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Item No. 13 on the agenda: Draft Triennial Work Programme 2014-2016 –
Comments received by the Secretariat

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the comments received by the Secretariat on the draft Work Programme for the 2014-2016 triennium</i>
<i>Action to be taken</i>	<i>To take note of the comments</i>
<i>Related documents</i>	<i>UNIDROIT 2013 –C.D (92) 13</i>

1. Article 5(3) of the UNIDROIT Statute mandates the Governing Council to prepare the ground for the adoption by the General Assembly of the new triennial Work Programme by analysing comments and proposals submitted by member Governments and the Institute's correspondents with a view to formulating recommendations. The Secretariat has prepared a document containing comments on the proposed new Work Programme and suggestions for projects and activities to be included in the UNIDROIT Work Programme for the triennium 2014-2016 (cf. UNIDROIT 2013 – C.D.(92) 13 and Annex I to this document).
2. In accordance with UNIDROIT's usual practice, Member Governments were informed about the status of all items on the current and proposals for the future triennial Work Programme by Note Verbale (refce: 97/WP) dated 1 February 2013 (Annex II). 3 Governments replied by 17 April 2013: Colombia, Tunisia and the United States of America. Their comments are reproduced in Annex III to this document.
3. Nine of the Institute's correspondents, who were also consulted, submitted comments: Mr Boutin (Panama), Ms Chiavarelli (Italy), Mr de Nova (Italy), Mr Finn (Australia), Mr Furnston (United Kingdom), Mr Kozuka (Japan), Mr Kramer (Switzerland), Mr Morán Bovio (Spain) and Mr Zimmermann (Germany) as well as one institutional correspondent, the Max-Planck-Institut für ausländisches und internationales Privatrecht. Those comments, together with comments received by other individuals, are reproduced in Annex IV to this document.
4. *The Governing Council is invited to take note of the comments received by the Secretariat.*

DRAFT WORK PROGRAMME FOR THE TRIENNIUM 2014-2016**A. Legislative activities**

1. International Commercial Contracts
 - (a) Issues relating to long-term contracts, in particular termination for just cause **
 - (b) Issues relating to multilateral contracts, in particular corporate contracts *
2. Secured transactions
 - (a) Implementation of the Rail and Space Protocols to the Cape Town Convention***
 - (b) Preparation of other Protocols to the Cape Town Convention
 - (i) Agricultural, mining and construction equipment **/*
 - (ii) Ships and maritime transport equipment **/*
 - (iii) Off-shore power generation and similar equipment **/*
3. Transactions on Transnational and Connected Capital Markets
 - (a) Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets **/*
 - (b) Additional topics *
4. Liability for Satellite-based Services **/*
5. Private law and development
 - (a) Private law aspects of agricultural financing
 - (i) Contract Farming ***
 - (ii) Possible future work in the field of private law and agricultural development
 - (a) Possible preparation of an international guidance document on land investment contracts *
 - (b) Possible future work in other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing
 - (b) Legal aspects of social business *
6. Transnational civil procedure: formulation of regional rules **/*

B. Implementation and promotion of UNIDROIT instruments

1. Depository functions ***
2. Promotion of UNIDROIT instruments ***
 - (a) UNIDROIT Principles of International Commercial Contracts
 - (b) UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva, 2009)
 - (c) UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) and 2011 UNESCO-UNIDROIT Model Provisions on State ownership of Undiscovered Cultural Objects
 - (d) Convention on the Form of an International Will (Washington, D.C. 1973)

C. Non-legislative activities

1. UNIDROIT Library and Depository Libraries
2. Information resources and policy
 - (a) Uniform Law Review and other publications
 - (b) Website
3. Internships and scholarships

ANNEX II

97/WP

NOTE VERBALE

Re: Draft triennial Work Programme (2014-2016)

The International Institute for the Unification of Private Law (UNIDROIT) presents its compliments to the Embassy of in Italy and has the honour to transmit attached hereto copy of a document providing suggestions of the Secretariat for projects and activities to be included in the UNIDROIT Work Programme for the triennium 2014-2016 (UNIDROIT 2013 – C.D. (92) 13).

In accordance with its usual practice, UNIDROIT has the honour to refer to its Member States on its draft Work Programme before it is adopted. In fact, the Governing Council will discuss the proposals at its 92nd session (May 2013) and submit a draft to the General Assembly for formal adoption at its 72nd session (November/December 2013).

In view of member Governments', the Governing Council's and the Secretariat's desire to keep the Institute's work focuses on those areas where UNIDROIT has acquired special expertise and to establish clear priorities, the Secretariat would recommend to continue work in subject-matter areas as credit, finance, capital markets, general law of contracts and, possibly, liability for space-based services, while being open to any other proposal, and caution against adding too great a number of new items or new subject-matter areas.

As to the Organisation's objective to ensure that, in principle, at least one project be geared to the needs of developing countries feature on the Work Programme at all times, the Secretariat would submit that subjects as the emerging-markets, the private law aspects of agricultural financing, a fourth protocol to the Cape Town Convention or liability for certain space-based services that are of particular importance for developing countries might be considered to satisfy that criterion.

In these circumstances, the Secretariat would be most grateful if the Embassy of in Italy could bring this Note Verbale as well as the attached document to the attention of the competent Authorities of its Government and to convey to the Secretariat (info@unidroit.org), if possible no later than 22 March 2013, any comments and proposals on the draft Work Programme for the 2014-2016 triennium. Governments are invited to indicate their specific priorities with regard to the items.

UNIDROIT finally avails itself of this opportunity to renew to the Embassy of ... in Italy the assurances of its highest consideration.

Rome, 1 February 2013

To the Embassy of ... in Italy
ROME

ANNEX III**Comments received from Member States on the future UNIDROIT Work Programme
(2014 – 2016)****COLOMBIA****INTRODUCTION**

Colombia acceded to the Statute of the International Institute for the Unification of Private Law (UNIDROIT) in 1940. However, entry into force of that statute did not occur until October 18, 1994, after completion of incorporation into national law.

Despite being part of UNIDROIT for almost 30 years, Colombia's participation has not been very active. At present, Colombia has acquired international commitments only with relation to the 1995 Convention on Stolen or Illegally Exported Cultural Objects and the Convention on International Interests in Mobile Equipment of 2001. As a result, the Ministry of Foreign Affairs began a program for reaching out to stakeholders interested in UNIDROIT's activities since last year.

In this context, the UNIDROIT work program for 2014-2016 includes a range of topics of interest to Colombia, which warrant comment. Consequently, the Economic Affairs Coordination of the Economic, Social and Environmental Department and the Cultural Affairs Coordination, after making inquiries with the relevant technical authorities in the field and in response to UNIDROIT's Note Verbale 97/WP of 1 February 2013, have the following comments:

Distribution of Human and Financial Resources

With regard to the distribution of financial and human resources by the International Institute for the Unification of Private Law, Colombia presents no objection and agrees with the assignment given by UNIDROIT.

