

MEMORANDUM

TO: Members of the Committee to Implement the United Nations E-Commerce Convention (the "Committee"), ABA Advisors to the Committee, Observers to the Committee

FROM: D. Benjamin Beard, Reporter, Committee to Implement the United Nations E-Commerce Convention

DATE: September 18, 2009

RE: Second Supplemental Memorandum for Meeting September 25-27, 2009

This supplemental memorandum sets forth a report of a teleconference organized by Hal Burman of the Department of State and conducted on September 17, 2009 to solicit input from members of the ABA, Business Law Section, Cyberspace Committee, and members of the ABA Science and Technology Section regarding the work of the Committee and the best method for implementation of the United Nations Convention on the Use of Electronic Communications in International Contracts (the "Convention"). The materials previously circulated to members of the Committee, Advisors and other interested persons reflect input received on earlier teleconference calls of the ABA members. The September 17 conference call was limited to comments regarding the United States Commentary in Exhibit C.

COMMENTS REGARDING EXHIBIT C - UNITED STATES COMMENTARY

1. **Comment following Articles 1 and 2.** It was suggested that the end of the first paragraph also include a reference to the exclusion, in Article 2 of the Convention, for financial transactions beyond negotiable instruments. It also was suggested that the last sentence of the comment be revised along the following lines for clarity: "The proposed declaration under Article 19(2) will further narrow the scope of the Convention, as ratified by the United States, to better comport with the exclusions under current Domestic Legislation."
2. **Comment following Article 3.** It was noted that the last two sentences of the comment should remain in brackets in the event that an E-Sign Amendment is ultimately not recommended.
3. **Comment following Article 6.** It was suggested that the end of the third sentence include the following proviso: ", subject to Article 1.1." since that provision cannot be altered by party autonomy.
4. **Comment following Article 10.** The possibility was noted that the United States may wish to include an understanding regarding the last sentence in Article 10(2) to clarify that the presumption of the fact and timing of receipt under Article 10(2) is rebuttable. See Convention Explanatory Note 184. It was also noted that we may want to include this notation in the Comment to Article 10.

5. **Notation following the Comment to Article 14.** The Comment was made that certain provisions following Article 14 may in fact implicate Domestic Legislation, e.g., taking of a declaration under Article 19 would implicate Domestic Legislation by affecting the scope of coverage. It was suggested that the proviso be revised to better reflect the fact that the provisions following Article 14 were not directly parallel to the substantive provisions in Domestic Legislation that were being compared in Articles 1-14.