



TOWARDS A TRANSNATIONAL APPROACH FOR CHOICE-OF-LAW CLAUSES

Presentation of the ICC Study on "Developing Neutral Legal Standards for International Contracts"

Rome, 11 September 2015

One of the main qualities required from an international lawyer is his ability to work out “creative” (but at the same time effective) contractual solutions, which can satisfy both parties and thus help overcoming a deadlock in negotiations.

This is particularly the case with respect to clauses regarding the choice of the applicable law and dispute resolution, where the traditional approach of negotiators consists in trying to impose its own law and its own courts or arbitration institutions.

How to escape this alternative (“my law – your law”, “my courts – your courts”) through alternative solutions, is the main topic of this conference, which aims at discussing the pro’s and con’s a wide range of possible solutions which the parties can use when negotiating international contracts.

Although some of the issues imply the analysis of more theoretical aspects (like *lex mercatoria*) the purpose of the conference is to compare solutions which can actually be used in practice and to verify their effectiveness, with the purpose of increasing the tools at the disposal of lawyers who negotiate international contracts.

Unidroit has kindly offered to host the conference at its premises, via Panisperna 28, Rome.

Choice-of-law clauses: analyzing the various alternatives

Session Chair:

FILIP DE LY, Erasmus University, Rotterdam, the Netherlands;
Council Member, ICC Institute of World Business Law

- 9:30 **Registration**
- 9:40 – 10:00 **Welcome address**
Yves Derains, Chairman of the ICC Institute of World Business Law
José Angelo Estrella Faria, Secretary General, Unidroit
Piero Bernardini, President Associazione Italiana per l'Arbitrato
Maria Beatrice Deli, Secretary General, ICC Italia
Fabio Bortolotti, Chair of the ICC Commission on Commercial Law and Practice
- 10:00 – 10:15 **Introduction**
- The need for new solutions, adapted to a globalized world
 - An overview of the various options
 - The central role of the Unidroit Principles
- Filip De Ly**, Erasmus University, Rotterdam, the Netherlands;
Council Member, ICC Institute of World Business Law
- 10:15 – 11:00 **Choosing the law of a third country: the practical experience, especially when disputes arise**
- The law of which country? Switzerland? Sweden? Austria? England?
 - Drafting the contract and managing possible disputes under such law; assistance of local lawyers; costs
 - Possible impact on choice of forum or arbitration clauses
- Discussion panel chaired by Paul-A Gélinas**, member of the Paris and Montreal Bars, Paris; Council Member, ICC Institute of World Business Law
- **Pietro Galizzi**, Legal Department ENI, San Donato Milanese
 - **Patricia Peterson**, Linklaters LLP, Paris; Member, ICC Institute of World Business Law
- 11:00 – 11:30 Coffee break
- 11:30 – 12:10 **The choice of the Unidroit Principles as the applicable law**
- To what extent is it possible to apply the Unidroit principles as the law governing the contract?
 - Coordination with national laws
 - The model clauses prepared by Unidroit

Discussion panel chaired by Alberto Mazzoni, President Unidroit

- **Franco Ferrari**, Director, Center for Transnational Litigation, Arbitration and Commercial Law, New York University School of Law, New York
- **Anna Veneziano**, Deputy Secretary-General, Unidroit
- **Massimo Benedettelli**, Partner, Arblit, Milano, Professor of International Law, University of Bari

12:10 – 12:30 **The choice of a totally alternative framework (*lex mercatoria*) together with the Unidroit Principles: the solution of the ICC model contracts**

- Reasons for placing the contract in a fully alternative legal system; this does not amount to submitting the contract to vague and unforeseeable rules
- Why general principles + Unidroit Principles can offer a reasonably foreseeable legal framework
- The solutions adopted in the ICC model contracts

Fabio Bortolotti, Partner, Buffa, Bortolotti & Mathis, Italy; Chair of the ICC Commission on Commercial Law and Practice; Council Member, ICC Institute of World Business Law

12:30 – 13:00 **Discussion**

13:00 – 14:30 **Buffet lunch**

AFTERNOON SESSION

The actual experience of negotiators and arbitrators

Session Chair:

YVES DERAINS, Derains & Gharavi, Paris;
Chairman of the ICC Institute of World Business Law

14:30 – 15:00 **The acceptance of a-national solutions in international contracts, particularly by developing countries**

- In recent years reference to a-national or transnational solution with respect to the choice of the applicable law is increasing. Which countries favour this trend
- Which are the most commonly chosen solutions?
- Possible compromise solutions: national law together with a-national rules

Discussion panel chaired by Ercüment Erdem, Erdem & Erdem, Istanbul;
Council Member, ICC Institute of World Business Law

Munir Maniruzzaman, University of Portsmouth; Member, ICC Institute
of World Business Law

Edoardo Marcenaro, Head of International Legal and Corporate Affairs,
Enel Spa, Rome

Eckart Brödermann, Brödermann Jahn, Hamburg

15:00 – 15:20 **Presentation of the ICC Study on "Developing Neutral Legal Standards
for International Contracts"**

Stefano Catelani, Corporate Counsel, Dupont de Nemours International
Sarl, Geneva, member of the working party which drafted the study.

