UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

UNIFORM ELECTRONIC COMMUNICATIONS CONVENTION ACT

Report and Uniform Act

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Halifax,
Nova Scotia
August 2010

Electronic Communications Convention

Canadian implementation

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[1] At its 2009 meeting, the Uniform Law Conference asked for uniform legislation to implement the UNCITRAL Convention on the use of Electronic Communications in International Contracts (the E-Communications Convention, or the ECC). In order to prepare this legislation, one needs to answer a number of policy questions – and then some drafting questions.

[2] This report sets out those questions and proposes answers to them. A consultation version of the questions was circulated to an electronic mailing list of several hundred people, many expert in the law of electronic communications in Canada, and also posted to a personal web site. Few comments were received.

[3] The principal sources are listed in Appendix B at the end of this paper, notably the reports received by the 2008 meeting on the effect of the Convention on the common law and civil law in Canada. These reports are also discussed in more detail in part 7 of this report, paragraphs [44] to [53] below.

[4] As of mid-July 2010, Honduras, Singapore and Turkey had deposited their instruments of ratification with UNCITRAL. As a result, the Convention will come into force for those countries on February 1, 2011.

1. Should Canada accede to the Convention?

[5] The main reason to accede to the Convention is to help build consistent rules around the world for using e-communications in international contracts. (Countries that signed the Convention while it was open for signature may ratify it; others may accede. The legal effect is the same.) For internal Canadian purposes, we do not need the Convention's rules; our own laws allow for e-communications in negotiating, making and performing contracts. Likewise the laws of many of our major trading partners, notably the United States, Europe and Japan, accommodate e-communications, though not always on identical terms.

[6] However, many countries do not specify that e-communications can be used with legal effect in their systems, and those that do so specify may do so in different language or use different concepts. It is not always possible in negotiating a contract to agree that Canadian law, or the law of a particular Canadian jurisdiction, will apply. It would therefore be an advantage to have an accepted international standard on the point.

[7] It makes sense for countries that are already familiar with e-commerce laws, and especially those whose e-commerce laws are inspired by the UNCITRAL Model Law on Electronic Commerce, a fore-runner of the Convention, to become a party to the Convention. By doing so they declare to the international community that they consider the Convention's rules to be acceptable, based on their experience.

[8] The Convention's rules apply to the medium for making international contracts. It is a separate question, discussed below, whether its rules should be adopted domestically at the same time. Someone who thinks that its rules are not ideal, or even undesirable, may wish to oppose their adoption at home. However, this view need not stand in the way of accession for international uses. As noted, there is no guarantee that the law applicable to an international contract will be our own domestic law, and the Convention may well be preferable either to uncertainty about the use of the electronic medium or to the application of even less desirable rules found in the domestic law of the other party.

[9] **Recommendation:** Canada should accede to the Convention, at least for international contracts. Jurisdictions that disagree are not obliged to enact the Uniform Act to be developed from the current project. Article 18 of the Convention allows the Convention to be brought into force only in the jurisdictions that ask the federal government to be designated for that purpose.

2. Application of the Convention: how is it triggered?

[10] On its face, the Convention applies to communications about contracts when the parties are in different countries. What makes the Convention apply to those circumstances? The law applicable to those communications may be the Convention because it is the law of both parties' countries, or because it is the law of one of the parties' countries and that law applies by choice or operation of law; or because the rules of private international law may apply the law of another Contracting State to them.

[11] Article 19(1) allows any Contracting States to declare that it will apply the Convention only when the states of both parties are Contracting States, or when the parties have agreed that the Convention will apply.

[12] Article 3 allows parties to opt out of the Convention, so if they do not want it to apply, they can avoid it. Similar rules apply to the application of the Convention on the International Sale of Goods (CISG), and we have experienced no problems with its application in the twenty years or so that it has been in force in Canada.

[13] **Recommendation:** Canada should not make a declaration under article 19(1). The general language of application is satisfactory, and leads to a broader application of the Convention.

3. Application of the Convention: what other conventions?

[14] The Convention applies to communications about international contracts subject to the general law of contracts of one of the parties' states. It also extends its rules to communications about international contracts governed by other conventions. Article 20 spells out six United Nations conventions that fall into that category: two to which Canada is a party – the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the CISG – and four to which it is not yet a party – conventions on limitations periods, the liability of operators of transport terminals, independent guarantees and stand-by letters of credit, and the assignment of receivables.

[15] Applying the ECC to the interpretation of these conventions does not amount to amending them; amending them would be a cumbersome process. It merely says that the use of electronic communications in association with contracts that they govern will be understood as in the ECC. This is a very useful means of encouraging the legally effective use of e-communications. UNCITRAL believed that there was little if any risk in allowing for e-communications under these conventions, for a country that was prepared to accept the ECC itself.

