

Legal Possibilities of Simplifying the Procedure of Concluding Contracts for the International Sale of Goods and Further Unification of their Content

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Abstract

The purpose of the article is to analyse the views of researchers who studied relations arising from contracts for the International Sale of Goods, the norms of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Incoterms® Rules, and on the basis of this analysis to propose directions for unification of such contracts and simplifying the procedure of their conclusion; to formulate recommendations for participants in contractual relations and international trade organisations. The conclusion of the study indicated the possibility and expediency of providing recommendations or appeals to the representatives of the International Chamber of Commerce (ICC), the UN Center for the Simplification of Trade Procedures and Electronic Business Operations (UN/CEFACT), the national chamber of commerce and industry, the legislative

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or executive authorities of their own the state, international and national public organisations, business entities and their associations—exporters and importers.

Introduction

Contracts have been known in the household sphere, the spheres of trade, production, finance, and general entrepreneurial activity for many thousands of years. The majority of researchers believe that in the “law and state” correlation, law was primary in the history of humankind, and the state was secondary. In the “law and contract” correlation, it is possible to suggest that the contract, concluded between people and their groups, was historically primary and existed long before the states and even long before the introduction of the law. The several-thousand-year-long evolution of contracts has gone from simple oral contracts of exchange between people or tribes through the expansion of their diversity and the complexity of the content. This continued for thousands of years: new types of contracts appeared and the content of existing contracts increased.

However, the trend has changed somewhat over the past few years. Now the genesis of the contracts has moved towards the unification of the contracts themselves and the unification and simplification of their content. Special terms are used that replace many words and mean certain complex procedures. These are historical terms formed by trade, maritime, and other legal customs, which are often used in international trade when purchasing products and their transportation, as well as the latest terms developed in recent decades within the framework of legal science and practice. The use of modern information technologies makes it possible to shorten the term of concluding a contract significantly. The universality and brevity of the terms of the contracts allow their participants to save time, effort, and money.

On the other hand, the lack of deep specifics and details can lead to misunderstandings that cost a lot of time and resources, especially financial. Therefore, the millennia-long development history of the legal foundations of contractual relations does not indicate their stability and the absence of a need for new research. On the contrary, legal support of contractual relations requires permanent research in order to find the optimal combination of the brevity of the contract terms with maximum certainty of its content, providing the possibility of a quick conclusion of the contract and respecting the interests of all its parties. This is particularly significant in the field of business, where time is important and valued in money.

Nowadays, business contracts in the field of international trade concluded on the basis of the United Nations Convention on Contracts for the International Sale of Goods (CISG) with the application of the Incoterms® Rules are extremely important.¹ Among Ukrainian authors, Bieliaieva paid attention to the analysis of the provisions of foreign economic contracts, and Derevianko devoted his studies to distinguishing the contract for the International Sale of Goods from other contracts.² While Myroslavskyi identified 14 groups of research on contractual

¹ United Nations, “United Nations Convention on Contracts for the International Sale of Goods”, <https://uncitral.un.org/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>.

² Alla Bieliaieva, *Principle of freedom of the contract in legal regulation of the external economic contract* (Kharkiv: Yaroslav Mudryi National Law University, 2005), p.30. Bohdan Derevianko, “Separation of the international

issues in Ukraine, Vogt and Davis singled out four groups of the latest research on the problems of interpretation and improvement of Incoterms® provisions:

- (I) research on the problems of Incoterms® in relation to the problems of individual countries;
- (II) comparative legal studies of individual terms and types of contracts in different versions of Incoterms®;
- (III) study of the problems of Incoterms® from the positions of trade and legal protection;
- (IV) studies designed to provide interpretation and clarification of the provisions.³

López, Rojas, and López Cadavid analysed 290 academic papers published from 1973 to 2022 in journals indexed in leading scientific metrics databases, such as Scopus and others.⁴ The researchers identified the degree of influence of the Incoterms® Rules development on changes in supply chains, distribution of risks between parties of contracts, speed and efficiency of dispute settlement, financial consequences, etc.

The already mentioned Vogt and Davis noted in their research that the Incoterms® issue has not been sufficiently studied at present. In the 2024 paper, the researchers determined the incorrect interpretation and subsequent application of the Incoterms® Rules, which led to additional unplanned obligations, unnecessary risks, and excessive costs. Furthermore, researchers pointed to the lack of basic training on Incoterms® Rules, which impedes the unified and correct interpretation of these rules by importers and exporters from different countries.⁵

This study supports both statements of those scientists. This study is relevant and will be useful for economic and legal sciences and the practice of concluding and executing contracts for the International Sale of Goods. Moreover, the study and correct interpretation of the Incoterms® Rules should be organised within the legal and economic educational institutions of countries interested in international trade, as well as in order of legal work by the subjects of foreign economic activity themselves—exporters and importers.

The aim of the article is to analyse the views of researchers who studied relations arising from contracts for the International Sale of Goods, the norms of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Incoterms® Rules and suggest directions for unifying and simplifying the procedure of conclusion of such contracts based on this analysis. The aim also includes formulating recommendations for participants in contractual relations and international trade organisations. The objectives of the article are as follows:

purchase-sale contracts from sites other contracts” (2010) 1 *Bulletin of the Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine* 53, 55.