Comments and Recommendations on UNIDROIT's Work Programme 2014-2016**A. Work Programme for the triennium 2014-2016: Legislative activities****1. International Commercial Contracts****(a) Issues relating to long-term contracts, in particular termination for just cause ****

With regard to paragraph 6:

6. "The UNIDROIT Principles 2010 cover virtually all the most important topics of general contract law, such as formation, interpretation, validity, performance, non-performance and remedies, assignment, set-off, limitation periods, etc. However, while the UNIDROIT Principles, whose main source of inspiration was the United Nations Convention on Contracts for the International Sale of Goods (CISG), can undoubtedly be considered a sort of "general part" of international sales law and other contracts to be performed at one time, it remains to be seen to what extent they provide adequate solutions also for

contracts to be performed over a period of time, or so-called long-term contracts. In fact, while the UNIDROIT Principles as they now stand already contain a number of provisions particularly suited to the special needs of this latter type of contract, there are still issues requiring further consideration which could be the subject of additional provisions or explanations in the comments”.

Comment:

The Colombian Ministry of Justice and Law considers it important the development proposed with regard to the principles governing particular situations typical of this type of contract and which are not referred to in the UNIDROIT Principles, based on contracts executed immediately or performed at one time.

In particular and taking into account the Colombian regulatory environment, one of the important aspects for private law would be those principles that may be developed, studied and unified, which arise from situations that modify the initial economic outlook that accompanied the parties at the time of conclusion of the contract, as well as alternative dispute resolution procedures arising in such circumstances, and the variation of obligations, with regard to its scope or enforceability.

With regard to paragraph 7:

7. “The same is true of Article 5.1.3 which states in general terms the parties’ duty of co-operation, which is particularly relevant in the context of long-term contracts. Even more important, the UNIDROIT Principles do not address the question as to whether, and if so, to what extent, parties to long-term contracts in general and to so-called “relational” contracts in particular, are entitled, even in the absence of any special provision to this effect in the contract, to terminate their contract for irreparable breakdown of their mutual trust and confidence (so-called “termination for just cause”)”.

Comment:

With regard to termination for cause by the irreparable breakdown of mutual trust and confidence, the Colombian Ministry of Justice and Law believes that an important aspect would be the development of this legal figure in the study of the UNIDROIT Principles, with special attention to the frequency in which term or long-term contracts, universal application to these or to only some of them pursuant to the particular characteristics and to the obligations or contractual framework required for the implementation of this form of termination of the transaction or of a specific obligation.

(b) Issues Relating to multilateral contracts, in particular, corporate contracts *

With regard to paragraph 10:

One of the most important examples of associative contracts in cross-border trade relationships is the so-called joint venture contract, i.e., agreements entered into by two or more parties – be they individuals or companies – from different countries, with a view to facilitating commercial co-operation with respect to a specific project or to the joint carrying out of an economic activity on a more or less durable basis. Joint ventures may take the form of either contractual joint ventures or corporate joint ventures, depending on whether the partners wish to rely on their contractual agreement(s) alone or whether they decide to set up a new entity – usually a corporation – as the legal form through which to pursue their shared undertaking. In both cases, there will be a general agreement between the partners setting out the basic terms of the joint venture (e.g.,

the object, structure and duration of the joint venture; the contributions of each party, the applicable law and dispute resolution) followed by several ancillary agreements specifying in detail the organisation and management, accounts, representation, share in profits and losses, exclusion and withdrawal of a party, termination of the joint venture, etc. In the case of corporate joint ventures, agreements of this latter kind may give rise to problems due to the fact that they must conform to the domestic law governing the corporation and/or the corporation statutes if and to the extent that that law or the statutes may not be modified by agreement between the shareholders. In this respect, mention may be made, among others, of so-called "governance agreements", including "director-restricting agreements", "shareholder voting agreements", "standstill agreements", "buy and sell agreements", etc.

Comment:

For the Ministry of Justice and Law it is of particular importance to study this type of joint venture contracts, taking account of their recurrence in contracts with the State, for which developing aspects such as the constituent elements and the responsibility of the parties involved in the joint venture, would be considered an important contribution.

For this reason, and given the noted incidence in state contracts, alternatives that are suggested to safeguard the problems or conflicts arising from adaptation to national law, could lead to reviewing the rules applicable to joint ventures, once the inputs that the Institute can provide in implementing the Work Programme on this topic are counted with.

2. Secured transactions

No Comments

3. Transactions on Transnational and Connected Capital Markets

No Comments

4. Liability for Satellite-based Services **/*

No Comments

5. Private law and development

No Comments

6. Transnational civil procedure: formulation of regional rules **/*

With regard to paragraph 45:

45. "The Secretariat believes there is a case for considering the resumption of work on the development of the "Rules", with particular focus on regional implementation and on adapting the Principles to the peculiarities of specific legal systems. In this respect, it submits that in the short term, the most promising partner for institutional co-operation regarding civil procedural law may be represented by the newly founded European Law Institute (ELI), created with the aim to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. Recent years have seen the emergence of a growing body of rules at European level in the field of procedural law, in the wake of the enlargement of the EU

competences towards judicial co-operation. A joint ELI/UNIDROIT project on the development of regional rules based on the adaptation of the ALI/UNIDROIT Principles would serve as a useful tool to avoid a fragmentary and haphazard growth of European civil procedural law, while at the same time supporting the promotion of the ALI/UNIDROIT Principles. Furthermore, it would respond to the interest expressed by ELI in co-operating with UNIDROIT in areas of common interest. It could also represent a first attempt towards the development of other regional projects by adapting the ALI/UNIDROIT Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules.”

Comment:

In relation to the harmonization of procedural rules, the Ministry of Justice and Law deems it necessary, as part of the specific program on this issue, an analysis of the frequency of regional agreements or trade agreements between nations that cover this issue, however it is necessary to reiterate that one of the fundamental aspects in the exercising of rights is the means by which it may be required, for which the purpose of harmonizing or creating common rules can be highlighted.

As a result, domestic legislation is an important factor in the respective analysis, in addition to the stipulations arising from free trade agreements, for example, or those derived from regional agreements (e.g. the Andean Community or Mercosur).

Therefore, the government of Colombia urges UNIDROIT to consider in addition to the European experience in the European Law Institute, experiences such as those generated in countries in which a greater confluence of issues is presented involving the use of alternative systems or in which openly dissimilar systems for settling private disputes have been evidenced.

On this point, it should be kept in mind that the experience arising pursuant to that which has been mentioned contributes to the formation of a criterion for the formulation of procedural rules that arise not only in the centers which have given origin to the principal procedural systems.

B. Work Programme for the triennium 2014-2016: Implementation and promotion of UNIDROIT instruments

1. Depositary functions ***

No Comment

2. Promotion of UNIDROIT instruments ***

(a) UNIDROIT Principles of International Commercial Contracts

No Comment

(b) UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva, 2009)

With regard to paragraphs 51 and 52:

"51. During the Committee's discussion on possible future work by UNIDROIT to promote the Geneva Securities Convention and, in general, its work in the area of capital markets, it was pointed out that the financial markets community, and regulators in particular, were currently

heavily engaged in international consultations and that UNIDROIT's involvement in this area, with the Geneva Convention and its work on netting, showed that private law aspects played an important role, a point that tended to be overlooked by regulators. Since the Geneva Securities Convention was germane to the interests of regulators and Governments in that, among other things, it reduced systemic risk, it was suggested that UNIDROIT envisage promoting the Convention as an assessment standard (such as might be done by the Financial Accounting Standards Board in other areas), similarly to the Secretariat's intentions for netting principles vis-à-vis the International Monetary Fund.