[16] The ECC goes further to apply similarly to international contracts governed by any other international convention to which a Contracting State to the ECC is now or later becomes a party. (Article 20(2)).

[17] However, Contracting States are allowed to tailor this application with respect to other conventions by a series of opting out and opting in. Without getting into the mechanics here, the result is that Contracting States may have a general rule accepting the ECC's rules for other conventions except as specified, or a general rule rejecting the ECC's rules for other conventions except as specified. The 'other specifications' can exclude any of the six listed conventions as well as others not named. In short, a Contracting State may apply the ECC to whatever other conventions it chooses.

[18] What should Canada do? Does somebody need to review the terms of every convention to which Canada is a party, to see if any rules applicable to international contracts that might be affected by the convention are consistent with those of the ECC? Or should we take a chance on acceding without declaring any exclusions? The ECC allows a Contracting State to make a declaration or a revised declaration at any time, so if we discover a problem in the future we can exempt contracts governed by the problematic convention at that time.

[19] The Singapore consultation paper from 2009 concluded on this point that there was no reason to prevent the ECC from applying to all conventions to which Singapore was a party, for three reasons.

(a) The domestic e-commerce statutes already applied to contracts under those additional conventions, to the extent that the contracts were governed by Singapore law.

(b) Matters in which the use of electronic communications may be a cause for concern are excluded from the domestic law and can be excluded from the Convention through the use of article 19(2). See the discussion below.

(c) The extension of the ECC to other conventions has a narrow effect. It merely achieves functional equivalence for electronic communications in connection with the formation or performance of a contract to which the other conventions apply. It does not affect the substantive legal questions governed by those conventions.

[20] When the ULCC was preparing to implement the UN Model Law on Electronic Commerce – the project that led to the Uniform Electronic Commerce Act – the federal government and some provinces did surveys of

all their statutes to see if allowing for electronic communications would create problems for them in principle or in practice. It was generally found that no such problems would arise, especially if a few classes of record or transaction were excluded from the general permission to communicate electronically. This conclusion has been borne out by the experience in the past decade of those jurisdictions that did legislate the general permissions of the UECA, or its Quebec equivalent. Thus there is no reason to fear that allowing similar uses of e-communications for international contracts governed by other conventions will create issues either.

[21] **Recommendation:** Accede to the Convention without any declarations of exclusion or special inclusion under Article 20.

4. Application of the Convention: international and domestic contracts?

[22] UNCITRAL's mandate is international trade law, so the ECC is drafted to apply to international contracts. However, it is also drafted to work as a domestic law on contractual communications where the Contracting State has no existing law on that topic.

[23] What should happen when, as in Canada, the Contracting State already has good law on that topic? Should we have a 'dual system', one law for communications about international contracts and one about communications for domestic contracts? Or should we bring our domestic law into conformity with the international rules so we can apply the same law to all?

[24] One will note that the ECC is almost the same as our domestic law, and in particular with the Uniform Electronic Commerce Act (UECA). This similarity arises from the common ancestry of the ECC and the UECA, namely the UN Model Law on Electronic Commerce of 1996. In addition, the ECC has added a couple of provisions inspired by domestic legislation that the UECA already has, so the ECC in this respect is 'catching up' to the UECA.

[25] That said, some of the terminology of the ECC is a bit different from that in the UECA. Acceding to a convention means applying its terms as written; a Contracting State may not change them. If we object to any of the rules or wording of the ECC, then perhaps we should not try to implement them for our domestic law as well.

[26] The main provision in the ECC that is not in our domestic law is that a proposal to conclude a contract not addressed to specific parties, including those that can be engaged by interactive communications, are not offers but invitations to receive offers – what the common law would call invitations to treat. This is probably our current law, but it is not codified. (The CISG has the same rule.) It is safe to conclude that this Convention rule would be acceptable in Canadian law.

[27] Studies in Singapore, a unitary state, and Australia, a federal state, have recommended that domestic law be amended to conform with the ECC, in order to avoid a dual legal regime. In Australia, that would mean amending legislation in all states and the Capital Territory. (Both the Singaporean and Australian e-commerce statutes vary more from the ECC than does the UECA, because they were enacted a bit earlier, and the ECC adopted a couple of provisions that the United States and Canada added to the Model Law.) Singapore has passed its implementing legislation, and Australia has published draft uniform legislation for this purpose.

[28] The American Uniform Law Commission has decided, on the other hand, that the ECC should be implemented to apply only to international contracts. The concern about proceeding the other way was the risk of non-uniform state implementing laws, and amendment of state laws at different times, leading to a patchwork that could be very confusing for foreign parties trying to understand what law applied to a contract to be negotiated.

