

An Appraisal of the International Legal Framework for E-Commerce

Ibrahim Shehu*, (Ph.D)

Faculty of Law, Usmanu Danfodiyo University, Sokoto, P.M.B. 2346, Nigeria

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*Corresponding author: Ibrahim Shehu

Abstract

The model law as a basis for e-commerce is not a law and therefore not binding on member states, but rather an important international instrument that provide the basis for electronic transaction. Therefore, arties are expected to enact their e-commerce legislation by adopting a unified standard in line with model law. However, there are conventions and treaties on e-commerce convention that parties are expected to ratify and domesticate. The focal point of this paper is on the major international instruments on e-commerce, the paper will further address some of the challenges face and proffer solutions on how to improve e commerce.

Keywords: UNCITRAL (Model Law), E-commerce, E- signature, Commercial Arbitration and Rotterdam Rules.

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INTRODUCTION

The UNCITRAL model law on e-commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996 in furtherance of its mandate to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade cause by inadequate and divergence in law affecting trade [1].

Therefore, the cardinal aim of the model law was to ensure that practice of member states in the area of electronic commerce as an emerging practices in commercial transactions should be uniform and of acceptable standard. It is worthy to note that, the model law set out rules which aim at facilitating the use of electronic means of communications and storage of information as an alternative to paper based methods of communication and storage of information [2]. Therefore, the paper would focuses on some international legal framework on e-commerce.

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) MODEL LAW AS BASIS FOR E-COMMERCE

The UNCITRAL model law on e-commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996 in furtherance of its mandate to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergence in law affecting trade [3]. A cardinal aim of the model law was to ensure that the practices of member states in the area of electronic commerce, as an emerging practice in commercial transactions should be uniform and of acceptable standard [4].

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www.jus.uio.no/im/un.electronic.commerce.model.law.1996/history.background.html assessed at 22/3/18

⁴ The UNCITRAL Model Law is intended to be read in conjunction with the *Guide to Enactment* <http://www.uncitral.org/uncitral/en/uncitral_texts.htm l> Accessed on 17/12/ 2017. The Introduction to the *Guide* includes the following in its statement of objectives:

... The purpose of the Model Law is to offer national legislators a set. of internationally acceptable rules as to how a number of such legal obstacles may be removed, and how a more secure legal environment may be created for what has become known as 'electronic commerce'.

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www.ijus.uio.no/im/un/electroniccommercemodellaw.1996/history.background.html accessed, 22/3/18

² Oyewumi,O.Adejoke “The ICT Revolution and Commercial Sectors in Nigeria, impact and legal intervention” British Journal of Arts and Social Sciences, Vol. 15 No.2 2013.accessed 26/3/18

Therefore member states were enjoined to enact laws and institutions that conformed substantially to the provision of the model law [5].

It is worthy to note that, the model law set out rules which aim at facilitating the use of electronic means of communication and storage of information as an alternative to paper based methods of communication and storage of information. To this end, the model law provides for the legal recognition of data messages, which are also in the absence of a contrary agreement, deemed to fulfill the requirement of using signature and original documents [6].

For more clarity, some provisions from the model law would be discussed below:

Article 1 of the UNCITRAL MODEL LAW 1996 provides:

This law applies to any kind of information in the form of a data message used in the context of commercial activities [7].

The objectives of the Model Law, which include enabling or facilitating the use of electronic commerce and providing equal treatment to users of paper-based documentation and to users of computer-based information, are essential for fostering economy and efficiency in international trade. By incorporating the procedures prescribed in the Model Law in its national legislation for those situations where parties opt to use electronic means of communication, an enacting State would create a media-neutral environment.

The *Guide* also has a section titled 'History and Background of the Model Law', which includes the following statement:

... The UNCITRAL Model Law on Electronic Commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996 in furtherance of its mandate to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade.

⁵ Akomolede T Ifedayo "Contemporary Legal issues in electronic Commerce in Nigeria." www.ajolalga/index.php/pel/article. accessed at 21/2/18

⁶ Oyewumi O. Adejoke "The ICT Revolution and Commercial Sectors in Nigeria, Impact and Legal Interventions", *British Journal of Arts and Social Science*, Vol. 5 No 2, 2012

⁷ The following notes are included as footnotes to the original UNCITRAL Model Law text.

