



DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES REGARDING  
INTERMEDIATED SECURITIES

**Committee on emerging markets issues,  
follow-up and implementation  
Second Meeting  
Rio de Janeiro, 27 and 28 March 2012**

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## REPORT

(prepared by the UNIDROIT Secretariat)

### **Agenda item No. 1: Opening of the meeting**

1. The second meeting of the Committee on Emerging Markets Issues, Follow-up and Implementation (hereafter *the Committee*) was held in Rio de Janeiro (Brazil) at the kind invitation of the Brazilian Securities and Exchange Commission (CVM) on 27 and 28 March 2012 under the co-chairmanship of Ms Niu Wenjie (China) and Mr Alexandre Pinheiro dos Santos (Brazil) and was attended by representatives of 18 States <sup>1</sup>, one regional economic integration organisation, one intergovernmental organisation, three non-governmental organisations and a very large number of other participants (cf. the list of participants in Appendix I).

2. The *Secretary-General* recalled that there had been a strong feeling at the diplomatic Conference to adopt the *UNIDROIT Convention on Substantive Rules for Intermediated Securities* that the work not only on promoting understanding of the Convention but also on legal issues related to financial markets, was not finished and completed simply with the adoption of the Convention. It was felt that the structure of consultation that had been established with the Committee on Emerging Markets deserved to be continued, and that this body should play a role also in connection with Resolution 3 of the diplomatic Conference, which called on the Secretariat to organise meetings intended to promote the Convention and its early entry into force, and invited this Committee to play an active role in that regard, and UNIDROIT member States to co-operate in that connection. He indicated that the Convention was a hardly coherent mosaic which could be complemented by other rules and principles on matters not treated by the Convention and that private law had a role to play.

### **Agenda item No. 2: Adoption of the draft Agenda**

3. The draft agenda proposed by the UNIDROIT Secretariat was adopted (cf. Appendix II to this report).

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<sup>1</sup> Members of the Committee, pursuant to the Final Act of the final session of the diplomatic Conference are the following: Argentina, Cameroon, Chile, France, Greece, India, Japan, Nigeria, Republic of Korea, South Africa, United States of America, European Community. The Observers are: Indonesia, European Central Bank, Hague Conference of International Private Law (HCCH), European Issuers, Trade Association for the Emerging Markets.

**Agenda item No. 3 – Colloquium on Financial Markets Law**

4. The *Chairperson of the Brazilian Securities and Exchange Commission* welcomed the participants and recalled that, after the financial crisis, many things had changed significantly but many others still had to be changed. She noted that after long discussions, recommendations and principles had been agreed, but they were issued by banking or industrial institutions and not adopted by States, and time had come for implementation without which those rules had no value. Brazil had made enormous progress even if there was still room for improvement and it needed guidance from institutions (IMF, World Bank, Basel Committee, IOSCO) to do so. She listed the topics on which Brazil had particularly worked on at internal level, such as payments, clearing entities, protection of investors (which was the mission of the Brazilian Securities and Exchange Commission), accounting standards, disclosure of information or enforcement of rules. She concluded saying that trust in the system was the condition for any progress in this field.

5. The Colloquium entitled “Promoting investor confidence and enhancing legal certainty for securities trading in emerging markets ” took place on 27 March 2012. Apart from the members of the Committee, participation in the Colloquium was be open to UNIDROIT member States, as well as to invited guests and speakers. A great number of Brazilians had positively replied to the invitation (see Appendix I to this report). The purpose of the Colloquium on Financial Markets Law was to consider action taken by emerging markets to create a favourable environment for trading in intermediated securities, with particular emphasis on the legal underpinnings of various securities holding systems, including so-called “transparent systems”, and measures and rules applied to ensure their integrity. The Colloquium also discussed how emerging markets have reacted to the financial crisis and the measures needed to be adopted to increase legal certainty and enhance investors’ protection. The programme of the Colloquium is reproduced as Appendix III to this report and the presentations, as far as authorised by the speakers, are to be found on the UNIDROIT website at the following page: <<http://www.unidroit.org/english/documents/2012/study78b/s-78b-cem02-programme-e.pdf>>.