³ Serhii Myroslavskiy, “Status and prospects of contractual relations research” (2024) 47 *Actual Problems of Law: Theory and Practice* 161, 173. John Vogt and Jonathan Davis, “The state of Incoterm® research” (2020) 59 *Transportation Journal* 304, 315.

⁴ Juan Gabriel Vanegas López, José Jaime Baena Rojas and Diego Alejandro López Cadavid, “Interrelations between logistics, trade, and law in the Incoterms® context: A bibliometric analysis of academic literature” (2024) 38 *Scientific Journal of Maritime Research [Pomorstvo]* 82, 90.

⁵ John Vogt and Jonathan Davis, “An exploratory study of Incoterms® knowledge and effective use in trade” (2024) 19 *International Journal of Trade and Global Markets* 193, 202.

- (1) to suggest recommendations to the International Chamber of Commerce (ICC), the Chamber of Commerce and Industry of Ukraine, potential exporters and importers of products;
- (2) to suggest recommendations for states and their chambers of commerce and industry;
- (3) to determine the direction of clarifying the rules for concluding and executing contracts for the International Sale of Goods.

Literature Review

Researchers from many countries and scientific schools paid attention to the problems of legal regulation of contractual relations in the spheres of civil, economic, administrative, constitutional, international, and other fields of law. In the scientific article of Myroslavskyi, the works of modern Ukrainian researchers on the topic of improving the legal support of economic and contractual relations are conditionally divided into 14 large groups according to subject characteristics:

- I. Study of general theoretical provisions on contracts and business contracts;
- II. Study of the level of ensuring the principle of freedom of the contract;
- III. Study of the peculiarities of economic contracts, which differ in the methods of concluding;
- IV. Study of the general provisions on the essential terms of the contract;
- V. Study of individual essential terms of the contract, including the subject, object, and term of the contract and the price formation and determination;
- VI. Research of relations arising from property contracts—contracts for ownership, use and disposal of property, its management, granting of property or property rights for rent, leasing, concession;
- VII. Research of contracts concluded in the field of transport;
- VIII. Research of shareholder and corporate contracts;
- IX. Research of investment contracts;
- X. Study of contracts on joint economic activity (agreements of particular partnership);
- XI. Research of contracts concluded in the agro-industrial complex;
- XII. Study of medical contracts;
- XIII. Research of service agreements, contracts in the field of economic and commercial activity and other contracts in the field of entrepreneurial activity;
- XIV. Research of electronic contracts and related digital contracts, smart contracts, e-contracts.⁶

Durdag and Delipinar investigated the influence of delivery terms and logistics on the formation of Incoterms® provisions and international contracts in the future.⁷ Bergami and Tichá examined the provisions of Incoterms® 2020. The researchers

⁶ Serhii Myroslavskyi, “Status and prospects of contractual relations research” (2024) 47 *Actual Problems of Law: Theory and Practice* 161, 173.

⁷ Celil Durdag and Gül Esin Delipinar, “The past, today and future of Incoterms in international delivery: A review on the innovations in logistics” (2021) 7 *Journal of Economics Library* 201.

highlighted some of the main challenges these provisions pose to exporters under contracts for the International Sale of Goods and suggested directions for reducing exporters' risks.⁸ In 2021, Vogt and Davis conducted a comparative study of the provisions of Incoterms® 2020 with those of Incoterms® 2010. They indicated that the latest Incoterms® 2020 has problems and complications that impede full and comprehensive coverage of all foreign trade and make it difficult to interpret individual terms.⁹

Kim researched the provisions of Incoterms® 2020 and compared certain new and old rules for the goods delivery in international trade with proposals for further clarification and improvement.¹⁰ Stojanovic and Ivetic investigated the relationship between the quality of logistics of countries and the level of their economic development with the effectiveness of the application of Incoterms® rules.¹¹ The researchers posit that the provisions of Incoterms® and indicators of their effectiveness should be employed when monitoring, evaluating, and analysing the use of transport and logistics in the country to enhance them in the future.

A group of researchers from a country with a developing economy, Bangladesh, identified three main factors that influence the choice of Incoterms® rules by small and medium-sized businesses from underdeveloped countries: state economic policy; influence of commercial banks; exchange rate fluctuations. The researchers concluded that exporters from such countries most often used free-on-board (FOB) rules, and importers from such countries—cost and freight rules (CFR).¹² Researchers from Thailand studied the peculiarities of the choice of Incoterms® rules by companies that export and import car spare parts. Among the main criteria for choosing specific Incoterms® Rules, they determined the cost of products, transport costs and total costs of all operating companies. Their consideration directly supports the selection of certain Incoterms® rules.¹³

The Japanese scientist Soga studied the factors that influence the choice by potential participants of contracts for the International Sale of Goods of certain conditions under the Incoterms® Rules and, accordingly, of the contract conditions.¹⁴ According to the scientist's conclusions, the most important in this aspect are the industry of production (product range), the nationality of the exporter and importer, as well as their experience of participating in international trade. The Chinese researcher Shang analysed the provisions of Incoterms® 2020 and identified their positive and negative points, and also provided recommendations

⁸ Roberto Bergami and Lucie Tichá, "Managing Incoterms® 2020 export risks" (2022) 23 *International Journal of Economics and Business Research* 255, 267.

