

Consumer Protection in E-Commerce in Light of the Substantive International Rules Approach in Electronic Commerce

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Our current era is witnessing an unprecedented technological revolution that has impacted various fields, including cross-border international trade. This has led to the emergence of a new form of transactions known as electronic commerce. E-commerce is characterized by the reliance on contracts concluded in a virtual space without the need for the physical presence of the parties. With the widespread use of this type of contract, complex legal issues have begun to surface, most notably the determination of the competent court in the event of a dispute and the difficulty in identifying the applicable law. Since international electronic consumer contracts are not excluded from these challenges, such issues cannot be resolved except through the application of private international law rules, as it is the branch of law specifically designed to regulate international private relationships.

Given the inability of traditional conflict-of-law rules in private international law to adequately address the legal issues arising from international e-commerce contracts—especially those involving a consumer—due to their reliance on traditional concepts such as territoriality and geographical links, there has been a shift in the doctrine of private international law. This shift calls for abandoning reliance on conflict-of-law rules and replacing them with a modern approach based on substantive international rules for electronic commerce. These rules offer direct and effective solutions for the electronic consumer and provide enhanced protection by adopting objective standards that ensure transparency, clarity, and the safeguarding of consumer rights in the international digital environment. Thus, the substantive international rules of electronic commerce have emerged as a viable methodology capable of addressing the shortcomings in the protection of electronic consumers within the framework of private international relationships.

Based on this, we pose the following research question:

To what extent are the substantive international rules of electronic commerce sufficient to ensure optimal protection for the electronic consumer in the context of international commercial transactions?

To answer this question, the following outline is proposed:

- **Chapter One:** The Nature of the Substantive International Rules Approach in Electronic Commerce
 - **Section One:** The Concept of the Substantive International Rules Approach in Electronic Commerce
 - **Section Two:** Sources of the Substantive International Rules in Electronic Commerce
- **Chapter Two:** Substantive International Rules as a Mechanism for Protecting the Electronic Consumer
 - **Section One:** The Legal Nature of Substantive International Rules in E-Commerce
 - **Section Two:** Evaluating the Role of Substantive International Rules in Electronic Commerce in Protecting the Electronic Consumer

Chapter One: The Nature of the Substantive International Rules Approach in Electronic Commerce

Private international law has witnessed a fundamental transformation in its approach to disputes related to international electronic commerce, particularly those concerning the protection of electronic consumers in cross-border transactions. Although conflict-of-law rules constitute a fundamental methodology within private international law, their proven inability to keep pace with the complexities and challenges of international e-commerce transactions has led to the emergence of new and modern approaches. Among these is the substantive rules approach, which its proponents consider to be a more suitable framework for protecting the electronic consumer in international contracts.

To understand the role of these substantive rules in resolving disputes arising from international electronic consumer contracts, it is essential to first examine the concept of these rules in Section One, followed by an exploration of the sources from which these rules derive their foundations in Section Two.

Subsection One: The Concept of Substantive International Rules in the Context of Electronic Commerce

There is no doubt that the substantive international rules governing electronic commerce constitute an independent legal system, with a character distinct from the traditional rules of private international law. In this context, there is a growing orientation toward recognizing these rules as a suitable legal framework for governing international electronic consumer contracts. Accordingly, understanding their concept requires examining their definition in Subsection One,

and their distinct characteristics that set them apart from other approaches within the realm of private international relations in Subsection Two.

Branch One: Definition of Substantive International Rules for Electronic Commerce

Substantive rules in private international law can be understood as a set of international legal norms, customs, and commercial practices commonly applied by businesspeople and traders¹.

Generally, substantive rules—also known as the rules of customary international trade law—are defined as:

“A set of principles, systems, and rules derived from all sources that continuously contribute to the development and functioning of the legal framework governing the international commercial community².”

As for substantive rules specific to electronic commerce, several definitions have been proposed. One such definition describes them as:

“Substantive rules governing relationships conducted via the Internet with an international character, which provide a direct solution to the disputed issue without resorting to conflict-of-law rules that, by their nature, are indirect and refer to domestic legal systems that may not align with the principles of international law³.”

Others have also defined these rules as:

“A set of rules that directly establish a special substantive regulation for commercial transactions concluded via electronic networks⁴,”

or as:

“A set of automatic rules of a substantive nature applicable to legal relationships conducted through electronic networks⁵.”

The essence of these substantive rules lies in providing direct solutions to the transaction in dispute, without regard to geographical borders, the domicile or nationality of the contracting

¹Safwat Ahmed Abdel Hafiz, *The Role of Foreign Investment in the Development of Private International Law Provisions*, University Publications House, Alexandria, 2006, p. 241.

² Taha Kazem Hassan Al-Mawli, *Adapting Conflict of Laws Rules in Electronic Commerce Contracts*, Zein Legal Publications, Beirut, Lebanon, 2018, p. 256.

³Chahid Slimani, *Practical Legal Solutions to International Trade Conflicts*, *Electronic Journal of Legal Research*, No. 1, Rabat, Morocco, 2018, p. 190.

⁴ Hisham Ali Sadiq, *The Applicable Law to International Commercial Contracts*, Dar Al-Fikr Al-Jamii, Alexandria, 2001, p. 695.

⁵ Fatima Zahra Jendouli, *Electronic Commerce Contracts in Private International Relations*, Doctoral Thesis in Private Law, Faculty of Law and Political Science, AbouBekrBelkaid University, Tlemcen, Academic Year: 2017/2018, p. 161.

parties, and without reference to national laws. These rules focus on the nature and character of the transaction itself, without consideration for international or national standards⁶.

From the definitions above, it becomes clear that substantive rules for electronic commerce have evolved from practices and customs that have emerged within the electronic community—including governments, relevant institutions, and users. These customs and practices have been further developed by international organizations, both governmental and non-governmental, such as the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the Organisation for Economic Co-operation and Development (OECD), and others⁷. These bodies have introduced new ideas aiming to address electronic commerce contracts in a substantive manner, thereby fostering confidence among all parties by establishing unified international rules that apply directly to e-commerce contracts. This approach distinguishes itself from national laws and the conflict-of-law rules of private international law⁸.

Based on the above, it can be said that substantive rules in the field of electronic commerce represent a legal methodology grounded in the creation of core material rules that offer solutions tailored to the specific characteristics of electronic commercial transactions⁹.

Accordingly, and based on the previous definitions, it becomes evident that substantive rules in electronic commerce possess characteristics that differentiate them from conflict-of-law rules, both in terms of their nature and their legal function — a matter which will be examined in the following subsection.