**Agenda item No. 4: Consideration of the reception given to the UNIDROIT Convention on Substantive Rules for Intermediated Securities in the various countries, in particular in emerging countries**

6. The *Secretary-General of UNIDROIT* recalled that the Convention had been adopted in 2009 and after the time foreseen in the Resolution of the diplomatic Conference for establishing the authentic versions of the Convention the final text of the Convention had been officially published within the deadline set by the diplomatic Conference and transmitted to all the Governments. Then the Committee appointed by the diplomatic Conference to prepare the Official Commentary worked on the final version of the Official Commentary, which had now been published in English, the French version to follow soon. The Secretariat had already prepared and published the Declarations Memorandum for the Geneva Convention, that is the document that sets out guidelines on how to formulate the declarations that are authorised by the Geneva Convention. This document had been finalised by the Secretariat and was available on the web site of the Institute.<sup>2</sup>

7. The Secretary-General noted that, as regards the Secretariat’s support and technicalities for the process of implementing the Geneva Convention, its work was essentially done. It was now a question of moving forward domestically for the adoption of the Geneva Convention, and he invited participants at the meeting to submit information as to where they stood, domestically, on that process and what were the obstacles seen, the kind of assistance needed. He also welcomed

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<sup>2</sup> The Declarations memorandum is available at the following page: <http://www.unidroit.org/english/documents/2011/depositary/dc11-dep-01rev-e.pdf>

information about the process within the European Union towards the adoption of a directive on securities law within Europe.

8. The *representative of Brazil* indicated that the Brazilian Foreign Affairs Office had been working with the CVM since the beginning, and was aware of the intention to sign and internalise the Convention in Brazil, in co-operation with other Brazilian Government institutions related to the issue. Brazil had already made a lot of work in this direction and was also working on some other legal statutes – at CVM and the Brazilian Central Bank –, such as collaterals, CSDs, custodians, in order to make the internalisation of the Convention smoother when the time would come.

9. The *representative of South Africa* declared that her country embarked on re-writing the internal legislation on securities to align it with the UNIDROIT principles enshrined in the Convention. That piece of legislation was called the Financial Markets Act, and had been approved by the State Law advisers in the parliamentary process but still had to go through all the different phases in Parliament to be approved (it was tabled for this year).

10. The *representative of Cameroon* noted that his country had been very active during the elaboration process of the Convention and was therefore very interested in the evolution of its implementation. On the domestic level, he indicated that Cameroon had started to study how to integrate different rules of the Convention into national legislation. Cameroon had just made its first issue of government securities and the Convention might hopefully be an additional legal instrument which could reassure investors. He also hoped that consultations with the national Financial Markets Commission ("*Commission des marchés financiers*") will be intensified to examine how to rapidly take into consideration the rules of the Convention. However, to do so, he asked for UNIDROIT's assistance as well as that of other institutions and States having more experience.

11. The *representative of China* informed that, after the diplomatic Conference, the Convention was submitted to some Chinese Government branches and further discussions were engaged with scholars and practitioners which showed a great interest. Until now, China had no special legislation to govern securities interest (only provisions in securities law and company law, civil law) but hoped to have a separate law regarding this issue. He was welcoming information regarding other countries' attitudes and accession to the Convention and his country would further study and do more research on the Convention in the future.

12. The *representative of Italy* indicated that, being bound by the work currently done by the European Union in this field, he would let the representative of the European Commission give a presentation of the situation in Europe.

13. The *representative of India* complimented UNIDROIT for the progress and the interest which it was taking in terms of promoting the Convention. India was one of the signatories at the adoption ceremony in October 2009 and was now studying the Convention and looking at the implications, as the Official Commentary had now been issued, discussing the matter with all stakeholders, including the various departments, the Central Bank, and regulators. India had adopted the Depositories Act 1996 which it was analysing in terms of domestic law. Broadly, she indicated that they did not see much of a problem in terms of the depositary, but were examining the exemptions as well as the declarations contained and allowable under the UNIDROIT Convention. After also looking at the level of acceptance and understanding the Convention and the comments, India would take a final view but was, for the time being, very interested and wishing to proceed in a positive manner.