[29] The Canadian situation can be summarized in this way:

<u>In favour of having a single law</u> (i.e. amending the domestic law to conform with the ECC)

- The ECC is almost the same as the UECA, so its provisions are largely acceptable and tested in practice here.
- To the extent that the ECC's rules are new, they are better than those in the UECA and the jurisdictions that have implemented it.
- Parties should not be caught by surprise by having different rules depending on where the other party is. This is particularly important for electronic transactions, which may attract foreign parties (though the

Convention applies only if the parties know or ought to know that they are in different countries – Article 1(2)).

- Professor Deturbide's recommendations to the ULCC in 2008 were that "harmonization between the Convention and domestic legislation is desirable to avoid the possibility of two different sets of rules.... The impact of these differences will not likely be significant ... However, the possibility that judicial examination of these differences could result in unanticipated interpretations cannot be entirely discounted."

<u>In favour of having a dual regime</u> (i.e. the ECC for international contracts and the UECA for domestic)

- Harmonizing provincial legislation will be too difficult. The UECA already has a non-uniform enactment, and getting uniform amendments will meet the same challenges, though for international purposes all the legislation must be consistent with the Convention. If one wants to touch the domestic law, there may be more political resistance and lobbying either to keep what is there or to improve it in non-uniform ways.
- Harmonizing provincial legislation may take too long. Although Canada can accede to the Convention in stages, a substantial number of provinces would have to be on side before accession. It would probably be faster to get agreement on and enactment of uniform legislation that applied only to communication about international contracts.
- Since the legal effect of the ECC is almost the same as that of the UECA, parties will not be prejudiced if they find themselves in the international regime of the ECC.
- Parties may opt out of all or any part of the ECC, including by conduct (such as a draft of a contract) that is inconsistent with it. They are not trapped in any event (so long as they can agree on an alternative.)
- Quebec has a separate legal regime for e-contracts and may not wish to harmonize domestically with the ECC rules. It might be willing to implement the ECC rules for international contracts affecting parties in the province.

[30] There may be a third option: revise the UECA to make it more consistent with the Convention, but insert an "international application" part that would accommodate those few differences where we want to maintain our domestic rules as they are. See Appendix A for possible details.

[31] **Recommendation:** Restrict the application of the ECC to international contracts, at least at this time. This maximizes the chances of uniform implementation within a reasonable time. For a convention,

implementation must be uniform.

5. Attach the Convention or rewrite the UECA?

[32] The Uniform Law Conference commonly prepares statutes to implement conventions with a short active part, saying 'the Convention is in force in the enacting jurisdiction' and giving local meaning to terms in the convention, like naming the appropriate courts, then annexing the convention to the Act. These days the text of the Convention is readily accessible online; one could therefore avoid the cost of including the Convention in the text of the Uniform Act.

[33] Following the recommendation for Question 4 in paragraph [31] to restrict the ECC to international contracts, then the traditional approach is the best process: it is quick and easy to understand and it ensures that the language of Canadian law is exactly that of the Convention – which, as noted earlier, no Contracting State has the right to change.

[34] If the Conference prefers the other option under Question 4, to apply the ECC's rules to domestic law as well, then it is probably preferable to rewrite the domestic law statute, i.e. the UECA, to conform with the Convention. The UECA covers a number of topics not in the ECC and the integration of the ECC may need more direction than a simple annex could achieve. Australia and Singapore are proceeding in that direction. (The only issue becomes the exclusions, and they can be harmonized through article 19. See more detailed discussion of Canadian exceptions below.)

[35] **Recommendation:** Adopt a short form implementation statute in the usual form for ULCC uniform acts. See Schedule C.

6. Application of the Convention: coordinating exclusions?

[36] Assuming that the ULCC decides to adopt a uniform statute applying the ECC only to international contracts, one has to ask what kinds of contracts or transactions should be excluded from the scope of the Convention. The ECC has its own exclusions, but Contracting States are allowed to add to that list. Should Canada add any? (If the ULCC makes the opposite decision, see Appendix A for further questions.)

[37] The ECC excludes from its scope consumer contracts (contracts for personal, family or household purposes), transactions “on a regulated exchange” (essentially sophisticated financial transactions among institutions that already have their legal rights in electronic communications spelled out satisfactorily among themselves), and bills of exchange, promissory notes, and other transferable documents of title.

[38] The UECA excludes a somewhat different, though overlapping, group of documents or transactions: documents of title, wills and trusts created by wills, most transfers of land, and powers of attorney respecting individuals. A few provincial implementing statutes have slightly different exclusions.

[39] Through the use of article 19(2) of the Convention, we can exclude from its application any of our domestic exceptions, either because we think the exceptions are right in principle for international as well as for domestic transactions, or just to keep the domestic and international laws consistent. When it ratified the Convention in July 2010, Singapore excluded the main matters already carved out of its domestic statute.

