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## UNIT 4 INTERNATIONAL TREATIES, CONVENTIONS AND PROTOCOLS CONCERNING CYBERSPACE

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### 4.1 INTRODUCTION

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After discussing domestic law in the previous three units, in this unit we shall discuss the international instruments and institutions dealing with cyber law and cyberspace. These are also integral parts of the legal system because the challenges posed by ICT are of universal nature, hence they cannot be addressed by one country alone without international cooperation.

The laws of cyber laws constitute the laws and regulations administered by national institutions together with the ones administered by international, intergovernmental and international non governmental organizations. Several International agencies are active in matters relating to the regulation of cyberspace and the media through which they execute these regulations are international legal instruments like treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, modus vivendi and exchange of notes. In fact, the meaning of the terms used to describe an international instrument is variable, changing from State to State, from region to region and instrument to instrument. Some of the terms can easily be interchanged: an instrument that is designated “agreement” might also be called “treaty”. The 1969 Vienna Convention on the Law of Treaties is the principal law governing the international law of rights and obligations that treaties entail. In this chapter we shall discuss some of the important international instruments that have a bearing on the global cyber law regime and as a natural corollary we shall also examine the work of the international organizations that are the custodians of these instruments.

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## 4.2 OBJECTIVES

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After studying this unit you should be able to:

- discuss the efforts made internationally to facilitate the growth and accessibility of Information and Communication Technology; and
- examine the role played by the international organizations and agencies to give electronic records the same recognition as paper based documents.

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## 4.3 UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

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The most prominent among all the international organizations is the United Nations. The United Nations Commission on International Trade Law (UNCITRAL) is the agency charged with the responsibility of harmonization and unification of International trade laws. Based in Vienna, UNCITRAL is a legal body with universal membership specialising in commercial law reform worldwide for over 40 years. UNCITRAL's business is the modernisation and harmonisation of rules on international business.

With the growing usage of electronic commerce and advanced communications technology in international trade, the UNCITRAL came up with a Model Law on Electronic Commerce in 1996. This was based on a Resolution of the General Assembly of the United Nations of 1985<sup>1</sup>, urging governments and international organizations to take action to ensure legal security in the context of the widest possible use of automated data processing in international trade. This model law was adopted by the UNCTRAL in the Commission's twenty-ninth session after observations of governments and other interested organizations. One of the guiding factors during the drafting of the model law was that the law should facilitate the use of electronic commerce that is acceptable to states with different legal, social and economic systems so as to significantly contribute to the development of harmonious international economic relations. The model law was intended to assist all states in framing appropriate legislation governing the usage of alternatives to paper-based methods of communication and storage of information.

Following the framing of the Model Law the United Nations General Assembly by its Resolution No. 51/62, dated 30<sup>th</sup> January 1997<sup>2</sup>, recommended that all states should give favourable consideration to the said law when they frame or revise their own law. The model law with its provision for equal treatment of users of electronic communications and paper based communication soon became the basis of several national legislations including the Information Technology Act of 2000 of India.

Currently the UNCITRAL in 2005 came out with the United Nations Convention on the Use of Electronic Communications in International Contracts. This was adopted by the General Assembly on 23 November 2005; the Convention aims to enhance legal certainty and commercial predictability where electronic communications are used in relation to international contracts. It addresses the determination of a party's location in an electronic environment;

the time and place of dispatch and receipt of electronic communications; the use of automated message systems for contract formation; and the criteria to be used for establishing functional equivalence between electronic communications and paper documents — including “original” paper documents — as well as between electronic authentication methods and hand-written signatures. This instrument is now open for countries to sign and ratify.

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Please answer the following Self Assessment Question.

<p><b>Self Assessment Question 1</b> <span style="float: right;"><i>Spend 3 Min.</i></span></p> <p>Discuss the efforts made by the UNCITRAL in the development of cyber law? Did it influence in any manner the Indian law in this area?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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**4.4 WORLD SUMMIT ON INFORMATION SOCIETY**

Under the aegis of the United Nations, with the International Telecommunication Union playing a key role, a World Summit on Information Society (WSIS) was held in two phases in Geneva, from 1-12 December 2003 and in Tunis, from 16-18 November 2005. At the summit in Geneva in 2003, world leaders realising the immense potential of information and communication technologies in human development, declared their “common desire and commitment to build a people-centered, inclusive and development oriented information society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights.” One objective of the WSIS was to address the uneven distribution of the benefits of the information technology revolution between the developed and developing countries and within societies, what is known as the digital divide.