14. The *representative of Pakistan* informed that his country had, in the last three to four years, been reviewing all its capital market laws. At a first stage, Pakistan had developed a law based on the IOSCO principles dealing with the Securities Exchange and the Clearing System. Subsequently,

Pakistan would be looking at the law dealing with the central depository, which was a separate law, and that would be the time to look at the Geneva Convention and adopt the principles from this Convention into the domestic law.

15. The *representative of Qatar* declared that his country would soon be moving to a single regulator. At the same time, Qatar was drafting a new law, hopefully for mid-2012, and he hoped that some of the principles of the UNIDROIT Convention would be taken into consideration in the new law.

16. The *representative of Poland* recalled that their preparation was strongly related to the work that was planned by the European Commission. On the other hand, he indicated that Poland had made some changes to its law in the last year, allowing for omnibus accounts – this was especially critical from the tax point of view – and passed some measures in line with the Convention. Poland was waiting for the new CSD regulation and negotiation in this area within the EU, and would be in line with what was decided at top EU level as the rest of the EU countries.

17. The *representative of the United States of America* recalled the legislative developments in his country in the last couple of years which had taken considerable effort and time domestically in terms of regulatory implementation. As far as the Convention was concerned, at this stage, the United States of America had been considering a sequential approach, looking first at the Hague Securities Convention, and the Convention hopefully shortly thereafter. He indicated that they very much welcomed the publication of the Official Commentary which will be of great assistance in that process.

18. The *representative of France* indicated that his country was also bound by the work underway at the European Union and that the representative of the European Commission would develop on this point. He added that legislative activities at the European level in financial matters had been quite intense in the last years and, in particular, discussion would start soon on a draft regulation on central securities depositories on which the representative of the European Commission would certainly also enter more into details.

19. The *representative of Japan* indicated that his country had a large amount of statutes in this field, and these will be reviewed from the standpoint of the Convention in due course.

20. The *representative of Malta* joined his European colleagues in giving way to the lead presentation on the negotiations that were being conducted under the aegis of the European Commission in terms of the new initiatives in this field, and in which Malta was actively participating. Concerning the UNIDROIT Convention, he indicated that many of the main articles were to be found already within Maltese law, *e.g.*, custody of assets, duty to pass on the rights accruing to the account holder, the owner behind the intermediated securities, both from the perspective of intermediaries and CSDs. Malta was now envisaging to await the official adoption by the European Union of the relevant laws, and perhaps also consolidate and streamline the approach to the various provisions of the Convention already existing in Maltese law.

21. The *representative of Nigeria* declared that since the last meeting of the Committee, the Securities and Exchange Commission of Nigeria, in conjunction with the Ministries of Foreign Affairs, Finance and Justice, had presented the Convention to the Federal Executive Council of Nigeria, and the Nigerian Government had given wide support to the Convention, but was awaiting the Official Commentary. Regulators had run a seminar in 2009 in conjunction with UNIDROIT, and was planning others to promote the Convention.

22. The *representative of the Republic of Korea* wished to stress three points in which his country was particularly interested in. One was acquisition by an innocent person, the other was segregation of accounts, and the third was netting of financial instruments to implement the Convention in relation to Korea's financial law.

23. The *representative of Switzerland* indicated that his country had a new statute, the Federal Intermediated Securities Act, which came into force on 1 January 2010. It largely reflected the principles enshrined in the Convention, though it would need a few adjustments, and Switzerland was planning to do those adjustments at the same time as the ratification process, within the next few years. Switzerland wished first to collect experience with the Statute and correct things that need to be corrected.

24. The *representative of Turkey* informed the Committee that his country was in the process of making a new capital market law. Besides the harmonised EU law, Turkey also considered the UNIDROIT text, especially on financial collateral and transparency of the system.