15:20 – 16:20 **Is a domestic law always more certain and foreseeable than
transnational rules?**

- The current scepticism of lawyers towards a-national solutions. Is it
always justified?
- Does a domestic law offer more certainty with respect to a-typical
contracts (distribution, licensing, M&A)?
- How to warrant sufficient certainty and foreseeability within an a-
national framework?

Discussion panel chaired by Marcel Fontaine, Professor emeritus,
Université catholique de Louvain; Member, ICC Institute of World
Business Law

Burghard Piltz, Ahlers & Vogel, Hamburg

Jean-Paul Vulliéty, Lalive, Genève; Member, ICC Institute of World
Business Law

Antonias Dimolitsa, A. Dimolitsa & Associates, Athens; Vice-Chair, ICC
Institute of World Business Law

Luca Radicati di Brozolo, Partner, Arblit, Milano, Professor of private
international law, Catholic University of Milano

16:20 – 16:40 **ICC arbitration case law on the application of a-national rules**

- The choice of a-national rules in the ICC rules of arbitration
- ICC case law on the application of transnational rules
- To what extent can the choice of non-State rules be challenged by
national courts

Andrea Carlevaris, Secretary General, ICC International Court of
Arbitration, Paris

16:40 – 17:00 **Concluding remarks**

Yves Derains, Derains & Gharavi, Paris; Chairman of the ICC Institute of
World Business Law

TOWARDS A TRANSNATIONAL APPROACH FOR CHOICE-OF-LAW CLAUSES

Rome, 11 September 2015

LOGISTICAL NOTE

VENUE

UNIDROIT

Via Panisperna, 28 – 00184 Rome, Italy

REGISTRATION FEES

The registration fee covers all training activities, including documentation, lunch and coffee break.

EARLY BIRD RATE UNTIL 10 JULY 2015

ICC/AIA Members: €400*

Non-Members: €650*

**VAT Included*

AFTER 10 JULY 2015

ICC/AIA Members: €500*

Non-Members: €800*

SPECIAL DISCOUNTS

ICC National Committees may benefit from a 10% discount on Non-Members Fees.

HOW TO REGISTER

Please return the registration form indicating method of payment to: **E** icc@iccitalia.org

T +39 06 42034321 **F** +39 06 4882677

ICC Italia, Via Barnaba Oriani 34, 00197 Rome – Italy

TRAVEL AND ACCOMODATION

Travel and hotel expenses are not included in the registration fees.

Participants are responsible for making their own reservations.

WORKING LANGUAGE

English

CANCELLATION POLICY

50% of the registration fee will be refunded if notice of cancellation is received in writing before 31 August 2015. Cancellations after this date are not refundable. Subject to agreement from ICC prior to event, the registration may be transferred to another person from the same company or organization at no extra charge. Updated registration information will be required.

Please note that ICC reserves the right to cancel this event or to make minor alterations to the content and timing of the programme or to the identity of the speakers. In the unlikely event of cancellation, delegates will be offered a full refund. ICC will not, however, be held responsible for any related expense incurring by the participant.

TOWARDS A TRANSNATIONAL APPROACH FOR CHOICE-OF-LAW CLAUSES

Rome, 11 September 2015

REGISTRATION FORM

PARTICIPANT INFORMATION

Title (Mr/Dr/Mrs/etc.)..... First/given name.....
Family name.....
Position.....Company.....

BILLING INFORMATION

First name/Family name.....
or Company name.....
VATn./Tax code.....
Address.....City/State.....
Zip/postal code.....Country.....
E-mail.....
Phone.....Fax.....

REGISTRATION FEES *(Please tick the correct box)*

EARLY BIRD RATE UNTIL 10 JULY 2015

ICC/AIA Members: €400*

Non-Members: €650*

ICC National Committee

**Including VAT*

AFTER 10 JULY 2015

ICC/AIA Members: €500*

Non-Members: €800*

METHOD OF PAYMENT

BY BANK TRANSFER: Camera di Commercio Internazionale

IBAN: IT18A 03069 05077 003815410296

SWIFT: BCITITMM716

Please indicate the name of the participant. Please note that transfer fees charged by the bank must be covered by the participants themselves.

Date.....Signature.....

Information pursuant to D.Lgs. of 30 June 2003 n.196

Under Article 13 of D.Lgs. of 30 June 2003 n. 196, of the Code on the processing of personal data, we inform you that the data contained in this application form will be treated in compliance with the conditions and limits set by art. 11 of the above mentioned decree for all purposes related to enrollment in the seminar and future communications regarding ICC training events.

Disclaimer

The photos and audiovisual recordings taken at this meeting/event may be used and published by ICC, its subsidiaries or affiliates, for informational or promotional purposes in printing materials or online, including on ICC websites and social media. Participation in the meeting/event implies agreement to such use of photos or audiovisual in which the participant may appear unless ICC receives written notification to the contrary.