Branch Two: Characteristics of the Substantive International Rules of Electronic Commerce

The **substantive rules of electronic commerce** (*Lex Electronica*), also referred to by some as the **substantive Internet law** (*Substantive Internet Law*), are distinguished by a set of features that set them apart from the rules of private international law and international commercial law. These characteristics can be summarized as follows:

First: Direct Rules

Substantive rules in the context of conflict of laws are **direct rules** that provide answers to questions raised in private international disputes without referring the issue to a specific national

⁶ Nabil Zaid Al-Muqabila, *The Legal System of Electronic Information Services Contracts in Private International Law: A Comparative Study*, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p. 87.

⁷ Ahmed Abdel Karim Salama, *Specific Private International Law*, Dar Al-Nahda Al-Arabia, 1st Edition, Egypt, 2000, p. 16.

⁸ Firas Kareem Shan & Taha Khadem Hassan, *Substantive Rules of Electronic Commerce: An Analytical Study in Light of International Law Provisions*, Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences, University of Babylon, Iraq, Vol. 08, No. 02, June 2016, p. 320.

⁹ Jean-Michel Jacquet, Philippe Delebecque & Sabine Corneloup, *International Commercial Law*, Dalloz, Paris, 2007, p. 67.

law. This is what distinguishes **material rules** from **conflict-of-law rules**. Substantive rules are considered direct because they are designed to regulate the appropriate legal provisions for electronic commerce according to its specific requirements¹⁰. This gives these rules a **clear purpose, well-defined content, and ease of application**, while also serving the interests of international private relations as well as the interests of states themselves¹¹.

Second: Sectarian and Specific Rules

The **sectarian nature** of these rules refers to the specific group of individuals targeted by them. These rules are directed at users of the global network, service providers, and subscribers—particularly those engaged in electronic commerce, whether as individuals or organizations, and whether they are merchants or consumers.

Their **specific nature**, on the other hand, comes from the fact that they regulate only a particular type of transactions and issues—namely, those arising in the field of electronic commerce. This includes areas such as advertising goods and services, automated data processing, systems of interaction with electronic banks, and electronic payment mechanisms¹².

It should also be noted that the sectarian and specific character of these rules does not stop at the persons or types of transactions involved. It also extends to the **institutions or bodies that apply these rules**, where what is known as **virtual jurisdiction** and **virtual justice** comes into play. This type of jurisdiction is characterized by the uniqueness of its rules, judgments, and procedures, making the application of substantive electronic rules both reliable and respected by participants in global digital networks¹³.

Third: Rules of Spontaneous Origin

These rules are considered **spontaneously generated**, as they result from the customs, practices, and traditions that have gradually developed among members of the electronic community itself over time¹⁴. Their **spontaneity** is one of their defining features. Most of these rules emerge organically within a self-regulating community and do not follow the formal procedures required by statutory laws. Moreover, they are not subject to any official authority that organizes or

¹⁰ Abdullah Saif Al-Subousi, The Role of Substantive Rules and the Conflict-of-Laws Approach in Resolving Legal Conflicts Related to Torts Arising from Infringement of Neighboring Rights to Copyright, South Valley International Journal for Legal Studies, Arab Republic of Egypt, Issue 5, Year 2020, p. 272.

¹¹ Mohamed Hussein Mansour, Electronic Liability, Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, Egypt, 2003, p. 356.

¹² Nafeh Bahr Al-Sultan, Conflict of Laws in Electronic Commerce Disputes, Master's Thesis in Law, Faculty of Law, University of Baghdad, Iraq, Academic Year: 2004/2005, p. 83.

¹³ Ahmed Abdel Karim Salama, Specific Private International Law, previously cited reference, p. 55.

¹⁴ Nasser Hammoudi, Disputes in Electronic Contracts: A Crisis of Conflict-of-Laws Approaches and the Emergence of Substantive Electronic Law as an Alternative, Maaref Journal, AkliMohandOulhadj University, Bouira, Issue 05, Year 2008, p. 175.

regulates them; rather, they are **applied spontaneously** and are **not governed by any specific authority**¹⁵.

There is no doubt that this spontaneous nature offers several advantages:

1. The application of customary practices and habits developed among electronic commerce participants aligns with the **technical and technological nature** of global network transactions, which are inherently **digital**, as data and information are transmitted electronically rather than on paper¹⁶.
2. Substantive rules of electronic commerce align with the **expectations of parties** operating on the global network, as these rules were shaped by the users themselves through their customs and practices—**independently of national laws**, which have yet to keep pace with this type of transaction. That is, the application of these rules does **not require the intervention of public authorities**¹⁷.
3. The spontaneous origin of these substantive rules grants them a **high degree of flexibility**, making them responsive and sensitive to all changes occurring in the virtual space, whether technological, economic, or political. These rules were formulated to meet the needs of online participants, reflecting the dynamic nature of digital interactions.

Fourth: Rules with an International Character

Substantive rules governing electronic commerce are characterized by their **international or transnational nature**¹⁸. This is evident in the **global reach of these rules** and the use of **electronic platforms** to conclude various international commercial transactions. The global network (the Internet) is not under the **dominance of any particular state, organization, authority, or regional or international entity**, and thus, **no unified international legal framework** currently governs e-commerce disputes¹⁹.

The international nature of these substantive rules is linked to the way they are organized—**most commonly through international conventions**. This makes sense, as these rules regulate **private international relationships** that require cooperation among different countries to

¹⁵Arjelous Rehab, The Substantive Rules Approach as a Mechanism for Regulating Electronic Commercial Transactions, Ma'alem Journal for Legal and Political Studies, University Center of Tindouf, Volume 4, Issue 2, December 2020, p. 441.

¹⁶ Firas Karim Shan and Taha Khadem Hassan, previously cited reference, p. 326.

¹⁷ Saleh Al-Manzalawi, The Applicable Law to Electronic Commerce Contracts, Dar Al-Jami'a Al-Jadida, Alexandria, Egypt, 2006, p. 184.

¹⁸Khalifi Samir, International Substantive Rules as a Mechanism for Regulating E-Commerce Transactions, Doctoral Dissertation in Legal Sciences, Faculty of Law and Political Science, MouloudMammeri University, TiziOuzou, Algeria, Academic Year 2017/2018, p. 182.

¹⁹ Ahmed Abdelkarim Salama, The Internet and Private International Law: Separation or Convergence?, Paper presented at the Conference on Law, Technology and the Internet, Faculty of Sharia and Law, United Arab Emirates University, May 2000, p. 23.

establish **direct legal provisions** for issues on which consensus is needed. This approach has already been realized in the context of **international consumer contracts**²⁰.

Fifth: Rules with Preventive and Remedial Functions

It can be said, metaphorically, that the application of **substantive rules** prevents the emergence of conflict-of-law issues aimed at determining which law applies or at unifying legal provisions. These rules are useful **at the early stages of a dispute**, serving a **preventive function**. The **remedial function**, on the other hand, applies **after a dispute has arisen**, as these rules assist the parties in reaching mutual understanding and in properly re-implementing contractual obligations. This may involve resorting to judicial mechanisms that lead to a binding decision, offering a **direct solution that resolves the dispute**²¹.

