id.
34. Id.
35. Id. at 10.
36. Id.
37. Id.
38. Id.
In comparison with traditional contracts, e-contracts lack a formal writing, they do not require human interface, and they can easily lead to miscommunications in contracting as everything takes place with a click of a button and is completed in a matter of seconds. The problems of "jurisdiction, validity, formation, modifications, authentication, message integrity, and non-repudiation" continuously confront businesses using e-contracts for international transactions. Most importantly formation issues abound in e-contracting where intent is difficult to find and automated transactions completely leave out human action. The lack of human interaction and diminished time-gap for re-negotiation inherent in e-contracting create a new field of legal issues to be dealt with. On an international level, these point and click contract negotiations can lead to even more problems since domestic laws may conflict and there is no binding international standard. Thus, "the fundamentals of contract creation – offer, acceptance, and consideration – come under attack in electronic contract formation in the initial agreement and in modification." When there is no structured means for resolving these issues, the continued development and spread of e-contracting becomes a problem that poses a great threat to the future of international coherence in the law of e-contracting.

B. Methods of E-Contracting: How do Lack of Human Interface, a Diminished Time-GAP For Renegotiation, and Automatic Transactions Create a New Set of Contract Issues Unfamiliar to the Traditional Form?

"Electronic commerce was born of electronic data interchange (EDI) and came of age with the popular use of the Internet." Today, e-contracting can be accomplished in numerous forms including: electronic agents, electronic data interchange, and e-mail. From the everyday consumer purchase on an internet website to sophisticated electronic business-to-business transactions, millions of e-contracts are being formed everyday. Each form of e-contracting presents its own set of problems. Thus, it is necessary to discuss possible forms of e-contracting and the different issues associated with each in order to shed light on how the CUECIC will address those problems.

39. Id.
40. See, e.g., id. at 10 (arguing that "the certainty and predictability of remedies afforded by a tangible contract are complicated by electronic measures").
41. Id. at 14.
42. Id.
43. See Eiselen, supra note 25, at 22.
44. See ABA, supra note 7, at 4.
46. Gregory, supra note 3, at 313 (explaining the development of e-commerce as an introduction to analysis of the CUECIC).
1. Electronic Agents

Electronic agents are virtual software intermediaries that act as contracting agents in transactions.\textsuperscript{47} Also known as "bots," electronic agents are autonomous software programs that have the authority to contract for a master.\textsuperscript{48} An example of an electronic agent is a program that allows an internet customer to purchase an item by simply clicking a button and forming a contract.\textsuperscript{49} In the world of e-commerce, "the term ‘agent’ is not meant to suggest that the parties involved share the legal relationship of agency, but rather connotes the more general idea that the software does what one tells it to do."\textsuperscript{50} Thus, electronic agents (bots for short) can be as simplistic as a coordinated program intended to carry out a single function or as complicated as a web crawler set to roam the internet "accomplishing whatever tasks their masters have set for them."\textsuperscript{51} These tasks can range from web crawling to metasearch engines to harmful viruses.\textsuperscript{52} Bots are autonomous electronic agents, they have the capability to move about and make contracts without human interaction.\textsuperscript{53} These transactions occur between businesses, or persons, who have not had previous communications.\textsuperscript{54} Moreover, there is no standardized business format set-up beforehand; these are entirely automated transactions.\textsuperscript{55} This results in numerous problems in contract formation and enforceability primarily because: "(i) the parties to an Internet commerce transaction may not know each other prior to the transaction; (ii) there is less likely to be a master agreement between the parties governing their agreement to do business electronically; and (iii) one or both of the parties may be a consumer."\textsuperscript{56} The main problems with these transactions come from a lack of human to human interaction.\textsuperscript{57} When one party is an

\textsuperscript{47} Stephen T. Middlebrook & John Muller, Thoughts on Bots: The Emerging Law of Electronic Agents, 56 Bus. Law. 341, 341 (2000) (using the term “bot” as synonymous with an electronic agent to illustrate that the electronic agent is merely a robot acting on behalf of its master).

\textsuperscript{48} Id.

\textsuperscript{49} Id. at 344.

\textsuperscript{50} Id. at 342.

\textsuperscript{51} Id.

\textsuperscript{52} Id. at 343-44.

\textsuperscript{53} See id. at 245 (setting forth a list of characteristics that almost all bots possess in order to function autonomously; according to the authors, bots are reactive, autonomous, goal-oriented, temporally continuous, communicative, learning, and mobile).

\textsuperscript{54} Id. at 348.

\textsuperscript{55} Id.

\textsuperscript{56} Id.

\textsuperscript{57} Id.; see also Hill, supra note 23, at 10.
electronic agent, and the other a human being, miscommunication often occurs. On top of that, the automatic nature of the transaction and the immediate formation of a contract can result in contracts formed without a “meeting of the minds.”

Thus, the most problematic of all e-contracting occurs through electronic agents and the internet.

The very nature of the internet and electronic agents lends to the creation of issues in contract formation and enforceability. “The internet is a massive collection of networks cooperating to connect millions of computers globally to pass information to each other.” When Business to Business commerce takes place over the internet, complicated contract negotiations and formation can be finalized within a matter of seconds. B2B commerce on the Internet is not dissimilar from consumer to business transactions. In the same way that an internet consumer can point and click and form a contract for sale with the internet seller, “B2B commerce functions similarly with publicly available or privately protected special websites prepared for valued customers, including direct billing and other inventory management efficiencies.”

