

The Legal Framework of the International Electronic Commercial Contract: A Study of Regulatory Sources and Its Significance in Algerian and Comparative Legislation

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Abstract:

The electronic international commercial contract is one of the most prominent forms of modern contracts emerging from the digital environment. It is concluded via technological communication means between parties from different countries. This type of contract is characterized by unique characteristics, most notably its remote completion, its reliance on electronic media, and its close connection to international trade. This reality poses complex legal challenges, both at the level of formation and proof, and at the level of determining the applicable law and the competent authority in the event of a dispute. Rapid digital transformations highlight the need to develop national legislation, enhance recognition of modern technological means, particularly electronic signatures and digital documents, and activate alternative dispute resolution mechanisms as a means of ensuring legal security in the international electronic commercial environment

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Introduction:

In recent decades, the world has witnessed rapid technological development that has imposed itself on various aspects of life. One of its most prominent features has been the widespread reliance on the internet and modern means of communication in economic activities, leading to the emergence of what is known as the "digital economy." This transformation has had a profound impact on commercial transactions, with e-commerce emerging as a modern alternative to traditional trade, relying on modern technologies to conclude and implement contracts without the need for parties to meet in one place.

In this context, the electronic international commercial contract has emerged as one of the most important legal mechanisms regulating commercial transactions conducted online between parties located in different countries. This type of contract is a complex model from a legal perspective, combining the characteristics of traditional contracts with the advantages of the digital environment. At the same time, it poses a number of new challenges not addressed to the same degree by paper contracts, whether in terms of its concept, methods of formation, means of proof, or even the legal rules governing it.

Electronic international commercial contracts differ from traditional paper contracts in several aspects, most notably: the absence of physical presence of the parties, reliance on electronic means to express their will, and their conclusion remotely. Furthermore, their international nature requires the determination of the applicable law and the competent judicial authority in the event of a dispute. This type of contract also raises profound questions about the adequacy of national legislation to keep pace with these

developments and the need to activate international agreements related to e-commerce.

In this regard, we pose the following question: How does the law regulate electronic international commercial contracts, given their digital and cross-border nature?

To answer this question, we will address the following points:

- Axis One: The theoretical and legal framework of the international electronic commercial contract
- Axis Two: The formation of the international electronic commercial contract
- Axis Three: Settlement of disputes related to international electronic commercial contracts

Axis One: The theoretical and legal framework of the international electronic commercial contract

The electronic contract is one of the modern contracts produced by the Internet. It has become a common form of civil and commercial transactions, especially in electronic transactions, which e-commerce contracts have witnessed in particular recently.

First: Definition of the Electronic Contract and Its Characteristics

1- Definition of the Electronic Contract

The electronic contract is defined as: "A contract in which offers of goods and services, expressed through various technological media, particularly the international information network, are received by persons located in one or more different countries, with an acceptance that can be expressed through the same media as the conclusion of the contract"¹

It is defined as any agreement in which an offer meets an acceptance on an open international network for remote

¹ Ajjali, B. K. *The legal system of the electronic contract in Algerian legislation: A comparative study (Doctoral dissertation)*. Mouloud Mammeri University, Tizi Ouzou, Algeria. 2014. P18.

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communication, via audio-visual means, thanks to the interaction between the offeror and the acceptor¹.

It is also defined as a contract or any other record that is created, formed, transmitted, received, or stored by any electronic means².

As for the Algerian legislator, he did not address the definition of the electronic contract within the provisions of the Civil Code. Rather, he granted it specificity and defined it within the provisions of Law No. 18-05 of May 10, 2018, relating to electronic commerce, in the second paragraph of Article Article 6 of Law No. 04-02 of Jumada I 5, corresponding to June 23, 2004, which defines the rules applicable to commercial practices, defines a contract as "a contract concluded remotely without the simultaneous physical presence of its parties, using exclusively electronic communication technology."³

Accordingly, e-commerce is defined as "the promotion and exchange of goods and services and the completion of their transactions using modern telecommunications and information exchange technology remotely, particularly the Internet, without the need for the parties to travel and meet in a specific location, and whether the mutual obligations can be implemented electronically or require their implementation in a tangible, physical form."⁴