It is worth noting that **substantive rules in electronic commerce** aim to fulfill **two core functions**:

1. **Preventive function**: These rules aid the parties during the contract negotiation phase, helping to reduce the likelihood of future disputes²².
2. **Remedial function**: In the event of a dispute, these rules assist the parties in reaching a mutual understanding and in peacefully re-performing their contractual obligations—whether through **conciliation and mediation** or through **judicial intervention**²³.

Now that the characteristics of **substantive rules in electronic commerce** have been identified, it is necessary to address the **sources** from which these rules derive their legitimacy.

Subsection Two: Sources of Substantive International Rules in the Context of Electronic Commerce

A variety of international efforts have produced a body of substantive rules specific to electronic commerce. These rules have contributed significantly by offering self-contained solutions to many of the problems associated with e-commerce. However, in the absence of a unified set of substantive international rules specifically governing consumer relations, we must rely on scattered provisions that regulate international electronic commerce and attempt to apply them to consumer transactions wherever possible.

²⁰ Abdullah Saif Al-Sabousi, The Role of Substantive Rules and the Connecting Factor Approach in Resolving Conflicts of Laws in Matters of Torts Resulting from Infringement of Neighboring Rights to Copyright, with Application to the Law of the United Arab Emirates, South Valley International Journal of Legal Studies, Egypt, Vol. 01, No. 05, December 2020, p. 274.

²¹ Mohamed Belq, The Crisis of the Conflict-of-Laws Approach and Its Impact on International Contract Disputes, Journal of Comparative Legal Studies, Hassiba Ben Bouali University, Chlef, Vol. 7, No. 1, June 2021, p. 2671.

²² Hisham Khaled, Private International Procedural Law: A Comparative Study, Dar Al-Fikr Al-Jami'i, Alexandria, 2012, p. 10.

²³ Mustapha Al-Qasimi, Substantive Rules in the Resolution of International Trade Disputes, article published on the website of Journal of Law and Business, <http://www.droitentreprise.com>, accessed on 18/06/2023 at 18:00.

To identify the sources of substantive rules for electronic commerce, it is appropriate to divide them into two categories: national sources and international sources, as outlined below.

Branch One: National Sources of Substantive Rules for Electronic Commerce

To shed light on the national sources that have contributed to the development of substantive rules for electronic commerce, these sources can be categorized into two forms:

1. Substantive electronic rules created by national legislation, and
2. Substantive electronic rules established through national judicial rulings.

First: Substantive Rules Created by National Legislators

Some national legal systems have introduced substantive rules within their domestic laws that may be directly applied to international commercial contracts, even though they originate from domestic legislation. Legal scholars have argued that a judge may apply such substantive rules directly to an international commerce-related dispute without resorting to conflict-of-law rules²⁴.

This trend has become more evident in the present era of electronic commerce. Due to the unique nature of e-commerce, which is fundamentally different in how it operates through cyberspace, many states have taken significant steps to issue special legislation governing e-commerce transactions, electronic contracts, electronic signatures, electronic payments, consumer protection, privacy, intellectual property, and other relevant issues.

Among these legislative efforts is the Uniform Electronic Transactions Act (UETA) of 1999 adopted in the United States, in addition to the E-Commerce Action Plan launched by the U.S. President, which is built on five core principles to promote the development of electronic commerce²⁵.

Second: Substantive Rules Established by National Courts

National courts, along with electronic arbitration bodies, have played an important role in establishing many substantive rules at both the level of international trade and electronic commerce. This will be discussed in further detail in the following sections.

1. National Judiciary:

In the realm of electronic transactions, national courts have had the opportunity to establish a number of legal principles while adjudicating disputes related to electronic commerce—especially those involving domain name disputes on the internet, also known as domain names.

²⁴ Taha Kazem Hassan Al-Mawli, Previously cited reference, p. 256.

²⁵ Pierre Trudel, Charles-Albert Morand, La Lex Electronica, in *Le Droit Saisir la Mondialisation*, Brussels, Éditions Bruylant, International Law Collection, 2001, p. 15.

A second area of application involves the **implementation of “police rules”** (public policy) by national courts within the information society context²⁶.

2. Electronic Arbitration:

Due to the prominent role played by e-commerce laws and electronic transaction regulations, and in order to avoid the complexities associated with litigation, it has become increasingly logical to resort to alternative dispute resolution mechanisms suited to the nature of modern communication technologies and online transactions. These mechanisms include electronic arbitration, electronic mediation, and online conciliation²⁷.

In this regard, electronic arbitration is considered one of the most important sources of substantive rules, through the decisions issued by arbitral tribunals specialized in online disputes. These rulings significantly contribute to the development of electronic substantive law. Furthermore, electronic arbitration institutions have developed their own specialized rules that correspond to the unique nature of e-commerce disputes, and align with the speed and flexibility offered by the global digital network²⁸.

Branch Two: International Sources of Substantive Rules for Electronic Commerce

A wide range of international initiatives and instruments have contributed to the creation of a body of substantive rules specific to electronic commerce. To highlight these sources, we will examine them in two categories:

1. Organizationally-originated substantive rules for electronic commerce, and
2. Spontaneously-originated substantive rules for electronic commerce, as outlined below:

First: International Substantive Rules of Organizational Origin

Proponents of the virtual society consider the organizational sources of substantive rules to include:
international conventions, recommendations, international instruments, and normative practices.

1. International Conventions:

In the field of electronic commerce, international conventions represent an important source for addressing e-commerce issues, despite the challenges involved in applying them within the digital environment. These conventions are among the most significant tools for harmonizing

²⁶ Salah Ali Hussein, *The Applicable Law to International Electronic Commerce Contracts*, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 175.

²⁷ Abu Al-'Ala Abu Al-Nimr, *Practical and Legal Problems in Electronic Commerce*, no publishing house, 2006, p. 39.

²⁸ Adel Abu Hashima Mahmoud Hawta, *Contracts for Electronic Information Services in Private International Law*, PhD dissertation, Faculty of Law, Cairo University, Egypt, Academic Year: 2003, p. 145.

substantive rules across various domains, especially within private international law as it pertains to international trade, due to the importance of this area and its need for well-organized legal frameworks²⁹.

In reality, there is only a limited number of conventions directly related to electronic commerce. These existing instruments often fall short in providing adequate solutions to the massive volume of digital transactions. Consequently, emphasis has been placed on the necessity of extending the application of traditional international conventions—such as the Hague Conventions and the 1980 Vienna Convention on the International Sale of Goods (CISG)—to e-commerce contracts, and on adapting them to ensure legal certainty for contracts concluded via the Internet³⁰.

Notably, the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) stands out as one of the few conventions explicitly dealing with e-commerce. It has played a prominent role in establishing some substantive rules for electronic commerce by striving to adopt uniform rules aimed at eliminating obstacles to the use of electronic communications in international contracts. This convention worked toward overcoming those barriers by setting out international standards to ensure legal equivalence between electronic and paper-based communications³¹.