52. Moreover, in view of the request for technical assistance made by certain member States wishing to incorporate some of the issues addressed in the Geneva Securities Convention into their legislation, and given the quality of the experts that make up the Committee, it was suggested that UNIDROIT set in place a network of experts willing and able to assist these States with a view, if possible, to ratification of / accession to the Geneva Securities Convention. In doing so, UNIDROIT should co-operate with the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD) or the World Bank, so that the special expertise, competences and special resources of each of these bodies may be brought to bear on the matter”.

Comments:

With respect to paragraphs 51 and 52, the Ministry of Finance considers favorable the technical assistance requests made by some UNIDROIT member States to analyze incorporation of the topics covered in the Geneva Securities Convention into national law, keeping in mind that this analysis could result in measures to improve and further develop the Colombian Securities Market, from a regulatory standpoint.

Without prejudice to the foregoing, it would be necessary to conduct a detailed review of the rules of the Convention, in order to determine those areas to which Colombia could adhere and, as a result, incorporate into national legislation.

It should be noted that, on this matter, there is a law passed by the Congress of the Republic (Law 964 of 2005, Securities Law), which establishes the macro regulatory aspects for these issues, with the corresponding implementing regulations. Consequently, any the review should undertake the joint study of both standards, with a view toward establishing similarities and disparities.

(c) UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) and 2011 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects

With regard to paragraph 53:

“The UNIDROIT Secretariat has been increasingly called upon in recent years in connection with the 1995 Convention and, more recently, in respect of the 2001 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects, owing, among other things, to the upsurge in trafficking in cultural objects. The Institute's excellent collaboration links with other Organisations active in the field of cultural property have, in recent years, done much to compensate for the lack of funds. Following a series of regional training seminars organised by UNESCO in 2012, at the behest of the Organisations' member States and thanks to the UNESCO Emergency Fund, and in which UNIDROIT was invited to join, other important meetings are now planned for the coming months. Among those meetings, UNESCO has already announced the following:...

– follow-up training workshops in Latin America (Andean region) : 2nd semester 2013 (to be confirmed)”.

Comment:

The Ministry of Culture requested to propose the feasibility of performing two workshops in the Andean region and to propose Colombia as the host for one of them.

With regard to paragraph 54:

“At the institutional level, UNIDROIT agreed at the first meeting of the special follow-up committee of the 1995 Convention (convened in accordance with Article 20 of the Convention) organised in Paris in June 2012, to accede to the request of some States that such meetings be organised more frequently and that they be linked, if possible, with the new follow-up mechanism established by UNESCO for its 1970 Convention. UNESCO has in fact decided to convene a meeting of States Parties every two years as from 2013, and will establish a Subsidiary Committee to be convened each year. This latter Committee will, among other tasks, promote the purposes of the 1970 Convention, exchange best practices, and prepare and submit recommendations and guidelines to contribute to the implementation of the Convention. The two meetings will take place in Paris from 1 to 4 July 2013. A preparatory seminar will be organised in Mexico (sponsored by UNESCO, UNIDROIT, the International Association of Legal Science, the Ministry for Culture, the Instituto de Investigaciones jurídicas (UNAM) and the Mexican Center of Uniform Law) entitled “The Globalization of the Protection of Cultural Heritage. The 1970 UNESCO Convention and the 1995 UNIDROIT Convention. New challenges” (Mexico City, 21-23 March 2013)”.

Comment:

The Ministry of Culture commends the possibility of holding joint follow-up meetings to the UNESCO and UNIDROIT conventions every two years beginning in 2013.

With regard to paragraph 55:

“UNIDROIT was one of the institutional partners closely involved in the preparation of a “Study on prevention and fighting illicit trafficking in cultural goods in the European Union” – October 2011 – carried out by CECOJI-CNRS at the request of the European Commission in response to the need to study ways of developing more effective tools to fight such trafficking in Europe. The study takes account of international instruments dealing with the subject, with a view, in particular, to revising Directive 93/7/CEE. It formed one of the bases of the conclusions adopted by the EU Council in December 2011 in respect of “preventing and combating crime against cultural goods”. In particular, the Council stressed the importance of the UNIDROIT Convention which, together with the 1970 UNESCO Convention, “constitute important instruments for strengthening protection of the global cultural heritage” and recommended that the member States “consider ratification [...] the 1995 UNIDROIT Convention” and that the European Commission involve relevant stakeholders when setting up the expert group provided for under the Work Plan for Culture 2011-2014 to produce a toolkit on the fight against illicit trafficking and theft of cultural goods. This expert group is due to meet in early 2013”.

Comment:

The Ministry of Culture highlights the importance of accession to the convention referred to in paragraph 55 by the European Union countries, and urges UNIDROIT to perform all the necessary activities with all non-European member States to promote accession. Likewise, it requests that those countries that are part of the 1995 UNIDROIT Convention are urged to sign the 1970 UNESCO Convention.

(d) *Convention on the Form of an International Will (Washington, D.C. 1973)*

No Comments

C. Work Programme for the triennium 2014-2016: Non-legislative activities

1. UNIDROIT Library and Depository Libraries

No Comments

2. Information resources and policy

(a) *Uniform Law Review and other publications*

No Comments

(b) *Website*

With regard to paragraph 68

"In 2012 the Secretariat started work on the creation of a new, more user-friendly website, using up-to-date technology developed since the creation of the present website in the 1990s. The new website will include certain features of the UNILAW database, which will be discontinued due to lack of resources. The new website is expected to be available for a demonstration at the 92nd session of the Governing Council in May 2013. The Secretariat trusts that the new website will enhance the Organisation's visibility and constitute a more effective tool to disseminate information on the Organisation".

Comment:

Colombia comments the updating of the website to make it much more accessible to users interested in having access to the information generated by UNIDROIT and to increase the international visibility of the Organization, and urges that the product is available in all official languages of the organization and not only in English and French.

3. Internships and scholarships

No Comments

TUNISIA

The Triennial UNIDROIT Work Programme for the period 2014-2016, which was submitted for opinion, comments and/or proposals, covers a number of legislative activities that centre around four principal themes:

1. The Principles of International Commercial Contracts will focus on issues relating to long-term contracts, in particular termination for cause.
2. With regard to secured transactions, activities will include:
 - The implementation of the rail and space Protocols to the Cape Town Convention [Convention on International Interests in Mobile Equipment]¹
 - The preparation of other protocols to the Cape Town Convention which will address **the following topics**: agricultural mining and construction equipment; ships and maritime transport equipment, and off-shore power generation and similar equipment.
 - The preparation of a Legislative Guide on principles and rules capable of enhancing trading in securities in emerging markets.
3. Liability for satellite services.
4. Private law and development, which will focus on the following aspects:
 - private law aspects of agricultural financing, including contract farming, and possible future work by UNIDROIT in the field of private law and agricultural development, focusing on the formulation of an international legal guide to international contract farming arrangements. Work may also be undertaken in due course in other areas: reform and modernisation of land regimes; the legal structure of agricultural enterprises; an international guide on agricultural financing.
 - Legal aspects of the social business.