2- Characteristics of an Electronic Contract

- An electronic contract is one of the contracts concluded remotely:

The basic characteristic of this type of contract is:

- The lack of contemporaneous physical presence of the parties at the moment of exchange of consent. It is a contract concluded

¹ Djilali, A. *The legal system of the electronic contract in Algerian legislation. Journal of Legal and Political Thought*, 6(2). University of Blida 2, Algeria.2022.P708

² Souli, Z. *The legal system of the electronic contract (Master's thesis). University of Biskra, Algeria.2008. P12.*

³ Article 06, Law No. 18-05 on electronic commerce

⁴ Jendouli, F. Z. *Electronic commerce contracts in private international relations (Doctoral dissertation). Abou Bekr Belkaid University, Tlemcen, Algeria.2017. P14.*

between two parties who are not physically present at the moment their wills meet.

- In addition, it is concluded via one or more means of remote communication.¹

- It is predominantly commercial in nature:

Electronic commerce is the field in which the electronic contract appears specifically, as it is the most important means of this commerce. This has led some jurisprudence to use the term "e-commerce" to refer to electronic contracts, which are expressed as commercial relationships and transactions conducted between parties through the use of electronic devices and means such as the internet. This contract has a consumer nature, as it often occurs between a merchant (professional) and a consumer.²

- The electronic contract has a domestic and international nature:

Electronic contracting conducted over the internet is characterized by both a domestic and international nature. An electronic contract is domestic when it is between two parties within the same country, while an international contract occurs when it transcends the borders of a country. Electronic transactions over the internet can take place between people located in different countries. The user is from one country, and the supplier is from another country. A technology company processes, enters, and uploads data via an existing network. In another country³.

- Electronic contracts are bargaining contracts:

The bargaining process prevails in these contracts, as their terms can be negotiated and discussed, and these terms are set by the free will of both parties. This means that the obligor's role is not limited to merely agreeing to the pre-prepared terms, but rather has absolute

¹ El-Mokdad, H. *The electronic contract. Journal of Legal Studies*, 2. University of Algiers 1, Faculty of Law, Algeria 2017.. P7

² Mansour, M. H. *Electronic liability. New University Publishing House, Alexandria*. 2003. P19

³ Abdelmoumen, A. H. A. *The concept and characteristics of the electronic contract. University of Sheikh Al-Rida Scientific Journal*, 13, Sudan. 2014. P208

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freedom to contract with any product and to move from one location to another. The contract does not relate to goods that affect a real interest, provide a service that the consumer cannot easily dispense with, or be subject to a monopoly¹.

- Proving it and fulfilling its obligations through electronic means:

An electronic contract can be proven through an electronic document and electronic signature. Electronic payment methods can also be used to pay the price, such as electronic money, bank cards, and electronic commercial paper.²

Second: Definition of an International Commercial Contract

A contract generally refers to an agreement between two parties to produce a specific legal effect. This legal effect may consist of giving something, performing an action, or refraining from an action. In the field of international law for individuals, contracts are of particular importance, as they are the primary tool through which cross-border commercial exchange takes place. This is known as an international commercial contract³

Commercial contracts are those that create a commercial obligation on the part of one of the parties, regardless of the method of concluding the contract and the subject of the obligations it entails, as long as they are legitimate. In other words, a contract is considered commercial if the subject of the obligation of either party is a commercial act in accordance with the provisions of the general theory of commercial business. In a third sense, they are contracts

¹ Lazaar, W. *Execution of the electronic contract (Master's thesis)*. University of Algiers, Ben Aknoun, Algeria.2010-2011. P18

² Djilali, A. *ibid*. P710.

³ Tayab, N. *Arbitration as a mechanism for resolving disputes in international trade contracts (Master's thesis)*. Mouloud Mammeri University of Tizi Ouzou, Algeria.2006.p2

concluded between merchants, or those concluded between them and consumers, which are called consumer contracts¹.