A Plan of Action was adopted in Geneva to give effect to the vision of an inclusive information and communication society aimed at bridging the digital divide and building digital solidarity. The targets that were laid down in the action plan to be achieved by 2015 by all nations are listed below.

- a) to connect villages with ICTs and establish community access points;
- b) to connect universities, colleges, secondary schools and primary schools with ICTs;
- c) to connect scientific and research centres with ICTs;
- d) to connect public libraries, cultural centres, museums, post offices and archives with ICTs;
- e) to connect health centers and hospitals with ICTs;
- f) to connect all local and central government departments and establish websites and e-mail addresses;
- g) to adapt all primary and secondary school curricula to meet the challenges of the Information Society, taking into account national circumstances;
- h) to ensure that all of the world's population have access to television and radio services;
- i) to encourage the development of content and to put in place technical conditions in order to facilitate the presence and use of all world languages on the Internet;
- j) to ensure that more than half the world's inhabitants have access to ICTs within their reach.

At the summit held in 2005 in Tunisia, governments reaffirmed their dedication to the commitments made in Geneva and decided to further build on them focusing on financial mechanisms for bridging the digital divide and also on areas such as internet governance as well as follow up on Geneva and Tunis decisions. A Tunis Agenda for the Information Society was adopted along with a Tunis Commitment that outlined the basis for the implementation and follow-up of the Agenda. The agenda has further identified the strategy to meet the obligations of the Geneva plan. There the agenda proposes to undertake efforts for:

- a) mainstreaming and aligning national e-strategies, across local, national, and regional action plans, as appropriate and in accordance with local and national development priorities, with in-built time-bound measures.
- b) developing and implementing enabling policies that reflect national realities and promote a supportive international environment, foreign direct investment as well as the mobilisation of domestic resources, in order to promote and foster entrepreneurship, particularly Small, Medium and Micro Enterprises (SMMEs), taking into account the relevant market and cultural contexts. These policies should be reflected in a transparent, equitable regulatory framework to create a competitive environment to support these goals and strengthen economic growth.
- c) building ICT capacity for all and confidence in the use of ICTs by all – including youth, older persons, women, indigenous peoples, people with

disabilities, and remote and rural communities – through the improvement and delivery of relevant education and training programmes and systems including lifelong and distance learning.

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- d) implementing effective training and education, particularly in ICT, science and technology that motivates and promotes participation and active involvement of girls and women in the decision-making process of building the Information Society.
- e) paying special attention to the formulation of universal design concepts and the use of assistive technologies that promote access for all persons, including those with disabilities.
- f) promoting public policies aimed at providing affordable access at all levels, including community-level, to hardware as well as software and connectivity through an increasingly converging technological environment, capacity building and local content.
- g) improving access to the world's health knowledge and telemedicine services, in particular in areas such as global cooperation in emergency response, access to and networking among health professionals to help improve quality of life and environmental conditions.
- h) building ICT capacities to improve access and use of postal networks and services.
- i) using ICTs to improve access to agricultural knowledge, combat poverty, and support production of and access to locally relevant agriculture-related content.
- j) developing and implementing e-government applications based on open standards in order to enhance the growth and interoperability of e-government systems, at all levels, thereby furthering access to government information and services, and contributing to building ICT networks and developing services that are available anywhere and anytime, to anyone and on any device.
- k) supporting educational, scientific, and cultural institutions, including libraries, archives and museums, in their role of developing, providing equitable, open and affordable access to, and preserving diverse and varied content, including in digital form, to support informal and formal education, research and innovation; and in particular supporting libraries in their public-service role of providing free and equitable access to information and of improving ICT literacy and community connectivity, particularly in underserved communities.
- l) enhancing the capacity of communities in all regions to develop content in local and/or indigenous languages.
- m) strengthening the creation of quality e-content, on national, regional and international levels.
- n) promoting the use of traditional and new media in order to foster universal access to information, culture and knowledge for all people, especially vulnerable populations and populations in developing countries and using, inter alia, radio and television as educational and learning tools.