⁹ Jonathan Davis and John Vogt, "Incoterms® 2020 and the missed opportunities for the next version" (2021) 25 *International Journal of Logistics Research and Applications* 1263, 1271.

¹⁰ Sang Man Kim, "Right choice of DPU in Incoterms 2020" (2021) 16 *Global Trade and Customs Journal* 114, 118.

¹¹ Đurđica Stojanović and Jelena Ivetić, "Possibilities of using Incoterms clauses in a country logistics performance assessment and benchmarking" (2020) 98 *Transport Policy* 217, 221.

¹² Wahidul Sheikh, S. M. Abu Nahiyen Miah, Md. Tanvir Hasan, Khadija Khatun Zitu, and Jakir Hosain, "Optimising international trade: The examination of Incoterms selection by exporters and importers" (2024) 34 *Review of International Business and Strategy* 562, 570.

¹³ Juthathip Suraraksa, Chompoonut Amchang, and Nutcharin Sawatwong, "Decision-making on Incoterms 2020 of automotive parts manufacturers in Thailand" (2020) 7 *Journal of Asian Finance, Economics and Business* 461, 463.

¹⁴ Hiroto Soga, "An exploratory analysis of the factors affecting Incoterms selection from the perspective of firm characteristics" (2021) 13 *International Journal of Japan Association for Management Systems* 9, 11.

to parties of international trade agreements.¹⁵ Modern studies pay great attention to the use of the latest information technologies at various stages of the execution of the contract for the International Sale of Goods, in particular at the stage of selecting suppliers for the conclusion of the contract for the International Sale of pharmaceutical products.¹⁶

A brief review of some modern research on the issues of settlement of contractual relations in foreign trade, in particular with the application of the Incoterms® Rules, and its latest edition—Incoterms® 2020, shows there are still a lot of problems despite the wide practice. The literature review also indicates the diversity of relations in the field of foreign economic activity, their complexity due to the specifics of the subject of trade, the geography of the countries of economic entities—exporters and importers, logistics, etc. Such a situation only adds to the number of unresolved problems and emphasises the need to study the provisions of Incoterms®, the United Nations Convention on Contracts for the International Sale of Goods (CISG) and acts of internal foreign economic legislation of various countries.

Materials and Methods

Various methods of scientific investigation can be applied in achieving the defined purpose. Thus, the use of methods of analysis and synthesis made it possible to carry out a critical analysis of scientific sources on the topic of the study, to determine the degree of their depth and relevance for this research. Based on the analysis of researchers' views on relations arising from contracts for the International Sale of Goods, the norms of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the rules of Incoterms®, and considerations provided in this article, it is possible to recommend the International Chamber of Commerce (ICC), the Chamber of Commerce and Industry of Ukraine, potential exporters and importers of products based on the Vienna Convention change the Incoterms® Rules not in ten but in fifteen years. However, the International Chamber of Commerce (ICC) should be granted the right to promptly make changes to the current Incoterms® Rules provided the reasons described by it—revolutionary changes in the rules of foreign trade according to the legislation of a significant number of countries with the most powerful economies in the world.

Formal-logical and systemic-structural methods made it possible to trace connections in relations between potential participants in foreign economic agreements. Their application made it possible to clarify the rules of conclusion for concluding and executing contracts for the International Sale of Goods through the active use of modern digital technologies in digital contracts and e-contracts as components of electronic contracts with the proposal of the content of such contracts by one of the parties—the exporter or the importer.

¹⁵ Beier Shang, “Positive Changes and Remaining Shortcomings of Incoterms® 2020” (2024) 13 *Frontiers in Business, Economics and Management* 268, 269.

¹⁶ Pankaj Kumar Detwal, Gunjan Soni, Suresh Kumar Jakhar, Deepak Kumar Srivastava, Jitender Madaan, and Yasanur Kayikci, “Machine learning-based technique for predicting vendor incoterm (contract) in global omnichannel pharmaceutical supply chain” (2023) 158 *Journal of Business Research*, <https://doi.org/10.1016/j.jbusres.2023.113688>.

The method of interpretation of legal norms made it possible to determine the intention of the initiators of amendments and additions to international legal acts, in particular the Incoterms® Rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Its application made it possible to interpret the principle of freedom of contract and to propose for states through their chambers of commerce and industry to apply to the International Chamber of Commerce (ICC) with a request to change or supplement certain conditions of the Incoterms® Rules in the current Rules in case the International Chamber of Commerce (ICC) has such a right.

The use of historical and dialectical methods was used when clarifying the grounds and legal nature of provisions on contracts, business contracts, determining their content and methods of conclusion. The comparative method of research made it possible to compare the provisions of different editions of Incoterms®, as well as the legislative norms of other acts; to compare the views of researchers from different countries and, based on the other named methods, to provide recommendations and formulate conclusions of the work. The application of the comparative legal method and the method of analogy made it possible to provide recommendations to subjects of foreign economic activity—exporters and importers. The latter can increase the degree of effectiveness of legal work at the enterprise, which will be reflected in the organisation of training employees in the ability to correctly interpret the Incoterms® Rules and the skills to choose the optimal content of contracts and economically profitable delivery logistics.