International trade can be defined as the exchange of goods and services between countries, as well as between companies and individuals at the international level². It can also be defined as a system of commodity and monetary relations consisting of the total foreign trade of all countries of the world. International trade can be practiced by natural or legal persons, as well as governments and various international companies. The general concept of international trade in its three forms, represented by the movement of goods, individuals, and capital, arises between individuals residing in different political units or between different governments and economic organizations.³

It is also defined as: the process of commercial exchange of goods, services, and other various elements of production between several countries with the aim of achieving mutual benefits for the parties involved.⁴

Therefore, international trade contracts are those contracts focused on commercial transactions intended to cross state borders to produce their effects in another country⁵.

International trade contracts are characterized by their non-immediate enforcement nature. They also differ from other domestic contracts in their length. This lengthy duration is due either to the agreement of the parties and their desire to achieve a degree of stability in their transactions, as in concession contracts and supply contracts, or to the nature of the contract itself and the magnitude of

¹ Taha, A. M. M. *The governing legal rules of international trade contracts: The approach of mandatory rules and substantive rules. International Journal of Jurisprudence, Judiciary and Legislation*, 5(2). Faculty of Administrative Sciences, October University for Modern Sciences and Arts.2024. P333.

² Ben Abdelaziz, S. *New protective methods and standards in international trade. New Academic Publishing, Tlemcen, Algeria*2016..p16.

³ Azzah, A. L. A. *The effects of trade liberalization on poverty in developing countries. Journal of Financial and Accounting Studies*, 7. University of Hamma Lakhdar, El Oued, Algeria.2016..p401.

⁴ Azzah, A. L. A. *ibid.* p402.

⁵ Tayab, N. *ibid.* p2

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the work required, which requires a long time for the parties to fulfill their obligations, as in technology transfer contracts, contracts for the construction of prefabricated factories, and international roads¹.

1- The commercial nature of international trade contracts:

The commercial nature of a contract does not depend on whether it was concluded in writing or orally, nor does it depend on the type of obligations arising from it. The obligation may be contractual, generating contractual liability, or it may be an error, generating tort liability. Regardless of the legal description of this obligation, whether it is a commercial obligation or not, it depends on both: the provisions of commercial law and the general theory of commercial business.

2- The Internationality of Commercial Contracts:

International trade contracts contain a foreign element, whether this element relates to the nationality of the contracting parties, the subject matter of the contract, or the implementation. Determining their internationality is a necessary preliminary issue for the application of the rules of private international law, as this means the possibility of applying more than one law, given the connection between transit trade contracts and different legal systems. The essence of international trade contracts is the mutual obligations between their parties, whether they are of the same nationality or of different nationalities, and whether the contract was concluded in light of the provisions of the law of their respective countries or based on the provisions of the laws of other countries. Two criteria govern the definition of international commercial contracts: the legal standard and the economic standard, which are explained as follows:

- The legal standard:

The legal standard for determining the internationality of a contract depends on the nationality of its parties. According to the

¹ Achour, F. *Addressing changed circumstances in the performance of international trade contracts*. Cahiers de Recherche Scientifique, 1. University Center of Tipaza, Algeria. 2013. P56.

legal standard, a contract is international if it contains a foreign element, whether this element relates to the business related to its conclusion or implementation, or to the domicile or nationality of the contracting parties. This means that a commercial contract is international if it is concluded between two nationals and executed in a foreign country, or if the domicile of one of them is in a foreign country. Foreign, or if one of them holds the nationality of a country other than the other party's. This criterion is criticized, given that the elements of the contractual bond are interconnected by more than one legal system, and most of them are not sufficient to confer international status on the contract in dispute. Rather, the element must be effective, influential, and sufficient in itself to confer this status. There are other elements, one of which is sufficient to confer international status.¹

- The Economic Criterion:

The basis of the economic criterion when assessing the internationality of a contract is its relationship to international trade. According to this criterion, a contract becomes international if it is connected to international trade, which takes place through the movement of goods and services across national borders. Regional trade, however, is not limited to exchanges within the borders of a single country; it also includes transactions conducted within economic blocs of a political nature, including trade between the countries of the European Union and between the countries of the Gulf Cooperation Council.