Usually there is an agreement on terms prior to the sale, but the “users manually interact with the website to select and purchase goods.” Nonetheless, the website is operated automatically. Once the button is pushed, the bot gives the automated response that has been commissioned by its master. Moreover, there is still no time gap for negotiations when miscommunication occurs. In international B2B transactions, issues like error, assent, and modification are complicated enough when parties are dealing with foreign legal systems. When international B2B commerce is conducted through electronic agents, these issues are even more problematic as there is no uniform means of resolving them. The CUECIC speaks directly to automated transactions and electronic agents; it offers a solution to the lack of uniformity in legal requirements for international e-contracts.

2. Electronic Data Interchange (EDI)

One of the most prevalent forms of electronic agents used in international B2B e-contracting is Electronic Data Interchange (EDI). EDI is an

58. Middlebrook, supra note 47, at 348.
60. See Eiselen, supra note 25, at 22 (emphasizing how small the gap in time between contract negotiations and automatic formation is when contracts are formed electronically).
62. Id.
63. See Middlebrook, supra note 41, at 344.
64. See CUECIC, supra note 1, at art. 12 (contracts formed by the interaction of a natural person and an automated message system or between two automated message systems are not automatically invalidated).
automated "transmission of information" which is most widely used by "fre-
quently contracting commercial parties."65 It functions as a standardized me-
dium through which parties can conduct all aspects of a sale. These
transactions regularly occur "devoid of human involvement."66 EDI's are,
"perhaps, the clearest example of electronic-contracting through the use of an
electronic agent."67 "Electronic Data Interchange (EDI) may be most easily
understood as the replacement of paper-based purchase orders with electronic
equivalents."68 However, the impacts of EDI are "far greater than mere au-
tomation."69 Among other things, EDI has the effect of reducing error in B2B
transactions as well as allowing for more efficient business practice.70 Fur-
thermore, "EDI offers the prospect of easy and cheap communication of
structured information throughout the corporate community, and is capable
of facilitating much closer integration among hitherto remote organisa-
tions."71 EDI is the ideal mode of contracting for international parties be-
cause it requires little face to face contact and allows for almost complete
automation.

While EDI is "the exchange of documents in standardised electronic
form, between organisations, in an automated manner, directly from a com-
puter application in one organization to an application in another," it does not
eliminate human interface altogether.72 Before the automated process takes
place, parties must develop "structured, formatted messages based on agreed
standards."73 Only then, once the preliminary requirements have been organ-
ized and agreed upon, does EDI literally become contracting without any
human involvement.74 The machines are set up in a certain way, and busi-
ness is conducted at the push of a button. In using EDI, "[c]ontract offer,
acceptance, and assent occur automatically."75 Nonetheless, assent is shown
outright in the use of EDIs because "parties must agree on the standards and
forms before they engage in the lengthy and expensive process of establish-

66. Id.
67. Id.
68. Roger Clarke, Electronic Data Interchange: An Introduction, (December 1998),
69. Id.
70. See id. (noting that EDI results in eliminating the "unnecessary recapture of
data" which "leads to faster transfer of data, far fewer errors, less time wasted
on exception-handling, and hence a more stream-lined business process").
71. Id.
72. Id.
73. Id.
74. See Hill, supra note 23, at 17.
75. Id.
ing direct communication." 76 Despite the fact that EDI is completely automated, the existence of assent has lead to an "apparently complete lack of litigation arising out of the use of EDI." 77 Thus, when electronic communication is used primarily for the transfer of data and not for the negotiations of contract terms, assent is not difficult to find. EDI still lacks a time gap and human interface in contract formation, but it does not create difficulty in determining assent because terms are negotiated prior to the automated transaction. Nonetheless, the CUECIC would be beneficial to EDI users as international parties would be able to look to the Convention for concrete answers when conflicts arise.

3. Electronic Mail (E-MAIL)

In the case of e-mail, lack of human contact is not so problematic, but the issue of assent and the requirements of signature become complicated when e-mails are used to form a contract. 78 Moreover, most people see e-mail as an informal means of communication; however, in B2B transactions, e-mails can easily become binding terms of a contract. 79 The primary issue with e-mail is whether or not typing your name at the bottom of the page evidences a signature that makes assent binding. 80 Courts have readily found non-traditional forms of signatures in telegrams and letterhead, thus the issue of finding a signature in an e-mail is easily resolved. 81 Usually the court will look to the intent of the parties to determine whether the e-mail should suffice for a signature; if the parties intended for the e-mail to be binding, then the court will find it so. 82 Other issues arise out of the problem of receipt and dispatch in e-mail. 83 One way of determining receipt and dispatch is by who has actual control over the document at a given time. 84 Thus, dispatch would be determined by the time that the transmission leaves the control of the sender, and receipt by the time the transmission enters the domain of the

76. Id. at 18.
77. See Middlebrook, supra note 41, at 347-48.
78. See Hill, supra note 23, at 15.
79. Id.
80. Id.
81. Id.
82. Id. at 16.
83. Id.
84. See Eiselen, supra note 25, at 23 (explaining that under the “reception theory” receipt of a “communication only becomes effective once the recipient has actually physically received the communication or it has at least been made available to it, even though it has not yet taken notice of the content”).
recipient. However, this is not an absolute rule for all jurisdictions and poses problems when e-mails are used in international commerce.

Overall, the problems posed by each form of electronic communication used in contract formation result from: 1) a lack of a time gap for re-negotiation in the event of a mistake or miscommunication; and 2) automatic formation of a contract done by an electronic means sometimes completely without human involvement. The problems with the "speed and automation" associated with e-contracting result in major complications in resolving formation and enforceability issues. These issues pose new problems for legislation that is based on traditional contracting methods because human interface is lacking in e-contracting. An evaluation of the current state of the law on e-contracting will show that although legislators have made headway in resolving these issues, on the international forefront, incongruity still exists.