Results and Discussion

Theoretical aspects of the contract for the International Sale of Goods

The categories contract and business contract are international. The main types of business contracts have the same names and content, which are their essential conditions, in the absolute majority of countries of the world. This is indicated by the international nature of trade relations, as opposed to the domestic nature of, for example, family, housing, inheritance, labor and other relations. The latter are based on the mentality of the people, norms of morality, religion, etc., which are different in each country and even its regions. Relations in international trade and transport are based on objective physical and chemical characteristics, such as distance, weight (quantity), the density of a material, sample of precious metal, “purity” of precious stones, age and health of animals and slaves, their physical strength and endurance, etc. This characterises the useful qualities of objects of ancient, medieval, and early capitalist international trade and the degree of complexity of their transportation.

Since the physical and chemical indicators are objective, they do not depend on the subjective administrative decisions of individual people or their groups endowed with power. In addition, it should be mentioned that economic and judicial practice, formed during the organisation and implementation of international trade through sea and land routes, contributes to the unification of the form and content of economic contracts and, accordingly, simplifies the procedure of their concluding.

Several centuries ago, the unification of business contracts and the unification of norms and rules for resolving disputes between their participants were carried out within merchant guilds on the basis of formation, execution and codification through the systematisation of maritime and other honest trade customs. An example of such a medieval set of legal customs, which after systematisation took the form of a specific normative legal act, is the Amalfi table from the Italian port and trading city of Amalfi.

On the basis of such systematised acts, the content of economic contracts was determined—primarily in the field of trade and navigation. Various rules and customs were carefully described, but finally determined by only one or a few words. Participants of international trade and maritime relations knew the definition of one or another term, and therefore the scope of contracts was reduced and unified. A brief reference in the text of the contract to a certain trade or maritime custom, without describing it, was often sufficient. Now, thanks to the unified International commercial terms (abbreviated as Incoterms®), which will be discussed below, the initiator of the conclusion of the contract (exporter or importer) in the offer indicates a certain Incoterms® rule, port, city or place, as well as the edition of Incoterms®. This is more than enough to start negotiations on the terms of the contract.

Collective trade agreements may be adopted and put into effect in some regions of the world. Thus, Directive 2014/25 of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport, and postal service sectors and repealing Directive 2004/17 is in effect within the EU. Part 2 of art.1 of Directive 2014/25 of the European Parliament and of the Council defines the rules of “the acquisition by means of a supply, works or service contract of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities” under certain conditions.¹⁷ Directive 2019/771 of the European Parliament and of the Council on certain aspects concerning contracts for the sale of goods, amending Regulation 2017/2394 and Directive 2009/22, and repealing Directive 1999/44 is designed to foster the proper functioning of the internal market but ensure a high level of consumer protection by establishing common rules on certain requirements for contracts for the sale of goods.¹⁸ Other directives and national acts that determine the procedure for concluding contracts for the international sale of goods and protecting the legitimate interests of their parties have jurisdiction within the EU.

Today, international trade is conducted using the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, also known as the Vienna Convention.¹⁹ For Ukraine, this Convention came into force on 1 February 1991. The Convention is designed to promote the establishment of a single standard economic order in foreign trade, as well as to promote the elimination of legal barriers between subjects of foreign trade—sellers

¹⁷ European Parliament and the Council, “Directive 2014/25 of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17”, <https://eur-lex.europa.eu/eli/dir/2014/25/oj>.

¹⁸ European Parliament and the Council, “Directive 2019/771 of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation 2017/2394 and Directive 2009/22, and repealing Directive 1999/44”, <https://eur-lex.europa.eu/eli/dir/2019/771/oj>.

¹⁹ United Nations, “United Nations Convention on Contracts for the International Sale of Goods”, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>.

and buyers under the contract for the International Sale of Goods, who are residents of different countries.

Today, Incoterms® operate as a development of the provisions of the Vienna Convention. They are a set of rules and conditions for the organisation of international trade and the conditions of contracts for the International Sale of Goods, and the latest edition was Incoterms® 2020.²⁰ Incoterms® rules are adopted by the International Chamber of Commerce (ICC), which includes several million large commercial companies, trade and industrial associations, chambers of commerce and industry in most countries of the world, and national committees (representative offices) in 91 countries. The activity of the UN Center for the Simplification of Trade Procedures and Electronic Business Operations (UN/CEFACT) contributes to the simplification and deepening of international trade.

The Incoterms® 2020 Rules are not the first, but for today the last (the eighth) edition of the very first Incoterms® 1936 Rules, which are periodically updated. Before now, the Incoterms® 2000 Rules and the Incoterms® 2010 Rules were in force. In general, the Incoterms® Rules have been updated regularly, with new versions released every ten years. The Incoterms® rules can be considered as a document that supplements and at the same time clarifies and specifies the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and other international and national acts on foreign economic contracts.