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- o) reaffirming the independence, pluralism and diversity of media, and freedom of information including through, as appropriate, the development of domestic legislation, we reiterate our call for the responsible use and treatment of information by the media in accordance with the highest ethical and professional standards. We reaffirm the necessity of reducing international imbalances affecting the media, particularly as regards infrastructure, technical resources and the development of human skills. These reaffirmations are made with reference to Geneva Declaration of Principles paragraphs 55 to 59.
- p) strongly encouraging ICT enterprises and entrepreneurs to develop and use environment-friendly production processes in order to minimize the negative impacts of the use and manufacture of ICTs and disposal of ICT waste on people and the environment. In this context, it is important to give particular attention to the specific needs of the developing countries.
- q) incorporating regulatory, self-regulatory, and other effective policies and frameworks to protect children and young people from abuse and exploitation through ICTs into national plans of action and e-strategies.
- r) promoting the development of advanced research networks, at national, regional and international levels, in order to improve collaboration in science, technology and higher education.
- s) promoting voluntary service, at the community level, to help maximize the developmental impact of ICTs.
- t) promoting the use of ICTs to enhance flexible ways of working, including teleworking, leading to greater productivity and job creation.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 2</b>	<i>Spend 3 Min.</i>
Discuss the principles enunciated in the WSIS summits.	
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## 4.5 UNITED NATIONS COMMISSION ON TRADE AND DEVELOPMENT

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United Nations Commission on Trade and Development (UNCTAD) is the United Nations General Assembly's main agency responsible for trade and development. Since 1998 when the General Assembly gave UNCTAD a special grant to pursue and develop electronic commerce initiatives, this agency has been active in its advocacy of the role and importance of information and communication technologies in development.

UNCTAD carries out policy-oriented analytical work on the *information economy* and its implications for developing countries. Its analytical work is published in the annual *Information Economy Report* (former E-commerce and Development Report). It also assists governments, businesses and civil society groups that are considering adopting *free and open source software* policies.

UNCTAD has also published the *Digital Divide: ICT Development Indices 2004*, which benchmarks ICT diffusion for over 150 countries using indices of connectivity and access. It also monitors trends in ICT development to raise awareness and helps formulate policies aimed at narrowing the digital divide.

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## 4.6 COUNCIL OF EUROPE

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Council of Europe is an *international organization* of 46 member states in the *European* region. The Council is most prominent for the *European Convention on Human Rights 1950*, which serves as the basis for the *European Court of Human Rights*. The Council of Europe is not to be confused with the *Council of the European Union* or the *European Council*, as it is a separate organization and not part of the *European Union*.

The Council was set up to:

- Defend human rights, parliamentary democracy and the rule of law
- Develop continent-wide agreements to standardise member countries' social and legal practices,

The Council of Europe came out with a Convention on Cyber crime (2001) and its additional Protocol concerning the acts of a racist and xenophobic nature committed through computer systems (2003). The Convention aims principally at: (1) harmonising the domestic criminal substantive law elements of offences and connected provisions in the area of cyber-crime (2) providing for domestic criminal procedural law powers necessary for the investigation and prosecution of such offences as well as other offences committed by means of a computer system or evidence in relation to which is in electronic form and (3) setting up a fast and effective regime of international co-operation.

The Convention contains four chapters: (I) Use of terms; (II) Measures to be taken at domestic level – substantive law and procedural law; (III) International co-operation; (IV) Final clauses.

Section 1 of Chapter II (substantive law issues) covers both criminalization provisions and other connected provisions in the area of computer- or computer-related crime: it first defines 9 offences grouped in 4 different categories, then deals with ancillary liability and sanctions. The following offences are defined by the Convention: illegal access, illegal interception, data interference, and system interference, misuse of devices, computer-related forgery, computer-related fraud, offences related to child pornography and offences related to copyright and neighbouring rights.

Section 2 of Chapter II (procedural law issues) – the scope of which goes beyond the offences defined in section 1 in that it applies to any offence committed by means of a computer system or the evidence of which is in electronic form – determines first the common conditions and safeguards, applicable to all procedural powers in this Chapter. It then sets out the following procedural powers: expedited preservation of stored data; expedited preservation and partial disclosure of traffic data; production order; search and seizure of computer data; real-time collection of traffic data; interception of content data. Chapter II ends with the jurisdiction provisions.