[40] Note that wills, trusts created by wills, and powers of attorney are not contracts so would not be covered by the Convention, without need for an express exclusion. Thus the UECA's exclusions are pretty accurately covered by the ECC's exclusions. Probably we would want to use article 19(2) to exclude transactions in land that require registration to be effective against third parties, the formula in the UECA. On the other hand, we could allow any such international contract to be effective on its terms between the parties, and leave the need for and impact of registration to domestic law.

[41] The Convention does not say expressly that each territorial unit (in our case province or territory) that comes into the Convention by a declaration of Canada under article 18 can make its own declarations under article 19. However, there is a precedent for such a jurisdiction-specific declaration. When the CISG was extended to British Columbia by declaration, Canada declared that the provision on applicable law would operate differently in BC than elsewhere, in an alternative manner contemplated by the CISG. In other words, the declaration of extension to BC also made for BC one of the other declarations under that Convention. There is no reason to believe that the ECC works any differently. (BC later changed its policy about the additional declaration and the CISG now works the same way across Canada.)

[42] Thus a province that wants to maintain its own exclusion list for international contracts can do so. Whether that is a good idea is a different question. Each province or territory with non-uniform exclusions will have to consider this question. The policy recommended in this report, to implement the Convention only for international contracts, may make the decision easier. There is little reason to export our domestic exclusions to international contracts. That can just add confusion for parties to international transactions who are trying to figure out the law that applies to their contracts.

[43] **Recommendation:** Do not add additional exclusions to those of the ECC, except for land whose transfer requires registration to be effective against third parties.

7. Compatibility with existing Canadian law

[44] The Uniform Law Conference commissioned two papers on the compatibility of the Convention with Canadian law, one from Professor Deturbide of Dalhousie on the common law provinces and territories, and one from Professor Gautrais of Montreal on the law of Quebec.

[45] Professor Deturbide found that the Convention was very compatible with the law of the common law jurisdictions. He recommended small amendments in order to harmonize the law for domestic and international transactions, but said that "the benefits gained from a uniform international scheme outweigh concerns over perfect harmonization with domestic legislation." (para 60) He found that "no particular provision in the legislation of provincial or territorial common law jurisdictions has been identified that is contrary to the tenets of the Convention or would impede its implementation. Consequently, no amendment would have to be made to such legislation." (para 64)

[46] Professor Gautrais found that the law of Quebec on the use of electronic communications, mainly found in the Act to establish a legal framework for information technology and in the Civil Code of Quebec as recently amended, was also largely compatible with the Convention. Differences in terminology or perspective did not concern him. Both bodies of law rested on the principles of technology neutrality and the determination of functional equivalents to the rules that traditionally required paper media for legal effect.

[47] However, Professor Gautrais did find one major difference, one that he concluded was fatal to the

adoption of the Convention in Quebec. That was in the treatment of writing requirements. Article 9 of the Convention says that an electronic communication satisfied a legal requirement that information be in writing, "if the information contained therein is accessible so as to be usable for subsequent reference."

[48] The Quebec rule is found in the Legal Framework statute, section 5, which says that "where the law requires the use of a document, the requirement may be met by a technology-based document whose integrity is ensured." Professor Gautrais refers to the evidence part of the Civil Code of Quebec, which says that the integrity of various kinds of document must be assured for it to be used to adduce proof in the same way as a paper-based document of the same kinds (article 2838).

[49] Professor Gautrais sets out (paras 56 – 62) several criticisms of the "subsequent reference" test and several advantages of the "integrity" test, find them incompatible and prefers the latter, both in principle and as better fitted in the context of Quebec law.

[50] It is beyond the scope of this note to analyze that discussion in detail. However, it is submitted that the difference is much less than it is said to be. The Convention's test requires that "the information" be usable for subsequent reference. That does not mean part of the information, or amended information. It means the information that the law requires to be in writing. If what is usable for subsequent reference is something different, then it does not meet the Convention's test. As Professor Gautrais said about elements of article 14 of the Convention (para 51), "I am not certain they are lacking [in Quebec law], in that they are self-evident." Likewise the integrity requirement in the Convention is self-evident. It goes without saying, or should be able to do so.

[51] Professor Gautrais (paras 27 and 59) says that the subsequent reference test for an electronic equivalent of writing serves only to fulfill the evidence function but not the "formality ad validitatem", making the party aware of the nature of the transaction with which the information is associated. While this may be true, the "integrity" test is no better for this purpose so does not provide a ground for preferring the Quebec formulation to the Convention's.

[52] Finally, Professor Gautrais says (para 60) that the "subsequent reference" test was new at the time of the Model Law, and thus is not sufficiently tested. While that test was new, it was influenced by the American

uniform formulation found in all revisions to the Uniform Commercial Code, and other uniform statutes, since the early 1990s. Those statutes define “record” as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” These statutes have been in force in many states for several years and that definition has not caused difficulties.