25. The *representative of the European Commission* noted that the discussions during the Colloquium showed several issues that pose significant challenges to the European Union at the moment. In parallel, the Financial Stability Board, in which the European Union was an active participant, started to look more closely into shadow banking activities, after having identified securities lending and REPOs as being at the heart of the financial crisis in 2008. She explained that all these factors contributed to the conclusion within the European Commission that a much higher level of harmonisation in the European Union than offered by the Geneva Securities Convention was needed. This is why the Commission's main focus for the moment was on drafting securities legislation for Europe, rather than initiating the process of signature and ratification of the Geneva Securities Convention. Having said that, she stressed that EU did not regard the Geneva Securities Convention and its own securities law legislation as being substitutes, but as being complementary to each other. Actually, the idea was that the best result for global harmonisation would be achieved if all the references to national law in the Geneva Convention could be read – in the EU – as references to future EU securities legislation. She reiterated that, whatever the scope of its harmonisation in the end, the European Commission attached great importance to reaching a situation where securities law within Europe would fit within the global standard set by UNIDROIT. Therefore, in all the work, the Commission wanted to be compatible with the Geneva Securities Convention. In terms of the timetable, the securities law legislation was scheduled for the end of 2012, to be adopted by the European Commission, and then the proposal would go in parallel to the Council, where the 27 member States would discuss it, and to the European Parliament. Depending on the process, the European Union would then consider a possible future proposal for signature of the Geneva Securities Convention.

26. The *representative of Australia* indicated that there was, in 2011, a significant transfer of the law of personal property from each of the constituent States of the Federation to the Federal Government, and as a consequence of that process, the whole law of securities was picked up in the form of that legislation which dealt with intermediated securities in some detail, but not in a way which was entirely consistent with the Convention, and the drivers of that legislation were effectively the people who were driving the reform of personal property legislation. There was some will to bring it into line in due course, but for the time being the greatest degree of concern related to the Hague Convention on the issue of conflict-of-laws rules.

27. The *representative of Chile* noted that her country was analysing the Convention in order to meet the principles in its domestic law. It was now being studied by the authorities in the Government to identify the regulations that had to be modified.

28. The *representative of the Russian Federation* indicated that his country had taken into consideration the core principles of the Convention when working on the laws on clearing systems, which was adopted in the beginning of 2011, and the law on central securities depositaries, which was adopted in Russian at the end of 2011. Such concepts as the duties of the intermediary that holds the securities, the acquisition and disposition by debit and credit, the effectiveness in insolvency, the legal measures against unfair dispositions, the concept of effectiveness in the insolvency of the relevant intermediary and availability of sufficient securities by the intermediary were reflected in these two laws on clearing and on central securities depositaries. Some of these concepts were also reflected in the amendments to the law on securities markets, which was one of the core laws for Russian financial markets. The Russian Federation however had not yet decided to sign or ratify the Convention as a whole, although it understood the main ideas which were now being implemented in the internal legislation were quite in line with the Convention.

29. *The Secretary-General of UNIDROIT* thanked all delegates for the information provided and for what seemed to the Secretariat to be a vote of confidence on the quality of the Convention by those that expressed the interest of their authorities in either adhering to the Convention or at least for the time being looking at the Convention as a source of inspiration for domestic law reform. Obviously, the aim of the Organisation should be to bring this instrument into force as soon as possible, but UNIDROIT was aware of the time necessary for international instruments to be effectively ratified and implemented, much in the same way as it was aware of the particular context, e.g., for a large number of UNIDROIT's member States, those that were members of the European Union, because of the division of competences between the Union and the member States. The Secretary-General welcomed the declaration of the representative of the European Commission and the expressed interest of the Commission for ensuring compatibility and consistency between a global and a regional instrument which was the objective of all European participating member States from the very beginning, when they embarked on the negotiation of the Geneva Convention. To answer in particular the request for assistance by the representative of Cameroon, he stressed the readiness of the UNIDROIT Secretariat to assist Cameroon, even if not a member State of the Organisation, as much as it could in that country's efforts to modernise its national legislation and, possibly, to accede to the Geneva Convention.

30. The Secretary-General concluded by welcoming in the future more concrete information as to exactly what kind of legislative moves had so far been influenced by the thinking and the principles of the Geneva Convention, independently of the accession process. He also invited member States to share that information with the Secretariat so that it could periodically report exactly on the impact which the Convention had been having around the world.