The application of the international valuation rule in international trade contract disputes is useful when the nationality of the importer differs from that of the exporter. For example, if the importer is a national and wants to file a lawsuit against the exporter A foreigner has the choice between filing his lawsuit before the defendant's courts or filing it before the courts in his country. One of the most important international agreements that defines the concept of an international contract is the 1964 Hague Convention on the

¹ Taha, A. M. M. *ibid.* p334

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International Sale of Goods. This convention relies on the different business locations of the parties in determining this latter contract.

From this, it can be concluded that the 1964 Hague Convention considers a contract to be international if two conditions are met:

First: The parties have their places of business or residence in different countries.

Second: The contract must address one of three matters:

- The subject of the obligation is something that is transferred from one country to another.
- The offer and acceptance must be made in two different countries.
- Delivery must take place in a country other than the one in which the offer and acceptance were made.¹

Second Topic: Formation of an International Electronic Commercial Contract

A contract is generally based on the requirement of three basic elements: consent, subject matter, and cause. This same rule applies to the construction and formation of an electronic contract. What distinguishes it from a traditional contract is the physical dimension of the contracting parties. Its international nature and the diversity of its means of concluding it. In this context, many legal issues have been raised regarding the agreement of two wills via modern means of communication, and how to determine the time and place of their convergence to create a legal effect, especially the virtual and intangible nature of this contract, which affects the issuance of the offer and acceptance, which constitute the most important element of the contract, namely the element of mutual consent. In this research, we will address this element without considering the two elements of the subject matter and the reason for not addressing the specificity of the subject matter and the reason in jurisprudence when concluding

¹ Taha, A. M. M. *ibid.* p335.

electronic contracts¹. Mutual consent means the agreement of two or more wills to create a specific legal effect²

With the presence of two identical wills, this element is established, which is not sufficient to conclude an electronic contract. Referring to Article 59 of the Algerian Civil Code³, the contract is concluded as soon as the two parties exchange the expression of their identical wills, without prejudice to legal texts. Given that the electronic contract is nothing more than a contract, it is subject to... According to the original with these rules regarding its conclusion.

First: Expression of Will in an Electronic Contract

1- Consistency and Conformity of Wills:

An electronic contract is distinguished from other contracts by the use of modern means of communication in its conclusion. Expression of will is the external manifestation of will, whether verbally, in writing, by a commonly used gesture, or by adopting a position that clearly indicates the intent of its author. The element of consent consists of two wills: the first is the offer, and the second is the acceptance. This element is formed by their agreement and consistency. This consistency includes substantive issues. Here, we find in Article 5 of the Civil Code, which states: "If the two parties agree on all substantive issues of the contract and reserve detailed issues to be agreed upon later, and do not stipulate that the contract shall have no effect if they fail to agree upon them, the contract shall be deemed concluded. If a dispute arises over the agreed-upon issues, the court shall rule on them in accordance with the nature of the transaction and the provisions of law, custom, and justice."⁴

¹ Abu Al-Hassan, O. *The specificity of contracting via the internet*. Dar Al-Nahda Al-Arabiya Publishing, Egypt. P60.

² Al-Sanhouri, A. R. *Al-Wasit fi sharh al-qanun al-madani al-jadid: Theory of obligations in general and sources of obligations* (Vol. 1). Dar Ihya al-Turath al-Arabi, Beirut, Lebanon. P172.

³ Ordinance No. 75/58 of 26 September 1975, Civil Code as amended and supplemented by Law No. 05-07. Official Gazette, No. 31, 13 May 2007.

⁴ Article 05, Ordinance No. 75/58 (Civil Code).

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- Electronic Offer:

An offer is an offer made by a person that expresses in a definite manner their will to conclude a specific contract, such that if it is accompanied by a corresponding acceptance, the contract is concluded. Therefore, the offer must include the essential elements of the contract, such that it is concluded as soon as it is accompanied by a corresponding acceptance; otherwise, it is considered a mere invitation to negotiate¹.

The European Consumer Protection Directive defines an electronic offer in contracts concluded at a distance as "any distance communication that includes all the necessary elements so that the addressee can accept the contract directly, excluding mere announcement." What is inferred from this definition is that it does not highlight the most important characteristic of an electronic offer, namely its electronic nature, but rather focuses on the necessity for the offeror to state all the necessary elements of the offer, so that the acceptor is aware of the matter when issuing their acceptance².