[53] The Convention provides in article 18 an option by which Canada could accede to the Convention and bring it into force in the provinces and territories that implement it. If Quebec chooses not to implement it, in order to protect its concepts or principled framework, it is free to do so, without preventing the common law jurisdictions from benefiting from the Convention if they agree with Professor Deturbide that it will be a benefit.

8. Conclusion

[54] Canada appears to be able to benefit from more certainty in the use of electronic communications in its international trade by acceding to the Electronic Communications Convention. The Convention is very largely compatible with existing Canadian law. However, the Convention itself provides options for some matters of application, and a country that accedes to it must choose among them. The basic choices have been set out here, with recommendations.

[55] **Recommendation:** The ULCC should adopt the draft Uniform Electronic Communications Convention Act that appears in Schedule C to this report.

Appendix A: Alternative to scope decision

Harmonizing exclusions and permissions in order to adapt the UECA to the ECC

[56] If the ULCC decides, contrary to the recommendation in paragraph [31] above, to implement the Convention domestically, by harmonizing the UECA with it, then it would have to answer two additional questions about exclusions. First, what to do domestically with the Convention's exclusions of the financial transaction group? The answer is probably that their exemption clauses should be rewritten to exclude only the international aspects of those transactions – if any of such transactions rely on the UECA-based statutes for the domestic validity of their electronic communications in any event. (Singapore amended its statute to apply this exclusion to domestic and international applications.)

[57] Second, some provisions of the UECA apply differently – with more restrictions – to electronic communications to which "government" is a party. The Convention applies to contracts without regard to the "civil or commercial character of the parties", which suggests that it does not allow a distinction based on whether a party is a government entity. It may be that the special governmental rules in the UECA can be revisited, more than a decade after its adoption. Governments may be more comfortable with the general rules than they were in 1999. Otherwise some adaptation to international transactions will be needed, or an exception stated under article 19(2).

[58] If the ULCC wishes to harmonize the UECA with the ECC, it may be harder to decide what to do when our domestic law is more open to e-communications than the Convention. There are several examples:

- The UECA's rules apply to consumer contracts, while the Convention excludes such contracts.
- The rule on the validity of electronic signatures is broader in the UECA than in the Convention, though the new provision in the Convention (new compared to the Model Law on Electronic Commerce) allowing for a signature to be proved reliable in fact, goes some way to bridging the gap.
- The rule on correcting a unilateral mistake in the UECA is not on its face restricted to "input errors", and the remedy in the UECA is non-enforceability of the contract, not, as in the Convention, only the right to "withdraw" the portion of the communication that was mistaken input. Additional conditions are listed in the

UECA beyond what are provided for in the ECC.

- The time of sending an electronic message is measured in the UECA from the time the message arrives in a system outside the control of the sender (a rule taken from the Model Law), while the Convention now measures it from the time the message leaves a system within the control of the sender. This may be a distinction without a difference. The reason that the Model Law and the UECA chose the time of entry into another system is that system logs were thought to record the time of entry of messages but not the time of departure. The difference is a question of evidentiary focus and not of actual time.
- The time of receiving an electronic message is measured in the UECA from the time the message has entered an information system designated or used by the addressee and is capable of being retrieved. The Convention speaks of the message being capable of being retrieved at the electronic address designated by the addressee. It is unlikely that the different wording will produce different results on this point.

[59] Unlike parties to a contract, a Contracting State is not likely to be allowed to permit the use of e-communications more broadly in international contracts than the Convention requires. The parties to such contracts can expand on the Convention, though not so as to undermine protections for integrity of the communications (so parties could not by agreement alone validate e-signatures that did not meet the tests of article 9 of the Convention, though the Convention takes such agreements into consideration in applying its tests.) See paragraphs 14, 85, 86 and 137 of UNCITRAL's Explanatory Notes on the Convention.\

[60] It is arguable that parties to international contracts would want to rely on the limits to the Convention, and not just on its permissions, so it may be unwelcome to them to find themselves subject to e-signatures that do not meet the Convention's standards, or to find their contracts voidable for unilateral error more broadly than the Convention requires.

[61] Would such parties be surprised to find international consumer contracts covered by the Convention's rules, or should we treat the ECC's exclusion of consumers only as a limit inherent in UNCITRAL's mandate, not affecting the desirability of the rules on the international level? It is likely that Canadian law implementing the Convention must disclaim any application of the Convention itself to consumer communications. If the general Canadian law (provincial or territorial law) on electronic communications applies to those communications, then the parties will be able to rely on that law where it applies – and the consumer protection

measures that are also part of the applicable law.

[62] In short, implementing legislation would have to either make domestic law conform to the Convention or distinguish between domestic and international contracts for these few purposes. The examples of differences are few, as we have seen.

