

CLP Commission Executive Summary

14 November 2024, 14.00-17.15 (CET)

Hybrid virtual/in-person at ICC Secretariat

Paris, France

1. Welcome from CLP Commission Chair Ercüment Erdem

2. UNCITRAL Project on Negotiable Cargo Documents

Li Yanying, Legal Officer at the International Trade Law Division (UNCITRAL), presented the latest news on the UNCITRAL WG VI project to develop a 'negotiable cargo document' (NCD) – a bill of lading for any mode of transport in a multimodal or unimodal context.

See presentation. [[UNCITRAL Project On Negotiable Cargo Documents](#)]

A fact sheet and draft text of the instrument are available at the website link on the [UNCITRAL WG VI website](#).

Highlights included:

- Increasing need for NCD – as credit enhancement tool, and to facilitate sales of goods in transit, which is useful for example in times of crisis (as in the Red Sea crisis where transport had to be switched from maritime to other modes).
- Default rules + 2 fallback rules
 - Default: Annotate existing transport documents that meet minimum information requirements
 - Fallback: Issue negotiable cargo document in the absence of any transport document
 - Fallback: Issue a separate document in addition to non-negotiable transport document BUT – new proposal: cargo pledge bonds as alternative option to avoid conflicts with existing instruments, in particular the CIM Uniform Rules.
- Extend to storage of goods? Only where there is a single comprehensive services contract, which will help with interoperability of data exchange models
- Liability of transport operator not yet discussed (but presumably will not be covered).

- Possible timeline: Instrument finalized in July 2025, followed by adoption at the UN General Assembly in autumn 2025, and then a few additional sessions to prepare Explanatory Note in 2026/2027.
- **Discussion**
- Q: Would a B/L annotated to the effect that it is a transport document for purposes of the new UNCITRAL convention also be covered by other conventions, such as Hague-Visby? If so, would there a demarcation of liability as between the 2 applicable regimes?
- A: The new UNCITRAL instrument is silent on liability issues, the aim being to avoid conflict.
- Q: Have the ICC Banking Commission and P&I clubs been consulted on this project?
- A: The Banking Commission has provided input and its Legal Committee has sent thoughts on the new cargo pledge bond proposal. A representative of the Legal Committee will be attending the live session in Vienna in December.
- UNCITRAL interested in CLP Commission members' commercial law views from around the world, will send a short list of focused questions for CLP input.
 - **ACTION:** CLP Commission to circulate short set of targeted questions to come from UNCITRAL with a view to gathering CLP Commission/NC input ahead of the WG VI meeting in Vienna in December.

3. Vice Chair country presentations – Qatar and Nigeria

Dr. Ghada Darwish Karbon, Vice Chair, CLP Commission (Qatar) and **Dr. Adewale Olawoyin**, Vice Chair, CLP Commission (Nigeria), gave updates on selected legal issues of interest in Qatar and Nigeria.

See presentation re Nigeria. [[Court Intervention in Arbitration Proceedings](#)]

Highlights included:

- **Qatar**
- Recent developments – legal landscape generally improved, commitment to diversifying Qatar's economy in line with the Qatar Vision 2030
 - 2019 – Foreign Investment law – welcomes foreign investors in many sectors, though not banks or financial institutions. Foreign investors may exceed previous cap of 49% ownership, now 100%. Qatar consistently becoming more modern and in line with international standards.
 - Qatar Investment + Commerce Court: For complex commercial investment disputes, with jurisdiction to hear international investments disputes. Newly established, tailored, digital tools. Strict procedural timelines, less than a year as goal.
 - QICDRC: Qatar's international civil and commercial court, entered into deal with ICSID. Modern electronic system – e-filing, virtual and hybrid hearings.
- **Presentation - Nigeria**
- A recent case raises problems regarding court intervention in international commercial arbitration proceedings
- In 2023, Nigerian law enacted based on UNCITRAL model law, generally applauded

- But question as to how courts will respond to this new legislation? May 2024 High Court decision gives an indication of attitudes of courts generally (*Cocean Nigeria Integrated Limited Vs P.E. Bitumen Resources (Nigeria) Limited & 4 ors*)
 - Case evolved from ICC arbitration case regarding underlying transport agreement
 - Issues related to amount of fees and payment of fees in foreign currency
- Objection to so-called ‘attempt to dollarize’ the Nigerian economy as ICC Court of Arbitration would not accept payment in naira
- The case heralds an insidious trend where parties unable to pay arbitral courts will resort to courts to try to avoid payment (in this case, court granted the relief based on the Nigerian constitution)
- The court’s action was outside the bounds of legislative rights to intervene in arbitration, feeding into Nigerian tactics more generally in frustrating arbitration. Unconscious bias of courts against arbitration cost.
- The case is being appealed and the Nigerian arbitration community is watching closely, may file an amicus brief.
- **Discussion**
- A very frustrating decision. Part of solution lies with arbitral institution. This is an example of guerilla tactics by recalcitrant respondents who refuse to pay.