***Agenda item No. 5: Consideration of legislative measures to implement the Convention and incorporate it in domestic law***

31. *Ms Schneider* (UNIDROIT Senior Officer) recalled that in 2010, the UNIDROIT Secretariat prepared a guidance document intended to provide advice for countries that ratify the Convention on how best to incorporate the Convention and integrate it into their domestic legal systems. The first draft of that document, in the form in which it was submitted to the first meeting of the Committee, contained two parts, one relating to the formulation of declarations that may be lodged under the Convention and the other offering guidance on the relationship between the rules of the Convention and the otherwise applicable laws in a Contracting State. The Committee decided at its first meeting that the document should be split and make the two parts separate the first being a typical Secretariat document as Depository (UNIDROIT 2011 – DC11/DEP/Doc. 1).<sup>3</sup> It was felt that the

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<sup>3</sup> See footnote 2

second would be complemented to become a kind of legislative guide which could go further than the content of the Convention, and give options for the implementation of recommendations prepared by others.

32. She also recalled that in December 2010, the General Assembly of UNIDROIT adopted the triennial Work Programme 2011-2013, including the topic of the preparation of a prospective Legal Guide to enhance securities trading in emerging markets. Then, in May 2011 the document now entitled "Information for Contracting States in respect of the Convention's references to sources of law outside the Convention" was submitted to the Governing Council of UNIDROIT (UNIDROIT 2012 - Study LXXVIII B/CEM/2/Doc. 2). which entrusted the Secretariat to send it to a number of experts and other Organisations for in-depth comment as to the scope and content of the prospective Legislative Guide given the complexity and variety of the subjects involved, some of which had not yet been dealt with by UNIDROIT, and to ask for more consultation in order to know the real needs of emerging markets in terms of capital market legislation and regulation. The Secretariat received information from States, some representatives of States who wished to answer in a personal capacity, as well as from international governmental and non-governmental organisations.

33. The comments received first of all, generally, showed general support for this initiative. For some, the documents as it stood was a very useful tool for the enhancement of securities trading in emerging markets, and this was why some had added some sentences here and there, either to better explain or give examples to the original text. Some commentators, and particular those of international Organisations, did not wish to comment specifically for the time being – they wanted to wait for further discussion within this Committee, and to know about the areas to be covered, the objectives and the countries this instrument was targeting.

34. Concerning the purpose of the guidance document, it was clearly stated in the document that it would not replace the Official Commentary but one country proposed to use the positive form and say that it aims at assisting certain categories of person to understand the Convention and the Commentary, and identify areas outside the Convention as well as processes and options for States. Ms Schneider also recalled that the Secretary-General referred to the importance of providing information concerning those domestic laws and policies to the Depository, *i.e.*, the UNIDROIT Secretariat. Although not requested by the Convention, it was very important for the Secretariat to collect them, and to make them visible, of course. A comment was made on the importance of updating such information – and this should be the responsibility of States and not of the UNIDROIT Secretariat – as well as categorisation of the information into the categories listed before the terminology used in the Convention. One Organisation felt that such information should also appear on the web sites of Governments or public authorities responsible for regulation or supervision of intermediated securities.

35. Regarding observations on scope and content, on the sphere of application of the Convention, where of course issues of conflicts of law were extremely important, one State said that probably for some countries it might not be that easy to distinguish between substantive law and conflict-of-laws issues, and that this should be more elaborated in the document, with examples given as well as references to the Hague Convention specifically dealing with private international conflict-of-laws rules.

36. It was clear to some – and in particular to one expert – that the matters excluded from coverage by the Convention were only the starting point of such an instrument. This instrument should also position private law with respect to more general laws on property, and in the context of the State systems for regulating securities markets and market participants. Entering into more detail on the position of private law with respect to States' more general laws on property, examples were given of what might be inserted in the Legislative Guide as well. It was therefore

obvious that while private law matters were the expertise of UNIDROIT, this Guide should address other matters also, and this was also why UNIDROIT needed the co-cooperation of other bodies.