At the Arab regional level, there is the Convention on the Regulation of Electronic Signature Provisions in Electronic Transactions, concluded on June 5, 2008, though it has not yet entered into force. This convention is considered the first of its kind in the Arab world in the field of electronic transactions and aims specifically to promote intra-Arab trade³².

Despite the advantages offered by such conventions, anyone closely following developments in information and communication technology will quickly realize that the number of international conventions in this field remains insufficient, particularly in light of the growing demand for legal protection of electronic consumers.

2. International Recommendations:

Given the scarcity of modern international conventions dedicated to regulating electronic commerce and electronic data exchange, and the inability of most traditional international trade agreements to meet the needs of contemporary e-commerce, there has been an urgent need to establish a unified, substantive legislative framework that is in line with the realities and requirements of electronic commerce³³.

²⁹ Vincent Fauchoux, Pierre Deprez, Jean-Michel Bruguière, *Internet Law: Laws, Contracts and Practices*, Lexis Nexis, Paris, 2013, p. 12.

³⁰ Ibrahim bin Ahmed bin Saeed Al-Zamzami, *The Applicable Law in Disputes Arising from Electronic Commerce Contracts*, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 275.

³¹ Firas Kareem Shan, Taha Khadim Hassan, *op. cit.*, p. 341.

³² Sulaiman Ahmed Al-Fadl, *Disputes Arising from Electronic Commerce Contracts within the Framework of Private International Law*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2011, p. 236.

³³ Saleh Al-Manzalawi, *op. cit.*, p. 120.

Under this rationale, the importance of relying on international recommendations has emerged as one of the most significant sources of electronic substantive law. Perhaps the most notable of these recommendations is the one concerning the bill of lading, which included a proposal to use electronic data processing within a framework of necessary rules and procedures related to maritime transport³⁴.

Subsequent international efforts and recommendations have continued to focus on the regulation of electronic commerce, including a recommendation issued by the United Nations Commission on International Trade Law (UNCITRAL) that recognizes commercial documents issued through means other than writing as legally valid and official documents³⁵.

In this context, it is also worth noting the work of the European Commission's committee on dispute resolution, particularly regarding disputes between consumers and suppliers. This committee has issued a set of recommendations related to online dispute resolution (ODR), including Recommendation No. 98/257, issued on March 30, 1998, which concerns the resolution of consumer disputes outside the courts³⁶.

3. Normative Practices:

Normative practices in the field of electronic commerce represent substantive rules established through international model contracts and general conditions included in certain contracts that are essential for conducting e-commerce. These include:

- Model contracts: In the context of consumer contracts, model contracts are defined as:

“Contracts concluded between a supplier and users—whether consumers or professionals—that cover a wide range of technical and legal matters that must be respected by both parties³⁷.”

³⁴ This type of technological advancement in information systems in the field of maritime transport has been accompanied by the emergence of modern methods for concluding contracts in this sector. There has been a strong call for the establishment of an electronic system dedicated to information exchange and the elimination of paper-based transactions.

See: RashaAlieddin, *The Legal System of Electronic Bills of Lading: A Study in Light of Conflict of Laws Rules*, published on the following website:

<https://www.ahewar.org/debat/show.art.asp?aid=685484>, accessed on 11/04/2021 at 8:00 PM.

³⁵Argilos Rehab, previously cited reference, p. 445.

³⁶ Firas Karim Shan and Taha Khadem Hassan, previously cited reference, p. 341.

³⁷ The characteristics that must be met for standard terms to form the basis of a valid contract can be outlined as follows. First, these terms must be included within a consumer contract. This means that the contract in question is concluded between a professional or business entity and a consumer, rather than between two professionals. Second, the terms must be imposed on the consumer, indicating that the consumer had no real opportunity to negotiate or alter the terms, which are usually pre-drafted by the professional party. Third, the contract containing such terms must be directed toward an unspecified number of individuals, essentially targeting the general public or a broad segment of consumers, rather than being tailored to a specific individual. These conditions reflect the nature of standard-form contracts commonly used in mass-market transactions. For further details, see: Ashraf Abdel Azim Abdel Qader Abdel Wahid, *Consumer Protection from Contractual Imbalance Arising from the Use of*

Accordingly, they are considered pre-drafted templates made available to interested parties to govern any commercial relationship relevant to their field of interest.

Among the most important examples of these contracts is the ODETTE model contract, applied in the automotive sector in Europe, and the Model Contract for Electronic Commerce between Merchants and Consumers (Contrat-type de commerce électronique Commerçants–Consommateurs), adopted by the Paris Chamber of Commerce and Industry on April 30, 1980³⁸.

- General Conditions: These are defined as:

“Provisions used by contracting parties, which they include in their contracts and later supplement with specific conditions they mutually agree upon³⁹.”

In the context of electronic commerce, many general conditions have become standardized in certain essential contracts. These terms are typically drafted by technical or commercial entities with relevant expertise. Every contracting user on the global network is required to accept these terms when concluding a contract—i.e., before initiating commercial activity online⁴⁰.

Second: Substantive International Rules of Spontaneous Origin

Spontaneously (or autonomously) originated sources refer to:

“Rules that emerge from the conduct of professionals on the internet while interacting with consumers.”

These do not stem from formal regulatory frameworks and thus enjoy sufficient flexibility, enabling them to adapt to the evolving needs of the global digital network and its participants⁴¹.

These spontaneously originated sources include:

- Contractual practices,
- Codes of conduct,
- Customs, traditions, and settled practices in electronic commerce, as follows:

1. Contractual Practices:

Contractual practices are a major source for establishing the regulatory foundations of international electronic substantive law governing internet transactions. Their importance

Standard Terms in Consumer Contracts, *Journal of Legal and Economic Studies*, Cairo University, Arab Republic of Egypt, Vol. 5, No. 2, December 2019, p. 30 ff.

³⁸ Fatima Zahra Jendouli, op. cit., p. 192.

³⁹ Samir Khalifi, *International Substantive Rules as a Mechanism for Regulating E-Commerce Transactions*, Doctoral Dissertation in Law, MouloudMammeri University, Faculty of Law and Political Science, TiziOuzou, Algeria, Academic Year: 2018, p. 177.

⁴⁰ Taha Kazem Hassan Al-Mawla, op. cit., p. 280.

⁴¹ Saleh Al-Manzalawi, *The Applicable Law to E-Commerce Contracts*, op. cit., p. 184.

lies in the fact that such contracts enable control over the behavior of parties transacting online⁴².

2. **Codes of Conduct:**

Codes of conduct in the field of electronic commercial transactions are defined as:

“A set of principles and rules issued by professional and commercial organizations—whether national or international—aimed at regulating e-commerce and promoting ethical behavior across the global network⁴³.”