The very first Incoterms® 1936 Rules were adopted long before the Vienna Convention. After its adoption, subjects of foreign trade got the opportunity to use the provisions of the Incoterms® Rules of different years, provisions of the Convention and/or acts of certain national legislation. According to the general rule of correlation of the norms of different legal acts “*Lex specialis derogat generali*”, formulated by the lawyers of Ancient Rome, the Incoterms® Rules should have priority over the provisions of the Vienna Convention. This rule works only in case of mandatory application of both named acts when concluding contracts for the International Sale of Goods. Due to the optional nature of the application of both acts (most often the provisions of international conventions on economic issues have a dispositive or recommendatory nature), potential parties of contracts are free to choose certain provisions of acts of international and national legislation. Therefore, it is not a case of the theoretical competition of the norms of different acts here. In practice, this is resolved during the discussion of the content, in particular all essential conditions, and the conclusion of contracts.

Disputed provisions of the Incoterms® Rules and proposals for their clarification

The rules of Incoterms® of various editions, in particular the latest adopted—Incoterms® 2020, are not ideal, as they cannot suit all of the dozens or even hundreds of millions of companies that use them to conclude and execute contracts for the International Sale of Goods, as well as various related contracts,

²⁰ International Chamber of Commerce, “Incoterms-2000 (ICC 560)”, <https://cis-legislation.com/document.fwx?rgn=32945> [Accessed 15 August 2024]. International Chamber of Commerce, “Incoterms® 2020”, <https://iscosaficashipping.org/wp-content/uploads/2020/02/ICC-INCOTERMS-2020.pdf>.

in particular, on the transportation of products by various means of transport. Therefore, these Rules are updated annually in an effort to obtain improvements. In the paper dated 2000, Won-Suk pointed out the progressiveness of many provisions of the Incoterms® 2000 Rules, in particular in terms of the spread of electronic communications, clarification of many terms, changes in the competence (scope of rights and obligations) of participants, etc.²¹ After 20 years other researchers focus on the progress of the new provisions of Incoterms® 2020 compared to the previous ones. In general, the development of logistics, the emergence of new types of transport and technologies cannot but affect international trade. According to forecasts of Turkish researchers, if there are relatively few changes in the next Incoterms® 2030 Rules, then the Incoterms® 2040 Rules will have a revolutionary meaning.²²

The use of uniform and simple Incoterms® Rules is beneficial to countries with access to the sea and whose business entities are actively engaged in maritime trade and shipping. Thus, in Southeastern Europe, the largest sea ports in the Black Sea are the ports in Romania, Bulgaria, Ukraine, and Turkey. The city of Constanta in Romania is the largest port in the Black Sea with more than 140 simultaneously operating berths. The largest sea ports in Bulgaria are located in Varna and Burgas, while in Turkey—in Istanbul. In Ukraine, grain is exported to Europe, Africa, and Asia through sea ports located in Odesa and Chornomorsk. The unambiguous Incoterms® Rules and the United Nations Convention on Contracts for International Sale of Goods (CISG) standards facilitate maritime trade through these ports.

A researcher from South Korea, Kim, names among the positive aspects of Incoterms® 2020 defining the boundaries of the relationships regulated by them, that is, determining which relationships should be regulated by the Incoterms® 2020 Rules and which should not.²³ Shang points out that the merit of Incoterms® 2020 is to take into account the modern needs of foreign trade subjects by changing certain rules and providing clarifications. Among other things, the author supported the introduction of changes and additions, specifying the FCA and CIP rules, as well as the formulation of additional requirements for the safety of transportation of products (cargo), their packaging. At the same time, the scientist reminds potential contract participants that the Incoterms® 2020 Rules still need to be specified; he indicates the need to avoid unnecessary disputes due to, in his opinion, sufficiently broad interpretation of contractual relations, as well as the need to ensure as safe and conflict-free development of a unified trade order as possible.²⁴

In this connection, one of the warnings to modern humanity reflected in the Georgia Guidestones can be mentioned and cited: “Avoid petty laws and useless officials” (English text); “Avoid petty lawsuits and useless officials” (translated from the Russian text). That is, the provisions of Incoterms® 2020, the United Nations Convention on Contracts for the International Sale of Goods (CISG), international and national legal acts must ensure that the parties agree on the text

²¹ Oh Won-Suk, “Incoterms 2000 and maritime term” (2000) 13 *The International Commerce & Law Review* 105, 111.

²² Celil Durdag and Gül Esin Delipinar, “The past, today and future of Incoterms in international delivery: A review on the innovations in logistics” (2021) 7 *Journal of Economics Library* 201, 205.

²³ Sang Man Kim, “A study on the major changes in the Incoterms® 2020” (2019) 67 *Kyungpook National University Law Journal* 259, 272.

²⁴ Beier Shang, “Positive Changes and Remaining Shortcomings of Incoterms® 2020” (2024) 13 *Frontiers in Business, Economics and Management* 268, 270.

of the contract in such a way that it cannot contribute to the emergence of disputes between them.