37. The *representative of the European Commission* wondered what the exact nature of this Legislative Guide was to be, and its relationship to the Official Commentary, quite a crucial issue for the Commission. In fact, she explained that as soon as the Commission committed to global compatibility and to complying with UNIDROIT, it needed to have a stable text to comply with, and as it would need to do an impact assessment of the Convention and a lot of matters had been left to the Official Commentary, the Commission wanted the Official Commentary to form the last step in the process of the UNIDROIT Convention.

38. The *representative of Switzerland* wondered whether the words “legislative guide” were the best words. He indicated that there were now a Convention which was quite complex and technical, and an Official Commentary, which was useful and which would help to understand the Convention and the options that were left for the States to make in matters of non-Convention law. The Commentary was in his view more about the provisions of the Convention and just pointed out what non-Convention law and other applicable law might do, also supplemented by the document which was just presented, other sources of law applicable to intermediated securities. His understanding was that, for example, the EU had done, in the Legal Certainty Group, a huge, very fascinating and very useful work of thinking about these additional rules. This Group had produced an enormous amount of data and thinking, and that thinking had also influenced the process at UNIDROIT. He then noted that one might probably assume that within the EU, there was not much need for further assistance in devising the non-Convention law. He recalled the discussion on the previous day that in other jurisdictions, particularly in emerging markets, there were part of the Statutes which were already written, some other parts which were being considered, and all those issues had not been fully debated as they had been within the EU. The representative of Switzerland explained that he would conceive this additional piece, whatever it was, as a larger explanation of the options that were open to States, mostly within the Convention, but probably the issues raised were also valid even for States not considering the adoption of the Convention. This additional work still needed to be thought about because it certainly was not going to look like one of the traditional legislative guides.

39. The *representative of the United States of America* agreed with almost all the points indicated by the representative of Switzerland. He wished to reiterate that the Convention was *sui generis*, as to the extent to which it made explicit reference to non-Convention law. And the legislative guide likewise, whatever form and name it would take, would also be *sui generis*. The UNCITRAL Legislative Guides actually seek to harmonise the law, the legislative guide would address matters that the UNIDROIT Convention was unable to harmonise. The guide would lay out alternative approaches, presumably drawn from existing approaches already adopted by some countries. He concluded saying that it would be a challenge, but it could be quite useful.

40. The *Secretary-General* illustrated the question of the exact nature of the legislative guide raised by the representative of the European Commission with the example of segregation of financial assets which was a clear case of a very sensitive, very important method for ensuring compliance with one obligation in the Convention, for which, however, the Convention itself did not specify how that was to be achieved (there were different methods for ensuring that). To a large extent, this was a technical matter, but any way chosen would also have certain implications from a legal point of view. He noted that this would be an example where a document, whatever it might be called, would explain possible solutions, that the Convention did not address directly, but rather for the discretion for States to develop. The document would explain how those possible solutions worked and what were the possible advantages and disadvantages. The Secretary-General stressed that it would not be wise for the Committee now to suggest an attempt at harmonising what States had been unable to harmonise five years earlier, but it is might nevertheless be useful to compile



information as to what the law might look like, making States considering joining the Convention aware of the options that they might wish to choose.

41. The *representative of South Africa* supported the idea and noted that the compiling of information could only improve the understanding of the Convention and the Commentary.

42. The *representative of France* also agreed with the proposal for a strictly informative document presenting options in a neutral manner on a number of subjects without drafting specific recommendations. He felt that such an approach could only enrich the work.

43. The *representative of the United States of America* commended the Secretariat on the excellent work that had been done so far. For the most part the Secretariat had completed the initial work to set the stage for promotion and ratification of the Geneva Securities Convention, and these were matters with which the Secretariat had great experience and every prospect of success. Concerning the next step, the so-called Legislative Guide, he wished not to pre-judge what such a product might look like (it might be very different from the hard law sort of legislative guide UNCITRAL was producing), nor the kind of process and structure of such a project (it needed not follow the multi-year, expensive, many meeting, much travel model of the UNCITRAL legislative guides, for example). He invited the Committee to consider the following proposal: to request the Secretariat to convene a small, relatively informal working group to make recommendations to the Committee which might include the feasibility of the Legislative Guide project, how the project would be structured and staffed, how expenses could be kept to a minimum, what an outline of its contents might be, and similar matters. He believed this would give the Committee an opportunity to decide with the Secretariat on next steps. Such a Working Group would be seen as an interim arrangement, not a group that would be instructed to start drafting a legislative guide, but simply asked to make some preliminary recommendations to the Committee so as to have some further guidance from individuals who have given the matter a great deal of thought.