Chapter III contains the provisions concerning traditional and computer crime-related mutual assistance as well as extradition rules. It covers traditional mutual assistance in two situations: where no legal basis (treaty, reciprocal legislation, etc.) exists between parties – in which case its provisions apply – and where such a basis exists – in which case the existing arrangements also apply to assistance under this Convention. Computer- or computer-related crime specific assistance applies to situations and covers, subject to extra-conditions, the same range of procedural powers as defined in Chapter II. In addition, Chapter III contains a provision on a specific type of transporter access to stored computer data which does not require mutual assistance (with consent or where publicly available) and provides for the setting up of a 24/7 network for ensuring speedy assistance among the Parties.

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## 4.7 WORLD TRADE ORGANIZATION

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The growing importance of electronic commerce in global trade led World Trade Organization (WTO) members to adopt a *declaration on global electronic commerce* on 20 May 1998 at their Second Ministerial Conference in Geneva, Switzerland. The Declaration directed the WTO General Council to establish a comprehensive *work programme* to examine all trade-related issues arising from electronic commerce, and to present a progress report to the WTO's Third Ministerial Conference.

The 1998 declaration also included a so-called moratorium stating that “members will continue their current practice of not imposing customs duties on electronic transmission”.

The work programme was adopted by the WTO General Council on 25 September 1998. It continued after the Third Ministerial Conference in Seattle in November 1999.

At the Fourth Ministerial Conference in Doha in 2001, ministers agreed to continue the work programme as well as to extend the moratorium on customs



duties. They instructed the General Council, in *paragraph 34 of the Doha Declaration*, to report on further progress to the Fifth Ministerial conference at Cancún, in 2003.

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Under the work programme, issues related to electronic commerce have been examined by the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPS and the Committee on Trade and Development. During the course of the work programme a number of background notes on the issues have been produced by the WTO Secretariat and many member governments have submitted documents outlining their own thoughts.

After the Doha Ministerial Declaration, the General Council agreed to hold “dedicated” discussions on cross-cutting issues, i.e. issues whose potential relevance may “cut across” different agreements of the multilateral system. So far, there have been five discussions dedicated to electronic commerce, held under the General Council’s auspices.

The issues discussed included: classification of the content of certain electronic transmissions; development-related issues; fiscal implications of e-commerce; relationship (and possible substitution effects) between e-commerce and traditional forms of commerce; imposition of customs duties on electronic transmissions; competition; jurisdiction and applicable law/other legal issues.

Participants in the dedicated discussions hold the view that the examination of these crosscutting issues is unfinished, and that further work to clarify these issues is needed.

Please answer the following Self Assessment Question.

<p><b>Self Assessment Question 3</b> <span style="float: right;"><i>Spend 3 Min.</i></span></p> <p>Discuss the salient features of WTO Declaration on Global Electronic Commerce.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## 4.8 WORLD INTELLECTUAL PROPERTY ORGANIZATION

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WIPO, the Geneva based World Intellectual Property Organization has a world-wide coverage with 179 member states. The purpose of WIPO is to “to promote the protection of intellectual property throughout the world through cooperation among states”. (Art. 3 WIPO Convention). WIPO is the forum for international IP policy making, development and administration of the 23 international treaties of which it is the custodian.

Migration of intellectual property to the digital world, IP being ideally suited to digitization, is the order of the day. IP on the net is vulnerable because infinite number of perfect copies can be made and easily distributed through digital networks worldwide. There is therefore understandably a need to protect internet content including information, music, software, films, business methods, databases, etc.

Among the IP Issues on the Internet, the problem of the abusive registration of trademarks as domain names known in other words as cyber squatting is one of the areas that the WIPO addresses. The WIPO works through Uniform Domain Name Dispute Resolution Policy adopted by ICANN, and provides the services of a Domain name registrar. It also provides for alternative dispute resolution services through its Arbitration and Mediation center.

Significant issues in the field of copyright have been examined for a number of years through various public and private processes, at WIPO and other international organizations, and at national and regional levels. Significant progress has been made, with international consensus having already emerged on some of these issues. In 1996, two treaties were adopted by consensus by more than 100 countries at WIPO: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (commonly referred to as the “Internet Treaties”). The treaties, each having reached their 30<sup>th</sup> ratification or accession, both have entered into force: the WCT on March 6, 2002, and the WPPT on May 20, 2002.

The WIPO Internet Treaties are designed to update and supplement the existing international treaties on copyright and related rights, namely, the Berne Convention and the Rome Convention. They respond to the challenges posed by the digital technologies and, in particular, the dissemination of protected material over the global networks that make up the Internet. The contents of the Internet Treaties can be divided into three parts: (1) incorporation of certain provisions of the TRIPS Agreement not previously included explicitly in WIPO treaties (e.g. protection of computer programs and original databases as literary works under copyright law); (2) updates not specific to digital technologies (e.g., the generalized right of communication to the public); and (3) provisions that specifically address the impact of digital technologies.