- The Commission suggests the following text for States that might wish to limit applicability of this Law to international data messages: 'This Law applies to a total message as defined in paragraph (1) of Article 2 where the data message relates to international commerce.'

While Article 2 provides that for the purpose of this law:

- Data message means information generated, sent received or stored by electronic, optical or similar means including but not limited to Electronic Data Interchange (EDI), electronic mail, telegram, telex or telecopy.
- Electronic Data Interchange (EDI) means the electronic transfer from computer to computer of Information Using an agreed standard to structure the information.
- Originator of a data message means a person by whom, or on whose behalf the data message purports to have been sent or generated prior to storage, if any but it does not include a person acting as an intermediary with respect to that data message.
- Addressee of a data message means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message.

It is important to note that Article 5 discuss on the legal recognition of data messages. It provides that "Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data messages".

The commission further adopted in its thirty first session in June 1998 as an addition to Article 5, which state that:

Information shall not be denied legal effect, validity or enforceability,

- This Law does not override any rule of law intended for the protection of consumers.

- The Commission suggests the following text for States that might wish to fend the applicability of this Law: 'This Law applies to any kind of information in (form of a data message, except in the following situations: [...].'

- The term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual blot. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road. What do you think is the purpose of the first note? Can the second note and the fourth note be reconciled?

solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.

Article 6 further discuss on writing. It provides that:

- Where the law requires 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 subsequent reference.
- Paragraph (i) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

Article 7 provides that:

- Where the law requires e signature of a person, that requirement is met in relation to a data message if
 - A method is used to identify that person and to indicate that person approval of the information contained in the data message; and
 - That method is as reliable as was appropriate for the purpose for which the data message was generated or communicated in the light of all circumstances, including any relevant agreement.

Article 7 went further to say that

- Paragraph (i) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

Furthermore, Article 8 of UNCITRAL made mention of originality of a message and it laid down 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 which arises in the normal course of communication, storage and display and 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 9 discussed about admissibility and evidential weight of data messages. It provides that:

- In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence.
 - On the sole ground that it is a data message or
 - If it is the best evidence that the person adducing it could reasonably

be expected to obtain on the grounds that it is not its original form.

Article 9 (2) further provide that:

Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Also note that, where the law requires that certain documents, records or information be retained [8], that requirement is met by retaining data messages provided that the information contained there is accessible so as to be usable for subsequent reference [9] and the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received [10] and such information if any is retained as enable the identification of the origin and destination of a data message and the date and time when it was sent or received [11]. Meanwhile, Article 11 of the model law provide ground for the formation and validity of contract via the internet. It states that: In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages where data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose. Whereas article 12 discussed on the recognition by parties of data messages, and Article 13 provide for attribution of data messages while article 14 laid emphasis on the acknowledgement of receipt of a data message.

Nigeria being the largest economy in Africa is a signatory to the UNCITRAL model law 1996 and this law has been domesticated. There are Bills pending before the National Assembly on electronic commerce and the Electronic Transaction Bill 2015 is design alongside the UNCITRAL model law. Therefore, the Nigeria e-commerce proposed legal and regulatory framework is framed in line with the objective of the UNCITRAL model law.

UNCITRAL (Model Law) on commercial arbitration 2006

⁸ Article 10 (1) UNCITRAL MODEL LAW 1996

⁹ Article 10 (1) (a) *ibid.*

¹⁰ Article 10 (i) (b) *ibid.*

¹¹ Article 10 (i) (c) *ibid.*

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly. It plays an important role in improving the legal framework for international trade by preparing international legislation texts for use by states in modernizing the law of international trade and non legislation texts for use by commercial parties in negotiating transaction [12].

It is important to note that UNCITRAL legislative texts address international sale of goods, International commercial dispute resolution, including both arbitration and conciliation electronic commerce insolvency, including Gross border insolvency:- International transport of goods, international payments procurement and infrastructure development and security interest [13].

The UNCITRAL Model Law on International commercial Arbitration was adopted by the United Nations Commission on International Trade law on the 21st June 1998, the model law was amended by UNCITRAL on 7th July, 2006 and it recommend that all states give favourable consideration of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration [14].

Meanwhile, the model law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to states of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the model law on commercial arbitration has come to represent the accepted International Legislation Standard for a modern arbitration law and a significant number jurisdiction have enacted arbitration legislation based on the model law [15].