Other modern researchers point to certain positives of the Incoterms® 2020 Rules, but also emphasise the emergence of problems associated with changes in the Incoterms® CIF and CIP terms regarding insurance in international trade.²⁵ Thus, the adoption of the new Incoterms® Rules can simplify, clarify, or otherwise improve a certain number of terms, competencies of participants, and potential conditions of contracts. However, the same or other conditions in the Incoterms® Rules create new problems in some other aspects. Therefore, the need to improve the Incoterms® Rules is permanent.

Based on the results of his research, Kim noted that the DAT (Delivered at Terminal) rule was removed from the Incoterms® 2020 Rules, and the DPU (Delivered at Place Unloaded) rule was introduced in its place.²⁶ The scientist noticed the similarity of the new DPU Rule with the previously existing and currently valid DAP (Delivered at Place) Rule, and not with the deleted DAT (Delivered at Terminal) rule, and also pointed to the need for clarification regarding the correctness and clarity of the application of the new DPU Rule (Delivered at Place Unloaded) during the conclusion and execution of contracts for the International Sale of Goods. The above considerations of scientists from different countries prove that not always the new Incoterms® Rules are better than the previous ones, and that not all new Incoterms® Rules are positively perceived by researchers, and most importantly—by potential exporters, importers, carriers, insurers or other participants in contractual relations during organisation and implementation of international trade.

The above-mentioned Durdag and Delipinar indicate that updating the Incoterms® Rules every ten years is too fast and a significant number of participants in contractual international relations often cannot adapt to constant changes, and this causes them inconvenience.²⁷ This study puts forward a similar opinion. It seems logical that certain Incoterms® Rules should be valid for a longer period of time, for example fifteen years instead of ten. In this case, exporters (sellers) and importers (buyers) will have more time to organise and implement established contractual foreign economic activities. At the same time, the International Chamber of Commerce (ICC) may reserve the right to make changes or additions to the current edition of the Incoterms® Rules at any time, for example, based on the need to respond to certain revolutionary changes in the rules of foreign trade under the legislation of a significant number of countries with the most powerful economies in the world.

Other researchers remind potential importers and exporters of the retroactive effect of the law in relation to the Incoterms® Rules and the fairly widespread use of previous versions of the Rules, including Incoterms® 2000 and Incoterms® 2010.²⁸ The principle of freedom of contract does not prohibit its potential

²⁵ Jincheol Lee and Hong Seung Hong, “Study of marine cargo insurance under the Incoterms 2020 CIP term” (2024) 19 *Global Trade and Customs Journal* 260, 264.

²⁶ Sang Man Kim, “Right choice of DPU in Incoterms 2020” (2021) 16 *Global Trade and Customs Journal* 114, 118.

²⁷ Celil Durdag and Gül Esin Delipinar, “The past, today and future of Incoterms in international delivery: A review on the innovations in logistics” (2021) 7 *Journal of Economics Library* 201, 205.

²⁸ Jose Jaime Baena-Rojas and Jose Alejandro Cano, “Technique for estimation of costs and prices in contracts for the international sale of goods based on Incoterms®” (2022) 9 *Acta Logistica* 171, 179.

participants from choosing any version of the content based on the latest or previous Incoterms® Rules or to ignore all these Rules altogether.

Suraraksa, Amchang, and Sawatwong believe that the research of relations that arise on the basis of the use of the Incoterms® Rules should be conducted more actively and broader—various aspects of foreign economic activity and the content of various international agreements should be investigated.²⁹ Potential sellers and buyers can offer various alternatives to the Incoterms® Rules in case of difficulty in concluding a contract for the International Sale of Goods in each specific situation.

It should be reminded once again that the application of the Incoterms® Rules is optional. The contract can be concluded on the basis of the provisions of national legislation—the country of the seller or the country of the buyer under the contract, or of a third country. In this case, the parties, based on the principle of freedom of contract, will independently determine all the essential terms of the contract and include them in its content. On the one hand, the presence of such an opportunity should have a positive effect on the awareness of the freedom and security of the parties to the agreement and will also increase the role of the national legislation on the basis of which the agreement will be concluded.

On the other hand, using of national legislation will discredit the attempt to unify and simplify the conclusion of contracts for the International Sale of Goods, and will not contribute to the elimination of legal barriers in international trade. In any case, each of the parties to the contract is interested in personal gain. The application of the Incoterms® Rules is important for a potential exporter or importer under a contract for the International Sale of Goods in order to find a counterparty and quickly conclude a contract with him. Globally, states should be more interested in the elimination of legal barriers in international trade. The states through their chambers of commerce, relevant ministries, or other bodies can apply to the International Chamber of Commerce (ICC) with a request to change or supplement certain conditions of the Incoterms® Rules in the current Rules (if the International Chamber of Commerce (ICC) legitimises the right to make current changes) or in the following editions.

In light of the above, it seems prudent to suggest that the provisions of the Incoterms® Rules be developed, coordinated, and approved as international rules for maritime trade in the countries of the Black Sea region. The initiators of this development may be Romania, Bulgaria, and Ukraine. In the long term, the initiators can also be Turkey, Georgia, and countries formed after the possible collapse of Russia, or Russia itself after a change in its political leadership (otherwise, concluding agreements with Russia is inappropriate due to its failure to fulfill its contractual obligations). The general rules of sea trade of the Black Sea countries, considering their national economic features, will be of more interest to countries with the largest ports and subjects of port and those engaged in port and sea transportation business.