IV. THE CURRENT STATE OF THE LAW ON E-CONTRACTING: AN EVALUATION OF CURRENT DOMESTIC AND INTERNATIONAL UNIFORM LAW AND HOW IT DEMONSTRATES A NEED FOR AN INTERNATIONAL CONVENTION ON E-CONTRACTING

In evaluating the current law on electronic communications in international contracts, it is important to look at both UNCITRAL model laws on the subject as well as U.S. domestic law. The U.S. is the leading country in e-commerce and has the most fully developed law in that area. The substantive matter of the CUECIC is strikingly similar to U.S. law on e-contracting. The relevant U.S. laws on e-contracting are the Uniform Computer Information Transactions Act (UCITA), the Uniform Electronic Transactions Act (UETA), and the Electronic Signatures in Global and National Commerce Act (E-Sign). UNCITRAL has adopted two sets of model laws in an attempt to breakdown barriers created by e-commerce; these are the Model Law on Electronic Commerce (MLEC) and the Model Law on

85. See id.
86. See id.
87. See Hill, supra note 23, at 10; Gregory, supra note 3, at 313.
88. See Hill, supra note 23, at 10.
89. Hill, supra note 23, at 70.
90. See Uniform Electronic Transactions Act [hereinafter UETA] § 7 (1999) ("A record or signature may not be denied legal effect or enforceability solely because it is in electronic form."); compare CUECIC, supra note 1, at art. 8 ("A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication").
91. See Middlebrook, supra note 41, at 346-47.
Electronic Signatures (MLES). The substantive law of the CUECIC is almost identical to the MLEC, thus evaluation of the effect of the MLEC will give guidance to the future of the CUECIC.93

A. United States Domestic Law on E-Contracting

In the area of e-commerce in the United States two uniform acts have been promulgated: the Uniform Electronic Transactions Act (UETA), and the Uniform Computer Information Transactions Act (UCITA). Both of these were enacted in response to a movement in the United States toward e-commerce in order “to establish a legal framework for trade in information distinct from the commercial code for sales of goods, and to establish basic principles for electronic commerce generally.”95

The more ambitious of the two uniform codes is UCITA. UCITA came about after the failed attempt to establish the proposed Article 2B of the Uniform Commercial Code. Article 2B was intended to incorporate e-commerce into the UCC, but, after much deliberation, was never adopted. Even after Article 2B was dismissed, “[m]any people felt that Article 2 of the Uniform Commercial Code (U.C.C.) did not adequately cover transactions involving software because, in contrast to contracts involving ordinary goods, software contracts transfer intangible goods and often entail a license right to use rather than a sale.”99 UCITA “seeks to provide a full set of commercial law rules for computer information transactions;” it is an attempt to incorporate e-commerce into the traditional standards of the U.C.C.100

Under UCITA, an electronic agent manifests assent by “[authenticating] the record or term; or by [engaging] in operations that in the circumstances indicate acceptance of the record or term.”101 Moreover, “a contract may be formed in any manner sufficient to show agreement, including offer and acceptance or conduct of both parties or operations of electronic agents which

92. See Allende, supra note 10 (stating that the MLEC and MLES “were drafted with the aim at providing an example for States to update their legislation based on conventional printing technology”).
93. See Martin, supra note 6, at 283 (arguing that the MLEC is the model for the CUECIC’s substantive requirements).
94. See Middlebrook, supra note 41, at 346-47.
95. Id. at 346.
96. Id. at 351.
97. Id. at 352.
98. See id.
100. Middlebrook, supra note 41, at 352.
recognize the existence of a contract." Thus, not only can contracts be formed by electronic agents, they can also be formed by other means of electronic communication. In terms of contract formation, "an offer to make a contract invites acceptance in any manner and by any medium reasonable under the circumstances." This broad provision leaves open the possibility of contract acceptance taking any form; contracts may be done electronically or on paper and still be valid. If the offer is made by an electronic message, and the acceptance is also in the form of an electronic message, "a contract is formed: (a) when an electronic acceptance is received; or (b) if the response consists of part-performance or granting of access." If the contract offer and acceptance is conducted by electronic agents, a contract will be formed if the agents "[engage] in operations that under the circumstances indicate acceptance of an offer." In addition, contracts may be formed through electronic agents interacting with an individual "if the individual takes an action or makes a statement that the individual can refuse to take or say and that the individual has reason to know will: (1) cause the electronic agent to perform . . .;or (2) indicate acceptance, regardless of other expressions or actions by the individual to which the individual has reason to the electronic agent cannot react." Thus, if the individual has the choice to provoke the electronic agent into an action that will appear to be an acceptance, and chooses to do so, the individual will be bound. This protects against claims by individuals that they did not purposefully enter into a contract even when they intentionally interacted with the electronic agent in this way. Moreover, under UCITA, an individual is directly responsible for the acts of an electronic agent even if he was unaware of the agent’s actions or operations. This is the most stringent rule of the three U.S. attempts to resolve issues of e-contracting. To that end, UCITA also requires that agents be "reasonably configured," which could be "fertile grounds for litigation" as there are no standards for determining reasonableness for electronic agents. However, "the existence of a general rule, no matter how broad

102. Id. § 202.
103. See id.
104. Id. § 203.
105. See id.
106. Id.
107. Id. § 206.
108. Id.
109. See id.
110. See id.
111. Middlebrook, supra note 47, at 352.
112. Id. at 353.
113. Id.
gives parties some basis for evaluating the risks they are taking if they choose to use electronic agents for contracting."\textsuperscript{114} Thus, one very positive development that UCITA proposes is uniformity in electronic agency law.\textsuperscript{115} Yet, UCITA has not received unanimous approval.\textsuperscript{116} Thus, those states who have not adopted the uniform law still have questionable jurisprudence on the incorporation of e-commerce into the U.C.C.\textsuperscript{117} Even so, it is likely that the remaining states will adopt UCITA, and thus it will be successful in "[providing] substantive contract law and [establishing] a legal framework for computer information transactions..."\textsuperscript{118} The predicted success of UCITA in harmonizing differing state law issues on e-contracting mimics the effect that the CUECIC will have on international law. If adopted, the CUECIC will provide the same kind of substantive legal framework that UCITA has provided in the U.S.\textsuperscript{119}