4. ICC Model Contract on Commissioning and Maintenance Services

Valle Garcia de Novales, Chair of the Working Group (Spain), presented for approval the final draft of the new model contract covering commissioning and after-sales services related to the supply of equipment or an industrial solution.

Highlights included:

- The Working Group (WG) has just finished work on the model contract, which was circulated ahead of this meeting. Thanks to the international experts on the WG for their dedication and support, and to the network of NCs who provided feedback to improve the successive drafts of the model.
- The WG has succeeded in preparing the model contract in record time. The idea for the new model was presented in April 2023 and in October 2023, the WG held a kickoff in-person meeting after the Vienna CLP meeting. In January 2024, the 1st of several drafts of the model was circulated to the network for comments and in April 2024, the WG had a very productive meeting in person in Seville on the margins of the CLP Commission meeting.
- At the April meeting, expansion of the model was decided: the model is to be used not just for occasional service engagements, but also as a framework contract for successive services projects between the same partners.
- The model is intended in particular for SMEs, where a client engages a service provider in the geography where end use of equipment or an industrial solution is installed and used. The model may be used either as a client-contractor framework for unlimited service requests, or on a single project basis.
- The model is structured as a main body made of General conditions that are not to be modified, and a set of annexes and appendices that are to be adapted by parties. It is designed to be easy to use, and it tracks other ICC model contracts regarding, in particular, dispute resolution clauses that have recently been reviewed and refreshed by staff of the ICC Court of Arbitration in Paris.

- The CLP Commission Chair thanked Valle and the WG, and declared that in the absence of any objections from NCs or the CLP Commission, the new model contract is approved.
 - **ACTION:** CLP Commission to work with ICC Publishing to prepare the model contract for release in early 2025.

5. ICC Model Clauses on Digitalization

Robert Parson, Chair of the Working Group (UK), briefed the group on the new project in collaboration with the ICC Digital Standards Initiative (DSI) to create model contract clauses to help drive digitalization throughout the global supply chains.

See presentation. [[ICC Model Clauses on Digitalization](#)]

Highlights included:

- Model clauses are intended to encourage SMEs to take advantage of recently available technologies and rule changes (including adoption and implementation of the UNCITRAL Model Law on Electronic Transferable Records (MLETR)) to get involved in contracting by electronic means.
- The WG has winnowed down initial list of approximately 12 possible clauses to 3
- Aims: Produce entry-level contractual clauses. Not for those who are already geared up and lawyered up. Linking up with the ICC Digital Standards Initiative (DSI) Key Trade Documents and Data Elements (KTDDE) and law changes around the adoption of MLETR
- 3 small clause drafting groups
 - Clauses acknowledging the validity of transactions concluded through electronic means
 - Clauses dealing with the use of legal entity identifiers to establish capacity in contracting
 - Clauses dealing with contractual delivery evidenced by electronic trade documents
- First drafting expected Q1 2025
- The sub-groups are liaising with the ICC Banking Commission Legal Committee and ITFA to ensure existing research and knowledge are incorporated
- **Discussion**
- Q: What relation to ICC e-terms of 2004?
- A: We are very much aware of historical work, aim is to produce stand-alone clauses usable in today's environment
- Q: How are you involving the ICC Digital Economy Commission?
- A: The Digital Economy Commission will be asked for comments once draft clauses have been prepared
 - **ACTION:** WG to prepare drafts of initial clauses in first half of 2025 for eventual comment by the CLP Commission, Digital Economy Commission, and NC network.

6. EU Digital Agenda - Data Act + AI Act

Jan Paul Marschollek, Deputy Head of Legal, VDMA (Germany), briefed the group on the status of the implementation of the EU Data Act and the recently-adopted AI Act, which is foreseen to come into application in 2025.