These codes, created by the online business community for self-application, represent one of the primary sources from which the substantive rules of electronic transactions are derived⁴⁴.

One of the most notable examples in this area is the Uniform Rules of Conduct for the Exchange of Trade Data via Telecommunication, prepared by the International Chamber of Commerce in collaboration with various international organizations. These rules are informative in nature and aim to provide a standardized model for the acceptance of agreements involving the remote electronic exchange of commercial information⁴⁵.

It is also appropriate here to mention European Directive No. 31/2001 on electronic commerce, which urged EU member states to establish harmonized codes of conduct compatible with the objectives of trade, professional, and consumer associations, to ensure the proper implementation of the directive⁴⁶.

Accordingly, codes of conduct are considered an important source of electronic substantive rules, due in large part to the diversity of parties involved in online interactions.

3. **Customs, Traditions, and Established Practices in Electronic Commerce:**

In the field of electronic commerce—and by analogy with public international law—custom can be considered the primary source of regulation. This is due to two main reasons:

1. The recent emergence of the internet community, and
2. The absence of a central authority with legislative power to issue binding rules or enforce sanctions for violations⁴⁷.

⁴² Salah Ali Hussein, op. cit., p. 239.

⁴³ Firas Karim Shan and Taha Khadem Hassan, op. cit., p. 342.

⁴⁴ Hamza Jabir, op. cit., p. 549.

⁴⁵ Fatima Zahra Jendouli, op. cit., p. 179.

⁴⁶ Mohamed Mohamed Hassan Al-Hassani, *The Protection of the Electronic Consumer in Private International Law*, Dar Al-Nahda Al-Arabiya, Egypt, 2013, p. 329.

⁴⁷ Fatima Zahra Jendouli, *ibid.*, p. 180.

Participants in the field of e-commerce have contributed spontaneously to the development of the substantive rules of electronic law. Among the most important of these rules are those derived from established customs, traditions, and practices in professional circles within the digital world. These customs and traditions have a collaborative nature, varying according to the specific type of cooperation within this virtual environment⁴⁸.

Alongside custom, we find the concept of contractual commercial practices in electronic commerce, which are also considered a source of electronic substantive law. These are customary practices directly related to legal relationships arising from specific types of transactions⁴⁹.

Electronic commercial custom is defined as:

“A consistent behavior practiced by participants in the field of electronic commerce—whether merchants or consumers—regarding a specific commercial matter within electronic commerce⁵⁰.”

In the field of e-commerce, many international commercial customs have been compiled by specialized organizations. A notable example is the International Chamber of Commerce, which issued a set of rules known as the Incoterms⁵¹. These rules have raised the question of their applicability in the digital domain. On this matter, legal scholars have generally agreed that it is possible to extend their application to electronic commerce, provided that there is explicit agreement by the parties to adhere to their provisions⁵².

From the foregoing, it becomes clear that participants in the virtual world have sought to establish rules of electronic substantive law—rules that align with the technical and digital nature of the internet, in contrast to positive legal rules, which are characterized by slow and cautious development that fails to keep pace with the rapid evolution of electronic transactions⁵³.

In light of the above, it is evident that the sources of substantive rules for electronic commerce are relatively recent and diverse, which has significantly influenced international transactions concluded by electronic consumers. This, in turn, prompts an investigation into the effectiveness of this approach in ensuring consumer protection, assuming that it truly qualifies as an independent legal method.

⁴⁸ Ahmed Abdel Karim Salama, *The Internet and Private International Law: Separation or Convergence*, op. cit., pp. 17–18.

⁴⁹ Abu Al-Ala Ali Abu Al-Ala Nimer, *Practical and Legal Problems in E-Commerce*, op. cit., p. 52.

⁵⁰ Firas Karim Shan, Taha Khadem Hassan, *Op. cit.*, p. 349.

⁵¹ Abu Al-Ala Ali Abu Al-Ala Nimer, *Practical and Legal Problems in Electronic Commerce*, *Ibid.*, p. 68.

⁵² Saleh Al-Manzalawi, *The Law Applicable to Electronic Commerce Contracts*, *Op. cit.*, p. 187.

⁵³ Salah Ali Hussein, *Op. cit.*, p. 240.

Section Two: International Substantive Rules as a Mechanism for Protecting the Electronic Consumer

Amid growing legal challenges associated with electronic commercial transactions, international substantive rules have emerged as a modern tool aiming to achieve a level of balance and harmonization in the regulation of e-commerce and the protection of its stakeholders—especially the electronic consumer.

This approach is particularly important due to the unique nature of e-commerce contracts, which are often marked by the weakened position of the consumer and the divergence of legal systems across countries. These factors necessitate a thorough examination of the effectiveness of such rules and their ability to provide fair and balanced legal protection for the e-consumer.

However, before evaluating the effectiveness of these substantive rules in protecting electronic consumers, it is necessary to first address whether these rules truly exist and whether they qualify as a legal system in their own right. Following this, we can assess their efficacy in providing protection to e-consumers in comparison to the conflict-of-laws approach.

This will be explored by examining:

- The legal nature of international substantive rules for e-commerce (Section 1), and
- Evaluating their role in protecting the electronic consumer (Section 2).

Subsection One: The Legal Nature of Electronic Substantive Rules

Exploring the legal nature of electronic substantive rules cannot be done without acknowledging that these rules have sparked many doubts regarding their actual existence and their ability to resolve disputes arising from electronic commercial transactions⁵⁴. This has led some to question whether these rules constitute a comprehensive legal system capable of replacing traditional private international law approaches, or whether their role remains secondary, providing only occasional solutions in areas where private international law fails to offer adequate guidance.

To answer this question, it is necessary to first clarify the concept of a legal system in the context of electronic commerce (Subsection One), and then address the binding nature of the rules that form this system (Subsection Two).

Branch One: The Concept of a Legal System in Private International Law

Defining the concept of a legal system has long been a subject of debate among legal scholars. One of the clearest indications of this is the divergence of views on how to characterize a legal

⁵⁴ Taha Kazem Hassan Al-Mawli, Op. cit., p. 289.

system⁵⁵—some see it simply as a set of legal norms, while others approach it from the perspective of structure and organization.

The implications of this debate lead to one of two outcomes:

- Either denying the legal character of electronic substantive rules—meaning they are non-binding⁵⁶, or
- On the contrary, recognizing their legal character, which in turn dispels concerns about the “freedom” or ungoverned nature of electronic contracts, since these contracts would then be subject to electronic substantive legal rules capable of directly resolving disputes.

For this reason, we must begin by examining the concept of a legal system, followed by a discussion of the jurisprudential debate over whether electronic substantive rules in e-commerce qualify as a legal system in their own right⁵⁷.

Clause One: Definition of a Legal System

Some define a legal system as:

"A coherent set of rules originating from sources that are hierarchically connected and inspired by the same set of principles and worldview regarding life and relationships within the social unit it is meant to govern⁵⁸."