The form of a model law was chosen as the vehicle for harmonization and modernization in view of the flexibility it gives to states in preparing new arbitration laws. Notwithstanding, that flexibility and in order to increase the likelihood of achieving a satisfactory degree of harmonization, states are encouraged to make as few changes as possible when

incorporating the model law into their legal systems [16].

Article1 provides that the law-applies to international commercial arbitration subject to any agreement in force between this state and any other state or states.

The provision of this law applies only if the place of arbitration is in the territory of this state [17]. Furthermore, arbitration is international [18] if the parties to an agreement have at the time of the conclusion of that agreement, their places of business in different states, one of the following places is situated outside the state in which the parties have their places of business [19].

- The place of arbitration if determined in or pursuant to the arbitration agreement.
- Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected.

It is important to note that, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address. If none of these can be found after making a reasonable inquiry a written communication is deemed to have been received if it is sent to the addresses's last known place, habitual resident or mailing address by registered letter or any other means which provides a record of the attempt to deliver it [20].

However, Article 5 provide the extent of court intervention in matter governed by the law, no court shall intervene except where so provided in this law. While Article 10 empowers the parties to determine the number of arbitration and failing such determination, the number of arbitrators shall be three.

The UNCITRAL model law on commercial arbitration is relevant to this thesis in the sense it provide for the international commercial arbitration. Since this research is on electronic commerce, there is likely hood of dispute and model law on international arbitration is relevant to this research in the sense that it provides guidance for solving dispute on international trade.

¹² United Nations, UNCITRAL Model Law on International Commercial Arbitration www.uncitral.org/pdf/English/texts/arbitration/ml-arb/07-86998-Ebook.pdf assessed 22/4/18

¹³ *ibid*

¹⁴ UNCITRAL Model Law on International Commercial Arbitration as amended 2006

¹⁵ *ibid*

¹⁶ *Ibid.*

¹⁷ 1 (2) UNCITRAL Model Law on International Commercial Arbitration, 2006

¹⁸ 1 (3)(a) *ibid*

¹⁹ 1 (3) (b) *Ibid*

²⁰ Article 3 1 (a) UNCITRAL Model Law on Commercial Arbitration 2006

Therefore, where there is a dispute between parties, this law will apply subject to any agreement in force between this state and any other state. Nigeria is a signatory to this international instrument and even the Alternative Dispute Resolution Act is design in line with the model law on commercial arbitration

UNCITRAL model law on electronic signature 2001

The above law applies where electronic signatures are used in the context of commercial activities, it does not override any rule of law intended for the protection of consumers [21].

However, where the law requires a signature of a person, that requirement 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 in the light of all the circumstances, including any relevant agreement [22].

The above applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provided consequences for the absence of a signature [23]. Furthermore, an electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 [24]. If the signature creation data are within the context in which they are used, linked to the signatory and no to no other person and the signature creation data were at the time of signing, under the control of the signatory person and of no other person. Note that Article 7 & 8 of UNCITRAL Model Law on electronic signature emphasize on satisfaction of Article 6 and the conduct of the signatory. Section 7 (1) provide that:

Any person, organ or authority, whether public private specified by the enacting state as competent may determine which electronic signatures satisfy the provision of Article 6 of this law.

Article 8 (1) state that:

²¹ Article 1 UNCITRAL Model Law on Electronic Signature (2001). Electronic signatures are of such importance that they demand particular and focused attention. For the moment, it must suffice to say that the UNCITRAL Model Law regime attempts to provide some guidance in this area; however, the attempt is less than comprehensive and the national legislation less than harmonised. Signatures are absolutely essential for the conduct of commerce. A paper signature is a mark carrying an expression of authenticity and intent, both essential for the formation of contracts. If electronic contracting is to become effective and frequent, secure signature mechanisms, both legal and technical, are essential.

²² Article 6 (1) ibid

²³ Article 6 (3) ibid

²⁴ Article 6 (3) (a) (b) ibid

Where signature creation data can be used to create signature that has legal effect, each signatory shall

- Exercise reasonable care to avoid unauthorized use of its signature creation data.
- Without undue delay, utilize means made available by the certification service provider pursuant to Article 9 of this law or otherwise use reasonable efforts, to notify any person that may reasonable be expected by the signatory to rely on or to provide services in support of the electronic if.
 - The signatory knows that the signature creation data have been compromised.
 - The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised.