A review of the document submitted by UNIDROIT on its draft Work Programme for the triennial period 2014-2016 gives to the following comments on our part:

1. Tunisia, as a member State of the International Institute for the Unification of Private (UNIDROIT) stresses that it is in agreement – in principle – with the four resolutions adopted at the close of the diplomatic Conference for the adoption of a **Protocol on Matters specific to Space Assets** (Berlin, 27 February - 9 March 2012) which are of particular interest to Tunisia; these four resolutions propose:

1) to mandate the Secretariat to convene a preparatory commission for the establishment of an international Registry for space assets;

2) to invite the governing bodies of the International Telecommunications Union (ITU) to consider the matter of becoming the Supervisory Authority upon or after the entry into force of the Protocol;

¹ *Adopted at Cape Town – Le Cap - on 16/11/2001 (not yet ratified by Tunisia)*

3) to invite the Supervisory Authority of the International Registry for space assets to ensure that, so far as practicable, any search of the International Registry relating to physically linked assets reveal all international interests registered against such assets, as also any rights assignments, acquisitions by subrogation and rights reassignments recorded as part of the registration of those assets.;

4) to encourage all Contracting States, and international, national, as well as private financing institutions, to assist the developing Contracting States by providing them with reasonable discounts or rebates on any exposure rates or similar charges levied by such financing institutions.

In this context,

and in the framework of the preparation of a **fourth protocol to the Cape Town Convention** or of **work on the issue of liability for certain satellite services**, which are of special importance to developing countries, Tunisia wishes to broaden the discussions and to place greater emphasis on the following legal issues which will be addressed in preparing such a protocol:

(a) Liability of the (satellite service) provider vis-à-vis operators in developing countries

- Regardless of whether the claim submitted by the operating country arises from the contract, concerns a civil offence or any other grounds for legal proceedings, the provider is wholly liable for any damage, including any indirect, particular and consecutive damage, resulting from the performance or non-performance of the contract by the provider relating to:

- * any infringement of intellectual property rights;
- * any breach of the duty of confidentiality;
- * any breach of the guarantee obligation; and
- * any injury, including death.

(b) The provider is liable for any direct damage to personal or other property of the operating country, either in its possession or occupied by the operating country.

(c) The provider is liable for any direct damage relating to a charge or claim in respect of any part of the work for which the operating country has paid.

(d) The provider is liable for any direct damage suffered by the operating country that is linked in any way to the contract, up to the amount of the damage, including the full cost incurred by the operating country in finding another party to carry out the work if the contract is terminated by default. Such costs include any increase in the price of the work.

If the files or data concerning the operating countries are damaged in the performance of work or as a result of the non-performance of such work, the provider's sole liability consists in restoring these files and data by using the most recent back-up copy kept on file by the operating country.

UNITED STATES OF AMERICA

The United States of America appreciates the opportunity to comment on the draft UNIDROIT work program for 2014-2016. We thank the Secretariat for distributing the draft to all member states prior to the Governing Council meeting; obtaining broad input on the organization's agenda at an early stage is vital to ensuring that limited resources are dedicated to the most useful projects. As discussed in our separate comments on the UNIDROIT strategic plan, we believe it is important to solicit input from outside voices as well—such as other intergovernmental organizations, non-member states, and the private sector—in order to ensure that the work program is focused on projects that will have a broad appeal globally. Similarly, as also described in that separate letter, partnerships with UNCITRAL and other organizations should be explored in order to maximize UNIDROIT's ability to move forward with the most worthwhile projects discussed below. It could be helpful to add further discussion of activities such as outreach and partnerships in the work program; while such activities overlap in part with legislative work and promotion of existing instruments, addressing them explicitly in the work program could help ensure that sufficient resources are available for those tasks.

With regard to the specific projects currently proposed for inclusion on the work program, we have the following comments:

Agricultural Finance

We believe that the various projects related to agricultural finance should be UNIDROIT's highest priority at this time. Work in this area has the greatest potential to broaden the organization's visibility and to provide significant benefits to developing countries. We commend the Secretariat for its efforts to open up this new area of work for the organization.

A. *Contract Farming*

The United States strongly supports the ongoing work related to the development of a legal guide to contract farming. We believe that the project can be the foundation of a fruitful partnership with FAO and IFAD. We also believe that UNIDROIT's long-term cooperation with those organizations should include collaboration with IDLO as well, and that the four organizations together should develop a strategy for how the legal guide can be promoted and used in technical assistance programs after it is completed. We hope that the study group will be able to finish the substance of its work next year.

B. *Cape Town Convention Protocol on Agricultural, Construction, and Mining Equipment*

Other than the contract farming work that is already in progress, the United States believes that work on a fourth Cape Town protocol covering agricultural, construction, and mining equipment should be the highest priority project on UNIDROIT's work program. We believe that significant development benefits would result from such an extension of the Cape Town system. By facilitating the acquisition of advanced agricultural equipment, the protocol would aid food security efforts by contributing to local food production capabilities. Decreasing financing costs for construction equipment would help enable infrastructure projects in developing countries. Similarly, for countries whose economies rely heavily on natural resource extraction, making mining equipment more easily available would stimulate growth.

Moreover, we have conducted extensive private sector consultations, which have demonstrated strong support for the project. The President's Export Council (which is led by the Chairman of Boeing and includes leaders of companies such as Dow Corning, Ford Motor Company,

UPS, United Continental Holdings, and Archer Daniels Midland) has endorsed the idea, as described in the attached letter to President Obama. Similarly, the National Association of Manufacturers has urged UNIDROIT to move forward with this project, in a letter being separately distributed to the Governing Council. We believe that the private sector clearly sees the potential for this proposed protocol to lower financing costs and thereby facilitate trade in these types of equipment. We hope that similar consultations are occurring in other member states, as we believe that such consultations could reveal a widespread desire to extend the benefits of the Cape Town regime to these categories of equipment.

We believe that, based on the preparatory work done in prior years, a study group should be formed to move this project forward.

C. Other Future Projects

Once the contract farming guide is completed, we believe that other agriculture-related topics ought to be pursued as well. Work on land investment contracts could be productive, as more detailed legal guidance would be useful to build on more general policy work done by other organizations in the context of the Principles for Responsible Agricultural Investment and the Voluntary Guidelines on the Responsible Governance of Tenure. Of course, any work in this area—whether related to land investment contracts, land tenure, the legal structure of agricultural enterprises, or agricultural financing—should be done in consultation with FAO, IFAD, IDLO, the World Bank, and other organizations that are also addressing similar topics.

Financial Markets

The United States believes that the second major priority for UNIDROIT, after the projects related to agriculture, should be continued work on topics related to the legal frameworks governing financial markets. The recently-completed project to develop Principles on the Operation of Close-out Netting Provisions was a resounding success. The study group provided a strong draft document, and two rounds of intergovernmental discussions were able to work through some challenging issues in order to reach a broad consensus among member states. The United States would like to congratulate the Secretariat—and the delegations from other member states and observers who participated in the discussions—for the successful conclusion of that project.