Although the Internet Treaties have now entered into force, in order that they are truly effective in the digital environment, they must become widely adopted in countries around the world, and their provisions must be incorporated in national legislation.

There have also been some regulations from other intergovernmental bodies like the European Union and also by international non-governmental bodies like international chambers of Commerce.

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## 4.9 SUMMARY

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Cyber laws also include all the international instruments governing cyberspace. Therefore in this chapter we have examined some important international treaties, bodies international instruments formulated by various international organizations such as the United Nations Commission on International Trade Law (UNCITRAL), the work of the World Summit on Information Society (WSIS), the United Nations Commission on Trade and Development (UNCTAD), Council of Europe, World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO).

The objectives of these international organizations are to give equal status to electronic documents with the paper based documents, to connect government departments, health centers, universities and other educational and research organizations via Internet thus to promote e-governance, to make the computer and internet accessible to all irrespective of the economic status etc, to encourage the development of software in regional languages so that every section of the society may be benefited by the information and communication technology, to encourage the development devices and software for the persons with disabilities so that they may also be benefited by the ICT revolution etc.

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## 4.10 TERMINAL QUESTION

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- 1) Discuss the steps taken by international organizations to make Information and Communication Technology universally accessible.

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## 4.11 ANSWERS AND HINTS

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- 1) With the growing usage of electronic commerce and advanced communications technology in international trade, the UNCITRAL came up with a Model Law on Electronic Commerce in 1996. This was based on a Resolution of the General Assembly of the United Nations of 1985, urging governments and international organizations to take action to ensure legal security in the context of the widest possible use of automated data processing in international trade. This model law was adopted by the UNCTRAL in the Commission's twenty-ninth session after observations of governments and other interested organizations. One of the guiding factors during the drafting of the model law was that the law should facilitate the use of electronic commerce that is acceptable to states with different legal, social and economic systems so as to significantly contribute to the development of harmonious international economic relations. The model law was intended to assist all sates in framing appropriate legislation governing the usage of alternatives to paper-based methods of communication and storage of information.

- 2) Under the aegis of the United Nations, with the International Telecommunication Union playing a key role, a World Summit on Information Society (WSIS) was held in two phases in Geneva, 1-12 December 2003 and in Tunis, 16-18 November 2005. In Geneva in 2003, world leaders realising the immense potential of information and communication technologies in human development, declared their “common desire and commitment to build a people-centered, inclusive and development oriented information society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights.” Amongst the objectives of the of the WSIS was to address the uneven distribution of the benefits of the information technology revolution between the developed and developing countries and within societies, what is known as the digital divide.

A Plan of Action was adopted in Geneva to give effect to the vision of an inclusive information and communication society aimed at bridging the digital divide and building digital solidarity. The targets that were laid down in the action plan to be achieved by 2015 by all nations are listed below.

- a) to connect villages with ICTs and establish community access points;
- b) to connect universities, colleges, secondary schools and primary schools with ICTs;
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- d) to connect public libraries, cultural centres, museums, post offices and archives with ICTs;
- e) to connect health centers and hospitals with ICTs;
- f) to connect all local and central government departments and establish websites and e-mail addresses;
- g) to adapt all primary and secondary school curricula to meet the challenges of the Information Society, taking into account national circumstances;
- h) to ensure that all of the world’s population have access to television and radio services;
- i) to encourage the development of content and to put in place technical conditions in order to facilitate the presence and use of all world languages on the Internet;
- j) to ensure that more than half the world’s inhabitants have access to ICTs within their reach.

- 3) The growing importance of electronic commerce in global trade led World Trade Organization (WTO) members to adopt a *declaration on global electronic commerce* on 20 May 1998 at their Second Ministerial Conference in Geneva, Switzerland. The Declaration directed the WTO General Council to establish a comprehensive *work programme* to examine all trade-related issues arising from electronic commerce, and to present a progress report to the WTO's Third Ministerial Conference.

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#### **4.12 REFERENCES AND SUGGESTED READINGS**

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1. 40/71 of 11 Dec. 1985 (A/40/17).
2. A/RES/51/162. 30 Jan.1997.