See presentation. [[EU Digital Agenda Update: EU Data Act; EU AI Act](#)]

Highlights included:

- **Presentation**
- Vision of EU Data Act
 - Fulfil common EU digital vision of world
- What has been realized
 - EU bureaucratic monster
- European Commission has had webinars on model clauses and has produced an FAQ document
- Sanctions issues among others are still open as far as Member State national legislation
- AI Act
 - There is an EU office of c. 130 people working on implementation, administration, etc. related to the AI Act
 - Aim among others of the AI Act is to foster innovation
 - The Act will need more flanking legislation on national level, will need AI to deal with AI requirements of future. Self-perpetuating system.
- **Discussion**
- Q: Should the average IT company that doesn't engage in high scale AI work do something now or just wait? These issues are already a high-level compliance topic of 'urgently wait and see'.
- A: The sanction regime is more frightening for the AI Act (up to 7% of global turnover) than for the Data Act. Companies may be wise to include in risk assessment. Most companies use Microsoft and that may be enough to trigger compliance risks. Look out for the link among AI Act/Data Act/GDPR if a company does affirmatively include AI in its products.

7. ICC Institute of World Business Law + Unidroit: Project on international investment contracts

Sybille de Rosny Schwebel, Director, ICC Institute of World Business Law (ICC), updated the group on the status of collaboration between the ICC Institute and Unidroit to develop ICC guidance and model clauses related to international investment contracts. Opportunities for CLP member involvement explained.

Highlights included:

- Initiative related to international investment contracts spearheaded by Eduardo Silva Romero, Chair of the Institute Council. Study was agreed with Unidroit for a 3-year joint project, wrapping up at the end of 2025, to look at:

- How can such contracts be harmonized, modernized and standardized? Can be hard to define; this project focuses on contracts between private investors and state entities.
 - Analyze the contracts and awards we see today – based on these, can we make suggestions for harmonization?
 - Consider policy and regulatory trends – eg, CSR, sustainability, digitalization, DEI, etc.
- Output expected to include a Legal Guide with possible adapted Unidroit principles, as well as a possible set of model clauses. The aim is to produce something accessible and easy to use.
- Background and next steps of project
 - Started in January 2023, formation of small but diverse expert group. Initial meeting to discuss what the project would entail held in October 2023, then 2 subsequent meetings and a 4th meeting to take place in a few weeks. In-person meetings of 2-3 days each, allowing for focused work.
 - 5 sub-groups have been meeting in the interim
 - Definition and conceptualization of international investment contracts and Unidroit Principles
 - Pre-contractual issues: formation, validity, parties, non-signatories, transfer of rights and obligations, remedies, et al
 - Change of circumstances: stabilization, force majeure, renegotiation, et al
 - Policy goals
 - Choice of law and dispute resolution
- Drafting will start soon, to be carried out in 2025, the final year of the project. The sub-WGs have been given existing CLP model clauses for inspiration/reference.
 - Some standalone and some pulled from existing ICC model contracts, including but not limited to:
 - Force Majeure/Hardship
 - Confidentiality
 - Anti-corruption
 - good faith and fair dealing
 - interpretation
 - waiver of sovereign immunity
 - dispute resolution
- Aim to provide CLP Commission the first draft of the legal guide and model clauses for comments in first half of 2025.
- In 2026, we envision publication, dissemination, trainings, general outreach
- **Discussion**
- Q: What are trends you are seeing in international investment treaties?
- A: Treaties on investment contracts have made states or investors feel the relations may not be balanced.
- CLP Commission is happy to be involved, we will provide comments on future drafts through our interested members, including new Institute member Sven Schilf.
 - **ACTION:** ICC Secretariat to create a shadow group of CLP members interested in providing comments on ICC Institute-Unidroit project draft texts -

8. Incoterms® 2020 rules - Various issues

Christoph Radtke, Vice Chair of CLP Commission; Co-Chair of Incoterms® Drafting Group (France), and **Emily O'Connor**, Director of Commercial Law and Practice (ICC), led a discussion on developments related to the Incoterms® 2020 rules.

- **Incoterms® 2020 + national barriers.** Thanks to all who contributed to the survey results regarding national rules impeding or prohibiting the use of certain Incoterms® 2020 rules – the document will be updated periodically with any new contributions, the original version to be ready by the end of the year and will be circulated to the CLP Commission and NCs, as well as being made available on the ICC website and Incoterms 2020 app. Unsurprisingly, issues related to usage were observed often regarding EXW and DDP, as well as related to requirements for local insurance.
- **Italian decision of Corte di Cassazione.** Presentation of Italian decision using the Incoterms® 2020 rules as a basis for jurisdiction in a cross-border contractual dispute.
- Drawn from Mr. Radtke's article in the forthcoming issue of the ICC Dispute Resolution Bulletin:
- '....One consequence of the use of an Incoterms rule is less known to many users: its impact on the place of jurisdiction in case of a dispute. This is illustrated by the 10 May 2024 decision of the Italian Corte di Cassazione (Corte di Cassazione Civile Ord. Sez. 2 Num. 12854 Anno 2024) which clearly states: " The use of an Incoterm in a contract of sales, defines the physical place of delivery of the goods and gives jurisdiction to the court at the place of delivery".