Professor Virally defines it as:

"A system for structuring social relations, distinguished not only by the creation of rules but also by the establishment of mechanisms to regulate social ties or resolve disputes⁵⁹."

Meanwhile, Italian jurist Romano Santi defines it as:

"A legal system must comprise a sufficiently homogeneous community, an influential authority within that entity, and a body of rules governing the behavior of individuals within the system⁶⁰."

Others add that a legal system consists of two main components:

1. An institutional or organizational aspect, and
2. A normative aspect, i.e., the existence of legal norms—which aligns with and complements the first component⁶¹.

⁵⁵ Ahmed Abdel Karim Salama, *The Theory of the Free International Contract*, Op. cit., p. 311.

⁵⁶ Saleh Al-Manzalawi, Op. cit., p. 200.

⁵⁷ Saleh Al-Manzalawi, *Ibid.*, p. 241.

⁵⁸ Suleiman Ahmed Mohamed Al-Fadl, Op. cit., p. 243.

⁵⁹ Taha Kazem Hassan Al-Mawli, *Ibid.*, p. 290.

⁶⁰ Samir Khalifi, *International Substantive Rules as a Mechanism for Regulating Electronic Commerce Transactions*, p. 235.

⁶¹ Mohamed Mohamed Hassan Al-Hassani, Op. cit., p. 337.

Given this general understanding of the concept of a legal system, the central question is: Can the set of substantive rules governing electronic commerce—particularly those regulating interactions on the internet between consumers and suppliers—be classified as a legal system? Or is such a classification still far from being realized?

Clause Two: To What Extent Do International Substantive Rules for E-Commerce Qualify as a Legal System?

Legal scholars are divided in answering this question, forming two main camps:

- I. One school of thought denies that electronic substantive rules constitute a legal system, highlighting various deficiencies that prevent such a classification.
- II. The other affirms that these rules possess an independent legal character and thus can be seen as forming a system.

We will address both views as follows:

1. The View That Denies Electronic Substantive Rules the Status of a Legal System

Some scholars argue that electronic substantive rules do not constitute an autonomous legal system. According to them, these rules are merely material rules that fall under the broader umbrella of commercial law⁶². Therefore, they do not amount to a standalone legal system.

Proponents of this view support their position with several arguments, including:

- I. The establishment of any legal system requires the presence of a community or organized structure. When applying this requirement to e-commerce, it is difficult to assert the existence of a cohesive, unified, and organized society encompassing all participants on the internet. This makes it unlikely that such a community could create binding rules of conduct for itself.⁶³
- II. There is a scarcity and difficulty in the emergence of customs within the field of e-commerce, largely due to the lack of unity and cohesion among internet users, who belong to diverse legal, social, intellectual, and cultural systems. This very fact makes it difficult to establish a unified framework, which is a foundational condition for the existence of a legal system⁶⁴.

2. States are still uncooperative in this area, based on the principle of providing adequate protection for their citizens. As a result, they are not ready to allow the resolution of disputes involving their nationals to be governed by electronic substantive rules, due to the potential harm

⁶² Ahmed Abdel Karim Salama, *Specific Private International Law*, Op. cit., p. 63.

⁶³ Nasser Hammoudi, *Op. cit.*, p. 177.

⁶⁴ Mohamed Maamoun Suleiman, *Arbitration in Electronic Commerce Disputes*, Op. cit., p. 428.

such rules may cause to their economic and political interests. This leads states to oppose any attempt to recognize such a system of electronic law⁶⁵.

3. Most substantive rules of electronic commerce have been formed from general codes of conduct, which are abstract in both origin and content. Due to the recent emergence of these rules, they lack the element of enforceability, making them closer to customary practices that may be followed but are not legally binding. Therefore, the absence of mandatory rules means that a proper legal system cannot exist⁶⁶.

4. Electronic substantive rules lack effective sanctions to ensure individuals comply with and uphold them—unlike the legal system of the state, which is defined by the presence of enforceable sanctions. For example, blocking a violator's access to the network, which supporters of substantive electronic law consider a form of punishment, is seen as ineffective due to the difficulty of identifying violators. The internet allows for easy anonymity, enabling users to change their IP address and personal information with ease⁶⁷.

Given all this, speaking of a substantive legal system for electronic commerce remains premature. This view highlights the inability of substantive rules to form an independent legal system. A society like the internet—composed not only of professionals but also of consumers—cannot be governed by merely supplementary rules. Consumers' rights must be protected by binding legal rules, and to achieve this, state intervention remains essential⁶⁸. This is not only to strike a balance between the public interest and the private/self-interest of internet users, but also to enforce sanctions against anyone violating the aforementioned codes of conduct or related rules⁶⁹.

These were the arguments raised by the school of thought that denies the legal system status to electronic substantive rules. However, in contrast, a second school of thought presents a series of arguments affirming that these substantive rules do indeed constitute a legal system.

Second: The School That Recognizes the Legal System Status of Substantive Rules of Electronic Commerce

This legal school takes a position contrary to the first. It considers that the substantive rules of electronic commerce (*Lex Electronica*) constitute an independent legal system by their very objective nature. Their importance is especially evident in the realm of electronic transactions conducted over the global network, and they are regarded as equally important as the substantive rules of international trade law⁷⁰.

⁶⁵ Salah Ali Hussein, *Op. cit.*, p. 250.

⁶⁶ Mohamed Mohamed Hassan Al-Hassani, *Op. cit.*, p. 338.

⁶⁷ Ahmed Abdel Karim Salama, *Consumer Protection in International Electronic Contracts*, *Op. cit.*, p. 56.

⁶⁸ Mohannad Azmi Masoud Abu Mughli and Mansour Abdul Salam Al-Saraira, *The Applicable Law to International Electronic Consumer Contracts*, *Dirasat Journal for Shari'a and Law Sciences*, University of Jordan, Jordan, Vol. 41, No. 2, 2014, p. 82.

⁶⁹ Ahmed Abdel Karim Salama, *Specific Private International Law*, *Op. cit.*, p. 65.

⁷⁰ Hamoudi Mohamed Nasser, *Op. cit.*, p. 501.