²⁹ Juthathip Suraraksa, Chompoonut Amchang and Nutcharin Sawatwong, “Decision-making on Incoterms 2020 of automotive parts manufacturers in Thailand” (2020) 7 *Journal of Asian Finance, Economics and Business* 461, 462.

Possibilities of specifying the rules for concluding and executing contracts for the International Sale of Goods

Revitalisation of international trade is possible due to the development of a standard contract for the International Sale of Goods, simplified as much as possible. At the same time, simplicity and a relatively small volume should not be ensured at the expense of reducing its essential conditions. The latter should be written briefly, but clearly and unambiguously for interpretation. Vienna Convention does not give the definition for the concept of contract for the International Sale of Goods. It is given by national legislation or scientific doctrine. The latter can include the concept provided by Derevianko: “a contract under which one party—a seller, a supplier, who is a subject of foreign economic activity of one country, transfers or undertakes to transfer property (goods that are final products), in whole or in parts, with export abroad into the ownership of the second party—the buyer, who is the subject of foreign economic activity of another country, and accepts or undertakes to accept the property (goods) and pay a certain amount of money for it.”³⁰ In other words, in this contract there are two parties—the seller and the buyer, who are in the jurisdiction of different countries.

The goods cross at least one border. The seller transfers it in whole or in parts to the buyer. As indicated above, the content of the contract for the International Sale of Goods (its essential terms) is determined by the parties based on the provisions of the Vienna Convention, Incoterms® Rules and/or acts of national legislation. At the same time, the application of the Incoterms® Rules, according to the researchers, allows for quick coordination and distribution of risks between the participants of the contract for the International Sale of Goods. In addition, the application of the Incoterms® Rules, as indicated by the results of recent studies, is a way to save time and effort of potential sellers (exporters) and buyers (importers) under the contract, as it allows you to avoid the work of negotiating the terms of the contract.³¹

Possibilities of clarifying the rules of conclusion and execution of contracts for the International Sale of Goods should be found not only “from above”, that is, through amendments to the editions of the Incoterms® Rules, adoption of new international conventions, amendments and additions to internal foreign economic, trade, business legislation, but also through the organisation of legal work by the subjects of foreign trade themselves. In Ukraine, in the theory of economic law, such activity is called “legal work at the enterprise” and, among other things, involves the effective work of the legal department or a lawyer with a deep study of the nuances of economic legislation according to the profile of activity, careful specification of all essential conditions in contracts (recognition of various risks, as well as various types of responsibility in different branches of economy), strict fulfillment of their obligations to employees and shareholders, etc.

Due to the organisation and implementation of such work, the economic entity will be protected as much as possible from attacks by “raiders”, illegal actions of competitors, etc. This position is confirmed by the conclusions of Vogt and Davis,

³⁰ Bohdan Derevianko, “Regarding the notion of an international sales contract” (2009) 2 *Court Practice* 22.

³¹ Nengi Karibi-Botoye, Ndah Ejims Enwukwe and Blessing B. Timothy, “An appraisal of the passing of risk in the international sale of goods under International Chamber of Commerce Terms (Incoterms)” (2022) 2 *The Journal of International Trade Law & Contemporary Issues* 1, 6.

who emphasise the need for subjects of foreign economic activity to have high-quality specialists in their legal and other departments, or preferably to attract such specialists on a permanent basis.³² These specialists must have competence in the fields of industry, trade and logistics, as well as the ability to correctly interpret the Incoterms® Rules in order to strategically correctly choose the most profitable among them, which take into account the logistical aspects and the available opportunities of the seller and the buyer, and choose the most economically advantageous method of delivery of goods.

This study holds it will not be difficult for a large subject of foreign economic activity to organise periodic or permanent courses for employees of legal, economic departments or special marketing departments, which are engaged in the organisation of the sale of products abroad or the purchase of raw materials or products on foreign markets. Another option may be to send employees of the mentioned departments to courses at other organisations. In any case, the organisation of legal work at the enterprise in the form of improving the qualifications of employees in terms of knowledge and ability to work with the Incoterms® Rules, the Vienna Convention and the special economic and trade legislation of various countries, and as a result the effective work of such employees at the enterprise, will be economically more rational than the involvement of specialists from outside.

In addition to providing recommendations to subjects of foreign trade, clarification of the rules for concluding and executing contracts for the International Sale of Goods can be carried out by shortening the content of the contract and simplifying the process of its conclusion as much as possible. The Vienna Convention was held in the era without the Internet and modern digital technologies. Their existence greatly simplifies communications. Furthermore, the use of modern technologies can significantly simplify the process of concluding a contract. Article 11 of the Vienna Convention indicates that the written form of the contract for the International Sale of Goods is optional. Meanwhile, arts 12 and 96 of the Vienna Convention determine that the parties will be obliged to apply a mandatory written form of the contract for the International Sale of Goods if this is required by the legislation of the country of the seller or the buyer under the contract. Article 13 of the Vienna Convention also defines that written form of the contract can be send by telegraph and teletype.³³

It is clear that it was difficult to foresee the possibility of concluding a contract with the help of the latest computer technologies in 1980. Today, the classic or simplified electronic form of the contract can be considered written. The question is related to the simplification of its content and the use of automatic or the simplest method of conclusion. This is where the Incoterms® Rules come in handy. At the same time, potential participants of the contract for the International Sale of Goods are not prohibited from independently determining their content.