[63] However, it is not relevant to this discussion that the UECA applies to more uses of electronic communications than just to contracts. So long as Canadian law reflects the Convention with respect to contracts, nothing in the Convention requires that Canadian law should not apply to non-contractual communications, domestic or international.

Appendix B: Sources

UNCITRAL E-Communications Convention and Commentary, 2005:
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Government of Singapore, Electronic Transactions Act, 2010, passed May 19, 2010: http://www.parliament.gov.sg/Publications/100012.pdf

Uniform Law Commission, Committee to implement the UN E-Commerce Convention, Annual Meeting Report 2010: http://www.law.upenn.edu/bll/archives/ulc/ecom/2010am_report.pdf

A. Boss and W. Kilian, *The UN Convention on the Use of Electronic Communications in International Contracts* (Kluwer, 2008).

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Appendix C

Uniform Electronic Communications Convention Act

Comment: This uniform act implements the United Nations Convention on the use of Electronic Communications in International Contracts. The Convention facilitates the use of electronic communications by answering some frequently asked question, such as: where are the parties to the contract? How does one deal with a legal requirement that a document be in writing or signed or in original form? What is the nature of an offer made to the world online? When are electronic messages sent and received?

The act adds to the series of uniform acts implementing international conventions. As well, it constitutes an additional element in the suite of uniform acts dealing with electronic communications. That set of uniform acts includes the Uniform Electronic Commerce Act, which implements the United Nations Model Law on Electronic Commerce, and the Uniform Electronic Evidence Act.

Interpretation

1. (1) The following definitions apply in this Act.

"Convention" means the *United Nations Convention on the use of Electronic Communications in International Contracts* set out in the schedule. (*Convention*)

Comment: This is a standard provision in uniform acts implementing international conventions. For previous examples, reference may be made to subsection 1 of the Uniform International Trusts Act and subsection 1(2) of the Settlement of International Investments Disputes Act.

"declaration" means a declaration made by Canada under the Convention with respect to (*name of province or territory*). (*déclaration*)

Comment: Articles 17, 18, 19 and 20 of the Convention provide for the deposit of declarations by contracting States:

Article 17 allows a Regional Economic Integration Organisation to sign, ratify, accept, approve or accede to this Convention and have the rights and obligations of a Contracting State. It is not relevant to Canada.

Article 18 is a standard provision in private law conventions. It allows federal States to identify by declaration the territorial units to which the convention is to extend. Canada will make declarations pursuant to Article 18 upon the request of provinces and territories that adopt implementing legislation.
The other declarations may be made by each enacting jurisdiction. While each province or territory can technically propose its own declarations on these subjects, it would be preferable for declarations to be standardized in practice.

Article 19 allows two declarations. Article 19(1) allows any Contracting States to declare that it will apply the Convention only when the states of both parties are Contracting States, or when the parties have agreed that the Convention will apply. Canada should not make a declaration under article 19(1). The general language of application is satisfactory, and leads to a broader application of the Convention. Similar language is found in the Convention on the International Sale of Goods Act. Canada has not made the similar declaration and has not had any problems as a result.

Through the use of article 19(2) of the Convention, Canadian jurisdictions can exclude from its application any of its domestic exceptions, either because they think the exceptions are right in principle for international as well as for domestic transactions, or just to keep the domestic and international laws consistent. The commercial law exclusions of the Uniform Electronic Commerce Act are pretty accurately covered by the Convention's exclusions. Probably jurisdictions would want to use article 19(2) to exclude transactions in land that require registration to be effective against third parties, the formula in the UECA. On the other hand, they could allow any such international contract to be effective on its terms between the parties, and leave the need for and impact of registration to domestic law.

The Convention extends its rules to communications about international contracts governed by other conventions. Article 20 spells out six United Nations conventions that fall into that category: two to which Canada is a party – the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the CISG – and four to which it is not yet a party. Applying the Convention to the interpretation of these

conventions says that the use of electronic communications in association with contracts that they govern will be understood as in the Convention. This is a very useful means of encouraging the legally effective use of e-communications. The Convention goes further to apply similarly to international contracts governed by any other international convention to which a Contracting State to the Convention is now or later becomes a party.

The declarations under articles 20 (2), (3) and (4) essentially permit Contracting States to have a general rule accepting the Convention 's rules for other conventions except as specified, or a general rule rejecting the Convention 's rules for other conventions except as specified. In short, a Contracting State may apply the Convention to whatever other conventions it chooses.

Canadian experience with generally applicable domestic legislation with similar provisions to those of the Convention have not produced any problems in the decade since that legislation was first adopted. There is no reason to fear that allowing similar uses of e-communications for international contracts governed by other conventions will create issues either. Canada should make no declarations under article 20, so that the Convention will apply to contracts under all other conventions to which Canada is a party. Declarations under this article can be made at any time, so if problems arise they can be addressed at that time.