Unlike UCITA, the Uniform Electronic Transactions Act (UETA) does not propose to enact substantive changes to current law on e-contracting.\textsuperscript{120} Instead, UETA "intends to validate the use of electronic media" bringing e-contracts to the same legal status as their paper counterparts.\textsuperscript{121} The main purpose of UETA can be summarized by the language set forth in § 7: Legal Recognition of Electronic Records, Electronic Signatures, and Electronic Contracts.\textsuperscript{122} Under UETA § 7, "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form," and "[a] contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation."\textsuperscript{123} Moreover, "if a law requires a writing, an electronic record satisfies the law," and "if a law requires a signature, an electronic signature satisfies the law."\textsuperscript{124} Thus, UETA does not speak to the validity of a signature or an electronic record, it does not require intent of the signer for an electronic signature to be valid, but it does assert that electronic records and signatures are facially valid as a means of contract

\textsuperscript{114.} Id.

\textsuperscript{115.} See id.

\textsuperscript{116.} See Zaremba, supra note 99, at 495-96.

\textsuperscript{117.} See id.

\textsuperscript{118.} Id. at 496.

\textsuperscript{119.} See id. (explaining that without having adopted UCITA it is unclear what law the states will apply, but in those states where it has taken full effect this is not an issue).

\textsuperscript{120.} Id. at 494.

\textsuperscript{121.} See id.

\textsuperscript{122.} See id.; UETA, supra note 83, § 7.

\textsuperscript{123.} UETA, supra note 83, § 7(a-b).

\textsuperscript{124.} Id. § 7(c)-(d).
formation. Thus, UETA ensures procedural protection to e-contracts formed via e-mail negotiations and even electronic agents. It is not necessarily concerned with the validity of the contract so much as it is concerned with the validity of the use of electronic communications in formation.

In the area of electronic agents, "the UETA drafters emphasize that an electronic agent, as defined, is in essence a tool of its user." This is an attempt to resolve confusion about agency law issues concerning electronic agents. Under UETA, the electronic agent is not like a human agent who can bind the principal of its own volition given that it has the property authority. Instead, an electronic agent is a functional part of the individual's business; it is used just like e-mail as a means of conducting e-commerce, it is not a robot working as a replacement for a human being. Moreover, under UETA, an automated transaction is defined as "a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract." Thus, the automatic aspect of an electronic contract means that there is no time for review of the negotiations once it has been set into action; in other words an automated transaction is defined by a very small, if not non-existent, time gap in which negotiations may take place. Moreover, UETA defines an electronic agent as "a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual." Once again, this definition turns on the unavailability of a time gap for review. Thus, the key feature of an electronic agent is also automation. This means that UETA "seeks to establish" the general principle "that a contract may be formed through an automated transaction (such as an EDI transaction) or with an electronic agent on one or both sides, even if no human being reviewed the results of the electronic agent's action." This prevents the use of the "argument that use of an electronic tool or automated process per se indicates a lack of assent and therefore prevents contract formation." The problems of unintended assent that can occur when automation leads to hasty contract formation and the small time gap allows for no

125. See id.
126. See id.
127. See id.
129. See id. at 348.
130. See id. at 348-49.
131. UETA, supra note 83, § 2(2).
132. See id.
133. Middlebrook, supra note 47, at 349.
134. Id.
negotiation are resolved under UETA. In other words, UETA’s approach to electronic agents resolves the issues arising out of automation in electronic contracting. Overall, UETA gives the appropriate procedural protection to individuals in the United States conducting business through e-contracts.

Unlike UCITA and UETA, The Electronic Signatures in Global and National Commerce Act (E-Sign) is binding federal law in the United States. Since both UCITA and UETA have not been unanimously adopted, E-Sign is the only relevant e-commerce statute that applies nationwide. However, under E-Sign, if a state has previously adopted UETA, the provisions of UETA will prevail. It was adopted in October 2000 in an attempt by the federal government to enforce some of the principles outlined in UETA. E-Sign deals primarily with the validity of electronic signatures in electronic contracting. It was enacted not to provide substantive contract law, but to promote and facilitate the use of electronic records and signatures in interstate and foreign commerce on a federal law. Thus, it is not meant to create a new standard for signatures under U.S. contract law, its purpose is simply to recognize that electronic signatures will not automatically be invalidated.

Under E-Sign, “with respect to any transaction in or affecting interstate or foreign commerce,” so long as it is not in conflict with another governing rule of law, “a signature, contract or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.” And, “a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic record was used in its formation.” Thus, under E-Sign, a contract that is formed through e-mail negotiations will be valid on its face as the electronic signature will suffice under U.S. contract law. In addition, E-Sign has some bearing on the validity of electronic agents in the United States. E-Sign deals with electronic agents by asserting that “a contract or other record relating to

135. Id.
136. See id.
137. See id.
139. Id.
140. Id.
141. Middlebrook, supra note 47, at 346.
142. Id.
143. Zaremba, supra note 99, at 493.
144. See id.
146. Id.
a transaction in or affecting interstate or foreign commerce may not be denied legal effect...solely because its formation...involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound."