UNIDROIT should take advantage of this recent success to extend its work in this area. The United States supports the upcoming efforts to develop, through the Emerging Markets Committee, a **legislative guide addressing issues particularly pertinent to securities trading in emerging markets**. We urge renewed efforts to move forward with identifying the topics to be covered and the experts who will take leading roles in developing a draft. We hope that a draft of the guide can be completed by the end of 2014.

Moreover, we strongly support the proposal to address **commercial trusts**, particularly as investment holding vehicles. Given the extensive use of trusts (and analogous structures) in financial markets, such as in the context of mutual funds and asset securitization, UNIDROIT should examine what could usefully be done with regard to harmonization in this area. (For example, one key issue relates to the protection of assets in custody, and the necessity of recognizing that in the case of the custodian's insolvency those assets belong to the beneficiary.) A useful first step could be a paper by the Secretariat addressing the different types of cross-border commercial transactions that rely on trusts or trust-like legal devices.

International Commercial Contracts

The United States strongly encourages the Secretariat to continue its efforts to **promote the UNIDROIT Principles of International Commercial Contracts**. As a prelude to launching further substantive work in this area, we believe that UNIDROIT should undertake a study to identify steps that could lead to more widespread use of the Principles. The study should include outreach to the private sector, to examine current practice regarding use of the Principles in cross-border transactions and to identify what barriers might exist to increased use. (We note that some studies on private sector usage have occurred in the past, but up-to-date information on private sector views would be valuable.) Similarly, the study should include outreach to governments—both UNIDROIT member states and non-member states—to ascertain the degree to which the Principles are taken into account in the context of legislative reform efforts and to identify any obstacles to increased use. One topic that could be included within the study is an analysis of whether work in additional areas of contract law (such as long-term contracts or multi-party contracts) would be likely to make usage of the Principles more common. Moreover, the topic of increasing visibility and usage of the Principles could be included on the agenda of General Assembly meetings, to encourage discussion among member states regarding further steps that could be taken.

Finally, UNIDROIT, UNCITRAL, and the Hague Conference should **continue to coordinate and cooperate on all matters regarding international contract law** (whether legislative work or promotion of existing instruments), in order to ensure that the organizations' agendas remain complementary. UNCITRAL has once again endorsed the Principles—commending them for their intended purposes, identifying them as complementary to the Convention on Contracts for the International Sale of Goods, and congratulating UNIDROIT on preparing “general rules for international commercial contracts.” The Hague Conference's recent work on choice of law in international contracts is also a key development. It remains vital for these three organizations to work constructively together in this area.

Other Proposed Cape Town Convention Protocols

The United States does not believe that the possible extension of the Cape Town Convention to **ships** should be included on the work program at this time. In our consultations with private sector interests and relevant authorities, we have not yet encountered any suggestion that extending the Convention to ships would be beneficial, let alone needed. As a general matter, the current legal framework of national registration of ownership and liens is seen as working well in practice, despite some lack of uniformity. Should further study nevertheless occur on this topic, it should be given the lowest priority relative to other projects, and should be focused on consultations with maritime law practitioners in order to ascertain whether substantial dissatisfaction with the current framework exists.

With respect to the proposal regarding extension of the Cape Town Convention to **off-shore power generation equipment**, additional information should be gathered with regard to the relevant industries (e.g., wind, tidal, and wave energy) to assess whether they are sufficiently well-developed and extensive so as to necessitate work at the multilateral level. In particular, any preliminary work done by the Secretariat should include examination of whether, if problems with the current legal framework exist, such problems are being encountered globally.

Other Proposed Legislative Work

On the topic of **liability for satellite-based services**, the United States remains of the view that no general need for work by UNIDROIT has been demonstrated. While this view could be reevaluated if broader concerns—outside of a regional context—emerge, at present we believe the topic should be removed from the work programme.

With regard to the topic of “**legal aspects of social business**,” we do not believe this subject would be a likely candidate for a joint project with UNCITRAL. Although UNCITRAL is considering work related to microfinance, the scope of such work is not yet clear. The project may focus primarily on the creation of an enabling environment for small and medium-sized enterprises, rather than on the topics covered in the UNIDROIT paper on social business. To the extent work in this area proceeds in either organization, consultations between the two Secretariats is of course necessary to ensure coordination of any work.

On the issue of **transnational civil procedure**, it could be valuable for UNIDROIT to engage in a joint project with the European Law Institute; as noted in our separate comments on the UNIDROIT strategic plan, partnerships with other organizations should be a key component of developing future projects. At the same time, to the extent that the intended scope of a project with the ELI would be focused on European regional issues rather than global issues, it would be appropriate for most of the resources needed for the project to be provided by the regional partner organization.

Promotion of Existing Instruments

As noted above, the United States strongly supports the Secretariat’s efforts to promote increased use of the **Principles of International Commercial Contracts**. Similarly, once the Principles on the Operation of Close-out Netting Provisions are approved in their final form, efforts should be made to promote their use, including as an assessment standard to be used by other multilateral organizations. Efforts to promote the Geneva Securities Convention should also continue, including through the work of the Emerging Markets Committee.

The United States is also pleased that UNIDROIT continues, by promoting the **1995 Convention on Stolen or Illegally Exported Cultural Objects**, to actively demonstrate its concern for looting and trafficking in cultural property. Although the United States is not a party to the Convention, it welcomes the prominence this Convention shares as a partner to the 1970 UNESCO Convention on illicit trafficking in cultural property. Together, these conventions are the premier international tools to stanch looting in countries at risk of further loss to their cultural heritage. In terms of partnerships with other organizations, we encourage the Secretariat to consider whether cooperation with ICCROM in this area might be fruitful.

Similarly, with respect to the **Convention on the Form of an International Will**, the United States supports the Secretariat’s proposal to develop an international promotion strategy. We would favor consultations with other international organizations, as proposed, to ascertain possible steps for attracting more attention to the instrument.

UNIDROIT Library

As noted in our separate comments on the UNIDROIT strategic plan, the organization’s budget allocation should recognize that UNIDROIT’s primary value to the world community is in creating and promoting legal instruments. While the UNIDROIT statute does require the organization to maintain a library, that task should not divert almost 10% of the organization’s budget away from its core missions. Thus, we believe that a strategic review of the library should be undertaken, as noted in our earlier letter, and that any elements of the work program relating to the library’s function should be revised based upon the results of that review.

*Appendix***THE PRESIDENTS EXPORT COUNCIL**

WASHINGTON, D.C. 20230

March 12, 2013

President of the United States of
America The White House
Washington, DC 20500

Dear Mr. President,

UNIDROIT, the International Institute for the Unification of Private Law, is considering extending the Cape Town Convention to cover agricultural, construction, and mining equipment. The Cape Town Convention on International Interests in Mobile Equipment is a treaty that establishes an international legal framework for equipment financing. Its goal is to reduce legal risk by applying a uniform legal regime to security interests in mobile equipment that, because it crosses borders, could otherwise be subject to uncertain legal treatment. The Convention itself provides general provisions on asset-based finance, similar to the approach taken in the U.S. by the Uniform Commercial Code; each category of equipment to be covered needs a separate protocol to reflect financing requirements for that sector. The first three protocols have covered aircraft, railway equipment, and space assets. Currently 55 countries are parties to the Convention, and 49 are parties to the aircraft protocol (which is the only protocol that has entered into force thus far); the U.S. is a party to these instruments.