Supporters of this view justify recognizing Lex Electronica as an independent legal system through the following arguments:

- I. The issue concerning whether the substantive rules of electronic commerce qualify as a legal system is irrelevant—there is no valid reason to question their legal value based on the presence or absence of a sectarian international law. What matters is their actual capacity to form a coherent legal system based on sufficient principles that ensure both its effectiveness and cohesion⁷¹.
- II. As for the virtual community, proponents argue that a cohesive online society does indeed exist, consisting of actors in electronic commerce operating via the internet. These individuals share a common mindset and goals and are connected by strong bonds, enabling them to form a true international community capable of governing its own transactions and enforcing compliance through penalties—just as is done in electronic arbitration proceedings⁷².
- III. The legal recognition and stability of these sources in the online environment stem from the acknowledgment of their origins, such as international conventions and model contracts prepared by international organizations like UNCITRAL⁷³. This contributes significantly to legal certainty for contracting parties and ensures uniform solutions for technical and legal challenges arising from internet-based contracts. It also avoids the legislative vacuum and shortcomings of many national laws that either do not yet regulate electronic commerce or are insufficient when applied to e-contracts⁷⁴.
- IV. The substantive rules of e-commerce include self-enforceable sanctions, so it is inaccurate to claim that they lack the element of enforcement⁷⁵. The internet community now has specialized virtual judges to resolve disputes, and their virtual justice system includes conducting online hearings using specially designed tools, issuing judgments such as banning violators, terminating accounts, restricting network access, or suspending privileges—in addition to the system of electronic arbitration⁷⁶.

⁷¹ Antoine Kassis, *Le nouveau droit européen des contrats internationaux*, L.G.D.J / Hors collection, 1993, p. 392.

⁷² Ahmed Al-Hawari, *Electronic Commerce Contracts in Private International Law*, Dubai Judicial Institute Journal, United Arab Emirates, Vol. 02, No. 03, September 2013, p. 1662.

⁷³ Mohamed Mohamed Hassan Al-Hassani, *Op. cit.*, p. 341.

⁷⁴ Firas Kareem Shan and Taha Khadem Hassan, *Op. cit.*, p. 352.

⁷⁵ Fatima Zahra Jendouli, *Op. cit.*, p. 204.

⁷⁶ Ahmed Abdel Karim Salama, *The Internet and Private International Law: Separation or Convergence*, *Op. cit.*, p. 21.

Although the majority of legal scholars support the above arguments, a third, more moderate school of thought has emerged. While it acknowledges that substantive rules of e-commerce possess some features of a legal system, it recommends caution. It rejects the first school's call to dismiss Lex Electronica entirely, yet it also avoids the overstatement made by the second school claiming that these rules represent a fully-fledged legal system. Instead, this moderate view holds that Lex Electronica is still an incomplete legal system, comparing it to an embryo in the stage of formation and development⁷⁷.

In reality, the existence of a legal system based on substantive rules of e-commerce has become a factual matter, and academic debate has moved beyond questioning its existence. These rules have proven capable of addressing legal gaps and providing solutions to issues arising from electronic contracts specifically, and e-commerce in general⁷⁸.

In conclusion, substantive electronic rules represent an incomplete legal system. They possess many of the characteristics of a legal order but still suffer from deficiencies, necessitating support from national laws to fill these gaps. Nevertheless, this does not preclude evaluating their role in protecting electronic consumers, particularly in cross-border transactions.

Subsection Two: Evaluating the Role of International Substantive Rules of Electronic Commerce in Protecting the Electronic Consumer

Although the international substantive rules of electronic commerce are, as previously mentioned, sector-specific and specialized, they are not limited to these characteristics. They also address the regulation of **international electronic contracts involving consumers, which** allows them to serve as a more effective and appropriate alternative to traditional conflict-of-law rules, especially given the specific nature of these transactions. This highlights the importance of evaluating these rules in the protection of electronic consumers.

Thus, it is necessary to examine:

- The impact of applying international substantive rules of electronic commerce on the protection of electronic consumers (branch One), and
- The shortcomings faced by these substantive rules in providing such protection (branch two).

Branch One: The Impact of Applying Substantive Rules of Electronic Commerce on the Protection of the Electronic Consumer

We have previously discussed the nature and sources of the international substantive rules of electronic commerce. However, despite the existence of these sources and their apparent adequacy to govern disputes arising from international e-commerce contracts involving

⁷⁷ Abu Al-Ala Ali Abu Al-Ala Nimer, Op. cit., p. 118.

⁷⁸Hamoudi Nasser, Disputes of Electronic Contracts, Op. cit., p. 184.

consumers, the reality raises doubts about the existence and effectiveness of these rules in resolving such disputes⁷⁹.

Even with the justifications and arguments presented by supporters of Lex Electronica—who believe in its effectiveness and sufficiency as a unified set of legal rules—this belief may be exaggerated, as these rules are still underdeveloped. Therefore, they cannot yet govern international consumer contracts independently, without resorting to the application of traditional private international law or national laws that regulate such transactions⁸⁰.

Some scholars argue that the application of international substantive rules to electronic consumer contracts is problematic for the following reasons⁸¹:

- Most of these rules are not statutory, and thus do not express the law's stance in a clear and definitive way. This is particularly evident since many national legislations lack such rules entirely.
- Even assuming these rules exist, their application is often limited to business-to-business (B2B) transactions—whether conducted traditionally or electronically. In contrast, business-to-consumer (B2C) transactions are governed by statutory protective provisions, not by customs or unwritten rules that a judge might seek out.
- A large proportion of international commercial transactions involving consumers—especially those conducted online—often involve very small amounts of money. Nevertheless, consumers still need a special form of legal security, one that ensures they can rely on the application of their own national law or another law that offers better protection, regardless of whether that law is substantive or procedural. This need should not depend on the judge's discretion in selecting applicable substantive rules⁸².

Therefore, we believe that there is no alternative but to resort to the traditional rules of private international law to resolve disputes related to international electronic consumer contracts. We also emphasize the necessity of international cooperation to define certain concepts in the digital world, such as the concept of regional center, party consent and acceptance, and place of business. States must also amend their national legislations to cover all disputes related to e-commerce, especially those concerning the consumer, who is considered the weaker party and deserves protection for specific reasons. It is also important to consider reconciling the public and private interests. There is no objection to granting international contracts a degree of autonomy by allowing the parties to create a self-regulatory framework to govern their

⁷⁹ Mohamed Belaï, The Challenges Facing Disputes in Electronic Commerce Contracts, *Al-Ijtihad Al-Qada'i Journal*, University of Mohamed Khider, Biskra, Vol. 13, No. 02, October 2021, p. 838.

⁸⁰ Nabil Zaid Moqabla, *Op. cit.*, pp. 98–99

⁸¹ Ibrahim Ahmed Said Zamzami, *Op. cit.*, p. 272.

⁸² Ibrahim Ahmed Said Zamzami, *Ibid.*, p. 273.

contractual relationships—provided that this does not lead to freeing the contract from the rule of law⁸³.

Based on the above, it becomes evident that international electronic consumer contracts require the integration of legal approaches to guide their use in contractual relationships, particularly in times of crisis. This necessity imposes a special responsibility on the key players in this domain—who are the dominant and constant actors—to promote cooperation. Indeed, the idea of coexistence and collaboration between legal methods introduces international cooperation as an alternative aimed at achieving legal security and the shared interests of the contracting parties, thereby fostering economic and legal transformations that drive international relations toward progress and prosperity⁸⁴.