The facts of the case are relatively simple. An Italian seller sold goods to a Dutch buyer and the documents constituting the sales contract indicated "Ex-works Incoterm". A dispute arose and the Italian seller filed an action before the Italian courts. They declined jurisdiction and this result was confirmed by the Italian Court of Appeal, who considered that the reference to the Incoterms EXW does not show a clear agreement on the choice of jurisdiction.

This motivation was disapproved by the Italian Corte di Cassazione, who stated in the above decision that "the Incoterms EX works clause, validly included in a contract of sales, identifies the place of delivery of the goods, and by virtue of effectiveness of the said clause, the place of delivery (premises of the Seller) must be considered to be located in Italy and consequently gives jurisdiction to the Italian courts".

This decision shows a perfectly correct understanding of the Incoterms rules and is in line with the established case law of the European Court of Justice. (Judgment CJEU Electrosteel of June 9th, 2011 and judgment CJEU Granarolo of July 14th 2016).....

.....For a better understanding of the above decision, [some] comments can be made: The first one is that the result is relevant for disputes within the European Union. EU Regulation 1215/ 2012 gives jurisdiction for a dispute resulting from a contract of sale of goods to the courts at the place where the goods were delivered according to the terms of the contract, unless the parties have expressly otherwise agreed on a choice of jurisdiction. This means

that jurisdiction in such a situation results directly from the place of delivery defined by the Incoterms rule used by the parties in the contract of sale.'

9. ICC Product Innovation Lab

Charly Gordon, Global Policy Lead (ICC), presented the new ICC Product Innovation Lab and the process for new product ideas to be submitted for consideration.

Highlights included:

- Initiative launched 6 months ago with Lab Director, Christian Thywissen.
- Underlying objective is to enhance ICC's ability to deliver on its mission with impact, and to prepare for the future with intentional planning. The Lab looks at the products and services that ICC brings to the world, with a view to amplifying their effectiveness and impact.
- 2 key activities of Product Innovation Lab
 - Looking at existing ICC assets
 - Delivery, marketing, market in which it lives – need to adapt, build something better for end user, consider financials
 - Examples include ICC's certificates of origin solution and the ICC Academy – strong products and services that we think ICC can enhance to further the reach and mission of ICC
 - Ideas for new ICC products and services
 - Structured process to consider proposed ideas - building a methodical approach. Stage-gate process (common in innovation). Start with large ideas and concepts and test the ideas to refine the thinking to eventually get to a new asset.
 - The Lab wants to work with the wider ICC network to ideate. First, Lab conversations with chambers, NCs, small businesses to identify and understand their pain points. Then, a structured process of ideation together with the wider ICC network. We envision a long process to bring some ideas to market, allowing ICC to ensure that we can produce the right products and services.
- The Product Innovation Lab will be reaching out with more information to NCs, etc. in the coming months to explain how involvement in proposal and ideation stages will work.

10. GUEST PRESENTATION: A Standard for the 'Digitalization' of Trade: Expressing, Communicating, and Using 'Rules' with the Data With Direction Specification (DWDS)

Craig Atkinson, Chair of the Xalgorithms Foundation's Xalgo4Trade Working Group presented technology related to the automation of rules and its possible application to the Incoterms® rules.

See presentation. [[\(Proposed\) Standard for the 'Digitalization' of Trade](#)]

Highlights included:

- **Overview of Presentation**
 - **Who we are: Xalgorithms Foundation** (3-4)
 - **The challenge of communication in a 'digital world'** (5)
 - **Introduction to concepts**
 - **Digital transformation** (6-8)
 - **Computational law** (9-10)
 - **Rules** (11-13)
 - **The 'Data with Direction Specification' (DWDS) and 'an Internet of Rules'** (14-17)
 - **Expressing, communicating, and using 'Rules as Data'** (18-20)
 - **Example visualizations of rules** (21-23)
 - **Conclusion: A Vision for Incoterms® 2030 (including an example visualization of the Incoterms® 2020 rule FCA)** (24-29)
- Craig Atkinson bio: 20 years working in public and private international trade in Canada, Australia, and Geneva at the International Trade Centre, working on how to improve trade capacity of SMEs, typically from developing countries. Trained economist with some legal training, driven by a passion for technology and making it accessible.
- Working with the ICC Digital Standards Initiative (DSI) and communicating over the past 18 or so months with the CLP Commission Secretariat about the future of the Incoterms rules in the context of digitalization.
- The Xalgorithm Foundation is winner this year of a Central Banking Publications FinTech and RegTech Global Award for the Data with Direction Specification (DWDS) tool: Finnovator of the Year 2024. The awards ceremony is taking place in Mexico City.
- Global traders are inundated by technologies and terminologies. What's practical, how to separate the wheat from the chaff, how to know what is just a new hype cycle? We hear about AI everywhere, blockchain, how to know what is snake oil and what is useful in the global journey towards trade digitalization.
- Long road to trade digitalization. Distinction between digitization (making paper info available via PDFs, for example) and digitalization (see attached presentation).
- History of the digitalization journey highlights problems of lack of interoperability among the many technologies developed in recent years, creating digital islands. The ICC DSI is very involved in raising awareness regarding, and ameliorating, this phenomenon.
- Important features of the DWDS standard is that it is technology neutral, interoperable across platforms, and also can be understood and read by both non-technologists and technology experts. It is an important interoperable 'bridge'.
- The DWDS allows not only for digitalization and automation of trade by allowing lawyers/rules-writers to approve and authenticate things in the visualized expression, but may also contribute to better, simpler, more intuitive rule-drafting.
- **Discussion**
- The CLP Secretariat gave some impressions and background:
 - People have for decades talked about 'digital' Incoterms rules, often unclear what is meant. Discussions with Craig and co-founding Executive Director of the [Xalgorithms Foundation](#) Joseph Potvin over the past 18+ months indicate that the DWDS technology may be a real step forward in helping integrate the Incoterms rules into various systems related to the digitalization of global trade.

- Cutting-edge (and award-winning) technology and thinking that may have far-reaching, transformational practical impact. Can bring Incoterms® rules into a new era and contribute profoundly to global trade digitalization.
 - Provides a bridge between natural language rules and the code that allows those rules to be incorporated into trade-digitalizing systems. Natural language rules can be expressed in a simple symbolic language that can be read by a non-technical person (such as most lawyers) and also by a software engineer/coder integrating the rules into an automating technological system/platform.
 - See attached presentation for examples of DWDS visual expression of the Incoterms® 2020 rule FCA and some US financial regulations.
 - CLP Commission will continue discussions on possible collaboration in the context of the eventual preparation of the Incoterms® 2030 rules.
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- **ACTION:** CLP Secretariat to continue conversations with Xalgorithms Foundation about possible collaboration on developing a DWDS-based visualization of the Incoterms® 2030 rules.

11. ICC Germany x Luther Digital Contract Generator : Automation of the ICC Model International Sale Contract

Dr. Robert Burkert, Senior Associate at Luther law firm (Germany), briefed participants on the Incoterms® 2020 Digital Guide and the project to automate the ICC Model International Sale Contract via the ICC Germany x Luther Digital Contract Generator (ConGen).

See presentation. [[Automated Contract Generation](#)]

Highlights included:

- **Presentation**
- Digitalized contract generator that uses customer's prompts and finalizes the contract for customer.
- Template is based on ICC Model International Sale Contract and can be altered to customer's needs.
- Based on no-code, cloud-based solution, LAWLIFT.
- Can be made into a bespoke contract based on the ICC model as starting point.
- Business model contemplated: Customers can buy the basic model and use it OR if customization desired, an individualized premium model can be generated, possibly hosted by Luther
- Especially useful for companies that don't have their own full digitalized contract management system.
- **Discussion**
- Helps SMEs but also can warn/prevent people in big companies in non-legal departments that are about to enter into a contract that will be difficult for the company to fulfill, or contravene company policy.
- Q: Depends on the chosen governing law?
- A: Yes, this version is tailored to the German law market.
- Q: How is ICC copyright of model contract being protected?

- A: Agreement prepared by ICC Secretariat Legal Department, as with any license of ICC intellectual property.
- Q: How can this be rolled out to other NCs?
- A: This is being considered by ICC Secretariat and project partners.
- **Comments from CLP Commission leadership and several meeting participants (including after the meeting):**
 - ICC Model International Sale Contract is very carefully balanced model and the ConGen may transform it into something very different. The ConGen should indicate it is **'based on'** the ICC model contract, since the modifications made by the ConGen may render the ICC model unbalanced and considered an unbalanced set of general conditions.
 - **ACTION:** CLP Commission to continue consultation with other ICC Secretariat departments, ICC Germany and Luther on project as it is refined and rolled out.

12. Next meetings

- Q2 2025 – Date/place to come.
- Q3/4 2025 – Date/place to come.