The President's Export Council recommends the Administration support, encourage, and actively engage UNIDROIT to extend the Cape Town Convention to cover agricultural, mining, and construction equipment. The Council sees a time-sensitive opportunity to promote an enhanced trade finance mechanism that would increase exports of U.S. agricultural, mining, and construction equipment. U.S. manufacturers that lack captive finance arms experience difficulty in accessing wholesale and retail financing for their capital goods overseas. And even if available, interest rates are often high and terms are poor due to an inadequate legal framework to appropriately securitize the transaction. Even for transactions that are supported by captive finance companies or an Export Credit Agency such as Ex-Im Bank, a better, global legal framework would improve acceptance rates, lower financing costs, and increase sales. Building on the implemented legal framework for collateralizing aircraft worldwide under UNIDROIT'S Cape Town Convention, a new protocol to that treaty is now being considered for agricultural, mining, and construction equipment. U.S. manufactured exports, especially from small to medium sized firms, stand to benefit greatly if such a protocol were developed and implemented by member countries.

As with aircraft and other types of equipment that cross borders frequently, agricultural, construction, and mining equipment is widely used in various jurisdictions and crosses borders both during use and upon sale or resale. Extending the Cape Town framework to such equipment would thus be appropriate and would provide significant benefits, particularly for small to medium sized companies who lack captive finance capabilities in multiple countries. A new protocol would provide for the creation of an international creditor's interest in these categories of equipment that would be recognized in all ratifying countries, and would establish an electronic international registry for these interests. The protocol would provide creditors with basic default remedies and means of obtaining speedy interim relief, thus enhancing the credit rating of frequently-mobile equipment and reducing borrowing costs. The increased finance approval rates and lower financing costs would lead to increased U.S. exports of capital goods. Moreover, in addition to aiding U.S. exports, the protocol could simultaneously provide development benefits – such as aiding global food security efforts

through increased availability of advanced agricultural equipment – by facilitating the acquisition of new equipment in countries where such purchases are currently difficult.

UNIDROIT's Governing Council will meet in May 2013 to determine its 2014-2016 agenda and decide whether to proceed with work on a new protocol. If not approved for consideration, work on a new protocol would likely wait a minimum of three years. We believe agricultural, construction, and mining equipment crosses borders frequently enough to merit a uniform, treaty-based solution, and that the potential benefits of a new protocol far outweigh any challenges. We urge the Administration to provide its full support to this new protocol, and we in the private sector stand ready to work in partnership with you to provide any assistance that could further your efforts.ⁱ

Sincerely,

Jim McNerney

ⁱ Please note this letter was prepared by the private sector appointed members of the PEC.

ANNEX IV

**Comments received from UNIDROIT correspondents, and other individuals, on the future
UNIDROIT Work Programme
(2014 – 2016)**

Gilberto Boutin (Panama)

.... I am pleased to strongly express my sympathy for the 2014-2016 triennial Work Programme and your dynamic Administration. It is for this reason that, in my capacity as correspondent and President ACECADIP – Central-american Academy of Private International Law -, we support the idea of developing projects on:

- in A, Point b) Question related to **multilateral contracts**, particularly corporate contracts, in the context of the Principles of International Commercial Contracts on one side;
- In B, the point d) relating to the **Convention providing a Uniform Law on the Form of an International Will** (Washington, DC 1973), we consider that for the Central American region, it would be of great utility to establish a legislative and conventional research preceded by a doctrinal debate in order to materialize the inclusion of this type of international instrument

Emilia Chiavarelli (Italy)

I agree with the draft Work Programme. My only proposal is to consider the possibility to insert a point referred to the **Cape Town Convention** on International Interests in Mobile Equipment for Civil Aviation and related Protocol. The ratification of these Instruments, for instance by Italy, need an effort of UNIDROIT in order to facilitate the process that was not completed only because the process itself is quite complex.

Giorgio De Nova (Italy)

The issue related to **multilateral contracts** seems to me of paramount importance, as it is for example, with regard to project financing contracts.

Multilateral contracts raise many material questions also with reference to the decision of disputes.

Paul Finn (Australia)

Thank you for the invitation to comment on the Draft Programme. **I will limit what I have to say to the proposals made in relation to 'International Commercial Contracts'**. As you are aware, I was a member of the second and third Working Groups which prepared the 2004 and 2010 versions of the *Principles*. For the reasons I give below, I would commend *Proposal* (a) to you.

The *Principles* in its present form is an achievement in which UNIDROIT justifiably should take pride. Nonetheless it is, in my view, an incomplete work. In their coverage the Articles and the Comments address appropriately sales contracts, as the Secretariat's comments suggest. The same cannot be said of the treatment given explicitly to long term contracts in general and to relational contracts in particular, notwithstanding that these are pervasive species of commercial contracts. While examples in the Comments relate, on occasion, to long term contracts, explicit commentary relating to such contracts is sparse indeed.

In my seventeen years on the Federal Court of Australia, I dealt with quite some number of long term, relational and joint venture contract cases. These exposed issues which are recurrent in common law jurisdictions and, I would venture, civilian systems. Authoritative guidance and comment on them in the *Principles* would be invaluable.

The following illustrations are from cases I have decided and I give the citations of the principal examples of each of them. The illustrations have some reflection in the examples given in the Secretariat's comments.

1. Many projected long term contracts fail to eventuate after lengthy periods of preliminary negotiations, preparatory work, etc. often at great cost to one party. The examples are many in common law jurisdictions and involve projected distributorships or franchises, contractual joint ventures, leases of buildings to be constructed, lengthy but unsuccessful tender bids, etc. They can give rise to issues as varied as 'bad faith negotiations' (Art 2.1.15), 'inconsistent behaviour' (Art 1.8), preliminary contract, and unjust enrichment/restitution: see eg *Gibson Motorsport Merchandising Pty Ltd v Forbes* (2006) 149 FCR 569 (Aust); *Hughes Aircraft Systems International v Air Services Australia* [1997] FCA 558.
2. Even though parties address at length what are to be the terms of their contract, their conduct over time often deviates from those terms and for quite explicable reasons in some instances. This asymmetry can, in common law countries, be a cause of acute difficulty when disputes arise. The rules on variation, waiver, 'inconsistent behaviour' and 'no oral modification' clauses (Art 2.18) can collide unhappily: eg *GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* (2003) 128 FCR 1.
3. Relatedly, the question of what is the actual contract between the parties from time to time can be quite controversial when the parties themselves acknowledge that the contract is an evolving one which, for example, is likely to require additional clauses, re-negotiation etc. The issue of what already has been agreed and what needs to be, or remains to be, agreed is commonplace: eg *South Sydney District Rugby League Football Club Ltd v News Ltd* [2000] FCA 1541.
4. The difficulty involved in terminating a long term contract because of breakdown of mutual trust and confidence between the parties is one frequently encountered. I have attached the first five paragraphs of a judgment I gave in 2010 which exposes my views on this matter.
5. It hardly needs to be said that 'good faith' and 'cooperation' have uncommon importance in practice in relational contract settings in particular. I need say no more on this other than that the *Principles* (Art 1.8) is quite muted in recognising this.
6. The above examples do not exhaust the difficulties/ issues to which long term contracts commonly give rise. They simply are ones I have encountered with some frequency.