(2) Words and expressions used in this Act have the same meaning as in the Convention.

DRAFTING NOTE: *Some Uniform Acts preface this provision with "unless a contrary intention appears". In this short Act, no contrary intention appears, so this phrase is not necessary.*

(3) In interpreting this Act and the Convention, recourse may be had to the *Explanatory Note on the United Nations Convention on the use of Electronic Communications in International Contracts* published by the United Nations Commission on International Commercial Law.

Comment: The Explanatory Note is available on the UNCITRAL website at http://www.uncitral.org/pdf/english/texts/electcom/06-57452_Ebook.pdf. This supplementary interpretive source conforms to the interpretive sources sanctioned by Article 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to these sources is reflected in the

observation of Justice La Forest in Thomson v. Thomson, [1994] 3 S.C.R. 551, at pp. 577-578, that "[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so."

For an example of a similar provision, reference may be made to subsection 1(3) of the Uniform Assignment of Receivables in International Trade Act

To facilitate ease of access to the Explanatory Report referred to in paragraph (3), enacting jurisdictions may wish to include reference in their Gazettes or other appropriate governmental organ to the UNCITRAL address from which it may be downloaded.

The list in paragraph (3) is not intended to be exhaustive. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source of the evolving jurisprudence on the Convention from the courts in all Contracting States

DRAFTING NOTE: *At this point some Uniform Acts have a provision to say that the purpose of the Act is to implement the Convention. Section 19 of the Uniform Drafting Conventions says this:*

> *Explicit statements of purpose are rarely necessary, since the object of a well-drafted Act should become clear to the person who reads it as a whole. In general, legislation should not contain statements of a non-legislative nature. However, a specific statement of purpose is occasionally required (for example, to give guidance to the courts).*

In this case the purpose is very clear and no separate purpose clause is desirable. The rest of the Act gives courts all the guidance they need.

DRAFTING NOTE: *Uniform Acts often contain a provision requiring the responsible minister to request the*

Government of Canada to declare that the Convention extends to the enacting jurisdiction. The minister may include at this time a request for any declarations permitted by the Convention, for example to exclude particular contracts from the application of the Convention in the enacting jurisdiction.

This provision is unnecessary, because ministers may send requests to the Government of Canada without statutory authorization, and in any event the implementing legislation is implied authority for the request. Moreover, if the Act comes into force only when the Convention applies to the enacting jurisdiction, then the Act cannot give authority for the minister to send the request that logically precedes this coming into force.

Publication

2. A notice shall be published in *(name of publication)* of the day on which the Convention comes into force, or a declaration or withdrawal of a declaration takes effect, in (*name of province or territory*).

Force of law

3. Subject to any declaration that is in force, the Convention has the force of law in (*name of province or territory*).

Comment: This Convention is given force of law domestically only from the date the Convention comes into force at the international level for Canada in the jurisdictions declared pursuant to Article 18. That date is the first day of the month following the expiration of six months (i) after the deposit of Canada's instrument of accession, or (ii) thereafter, for a province or territory to which the Convention has been extended in accordance with Article 18, after the notification of the declaration referred to in that Article.

The preferred approach is to give the force of law to all the provisions of a Convention, including the 'final provisions' that are often administrative in nature.. This approach eliminates the risk of inadvertently overlooking provisions or omitting substantive provisions. To the extent that the final provisions of the

Convention are not substantive but are binding as to States on an international level, they would produce no legal effect in provinces or territories in any event.

Inconsistent laws

4. If a provision of this Act or a provision of the Convention that is in force is inconsistent with any other Act, the provision prevails over the other Act to the extent of the inconsistency.

Comment: The Act and Convention need to prevail over inconsistent provisions in other Acts to ensure that Canada is in conformity with its international obligations. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other Acts with which this Act or the Convention appears to be inconsistent, those other Acts should be amended to give precedence to this Act and the Convention.

DRAFTING NOTE: *Some Uniform Acts provide authority to make regulations. Nothing in the Electronic Communications Convention appears to require regulations, so no such provision is needed in this Act.*

DRAFTING NOTE: *Some Uniform Acts provide that the Act is binding on the Crown in the right of the enacting jurisdiction. The Electronic Communications Convention imposes no duties on anyone, however. Thus it binds no one, Crown or private party.*

Though most provincial and territorial laws, and federal laws, bind the Crown only if they do so expressly, or by necessary implication, this rule does not affect laws of general application that also apply to the Crown without binding it. Thus the purchase of assets by the Crown is governed by sale of goods legislation, but that legislation does not say it binds the Crown. Likewise, if the Crown enters into an international contract, the Convention will apply to the use of electronic communications in that contract. This application is not a case of binding, and no provision is needed on that front.