Although E-Sign is based on UETA, there is a difference in how electronic agents are addressed. E-Sign seems to suggest that the actions of electronic agents may or may not be "legally attributed" to the parties who control them. However, what is most problematic is "the fact that there is a difference...in the first statutes to deal with electronic agents" which "suggests the difficulty that may lie ahead in crafting more detailed rules for the law of electronic agents." This difficulty could be easily remedied on the domestic front, but when two entirely separate jurisdictions are interacting it becomes rather difficult. This simple discrepancy could be resolved by the adoption of the CUECIC.

U.S. domestic law illustrates that uniform law has the ability to validate electronic transactions on their face and to resolve disputes arising out of conflicting legislation. Both UETA and E-Sign demonstrate the effective use of procedural methods in securing the validity of e-contracts in the United States, and UCITA demonstrates the effect of substantive requirements for e-contracting on previously existing legislation. Yet, even with three uniform laws available in the United States, there is still incongruence. This would be almost completely resolved were every state to adopt the substantive requirements of UCITA. The section below will demonstrate that the international community is in need of similar action.

B. Currently Enacted Uncitral Uniform Law on E-Commerce

The United Nations has enacted two UNCITRAL uniform law proposals on e-commerce: The Model Law on Electronic Commerce (MLEC) and the Model Law on Electronic Signatures (MLES). The MLEC was promulgated by UNCITRAL in 1996. "The Model law lays down principles for e-commerce in order to remove a number of legal obstacles and to create a more secure environment for electronic commerce." However, the MLEC does not reach beyond this point. While the MLEC has been widely adopted,

148. Id.
149. Id.
150. Id.
151. See Zaremba, supra note 99, at 493-95.
152. Id.
153. Id. at 496.
154. Id. at 485.
155. Id.
156. Id.
by itself it has no binding legal authority. Yet, the principles outlined in
the MLEC have been widely adopted by the CUECIC as the primary source
of its substantive law. The MLEC requires the “legal recognition of data
messages.” To that end, under Article 5, “[i]nformation shall not be denied
legal effect, validity or enforceability solely on the grounds that it is in the
form of a data message.” Moreover, under Article 6, “where the law re-
quires information to be in writing, that requirement is met by a data message
if the information contained therein is accessible so as to be usable for subse-
cquent reference.” Thus, the “basic principle” of the MLEC is non-discrimi-
nation. In addition, the MLEC “sets out electronic ‘functional equals’ to traditional legal rules requiring paper, so that data messages
may have the same legal effect.” The MLEC does answer issues arising
from e-contract formation and validity, but there is no force behind its provi-
sions. The MLEC must be adopted into domestic law in order for it to
gain force, thus in practice its principles are not completely uniform.

The second UNCITRAL model law, the Model Law on Electronic Sig-
natures (MLES), is an elaboration of the MLEC. The MLES addresses
issues that were “left in suspense by the earlier text.” In particular, the
MLES deals with what is required under the MLEC to make a valid signa-
ture. Under Article 6 of the MLES, “the requirement [for a signature] is
met in relation to a data message if an electronic signature is used that is as
reliable as was appropriate for the purpose for which the data message was
generated or communicated. . . .” A signature is considered reliable if “the
signature creation data are. . . .linked to the signatory and no other person. . . .at
the time of the signing under control of the signatory [alone] . . . any altera-

157. Id. (explaining that the “[MLEC] is neither a convention nor a treaty”).
158. See Martin, supra note 6, at 283.
159. Model Law on Electronic Commerce of the United Nations Commission on
DOC/GEN/N97/763/57/PDF/N9776357.pdf?OpenElement.
160. Id. at art. 6.
162. Id.
163. Id. at 317.
164. Id.
165. Id. at 314.
166. Id.
167. See id.
168. Model Law on Electronic Signatures of the United Nations Commission on
DOC/GEN/N97/763/57/PDF/N9776357.pdf?OpenElement.
tion mad. ...[post] signing is detectable; and any alteration made to [information assuring integrity] is detectable." Thus, both the MLEC and the MLES take measures to protect the development of e-commerce and e-contracts. However, since neither one of them are conventions or treaties, the principles they promulgate are not binding law. Moreover, inconsistent adoption of the two has lead to inconsistent legal requirements across the globe. The adoption of a unifying Convention like the CUECIC would remedy this problem.


The United Nations Convention on the Use of Electronic Communications in International Commerce is intended to address and resolve issues arising from contract formation and modification through electronic means. In order to fully understand the potential benefits of adopting the Convention it is necessary to examine the provisions of the Convention itself. The CUECIC is divided into four Chapters: Sphere of Application; General Provisions; Use of electronic communications in international contracts; Final Provisions. The Chapters I, II, and IV, concerning Sphere of Application, General Provisions, and Final Provisions, respectively, deal with the procedural application of the CUECIC. Chapter III on the Use of Electronic Communications in International Contracts addresses the substantive law that will apply through the Convention. The Convention, if adopted, will "remove obstacles to the use of electronic communications in international contracts." "The purpose of the Electronic Communications Convention is to offer practical solutions for issues related to use of electronic means of communication in connection with international contracts." Moreover, the aim of the Convention is to resolve issues that arise out of the

169. Id.
170. See Allende, supra note 10.
171. CUECIC, supra note 1.
172. Id.
173. Id.
174. Id. at prmb.
current incongruence between legal requirements and legal practice in international e-contracts. If the CUECIC is adopted, it will provide uniform, reliable solutions to e-contract problems.

A. Chapters One and Two of the CUECIC: Sphere of Application and General Provisions

The general sphere of application of the CUECIC is set forth in articles 1 and 2 of the Convention. The Convention will only apply to contracts formed by means of electronic communications by parties located in different states. Article I reads as follows:

1. This 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.

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between the parties or from information disclosed by the parties at any time before or at the conclusion of the contract.