Furthermore, Article 9 and 10 discussed on the conduct of the certification service provider and trustworthiness respectively, for instance section 9 (1) provide that:

Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature that certification service provider shall.

- Act in accordance with representations made by it with respect to its policies and practices.
- Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate.
- Provide reasonably accessible means that enable a relying party to ascertain from the certificate and the identity of the certification service provider.

While Article 11 emphasized on the conduct of the relying party, by providing that a relying party shall bear the legal consequences of its failure to take reasonable steps to verify the reliability of an electronic signature or where an electronic signature is supported by a certificate to take reasonable steps to verify the validity, suspension or revocation of the certificate and to observe any limitation with respect to the certificate.

Note that Article 12 of UNCITRAL model Law on electronic signature provide for the recognition of foreign certificates and electronic signature. It states in section 1 of Article 12 that in determining whether or to what extent a certificate or an electronic signature is legally effective, no regard shall be had.

- To the geographical location where the certificate is issued or the electronic signature created or used or.

- To the geographical location of the palace of business of the issuer or signatory.

While Article 12 (2) provides that a certificate issued outside the enacting state shall have the same legal effect in the enacting state as a certificate issued in the enacting state if it offers a substantially equivalent level of reliability.

However, subsection (3) states that an electronic signature created or used outside the enacting state shall have the same legal effect in the enacting state as an electronic signature created or used in the enacting state if it offers a substantially equivalent level of reliability.

From the above provisions, it is clear that the model law is intended to provide essential procedures and principles for facilitating the use of modern techniques for recording and communicating information in various types of circumstances [25]. Therefore the model law is based on the recognition that legal requirement prescribing the use of traditional paper based documentation constitute to the main obstacle to the development of modern means of communication [26].

Therefore, the model law relies on a new approach sometimes referred to as the functional equivalent approach which is based on an analysis of the purpose and functions of the traditional paper based requirement with a view to determining how those purpose or functions could be fulfilled through electronic commerce techniques [27].

The United Nations Convention on the Use of Electronic Communication in International Contract 2005

The United Nations Convention on the Use of Electronic Communications in International Contracts is a landmark legal instrument that sets a new global standard for electronic commerce legislation [28]. The convention was adopted by the United Nations General Assembly on 23 Nov 2005. It builds on the UN Model Law of Electronic Commerce 1996, with the purpose of facilitating international trade by offering practical

²⁵ UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted 1998 www.uncitral.org/pdf/english/texts/electcom/org-89450-Ebook.pdf accessed on 12/3/18

²⁶ *ibid*

²⁷ *Ibid.*

²⁸ Wei C.Kah & Suling J.Chao., United Nations Convention on the use of Electronic Communications in International Contracts. A New global Standard <http://heinonline.org/HOL/LandingPage?handle=hein.journals/saclj18&div=9&id=&page=> accessed on May 31, 2018

solutions for issues arising out of the use of electronic communications in the formation or performance of contracts between parties located in different countries [29].

It is worthy to note that this convention was the first international convention designed specifically for international business to business electronic commerce (B2B). Therefore it is limited to Business to Business (B2B) electronic commerce, Consequently its provisions do not create any rights or obligations for online entrepreneurs with respect to contract concluded for personal, family or household purposes. Therefore, any contract conducted between professional party and a consumer or between consumers themselves or between consumer and professional parties are excluded from the scope of the convention [30].

Furthermore, the sphere of application of the convention to professional e-commerce is very broad. It is applicable to transactions of sale and to contracts other than sales such as barter more importantly, the new convention also covers transactions in services and information [31].

However, not all B2B e-commerce transactions are covered as the convention does not apply to the electronic financial services and international transferable documents such as bills of exchange. Meanwhile, contracts that are generally excluded involve transactions on regulated exchanges, foreign exchange transactions, inter bank transactions or the use of intermediaries to purchase stocks [32]. Some few provisions of the United Nations Convention on the use of electronic communication by international contracts 2005 would be discussed below.

Article 1(1) of the convention provides that:

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 state.

