I met Roger Clark my first day of law school: a dashing young Torts professor with a Kiwi accent who quickly inspired me to love the law and to use it in productive ways. Later, he became a good friend, a mentor, a confidant, a colleague, and, ultimately, my husband. We have shared a lot over the more than forty years that we have known each other, but the hardest obstacles we faced were in the mid 1980s when we decided to co-teach a course: International Business Transactions (with Roger teaching the international and I the business transactions). Roger was convinced that being in the classroom together for an entire semester would be the end of a beautiful relationship. It was quite the contrary: even after years together, we still had a lot to learn from each other. And, we also reaffirmed (teaching the course in Dublin, Paris or London to students amused by our differing accents and word usage) that we had a lot in common: that we view the law not just as an abstract system of rules but as an instrumental tool in addressing the needs of society. Indeed, while he has spent much of his time on international public law negotiations (particularly in the context of the International Criminal Court), I have become involved in private international law negotiations (particularly in the area of electronic commerce, a significant topic in our IBT course these last few years). Here is what we discuss with our students.

Increasingly, businesses are turning to new means of electronic technologies to improve their communications with customers, to access new worldwide markets, and to streamline their business practices. Many countries are attempting to revise their laws to accommodate new electronic commercial practices, and eliminate the barriers to increasing international trade. In so doing, they are increasingly considering ratification of the UN Convention on the Use of Electronic Communications in International Contracts (‘Convention’),1 and several have even enacted the provisions of the Convention as part of their domestic law.

An important question confronted by traders is how the Convention would affect their businesses, and the extent to which it may require changes to their established business practices. In other words, the concern is not what the Convention says technically, but its implications for the day-to-day functioning of international trade.

There are several key areas of concern for businesses moving from the traditional paper-based environment to the electronic environment. This article looks at the Convention through the eyes of a business utilizing electronic technologies as a part of their business plan to see what lessons may be learned from the Convention, and how several of their concerns are met: what law governs the transaction; can the transaction be carried out in electronic form; will the on-line process result in an enforceable contract; how will errors in communications be addressed; what information must be disclosed or exchanged before, during or after the transaction; is sufficient documentation of the transaction available; has a valid electronic signature been used that satisfies any formalities required of these types of transactions; have all applicable record-keeping requirements been satisfied.

1 What Law Will Govern My Transaction?

The Convention was drafted with the recognition that ‘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’. Yet in order to obtain the benefits bestowed by the Convention, it is important for traders ensure at the front end that the Convention will apply to their transactions.