3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Therefore, the CUECIC will apply to contracts formed or performed by electronic communications, in business to business transactions located in different States. Paragraph 2 requires that the transaction must indicate in some way that the parties have their places of business in different States, otherwise this will be disregarded. Accordingly, Article 1 sets forth a blanket application of the Convention to all international electronic contracts; Article 1 does not require that both parties to the transaction be signatories to the Convention. As a result, the scope of the Convention if enacted will be very broad, but this is a necessary element of uniformity. The broader the

176. Id.
177. CUECIC, supra note 166, at art. 1-2.
178. CUECIC Explanatory Note, supra note 166, at 14.
179. CUECIC, supra note 1, at art. 1.
180. See id.
181. See id.
182. CUECIC Explanatory Note, supra note 166, at 14.
183. Id.
Convention, the more contracts it will encompass, and there will be greater harmonization of international e-contracting.\footnote{184} 

The scope of application under Article 1 is subject to the exclusions set out in Article 2. Under Article 2 the Convention does not apply to the following: (a) consumer transactions; (b) "(i) Transactions on a regulated exchange; (ii) foreign exchange transactions; (iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; (iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary."\footnote{185} In addition, Article 2 states that "this Convention does not apply to... any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money."\footnote{186} Article 2's exclusionary provisions are crafted with the intent of avoiding further complications with electronic contracting.\footnote{187} For example, in Article 2(b) "the Convention does not apply to negotiable instruments or documents of title, in view of the particular difficulty of creating an electronic equivalent of paper-based negotiability, a goal for which special rules would need to be devised."\footnote{188} Finally, in the sphere of application of the Convention, Article 3 allows parties to "exclude the application of this Convention or derogate from or vary the effect of any of its provisions."\footnote{189} Thus, parties may opt-out of the Convention by explicitly stating they wish to do so in their contract.\footnote{190} This preserves party autonomy and allows for choice of law clauses to be upheld. Under Articles 1, 2, and 3, the Convention will apply so long as it arises out of an electronic contract formed by parties in different States, that does not deal with consumer transactions, financial transactions, or negotiable instruments, and the parties did not include a choice of law provision opting out of application.\footnote{191} 

While it seems straightforward, the Scope of the first three Articles is not so easily applied. It is necessary to evaluate the "General Provisions" of the Convention in order to devise a more precise definition of application of

\begin{itemize}
  \item \footnote{184} \textit{Id.}
  \item \footnote{185} CUECIC, \textit{supra} note 1, at art. 2(1)(a-b).
  \item \footnote{186} \textit{Id.} at art. 2(1).
  \item \footnote{187} \textit{See} CUECIC Explanatory Note, \textit{supra} note 166, at 14 (explaining why the working group excluded the application of the Convention from consumer purchases, financial transactions, and negotiable instruments of title).
  \item \footnote{188} \textit{Id.}
  \item \footnote{189} CUECIC, \textit{supra} note 1, at art. 3.
  \item \footnote{190} \textit{See id.}
  \item \footnote{191} \textit{See} CUECIC, \textit{supra} note 1, at art. 1-3.
\end{itemize}
the CUECIC. While Article 1 states that the Convention will apply to electronic communications, it doesn’t define this term. Article 4 sets forth the definitions applicable to the Convention. Most importantly Article 4 defines Electronic Communication as “any communication that the parties make by data messages,” where data messages encompass “information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telexcopy.” The Convention explicitly applies to all of the aforementioned problematic methods of contract formation through electronic commerce. As further evaluation will show, the Convention directly addresses the problems caused by “speed and automation” involved in these kinds of transactions.

In addition, Article 1 mentions that the Convention will apply to parties with “places of business in different States,” but gives no clear definition as to how this terminology shall be applied. Under Article 6, the location of parties is outlined and set forth in a manner which will allow for parties to be sure that their transactions are covered by the CUECIC. Article 6 Addresses the Location of the Parties as follows:

1. For the purposes of this Convention, a party’s place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.

2. If a party has not indicated a place of business and has more than one place of business, then the place of business for purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.

3. If a natural person does not have a place of business, reference is to be made to the person’s habitual residence.

192. The general provisions of the CUECIC offer definitions and explanations necessary to fully understand the scope of the application of the Convention. See CUECIC, supra note 1, at art. 4-7.

193. See CUECIC, supra note 1, at art. 1.

194. Id. at art. 4.

195. See id. at art. 4(b-c).

196. Aforementioned methods of e-contracting include Electronic Agents, EDI, and E-Mail, under this definition they are all covered by the CUECIC. See id.

197. See CUECIC, supra note 1, at art. 12.

198. See id. at art. 1.

199. Id. at art. 6.
4. A location is not a place of business merely because that is: (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or (b) where the information system may be accessed by other parties.

5. The sole fact that party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

Just as the problems of electronic contracting can be traced back to the lack of human interface, so can the problems of determining parties' places of business.201 When the majority of transactional negotiations are taking place via e-mail, it is unreliable to simply use the location of a domain name as the location of the parties.202 It is possible for a businessman who is from Korea to access his e-mail and negotiate in France with an e-mail address he has registered with the corporations head office in Canada. Under the Convention, there is no “duty for the parties to disclose their places of business, but” there are “a certain number of presumptions and default rules aimed at facilitating a determination of a party’s location. [The CUECIC] attributes primary — albeit not absolute — importance to a party’s indication of its relevant place of business.”203 Since the Convention will not apply without the international location of the contracting parties, Article 6 is a key element that is necessary to the determination of applicability.204 Article 6 also demonstrates the functionality of the Convention as it directly sets forth a uniform method of determining location that will facilitate the enforcement of contracts under the Convention.205

While Articles 1-3 set forth the general statement of applicability for the Convention, Article 4 and 6 add a more precise means of determining applicability. The procedural requirements for application of the Convention lend to the notion that if enacted it will be successful in practice. From the outset, the CUECIC offers resolution for potential issues arising out of e-contracts which shows how it will function once it is enforceable international law.