While Article 1(2) went further to say that:

The fact that e parties have their places of business in different states is to be disregarded whenever this fact does not appear either from

²⁹ Davidson Alan., Adoption of the United Nation Convention on the Use of Electronic communication in International Contract a Critique

³⁰ Polanski P.Przemysla."International electronic contracting in the newest UN Convention" (Journal of International Commercial law and technology) vol2 issue 3 2007. <http://www.jiclt.com/index.php/jiclt/article/view/26> accessed on May 31, 2018

³¹ *ibid*

³² *Ibid.*

the contract or from any dealings between the parties or for information disclosed by the parties by any time before or at the conclusion of the internet.

Article 1 (3) proceed to say that:

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, from the above provisions, it is clear that the Convention regulates the use of electronic communication in electronic contract between parties whose places of business are in different states and in contract between parties located in two states that are contracting states. Therefore, it will govern dispute if only one party is located in a state that ratified the Convention.

It is important to note that, Article 8 of this Convention deals with the legal recognition of electronic communications 8(1) provides that:

A communication or a contract shall not be denied validity or enforcement on the sole ground that it is in the form of an electronic communication.

While 8(2) states that:

Nothing in this Convention requires a party to use or accept electronic communication but a party's agreement to do so may be inferred from the parties conduct.

Article 8 laid a solid foundation for the validity of a contract made in electronic communication form. It confirms a well established principle of international commercial laws that a contract can be made or evidenced in any particular form.

However, where the law requires that a communications 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 [33]. And where the law requires that a communication or a contract should be signed by a party or provided consequences for the absence of a signature, that requirement is met in relation to an electronic communication [34], if a method is used to identify the party and to indicate the parties intention in respect of the information contained in the electronic communication [35].

The Convention equally laid emphasis on the time and place of dispatch and the receipts of electronic communication [36]. Therefore, the time of dispatch of an electronic communication is the time when it leave an information system under the control of the originator or of the party who sent it on behalf of the originator and 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 [37]. However, the term 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 and electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address [38].

Note that the Convention lacks a specific provision on the time and place of contract formation because such rule could be inconsistent with a law on contract formation applicable to any given contract [39]. This approach introduces an uncertainty because the time and place of contract formation have to be determined by an applicable national law established by the rules of private international law of the forum state [40]. Therefore, Article 10 of the convention contains provisions on time and place of dispatch and receipt of electronic communication and not on the time and place of formation of contract.

Article 11 provide a situation where 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 interaction applications for the placement of orders through such information system is to be considered as an invitations to make offers, unless it clearly indicates the intention of the party making the proposals to be bounds incase of acceptance.

Meanwhile, the reading of the Article suggest that as a rule of thumb, web based settlers should be treated as presenting no binding statements of intentions to enter into contractual arrangements. There are two conditions to this, the first is they should not address electronic communication to one or more specific persons and secondly, they should not clearly indicate the intention to be bond in case of acceptance [41].

³³ Article 9(2) of United Nation convention on the Use of Electronic Communication in International Contract 2005

³⁴ See Art 9 (3) *ibid*

³⁵ See Art 9(3)(a) *ibid*

³⁶ See Art 10 *ibid*.

³⁷ See Art 10(1) *ibid*.

³⁸ See Art 10(2) *ibid*.

³⁹ Polanski n 32

⁴⁰ *ibid*

⁴¹ *ibid*

It is clear from the provision highlighted above that the United Nations Conventions on the Use of Electronic Communications in International Contract has addresses some major questions that arise in the context of electronic contract such as whether web based contracts are valid, whether a website should be regarded as binding offer. The Convention also addresses issues that earlier international instruments on e-commerce did not, as the purpose of this convention is to offer practical solutions for issues related to the use of electronic means of communication in international trade. One clear objectives of this Convention is to remove legal obstacles to electronic commerce, including those which arose under Articles 11-22 of UNCITRAL Model Law. It important to note that, Nigeria has ratified this Convention and domesticated it into our law. Therefore, Nigeria is a party to this Convention.

The United Nations Convention on Contract for the International Carriage of Goods Wholly or Partly by Sea 2008 (The Rotterdam Rules)

The most prominent regime that governs a large majority of international shipments is an amended version of the original Hague Rules, the Hague Visby Rules. However, the Hamburg Rules which were later developed as an alternative to the Hague Visby regime with a view to redressing the balance between the interest of the shippers and carriers have so far failed to attract the support of a major shipping powers [42].