Today, in addition to classic business contracts, many other types of contracts are distinguished by the method of execution: digital contracts, e-contracts, smart contracts and related categories of contracts. Myroslavskyi proved that the concept

³² Jonathan Davis and John Vogt, "Hidden supply chain risk and Incoterms®: Analysis and mitigation strategies" (2021) 14 *Journal of Risk and Financial Management* 1, 9.

³³ United Nations, "United Nations Convention on Contracts for the International Sale of Goods", <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>.

of an electronic contract is broad and legitimate in the legislation of Ukraine; its difference from classic contracts is only in the electronic form; digital contracts and e-contracts are components or separate types of an electronic contract; the parties of the e-contract recognise each other during its conclusion; the widespread use of e-contracts in economic practice should contribute to the saving of time, financial and other resources by participants in contractual relations.³⁴ The e-contract is often drawn up by one of the potential parties of the contract; it is a so called “contract of accession”, which, in the case of the consent of the other party, significantly simplifies and speeds up the process of concluding the contract.

Therefore, the clarification of the rules for concluding and executing contracts for the International Sale of Goods is possible in:

- the area of organising effective legal work at the enterprise;
- exporter and importer, which should begin with professional training of employees in the ability to choose the optimal conditions of the Incoterms® Rules and logistics in each specific practical case;
- the field of wider application of digital technologies, in particular in digital contracts and e-contracts as components of electronic contracts.

Conclusion

Only the norms of acts of internal national legislation can be the object of proposals for amendments and additions to the legislation for researchers. In relation to international conventions or Incoterms® Rules, researchers can only provide recommendations or make appeals to the representatives of the International Chamber of Commerce (ICC), the UN Center for the Simplification of Trade Procedures and Electronic Business Transactions (UN/CEFACT), the national chamber of commerce and industry, bodies of legislative or executive power of their own state, international and national public organisations, economic entities and their associations—exporters and importers.

Based on the analysis of researchers’ views on relations arising from contracts for the International Sale of Goods, the norms of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the rules of Incoterms®, and considerations provided in this article, it is possible to recommend the International Chamber of Commerce (ICC), the Chamber of Commerce and Industry of Ukraine, potential exporters and importers of products based on the Vienna Convention change the Incoterms® Rules not in ten but in fifteen years. However, the International Chamber of Commerce (ICC) should be granted the right to promptly make changes to the current Incoterms® Rules provided the reasons described by it—revolutionary changes in the rules of foreign trade according to the legislation of a significant number of countries with the most powerful economies in the world.

An alternative may be the development and approval of uniform rules for trade between countries of a certain geographic region. Thus, rules for concluding contracts between sea carriers of the Black Sea region may be approved. Their use

³⁴ Serhii Myroslavskiy, “Electronic, digital, smart contracts, e-contracts in Ukrainian law and legislation” (2024) 1 *Economics and Law* 12.

may be beneficial to shareholders and owners of sea ports, as well as sea vessels from Romania, Bulgaria, Ukraine, Turkey, and other countries, whose vessels call at the Black Sea ports of the named countries.

The principle of freedom of contract and the optional application of the provisions of the Vienna Convention, the Incoterms® Rules of various editions and the provisions of acts of national legislation do not contribute to the uniformity of the content of contracts for the International Sale of Goods and the elimination of legal barriers in international trade, which may cause the reduction of foreign trade volumes. Therefore, it is advisable for states through their chambers of commerce and industry to apply to the International Chamber of Commerce (ICC) with a request to change or supplement certain conditions of the Incoterms® Rules in the current Rules in case the International Chamber of Commerce (ICC) has such a right.

Clarification of the rules for the conclusion and execution of contracts for the International Sale of Goods can occur through the provision of recommendations to subjects of foreign economic activity—exporters and importers. The latter can increase the degree of effectiveness of legal work at the enterprise, which will be reflected in the organisation of training employees in the ability to correctly interpret the Incoterms® Rules and the skills to choose the optimal content of contracts and economically profitable delivery logistics. The organisation of such training will be economically more rational for the subject of foreign economic activity than using the services of specialised law, consulting and other companies.

Clarification of the rules for concluding and executing contracts for the International Sale of Goods can be carried out through the active use of modern digital technologies in digital contracts and e-contracts as components of electronic contracts with the proposal of the content of such contracts by one of the parties—the exporter or the importer. This will make it possible to strengthen the degree of unification of such contracts and simplify the procedure for concluding them.

Prospects for further scientific research are in the field of legal and economic sciences in the direction of further simplification of the procedure for concluding contracts for the International Sale of Goods and other contracts; specification of the content of contracts; development of proposals for combining certain Incoterms® rules and vice versa—selection new rules from the existing ones, etc.