200. Id. (emphasis added).
201. See Hill, supra note 23, at 10.
202. CUECIC Explanatory Note, supra note 166, at 15.
203. Id. at 14.
204. See CUECIC, supra note 1, at art. 1, art. 6.
205. See id. at prmbl.; see also Allende (stating the main purpose of the Convention “is to promote the development of international trade removing the obstacles and uncertainties caused by the use of electronic media in the formation of international contracts”).
B. Chapter Three: Use of Electronic Communications in International Contracts — the Substantive Requirements of the CUECIC

Article 8 of the CUECIC sets forth the general, and most important, goal and requirement of the Convention. Article 8 reads: “1) A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication; 2) Nothing in this Convention requires a party to use or accept electronic communications but a party’s agreement to do so may be inferred from the party’s conduct.” Through Article 8, which is an affirmation of previous UNICITRAL law on electronic commerce, electronic communication is given the same validity as paper in the realm of contracts. It is this article that breathes new life into Electronic Contracting; it validates all electronic contracts on their face. In other words, if the Convention is passed, all international e-contracts will be invalidated only on traditional contract issues. Not only that, under the Convention, this would be established as binding international law, it would no longer remain as merely a generally accepted practice recommended by UNCITRAL model law.

While e-contracts cannot be invalidated simply because of their electronic nature, they still face the same issues of formation and enforceability that traditional contracts must surpass. Article 9 of the Convention addresses formation issues arising from e-contracts, applying traditional rules to untraditional contracts. Article 9 states:

1. Nothing in this Convention requires that a communication or a contract to be made or evidenced in any particular form.
2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

206. See Allende, supra note 10 (explaining that the non-discrimination principle set forth in the CUECIC will “[assure international trade players] that the contract formed electronically shall be as valid and enforceable as traditional paper-based contracts”).

207. CUECIC, supra note 1, at art. 8.

208. CUECIC Explanatory Note, supra note 166, at 15.

209. While Article 8 simply restates the concept of initial validity under the MLEC, if enacted, this will no longer be a recommended model law, it will be a binding source of international law. If enacted, Article 8 will validate all international e-contracts on their face. See Gregory, supra note 3, at 317 (explaining the difference between the legal effect of the MLEC and the CUECIC).

210. See CUECIC, supra note 1, at art. 8.

211. See Gregory, supra note 3, at 317.
3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if: (a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication.\footnote{CUECIC, supra note 1. at art. 9.}

Article 9 establishes "functional equivalence between electronic communications and paper documents — including "original" paper documents — as well as between electronic authentication methods and handwritten signatures."\footnote{CUECIC Explanatory Note, supra note 166, at 15-16.} Furthermore, Article 9 sets forth the minimum standards for contract writing and signature requirements in electronic communications.\footnote{Id.} Article 9 has the effect of bringing electronic contracts up to par with written contracts. It sets forth a set of rules that will determine the validity of signature and writing, and once those requirements are met, the e-contract will be just as valid as the paper contract.\footnote{See CUECIC, supra note 1, at art. 9.}

Article 10 addresses the "time and place of dispatch and receipt of electronic communications."\footnote{Id. at art. 10.} This is a particularly problematic area of e-contracting as it is difficult to determine exactly when electronic communications reach their intended recipients.\footnote{See Eiselen, supra note 3, at 22.} Nonetheless, Article 10 resolves this issue for contracts falling under the CUECIC.\footnote{See CUECIC, supra note 1, at art. 10.} The first two paragraphs of Article 10 address dispatch and receipt of electronic communications:

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being received by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to

\footnote{CUECIC, supra note 1. at art. 9.}
that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee’s electronic address.\textsuperscript{219}

Article 10 has the effect of determining when communications are officially deemed to have been transmitted and received by the contracting parties.\textsuperscript{220} Article 10 is intended to “align the formulation of relevant rules with general elements commonly used to define dispatch and receipt under domestic law.”\textsuperscript{221} This is yet another example of how the Convention brings the same validity to electronic communications that paper contracts already enjoy and enhances the congruence of current practice and legal requirements.\textsuperscript{222} Article 10 has the effect of making traditional contract principles applicable to electronic contracts.\textsuperscript{223} Thus, offer and acceptance can now be determined on a more effective scale and international parties to e-contracts can have a more efficient resolution of issues arising from the “speed and automation” inherent in their contracts.\textsuperscript{224}

Articles 11 and 12 are particularly important in addressing contracts that are formed through the use of electronic agents via the internet. Article 11 deals with “invitations to make offers.”\textsuperscript{225} Article 11 states that “a proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible... is to be considered as an invitation to make offers, unless it clearly indicates” otherwise.\textsuperscript{226} Thus, in Internet-based e-contracts, a mere posting on a website is not considered an offer.\textsuperscript{227} Just like an advertisement in a magazine has the effect of being considered an offer for negotiations in the paper-based contract sphere, web-based advertising takes on the same role. Moreover, an e-mail sent out to numerous potential customers advertising a product for sale would amount to the same status.\textsuperscript{228} “Article 11 clarifies that the mere fact that a party offers interactive applications for the placement of orders – whether or not its system is fully automated – does not create a

\textsuperscript{219} CUECIC, supra note 1, at art. 10(1-2).

\textsuperscript{220} See id.

\textsuperscript{221} CUECIC Explanatory Note, supra note 166, at 16.

\textsuperscript{222} See id.

\textsuperscript{223} See id. (noting the aim of “transposing [national rules on dispatch and receipt] to an electronic environment”).