It is worthy to note that, the emergence of the United Nations Convention on Contract for the International Carriage of Goods Wholly or Partly by Sea was adopted by the General Assembly on 11th Dec 2008, the Convention unlike the Hamburg Rules establishes uniform and modern legal regime governing the rights and obligations of shippers, carriers and consignees under a contract for door to door carriage that includes an international Sea. The Convention builds upon, and provides a modern alternative to earlier conventions relating to the international carriage of goods by sea, in particular the Hague Rule and its protocol (The Hague Visby Rules and the Hamburg Rules).

However, the Rotterdam Rules provide a legal framework that takes into account the many technological and commercial developments that have occur in maritime transport since the adoption of those earlier Conventions, including the growth containerization, the desire for door to door carriage under a single contract and the development of

⁴² Nikah Theodera. & Soyer Baris., “A New International Regime for Carriage of Goods by Sea: Contemporary, Certain Inclusive and Efficient, or just Another one for the Shelves”? *Berkeley Journal of International Law*, Vol. 30 Issue 2) 2012. <http://scholarship.law.berkeley.edu/bjil/vol30/iss2/2>.

electronic transport documents [43]. It is however necessary to look at some provisions of the Rotterdam Rules for instance Article 5(1) of the Convention discusses on the scope of the application. The Article states that:

Subject to Article 6, this convention applies to contract of carriage in which the place of receipt and the place of delivery are in different states, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different states.

If according to the contract of carriage, any of the following places is located as a contracting state: The place of receipt, The place of loading, The place of delivery, The port of discharge. While Article 5(2) provide that the convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee or any other interested parties. Therefore looking at the above provision, it clearly states the scope of the convention and emphasized the importance of international commercial transactions.

Meanwhile, the Convention does not cover contracts in liner transportation i.e charter parties and other contracts for the use of a ship or of any space thereon [44] and it does not apply to contract of carriage in non liner transportations [45] except where there is no charter party or other contract between the parties for the use of a ship or of any space or a transport documents or an electronic transport record is issued [46].

The Rotterdam Rules emphasized on the use and effect of electronic transport record and that anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper [47]. Note that, the issuance and exclusive control or transfer of an electronic transport record has the same effect as the issuance possession or transfer of a transport documents [48].

The procedures for the use of negotiable electronic transport record was part of the area covered by the conventions, for example the method for the issuance and transfer of that record to an intended holder and an assurance that the negotiable electronic

⁴³ *ibid*

⁴⁴ See Art 6(1) United Nations Convention on Contract for the International Carriage of goods Wholly or Partly on sea 2008

⁴⁵ See Art 6(2)(a) *ibid*.

⁴⁶ See Art (6)(2)(b) *ibid*.

⁴⁷ See Article 8(a) (b)

⁴⁸ *Ibid*.

transport retains its integrity, is also addressed the manner in which the holder is able to demonstrate that it is the holder and the manners of providing confirmation that delivery to the holder has been effected [49].

Furthermore, if a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record, the holder shall surrender the negotiable transport documents or all of them if more than one has been issued to the carrier. The carrier shall equally issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport documents [50].

The importance of an electronic signature was equally covered by the convention. It is provided that an electronic transport record shall include the electronic signature of the carrier or person acting on its behalf and that such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's [51] authorizations of the electronic transport record.

The Rotterdam Rules clearly attempted to address some of the challenges provided by contract of cost insurance and freight C.I.F and contract of Free on Board F.O.B in international commercial transaction. Therefore, Rotterdam rules have transformed the way and manner the transaction is carried out by digitalizing the whole process as it was above stated. It is important to note that, Nigeria is a signatory to this convention.

CONCLUSION

The model law serves as a guide for countries to enact their own legislation on e-commerce. A number of jurisdictions have enacted legislation to deal with issues arising in e-commerce and set out the rules and regulation governing e-commerce, most of the e-commerce laws enacted have recognized and used the international regulations set forth such as the UNCITRAL model on e-commerce etc.

It is worthy to note that the Rotterdam Rule and the United Nations Convention on the use of electronic communication in international contract 2005 are conventions and therefore, requires ratification and domestication. Meanwhile, the Nigeria Electronic Transaction Bill 2015 awaiting presidential assent was treated in line with the model law provision. For Nigeria to attain a certain level in e-commerce there is need for the president to assent to that Bill.

⁴⁹ See Article 9 (a)(b)(c)&(d) *ibid*

⁵⁰ See Article 10(a),(b)&(c) *ibid*.

⁵¹ See Article 38(2) *ibid*.