Some jurisprudence has defined it as a definitive expression of will made remotely via communication technologies, whether audible, visual, or both, and includes all the conditions and essential elements of the contract to be concluded, such that the contract is concluded if it is accompanied by acceptance³.

The most important characteristics of an electronic offer that distinguish it from a traditional offer are the following:

- An electronic offer is made via electronic communication: It is expressed via an electronic medium through the Internet. The expression of an electronic offer takes several forms through the exchange of electronic data messages and electronic communications,

¹ Hamdi, B. *Conclusion of the electronic contract (Doctoral dissertation)*. University of Batna, Faculty of Law and Political Science, Algeria.2015. P67

² Ibrahim, K. M. *Conclusion of the electronic contract: A comparative study*. Dar Al-Fikr Al-Jamii, Alexandria.2008. P316.

³ Merzoug, N. H. *Consent in electronic contracts (Master's thesis)*. Mouloud Mammeri University, Faculty of Law, Tizi Ouzou, Algeria.2012. P171.

whether this is done via websites, email services, or via electronic chat or viewing.¹

- An electronic offer is an expression of the will of the remote contracting party: Since an electronic contract is one of the contracts concluded remotely, the result is that the offer is an expression of the will of the remote contracting party and is subject to the rules for consumer protection in distance contracts. The European Directive on the Protection of Consumers in Distance Contracts defines an offer as any remote communication that includes all the necessary elements so that the addressee can accept the contract directly².

- An electronic offer is an international offer:

This is due to the use of electronic media across a global communications network. Since the Internet is characterized by its international nature, the offer communicated through it is international, meaning that the latter is international. Directed to all website visitors, regardless of their nationality or location. However, the offer may be limited to a specific geographical scope, i.e., the scope covered by the offer, by explicitly stating this³.

- Electronic Acceptance:

An electronic contract generally begins with an electronic offer, which constitutes an offer followed by acceptance. It represents the expression of the offeree's will to conclude the contract on the terms set forth in the offer.

Electronic acceptance is the expression of the will of the person to whom an offer is made via electronic means. Others define it as the expression of the will of the person to whom the offer is made to conclude a contract based on the data sent through the offer, by agreeing to its contents without modifying the offer, i.e., by making it completely identical to the offer. It is also defined as an expression of

¹ Mnani, F. *The electronic contract as a modern means of proof in Algerian civil law*. Al-Hoda Publishing & Distribution, Algeria.p79

² Ali, M. R. *Electronic contracts on the internet between Sharia and law*. New University Publishing House, Egypt. P201.

³ Ben Saïd, L. *The legal system of electronic commerce contracts*. Houma Publishing, Algeria.2012. P66

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the will of the other party who received the offer, such that the party is directed to the offeror to inform them of their acceptance of the offer, i.e., their acceptance of the offeror's offer, which leads to the conclusion of the contract.¹

Since acceptance is generally the consent of the acceptor to the offer presented to them by the offeror, this acceptance may be verbal, written, or behavioral. In all cases, acceptance must be absolute and fully consistent with the terms of the offeror. Electronic acceptance is no different from traditional acceptance, and is therefore subject to the same rules and provisions that govern traditional acceptance².

Article 10 of Law No. 05-18 on E-Commerce clarifies that for an electronic contract to be valid, it must be preceded by a commercial offer. Electronic and that it is approved by the electronic consumer, and the approval here is considered acceptance, so the contract is concluded as soon as it is received by the electronic supplier in electronic form. There are general conditions that must be met in the electronic acceptance, including that it be final and specific or intended to produce a legal signal, and that the acceptance be issued at a time when the offer is in effect and that it be completely identical to it without increase or decrease and free of any reservations, otherwise it will be considered a rejection that includes a new offer. It is also required that the expression of the will of the acceptor or the obligee be far from any coercion or compulsion or justification for his rejection or acceptance, and that it reaches the knowledge of the obligor so that it produces its legal effect.³

¹ Hammoudi, M. N. *The international electronic contract concluded via the internet*. Dar Al-Thaqafa Publishing & Distribution, Algeria.2012. P122.

² Ali. *Ibid*. p211.