\textsuperscript{224} See id.

\textsuperscript{225} CUECIC, supra note 1, at art. 11.

\textsuperscript{226} Id.

\textsuperscript{227} Id.

\textsuperscript{228} See id.
presumption that the party intended to be bound by the orders placed through the system."229

Article 12 addresses a similar issue: how the use of automated message systems affects contract formation.230 Article 12 asserts that:

a contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.231

"Article 12...recognizes that contracts may be formed as a result of actions by automated message systems ("electronic agents"), even if no natural person reviewed each of the individual actions carried out by the systems or the resulting contract."232 Article 12 tackles all of the issues arising from contracts formed by electronic agents, or bots.233 It solidifies the viability of bots as an effective means of e-contracting; two bots can form a contract for their international masters and it will not be invalidated on its face.234 Thus, under the CUECIC contracts that are formed "devoid of human contact" are completely valid.235

Finally, Article 14 addresses the inevitable consequence of the use of electronic communication: human error. Article 14 reads:

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

   (a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

229. CUECIC Explanatory Note, supra note 166, at 15.
230. CUECIC, supra note 1, at art. 12.
231. Article 12 CUECIC.
232. CUECIC Explanatory Note, supra note 166, at 15.
233. Id.
234. Id.
235. See id.
(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error than as provided for in paragraph 1.\textsuperscript{236}

Article 14 addresses the greatest fear of relying on electronic communications in contract formation: with the click of one button a contract will be formed and there is no way to go back and correct a mistake.\textsuperscript{237} Under Article 14, so long as the person responsible for the error notifies the receiving party as soon as possible and he has not received any material benefit from the error, the error can be corrected.\textsuperscript{238} Thus, when the error is done in good faith, there will be no problems for the person at fault.\textsuperscript{239} Article 14 thus provides the ultimate reconciliation of the issue of “speed and automation.”\textsuperscript{240} It effectively does away with the problem so long as the error is truly an honest mistake.\textsuperscript{241} Thus, parties who are timid to conduct business electronically now have protection against what they fear most.

In summary, the CUECIC will prove to be beneficial as it is the fist uniform international law that will have a substantive and procedural application to international e-contracts. Not only does it address problems of “speed and automation,” but it provides for a clear-cut method in determining applicability and enforceability. If enacted, the CUECIC will achieve its goal of harmonization and resolution of obstacles hindering the advancement of international e-contracts.

\section*{VI. CONCLUSION}

Although international uniformity in e-contracting law could have the adverse affect of stifling the development of the continuously expanding world of e-commerce, predictability and reliability of legal requirements will do more to help the growth of the industry than uniformity will do to damage it.\textsuperscript{242} It has been argued that certainty is not necessarily “preferable to more specific legal requirements that could unintentionally freeze or distort the development of commercial practices,” but it appears more convincing that

\textsuperscript{236} CUECIC, \textit{supra} note 1, at art. 14.
\textsuperscript{237} \textit{Id.}
\textsuperscript{238} \textit{Id.}
\textsuperscript{239} \textit{Id.}
\textsuperscript{240} \textit{Id.}
\textsuperscript{241} \textit{Id.}
\textsuperscript{242} See Middlebrook, \textit{supra} note 41, at 354; \textit{compare with} Gregory, \textit{supra} note 3, at 317 (stating the argument that “only a convention..can bring about the appropriate degree of harmony across borders”).
uniformity would promote involvement in e-commerce and would only lead to an increase in international participation in e-contracting.\textsuperscript{243} Moreover, growing up in an environment of reliability and practicability will only aid in the overall functionality of electronic communications in international contracts. These are the greatest benefits of the CUECIC and will do little, if any, harm to the overall practice of international e-contracting.

The greatest challenge to the CUECIC will be convincing the international community that the new Convention is a necessary step in establishing harmonization in international e-contracts.\textsuperscript{244} However, after close evaluation of the current law along with the proposed convention, it is evident that the CUECIC is not merely superfluous.\textsuperscript{245} There is no current standard for substantive requirements for all international e-contracts.\textsuperscript{246} The MLEC was not enacted to have this effect, and although it has been very beneficial in spreading uniformity in e-commerce, it has not reached the broad scope and enforceability that the CUECIC would achieve upon enactment.\textsuperscript{247} Thus, the CUECIC would be a new and powerful development for e-contracting.

There is only one year left before the option to sign the convention at the U.N. headquarters in New York will close. As of yet, there are only eight signatories to the Convention.\textsuperscript{248} In addition, not one of the three actions required for enforcement have been entered with the U.N. Secretariat.\textsuperscript{249} However, this does not mean that the Convention will not enter into force. In the end, it is likely that large players in e-commerce will sign the Convention as it is beneficial to their role in the e-commerce market. The CUECIC is the next necessary evolvement in international e-contracts. Without its adoption, the law will continue to exist in a state of incongruence and parties will continue to be without a source of uniform law. The United Nations Convention on the Use of Electronic Communication in International Commerce, if enacted, will prove to solve the current issues that exist for e-contracts and would foster the continued development of this beneficial business practice.

\textsuperscript{243} Middlebrook, \textit{supra} note 41, at 354; see Gregory, \textit{supra} note 3, at 317.

\textsuperscript{244} See ABA, \textit{supra} note 7, at 4.

\textsuperscript{245} Id. at 6.

\textsuperscript{246} Id.

\textsuperscript{247} See Gregory, \textit{supra} note 3, at 317.

\textsuperscript{248} (displaying that the current signatories to the CUECIC are Central African Republic, China, Lebanon, Madagascar, Senegal, Sierra Leone, Singapore, and Sri Lanka). \url{http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention_status.html}.

\textsuperscript{249} See id.