Branch Two: Aspects of Deficiency in the International Substantive Rules of Electronic Commerce in Protecting the Electronic Consumer

Experts developing international commercial transactions in the virtual world argue that the deficiencies in the international substantive rules of electronic commerce—in terms of failing to provide adequate protection for electronic consumers in their international contractual dealings—stem from the inability of this approach to address the problems arising from electronic commerce in general⁸⁵. In this regard, the shortcomings can be illustrated in the following paragraphs:

ClauseOne: Lack of a Legal System Status in the International Substantive Rules of Electronic Commerce

The application of the concept of a legal system to the substantive rules of electronic commerce is problematic because these rules do not constitute a fully developed legal system. On the one hand, it cannot be claimed that a coherent and organized society exists that brings together all internet users and is capable of establishing binding behavioral rules for them⁸⁶. There is no institution or authority that manages or enforces these rules. A true legal system, in the precise sense of the term, is a set of specific rules and mechanisms capable of enforcement, arising alongside the existence and activity of a particular social unit with its own distinctive nature. Consequently, it is difficult to recognize these substantive rules as a fully-fledged legal system⁸⁷.

On the other hand, there is no cooperation between states in this regard, and most are not willing to allow disputes involving their consumer citizens to be governed by such electronic substantive

⁸³ Suleiman Ahmed Al-Fadl, Op. cit., p. 250.

⁸⁴ Mohamed Belaï, The Limits of the Contribution of Material Rules in Resolving International Commercial Contract Disputes, Op. cit., p. 247.

⁸⁵ Salah Ali Hussein, Op. cit., p. 249.

⁸⁶ Adel Abu Hasheema Mahmoud Houta, Op. cit., p. 148.

⁸⁷ Mostafa Al-Qasimi, Material Rules in Resolving Disputes of International Commercial Contracts, article published on the following website: <https://www.droitentreprise.com/>, date of access: 01/03/2022, at 11:00 AM.

law. Furthermore, it is unlikely that developed and developing countries would agree on intellectual property rights in the context of the internet⁸⁸.

Thirdly, the claim of the existence of a virtual society independent of all states is difficult to accept. Users of the internet and service providers are, in fact, real individuals with physical presence, homes, or actual business headquarters. They make financial commitments through real bank accounts located in known physical places. Furthermore, communication technologies are based in specific countries. Thus, operations conducted over the internet may be subject to the laws of those territories as determined by conflict-of-law rules in private international law⁸⁹.

Second Clause: Lack of Binding Nature in the International Substantive Rules of Electronic Commerce

Upon careful examination of what are called the substantive rules of electronic commerce, it becomes evident that they are merely behavioral norms with limited origin and scope. They lack the essential element of perceived obligation necessary to transform a habit into a binding custom. Furthermore, these rules do not include enforcement mechanisms to ensure compliance. And even if such sanctions exist, they are ineffective; service providers lack the means to prevent violations. This situation negatively affects the consumer, who is considered the weaker party⁹⁰.

Third Clause: The Inherent Deficiency of International Substantive Rules of Electronic Commerce

As previously mentioned, these rules are still in their infancy—akin to a fetus in the process of formation. Moreover, some issues will always require national laws, such as the applicable law regarding the capacity of the parties and consent in online transactions⁹¹.

Therefore, the current deficiencies in these rules can only be overcome by returning to national legal systems. Their incompleteness also gives wide discretion to arbitrators or judges, who may issue rulings that do not serve consumer interests. Although these rules are intended to reflect the needs and realities of internet users and aim to achieve fairness among them, in reality, that fairness is often missing. There is always a dominant party—the supplier—who imposes the terms, undermining adequate protection for consumers⁹².

Fourth Clause: The International Substantive Rules of E-Commerce Reflect the Interests of Major Suppliers

⁸⁸ Ahmed Abdel Karim Salama, *Special Private International Law*, Op. cit., p. 63.

⁸⁹ Salah Ali Hussein, *Op. cit.*, p. 251.

⁹⁰ Ahmed Abdel Karim Salama, *Special Private International Law*, Op. cit., p. 64.

⁹¹ Salah Ali Hussein, *Op. cit.*, p. 254.

⁹² Ahmed Abdel Karim Salama, *Special Private International Law*, *Ibid.*, p. 66.

Some legal scholars have criticized the movement advocating for subjecting e-commerce contracts to substantive rules outside the control of states. They argue this approach benefits foreign companies and exporters while neglecting the interests of the other party. The so-called commercial customs are shaped by legal experts in Western countries and naturally serve the interests of their own major corporations, given that they dominate the advanced technology industry—often at the expense of importing countries⁹³.

while evaluating the proposed substantive rules of electronic commerce, including those related to international consumer contracts, it is essential to exercise caution. The idea should not be dismissed prematurely. Instead, we should monitor the growth of this "newborn" legal system. These electronic substantive rules originate from the virtual society, and any judgment regarding their unsuitability or ineffectiveness in resolving disputes or protecting electronic consumers is premature.

After reviewing both national and international substantive rules, the next step is to examine the role of dispute resolution mechanisms in protecting the electronic consumer, particularly in the context of international commercial disputes.

Conclusion

At the end of this research study, it can be concluded that the emergence of international substantive rules for e-commerce represents a qualitative step toward addressing the shortcomings of traditional conflict-of-law rules. This is particularly important in providing sufficient protection to the electronic consumer in international commercial transactions.

However, these rules still suffer from certain gaps and shortcomings, which can undermine the desired level of consumer protection. Therefore, there is an urgent need to develop the rules of private international law in a way that aligns with the necessary protection for the electronic consumer as a vulnerable party in international contracts.

This study led to the following findings and recommendations:

⁹³Ashraf Abu El-Wafa Mohamed, Op. cit., p. 209.

Findings:

- The spread of international electronic consumer contracts has given rise to new legal challenges, requiring the application of private international law in the event of disputes.
- The substantive rules of e-commerce represent an incomplete legal system still in formation, incapable of covering all types of electronic commerce disputes.
- These rules provide an important framework for protecting electronic consumers in international transactions, but their effectiveness depends on integration with strong enforcement mechanisms and supportive national laws.
- They have proven more effective than traditional conflict-of-law rules in protecting electronic consumers.
- These rules contribute to achieving contractual balance in favor of the electronic consumer.

Recommendations:

- Strengthen the international legal framework for these rules by concluding binding international agreements on electronic transactions.
- Intensify efforts at both the international and regional levels to unify international substantive rules in the field of e-commerce.
- Ensure the continuous development and enhancement of these rules to adapt to the challenges posed by e-commerce disputes—particularly those involving consumers.
- The Algerian legislator is urged to adopt protective rules that offer procedural and substantive protection to electronic consumers in cross-border transactions.
- Promote greater international cooperation in all matters related to the substantive rules **of electronic commerce** to address gaps in the international legal framework.