³ Ben Saïd, L. *The legal system of electronic commerce contracts*. Houma Publishing, Algeria.2012. P87.

Second: The Validity of Expressing Will in Concluding an Electronic Contract

An electronic contract, like any other contract, must be validly concluded by two contracting parties who possess contractual capacity. Capacity is defined as the ability to acquire rights, assume obligations, and perform legal acts. There are two types of capacity:

Compulsory capacity: This is the ability of a person to acquire rights and assume obligations.

Compulsory capacity: This is the ability to express, on their own behalf and on their own behalf, a will that produces legal effects. The basis of capacity to perform is perception and discernment. Its scope is determined by legal acts that require will to establish them and arrange their effects. Thus, a person's capacity to perform varies according to the differences in perception and discernment within each person. It ranges from lack of capacity to complete capacity, depending on the lack, deficiency, or completeness of both discretion and will. Thus, a person is considered fully competent if they possess full discretion, incompetent if they lack discretion, and partially competent if they lack it¹.

Third: Time and Place of Concluding an Electronic Contract

1- Time of Concluding an Electronic Contract

- The moment a contract is concluded via the web is upon approval of the standard contract and typing the word "I agree."
- The moment a contract is concluded via email differs.

According to the theory of sending acceptance: the contract is concluded when the acceptor sends the electronic message containing their acceptance, and it is deemed concluded the moment they click the send button.

According to the theory of receiving acceptance: the contract is concluded via email from the moment the message containing the

¹ Abdel Rahman, K. H. *Expression of will in the electronic contract*. Dar Al-Nahda Al-Arabiya, Cairo.2005. P138.

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acceptance reaches the offeror's email address. This is taken into account in Article 215 of the UNCITRAL Model Law¹.

2- Place of Concluding an Electronic Contract:

The UNCITRAL Model Law indicates that if the parties to a contract cannot agree on the place of conclusion, the contract is concluded at the place where the recipient of the acceptance has his or her business.

However, if there are multiple such locations, they will be executed at the workplace most relevant to the subject matter of the contract or at the principal place of work. If there is no workplace, the usual place of residence will be used instead of the place of work.

The location of e-commerce contracts is of particular importance in light of the importance of the issue due to the nature of the electronic medium, on the one hand, and the international nature that dominates e-commerce transactions, on the other. This raises numerous legal problems due to the difficulty of determining the place from which electronic messages are sent, as well as the place where they are received, both of which occur in an external space that is difficult to define.²

Fourth: Evidence in International Electronic Contracts

1- Electronic Writing

Electronic writing refers to digital information that is created, sent, or transmitted on an electronic medium, regardless of its source. Writing comes in two forms: phonetic writing, which can be spoken, and writing in the form of signs and symbols, which cannot be spoken. Electronic writing falls under this category because it consists of electrical flashes. Pressing keyboard buttons or inputs in general creates the document. For us, it is legible and understandable, but the device receives it as electrical flashes that are converted into a language understood by the device. This document remains stored in

¹ Yahya Souf, F. H. *The legal regulation of electronic contracts (Master's thesis)*. An-Najah National University, Faculty of Graduate Studies, Palestine. 2007. P58.

² Ibrahim, K. M. *Electronic litigation*. Dar Al-Fikr Al-Jamii, Egypt. 2008.P347

the device in this form, and when retrieved, it reappears in a form understandable to the human mind¹.

The UNCITRAL Model Law on Electronic Commerce does not define electronic writing, but rather merely defines electronic documents. Electronic writing is one of the conditions that must be met. This is evident in Article 2, paragraph (a) of the same law: "The term 'data message' means information generated, sent, received, or stored by electronic, optical, or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy."²

Among the most important conditions for the validity of electronic writing and electronic documents to ensure the legal evidential force of legal acts are:

- Clear and legible writing: Electronic writing must be clear and legible in a manner that is easy to understand and read by persons relying on it as evidence. Letters, numbers, symbols, and commonly recognized data must be used correctly and clearly.