Coming into force

5. This Act comes into force on a day to be fixed by (__________).

Comment: There is a need to coordinate the entry into force of the Convention at the international level, the coming into force of domestic implementing legislation, and giving the Convention force of law in the enacting jurisdiction. A provision in the implementing legislation stating that the Act comes into force when the Convention enters into force for enacting jurisdictions is not recommended since the actual date can be hard to find later. Instead, this coordination should be achieved by having the legislation proclaimed in force on that day. Enacting jurisdictions will need to communicate with Justice Canada officials to coordinate dates.

The enacting jurisdiction will use its usual language for a proclamation by the usual authority.

SCHEDULE

UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Noting that the increased use of electronic communications improves the efficiency of commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Considering that problems created by uncertainty as to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and help States gain access to modern trade routes,

Being of the opinion that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law,

Desiring to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems,

Have agreed as follows:

Chapter I

Sphere of application

Article 1

Scope of application

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.

Article 2

Exclusions

1. This Convention does not apply to electronic communications relating to any of the following:

(*a*) Contracts concluded for personal, family or household purposes;

(*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.

2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or 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.

Article 3

Party autonomy

The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

Chapter II

General provisions

Article 4

Definitions

For the purposes of this Convention:
(*a*) "Communication" means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;
(*b*) "Electronic communication" means any communication that the parties make by means of data messages;
(*c*) "Data message" means 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 telecopy;
(*d*) "Originator" of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;
(*e*) "Addressee" of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;
(*f*) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data messages;
(*g*) "Automated message system" means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;
(*h*) "Place of business" means any place where a party maintains a nontransitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

Article 5

Interpretation
1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 6

Location of the parties
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 the 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.

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 a 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.

Article 7

Information requirements

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

Chapter III

Use of electronic communications in international contracts

Article 8

Legal recognition of electronic communications

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.

Article 9

Form requirements

1. Nothing in this Convention requires 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.

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; and
(*b*) The method used is either:
(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
(ii) Proven in fact to have fulfilled the functions described in subparagraph (*a*) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:
(*a*) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and
(*b*) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (*a*):
(*a*) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and
(*b*) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10

Time and place of 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 or of the party who sent it on behalf 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 retrieved 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 that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

Article 11

Invitations to make offers
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 to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Article 12

Use of automated message systems for contract formation
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.

Article 13

Availability of contract terms

Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of its failure to do so.

Article 14

Error in electronic communications

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

(*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 other than as provided for in paragraph 1.

Chapter IV

Final provisions

Article 15

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 16

Signature, ratification, acceptance or approval

1. This Convention is open for signature by all States at United Nations Headquarters in New York from 16 January 2006 to 16 January 2008.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 17

Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Contracting State" or "Contracting States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over any conflicting rules of any regional economic integration organization as applicable to parties whose respective places of business are located in States members of any such organization, as set out by declaration made in accordance with article 21.

Article 18

Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 19

Declarations on the scope of application

1. Any Contracting State may declare, in accordance with article 21, that it will apply this Convention only:
(*a*) When the States referred to in article 1, paragraph 1, are Contracting States to this Convention; or
(*b*) When the parties have agreed that it applies.

2. Any Contracting State may exclude from the scope of application of this Convention the matters it specifies in a declaration made in accordance with article 21.

Article 20
Communications exchanged under other international conventions

1. The provisions of this Convention apply to the use of electronic communications in connection with the formation or performance of a contract to which any of the following international conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);
Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);
United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);
United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);
United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);
United Nations Convention on the Assignment of Receivables in International Trade (New York, 12 December 2001).

2. The provisions of this Convention apply further to electronic communications in connection with the formation or performance of a contract to which another international convention, treaty or agreement not specifically referred to in paragraph 1 of this article, and to which a Contracting State to this Convention

is or may become a Contracting State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph.

3. A State that makes a declaration pursuant to paragraph 2 of this article may also declare that it will nevertheless apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of any contract to which a specified international convention, treaty or agreement applies to which the State is or may become a Contracting State.

4. Any State may declare that it will not apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of a contract to which any international convention, treaty or agreement specified in that State's declaration, to which the State is or may become a Contracting State, applies, including any of the conventions referred to in paragraph 1 of this article, even if such State has not excluded the application of paragraph 2 of this article by a declaration made in accordance with article 21.

Article 21

Procedure and effects of declarations

1. Declarations under article 17, paragraph 4, article 19, paragraphs 1 and 2, and article 20, paragraphs 2, 3 and 4, may be made at any time. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 22

Reservations

No reservations may be made under this Convention.

Article 23

Entry into force
1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 24

Time of application
This Convention and any declaration apply only to electronic communications that are made after the date when the Convention or the declaration enters into force or takes effect in respect of each Contracting State.

Article 25

Denunciations
1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at New York, this twenty-third day of November, 2005, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.