It would, in my view, give greater balance and cohesion to the *Principles*, if it dealt much more explicitly with issues such as I have noted above. In saying this I am not necessarily suggesting a separate chapter for long term contracts — although I do consider that a separate article dealing with 'termination for just cause' should be a real priority. Much that concerns me could, I consider, be achieved by additions to the Comments by way of explanation and by significant cross-referencing of Comments where a 'family' of Articles might potentially apply in a given instance.

What is obvious is that quite some attention needs to be given to how long term contracts can be given greater centrality in the scheme of the *Principles*. I do not suggest that, apart from termination, there is a need for a separate body of Articles dealing with such contracts. Rather

some of the existing Articles have a greater importance for long term, and particularly relational, contracts than others. The scheme of the *Principles* should reflect this openly.

Accordingly, I would strongly support adoption of *Proposal* (a) for the 2014 – 2016 triennium.

Proposal (b) focuses upon relationships which have obvious practical importance. To the extent that they can be regulated by contract alone (this may not always be without difficulty where the 'joint venture' takes a corporate form), they are in essence no more than a sub-species of long term/ relational contracts. In my view, the specificity of the issues they raise is too particular for a work such as the *Principles*. I would not wish to see them included in the *Principles*, as a separate body of principle. They have no greater claim to this than say, franchises, distributorships and agencies which can have an 'associative' character in some degree: eg *Australian Medic-Care Co Ltd v Hamilton Pharmaceutical Pty Ltd* [2009] FCA 1220.

If I can be of further assistance to your consideration of these matters I will happily give it.

Michael Furmston (United Kingdom)

I strongly support the suggestion to consider **expanding the scope of the Principles to problems of long term and multilateral contracts**. In the field of international commercial contracts where the Principles are important and increasingly so, such contracts are common.

Souichirou Kozuka (Japan)

1. General Remark on legislative activities

The legislative activities of UNIDROIT, or law-making activities by international organisations in general, can be divided into two types. One is the legislation relevant to a specific industry or specific type of transactions, while the other is the legislation of general application.

If the success of an international instrument is measured by the number of states that become Parties to a Convention or otherwise adopt the rules contained in the instrument, the latter type of an instrument has a good chance of achieving success in a short period of time, as long as it satisfies the demands of the relevant industry. In this case, it is imperative to set up a cooperative relationship with such industry and address the issues that the industry finds as an impediment to transactions.

The other type of an instrument, by its nature of general applicability, will not require close coordination with a specific industry. The broad knowledge and expertise of the individuals involved will contribute to the elaboration of the instrument. On the other hand, it is less likely that the instrument sees rapid increase of States Parties, or States otherwise adopting the rule. For this type of an instrument, measuring the success only by the number of States adopting the rule may not be appropriate.

I believe that UNIDROIT, as an international organisation specialised in the unification of law, needs to keep balance of the two types of instruments as the subject of their activities. Below are my comments on the work programme of UNIDROIT for the coming triennium, based on this general view.

2. *International Commercial Contracts*

The UNIDROIT Principles of International Commercial Contracts have been a successful case of the second type of instrument, namely one with general applicability. The proposal of adding some provisions on long-term contracts merits exploring, on condition that this nature of the work is maintained. There are several countries that appear to have one rule or another on long-term contracts, in particular its termination. However, most of such legislation, to the extent of my knowledge, is meant to address the problem within a certain industry. Careful examination is required to distinguish such industry-specific rules and rules relating to long-term contracts in general when embarking on the work. Economic analysis of rules on long-term contracts may be helpful in this regard.

With this reservation, I recommend this subject be taken up as the medium priority.

3. *Implementation of Rail and Space Protocols to the Cape Town Convention*

The Cape Town Convention, as applied to aircrafts through its Aircraft Protocol, has been a very successful case of the first type of instrument, i.e. industry-specific rules. To have the other two Protocols achieve as much success as, I believe, is the work for UNIDROIT with utmost priority.

In carrying out this task, due regard must be paid to the fact that the background of the financing of rail rolling stocks and space assets are different from that of financing of aircraft. The practice of aircraft financing is already matured, and the asset based financing is well developed in this market. Further, most states already have national registries for filing secured interests in aircraft. The benefit of the Aircraft Protocol, therefore, lies in enabling the transaction of asset based financing to be made in a more smooth and efficient manner than before. To the contrary, the use of asset based financing with regard to rail rolling stocks has been much less common, and still less with space assets. Few states have registries to file security interests in these types of mobile assets. Because of these background situations, the Luxembourg Protocol and Space Assets Protocol have a significant value in the establishment of the International Registry itself. At the same time, efforts to provide suggestions as to how the Protocols can be used in practice for financing of the rail rolling stocks or space assets may help facilitate the implementation of these two Protocols.

As mentioned above, I believe that such efforts deserve the highest priority for the next triennium programme of UNIDROIT.

4. *Preparation of other Protocols to the Cape Town Convention*

Because the Cape Town Convention is the industry specific instrument and, therefore, requires the collaboration with the relevant industry as necessary conditions for its success, careful examination must be made before starting work on a new protocol. Among the three types of mobile equipment named in the Draft Work Programme, namely agricultural, mining and construction equipment, ships and maritime transport equipment and off-shore power generation equipment, ships are nowadays often financed by schemes of asset based finance. The question is, however, whether the industry would welcome new rules to be used for this purpose. The other two kinds of mobile equipment might have demands for the better rules for asset based financing. Again, however, it is a question to be tested.

In my view, the examination of whether the industries involved in financing these three types of mobile equipment would support the drafting of a new protocol to the Cape Town Convention is a work deserving medium priority. The actual drafting work, however, should be started only after confirming the existence of sufficient support.

5. *Private law and development*

As agriculture is the industry to serve the basic needs of the people in any country, the efforts made on contract farming are commendable. Finalising the Legal Guide on Contract Farming, as well as starting a work on guidance document on land investment, deserves the highest priority, as I believe they would contribute to the responsible transactions in agriculture. Considering that these guidance instruments will, in particular, be utilised in developing and emerging economies with less number of lawyers, it will be desirable that these instruments be easy to read and use, even if with limited assistance of legal experts. These works merit being conducted with the highest priority.

Apart from agriculture, it might be useful to consider about education as another possible subject under the heading "law and development." Education is, just as agriculture, of great importance for developing the welfare of a state. It has also experienced commercialisation and globalization recently. It might be useful to see whether there is a possibility to contribute to the sound development of this field of activities by suggesting good contracting rules and practices. This is not meant as a proposal to be included in the Work Programme for the next three years, but could be considered for a later term.