- Continuity of writing: This means the ability to preserve and stabilize the writing, and to be available for future reference when needed. In ancient times, writing was done on media such as paper and stone, and was susceptible to damage and fading over time. However, with the development of digital technology and advances in electronic preservation, the continuity of writing has become easier and more secure³

2- Electronic Signature:

It is defined as a set of data added to a data unit or a cryptographic transformation of a data unit that enables the recipient

¹ Zarroug, Y. *The probative value of modern means of evidence (Doctoral dissertation)*. Abou Bekr Belkaid University, Tlemcen, Algeria. 2013. P170.

² UNCITRAL. *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996: With additional article 5 bis as adopted in 1998*. United Nations. 1996

³ Hammoudi, M. N. *ibid.* p278.

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to prove the source of the data unit, as well as verify its authenticity or completeness, while protecting it from counterfeiting¹.

The French legislator defined it as: a piece of data resulting from a use by the signatory, or a piece of data resulting from the signatory's use of the message data².

The definition of an electronic signature is included in the Model Law on Electronic Signatures, developed by the United Nations Commission on International Trade Law. Article 2 of the Model Law states that "the concept of an electronic signature is intended to include all traditional uses of a handwritten signature to produce a legal effect, whereby the identification of the signatory and the statement of the intent to sign are no more than the minimum common denominator for the various approaches to signatures found in different legal systems. The definition does not ignore the fact that the technologies commonly referred to as "electronic signatures" can be used for purposes other than creating signatures with legal significance. The definition demonstrates the Model Law's focus on... The use of electronic signatures as functional equivalents of handwritten signatures is considered a functional definition, and therefore, technical conditions must be met for them to achieve the functions for which they were designed. To authenticate an electronic signature, the conditions required can be deduced in accordance with the third paragraph of Article 6 of the Model Law on Electronic Signatures of 2001:³

1 - The signature creation data must be linked exclusively to the electronic signatory.

¹ Al-Bakhti, T. *The probative value of electronic documents and electronic signatures in evidence. Moroccan Journal of Business Law and Enterprises*, 14.2008. P95.

² Al-Hasnawi, M. *Proof in the electronic contract. Journal of Legal Sciences – Commercial Judiciary Jurisprudence Series*, 1. Dar Al-Manzuma.2015. P176.

³ United Nations General Assembly. *UNCITRAL Model Law on Electronic Commerce*. Retrieved from [https://uncitral.un.org/mi-ecomm-a_ebook\(1996, December 16\)](https://uncitral.un.org/mi-ecomm-a_ebook(1996, December 16)).

2 - This data must be under the sole control of the signatory at the time of signing.

3 - The purpose of the signature must be to confirm the integrity of the information related to the electronic document.

4 - The signature must be capable of being monitored, verified, and its owner's identity determined.

An electronic signature can also take various forms, depending on the method used, which are directly related to the degree of trust and confidence in the electronic transaction. These forms include digital signatures, signatures associated with a secret number, biometric signatures, and electronic pen signatures¹.

Third Axis: Settlement Disputes in International Electronic Commercial Contracts

International electronic commerce contracts pose numerous problems when disputes arise between the parties to these contracts. These disputes involve identifying the competent judicial authority to settle them and determining the applicable law.

First: The Role of the Judiciary in Resolving Disputes in Electronic Commerce Contracts

The use of the Internet to conclude international electronic commerce contracts raises the issue of identifying the competent court to settle international electronic disputes. Accordingly, regional or personal standards are usually used to consider a dispute. Some jurisprudence has suggested that traditional courts may be used to resolve disputes related to electronic commerce based on the general rules for determining international jurisdiction.²

There are two criteria for determining the international jurisdiction of the courts of a particular country:

The first is personal, whereby jurisdiction is established for the court based on the nationality of one of the parties to the lawsuit.

¹ Moussa, N. *Proof of the electronic contract in Algerian legislation. Algerian Journal of Legal, Economic and Political Sciences*, 1. University of Algiers 1, Faculty of Law. 2020. P138.

² Tekmante, M. *Concise introduction to private international law. University Yearbook*. 2006. P95.

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The second is territorial, whereby one of the elements of the dispute is territorially linked to the country of the court's domicile or residence of the parties to the lawsuit. This is what the legislature has adopted. French.

Therefore, the rules of international jurisdiction are limited to the following three assumptions:

1- The jurisdiction of the court of the defendant's domicile or residence: In accordance with established practice, if an international contract is concluded over the internet, the jurisdictional rule may be applied and the lawsuit may be filed before the court of the defendant's domicile or residence. However, this poses a challenge related to the difficulty of identifying the defendant and his location.

2- The jurisdiction of the agreed-upon court: This is known as the "competent court" clause, based on the parties' attribution.

3- The jurisdiction of the court concluding or implementing the contract: If the two previous cases are not possible, recourse is made to the court concluding or implementing the contract, which is a practice adopted by the French legislator¹

Second: The Role of Arbitration in Resolving E-Commerce Contract Disputes

Arbitration refers to an agreement by which the parties undertake to resolve disputes arising between them, or potentially arising, through arbitration. The parties to a contract may not adhere to it unless they explicitly agree to resort to this method. The arbitration clause may be in the form of a condition in the contract, or in the form of a subsequent agreement, known as an arbitration agreement, to refer the dispute between them to arbitration, whether individual or institutional, for resolution. This procedure takes place outside the competent court²

¹ Abu Hashema, M. H. *Contracts for electronic information services in private international law*. Dar Al-Nahda Al-Arabiya.2004.

² Abdelaziz, F. M. M. K. *Legal protection of electronic commerce contracts*. Dar Al-Nahda Al-Arabiya, Cairo.2008. P731.

Definitions of international commercial arbitration, which specializes in international trade disputes, have varied. It emerged in response to the requirements of this trade to achieve justice, speed, reduce costs for the parties to the arbitration, and prevent the severance of commercial relations between them. However, there is a special type, largely independent of what has been practiced and is known as traditional arbitration. This is electronic arbitration, a procedure specifically for resolving e-commerce disputes. What distinguishes it is the mechanism by which this procedure is carried out, i.e., it is carried out electronically, starting from the agreement until it obtains enforcement force. The ruling¹.

The definition of electronic arbitration differs from traditional arbitration in the way in which arbitration procedures are conducted in the virtual world. There is no paper, traditional writing, or physical presence in this type of arbitration. The parties may even obtain the judgments signed and ready electronically. Some have defined it as a voluntary process by which the parties agree to refer the dispute to an impartial third party, called the arbitrator, who is freely chosen by the parties, relying on a list available at an arbitration center².

Conclusion

At the conclusion of this research on electronic international commercial contracts, it becomes clear that the digital transformation in the field of commercial transactions has created a new legal reality that requires careful monitoring by legislators and jurists. Electronic contracts are no longer merely a technical option; they have become a necessity imposed by the speed and flexibility that characterize modern international transactions, especially in light of the increasing reliance on the internet as a means of concluding and executing transactions. Through this study, a set of important findings was reached, the most prominent of which are:

¹ Zamzami, I. A. S. *The applicable law in disputes of electronic commerce contracts: A comparative study (Doctoral dissertation)*. Ain Shams University, Faculty of Law, Egypt. 2006. P314.

² Abdul Aziz, *ibid.* p732.

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- The electronic international commercial contract is characterized by unique characteristics, including the intangible dimension, the absence of physical presence of the parties, and reliance on modern means of communication, which necessitates specialized and adaptive legal rules.

- The international nature of this contract raises legal issues regarding the determination of applicable law and jurisdiction, especially in the event of a dispute between parties from different countries.

- Some national legislation, including Algerian legislation, still lacks a comprehensive understanding of this type of contract, despite the existence of some general legislative initiatives, such as e-commerce or electronic signature laws.

- Modern technologies, despite their advantages, weaken traditional means of proof, necessitating the development of electronic means of proof with clear and internationally recognized legal authority.

Based on the above, the following is proposed:

- The need to develop national legislation to include clear and comprehensive texts on electronic contracts, especially those of an international nature, taking into account technical standards and legal specificities.

- Promoting legal recognition of electronic means of evidence, especially electronic signatures and digital documents, to ensure the legal security of online transactions.

- Encouraging the use of electronic arbitration in international trade disputes, as it is an effective, rapid, and more compatible means of settling these contracts.

- Coordinating between countries to adopt unified international agreements that ensure a degree of legal consistency in dealing with electronic international commercial contracts.

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