6. *Transnational civil procedure: formulation of regional rules*

The principles of transnational civil procedure obviously belong to the group of international instruments with general nature. As the court procedure is often influenced by the historical background of each jurisdiction, it will be useful to draft the rules adapted to the local background as a supplementing instrument to the main, common principles. If the European Law Institute is collaborative, the work of formulating the regional rules for Europe may deserve the medium priority.

7. *Promotion of UNIDROIT instruments*

Among the four instruments named in the Draft Work Programme, I would suggest the Principles of International Commercial Contracts and Geneva Convention be given the highest priority, for different reasons. As regards the Principles, because they are already reputed as rules of general applicability, there will be much benefit in indicating how these principles can be used in practice. The Geneva Convention, on the other hand, was drafted with full support from the industry and, therefore, it will be worthwhile to pursue its promotion by encouraging states to be parties to it.

8. *Non-Legislative activities*

With due regard paid to the budgetary constraint, the importance of non-legislative activities cannot be overemphasised. This is because legal instruments can be meaningful only if they are used by people, in particular legal experts, who have good understanding of them. In this sense, drafting a convention or other instrument should not be the end of the work.

It is a pity that UNILAW database will be ceased. I hope the new website compensates its discontinuation. On the other hand, continuation of the Scholarships Program is good news. It must be pointed out, however, that the information about the results of their activities at UNIDROIT is currently very limited. It will be useful if the proposed changes during the next triennium include considering the system for visitors under the Scholarship Programme to publicise the outcome of their research to correspondents or other interested parties. In order to keep it cheap, creating a website for posting their papers or even a blog-style forum for contributing their views (and comments on them by experts) might be one possibility.

Ernst Kramer (Switzerland)

No comments to the Work Programme for 2014- 2016. Very convincing!

Reinhard Zimmermann (Germany)

I would welcome the initiation of a project along the lines set out under A. 1. (a); it would make the UNIDROIT PICC even more useful than they undoubtedly are already. In addition one might want to consider whether other lacunae in the existing document should be addressed; I am thinking, eg, of rules relating to standard contract terms, or the introduction of the remedy of price reduction.

At the same time I am sceptical about the project envisaged under A. 1. (b). It will be very difficult to draft standard rules in this field – joint ventures appear to me to be too different from each other.

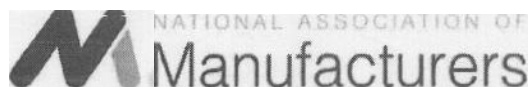
Max-Planck-Institut Jurgen Basedow

I shall limit my comments to two proposals in this context:

You might be aware of the Principles of European Insurance Contract Law (PEICL), a scholarly project started in 1991 that matured into a first comprehensive publication dealing with the general part of insurance contract law in 2009. Since then, the Group has continued its work focusing on life insurance, liability insurance and group insurance. The objective of the PEICL is to be a blueprint or an optional instrument of the European Union, and the European Commission has in fact taken a decision in January to set up an expert committee dealing with the subject. However, the PEICL are of course not limited to the European context and might serve as a basis for a universal project. Translations undertaken in China, Japan, Korea and Turkey indicate a worldwide interest in a harmonization of insurance contract law. I may add that one of the sections of the XVIIIth International Congress of Comparative Law at Washington, D.C. was dedicated to insurance contract law in 2010; the book containing the General Report and the National Reports has been published by Helmut Heiss, ed., *Insurance Contract Law between Business Law and Consumer Protection*, Zürich/St. Gallen: Dike 2012.

One might further contemplate a fourth Protocol to the Cape Town Convention dealing with ship liens and mortgages. This might raise some problems of coordination with the work of the International Maritime Organization. However, ship mortgages and their universal recognition are of the utmost importance for the funding of commercial fleets which is a major concern of a number of countries with emerging markets and also of developing countries.

**LETTER RECEIVED FROM THE NATIONAL ASSOCIATION OF MANUFACTURERS
(United States of America) ²**



Linda Dempsey
Vice-President
International Economic Affairs

March 4, 2013

José Estrella Faria
Secretary-General
International Institute for the Unification of Private Law (UNIDROIT)
Via Panisperna 28, 00184 Rome, Italy

Dear Secretary-General Estrella Faria:

The National Association of Manufacturers (NAM) strongly supports the expansion of the Cape Town Convention to include a Fourth Protocol covering mining, agricultural and construction (MAC) equipment. The Cape Town Convention's international legal framework for financing streamlines processus reduces risk and lowers costs for financing certain exports - helping to connect manufacturers and consumers.

The NAM is the largest industrial trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. The ability of manufacturers to find global customers - and to engage in global supply chains - has always been a critical issue for the NAM, and a strong framework for export financing is increasingly vital to supporting those exports.

Export financing takes on renewed importance in today's still-turbulent financial environment, Exporters increasingly face difficulties in obtaining credit and working capital, and overseas customers are financially stretched - placing a higher priority on exporters who can provide better financial terms. We believe that cross-border sales and leases of MAC equipment are being hindered by the high costs of financing in many jurisdictions. Uncertain and sometimes inconsistent legal frameworks for the recognition and enforcement of security interests are a significant part of the problem.

Although the NAM recognizes that MAC equipment is, in some ways, different from the other types of mobile equipment already covered by the Cape Town regime, it nevertheless crosses borders frequently and thus faces some of the same obstacles that prior Cape Town protocols were designed to address. In the aircraft industry, for example, the Cape Town regime has been

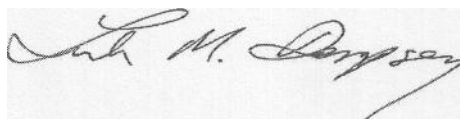
² *Note from the UNIDROIT Secretariat:* The Secretariat received other letters indicating support to the possible preparation of a new Protocol to the Cape Town Convention on agricultural, mining and construction equipment from AGCO Mexico S de R.L. de CV (Mexico), the Los Angeles County Business Federation (United States of America), as well as a joint letter by the Association of Equipment Manufacturers (AEM), the Equipment Leasing and Finance Association (ELFA), the North American Equipment Dealers Association (NAEDA), the Associated Equipment Distributors (AED) and the American Rental Association (ARA) (United States of America). Copies of those letters may be provided to members of the Governing Council upon request.

beneficial to manufacturers and exporters as well as airline customers and travelers. For major aircraft manufacturers, the unified legal regime put in place under the Cape Town Convention increases the availability of funding, creates liquidity and decreases costs. We hope that a protocol covering MAC equipment could be of similar benefit to those sectors - even if complicated issues need to be addressed during the negotiations, such as the scope of the protocol and how to identify covered equipment. Manufacturers in the United States look forward to working with UNIDROIT to address those issues and develop a strong protocol.

In addition to the clear benefits for U.S. exporters, the NAM is confident that a successful Fourth Protocol would also facilitate the purchase of new equipment by and between developing countries - helping with initiatives for food security, infrastructure and economic growth.

We appreciate your consideration, and we would appreciate your providing this letter to the members of the Governing Council. The NAM stands ready to provide whatever additional information may be helpful as we all work to facilitate trade, lower costs and maximize efficiencies in global supply chains.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda M. Dempsey", is centered on the page. The signature is written in dark ink on a light-colored background.

Linda M. Dempsey