44. The *representative of Japan* supported the suggestion made by the representative of the United States of America as, at this stage, the Committee should probably have a clear view as to what steps should be taken next. Such small group would make proposals to the Committee on the future steps in line with what had been explained by the Secretary-General.

45. The *Secretary-General* gave a first answer to a question which was to be discussed under another item of the agenda, "follow-up activities to implement and promote the Convention", i.e. the exact role and the function of the Committee. He noted that if the Committee expressed the wish to maintain a certain periodicity of meetings, then it might become the body that at a certain point would discuss and eventually approve initial drafts prepared by a smaller group, without having to engage in a heavy machinery of having twice-a-year intergovernmental meetings in Rome, with all 63 member States send representatives to discuss. He suggested that it might be an intermediate solution, a body having a natural legitimacy that was drawn from the diplomatic Conference, the membership of which was predominantly that of emerging markets, precisely the addressees of this work.

46. The *representative of Switzerland* supported the proposal made by the representative of the United States of America that a smaller advisory group should be set up to consider the scope and purpose of the future instrument, in order to be useful to countries seeking additional guidance. He noted that his country was an observer in the Committee, not a member, but was very interested in the implementation and follow-up of the Convention, and the preceding discussions showed significant interest in the Convention, first, as a set of principles against which one could think about and benchmark national legislation but also, he hoped, as an instrument capable of being adopted and which had the benefit of being an international instrument that was going to be binding. He stressed the fact that the Committee probably could not sit more than once a year,

every 18 months or even every other year and that this was a is good reason to have a small group of people who would commit in an informal and non-costly way to go on and make proposals for consideration by the Committee and by UNIDROIT.

47. The *Secretary-General* proposed that the participants that have expressed an interest in this could be invited to compose a small group with the two co-chairs of the Committee, Brazil and China, and proposed the following composition: South Africa, Brazil, China, United States, France, Japan, the Russian Federation and Switzerland. He also suggested that, if the Committee agreed, the Secretariat would invite the experts from those countries and contact them while they were present in Rio de Janeiro to set up the agenda and the working methods to come up with proposals for this small working group to submit to the Committee.

48. The *representative of Switzerland* expressed appreciation to the Secretary-General for welcoming this initiative. He wondered however how this small working group of States would interrelate with the Committee itself and suggested to have further consultation to discuss the very precise proposals made by the Secretary-General.

49. The *Secretary-General* concluded the morning session suggesting that, in preparation of the item relating to follow-up activities of the Convention, participants might exchange ideas, for example, on the periodicity with which events of this nature should be organised, or the possibility of organising events of a regional nature to disseminate knowledge of the Convention, the role envisaged for this very Committee, bearing in mind that the Committee had become a sort of open-ended body. Originally, it had a very small composition but in the meantime it had been opened up not only to the broader membership of UNIDROIT but also to those non-member States such as Cameroon and Qatar that participated in the negotiation of the Convention.

#### ***Agenda item No. 6: Presentation of the Official Commentary on the Convention***

50. The *Secretary-General* recalled that in Resolution No. 2, adopted together with the Final Act at the first session of the diplomatic Conference (Geneva, 1-12 September 2008), the Conference called for the preparation of a draft Official Commentary on the Convention by the Chairperson of the Drafting Committee, in close co-operation with no more than three members of the Drafting Committee, under the supervision of the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, as well as with the UNIDROIT Secretariat.

51. The draft Official Commentary had been presented to the final session of the diplomatic Conference (Geneva, 5-9 October 2009). At the close of the final session, the Conference in its Resolution No. 2 had requested the finalisation of the Official Commentary on the Convention, taking into account policy choices and relevant matters considered by the Conference, and its circulation to all negotiating States and participating observers no later than 10 months after the final session of the diplomatic Conference inviting comments thereon within four months upon its circulation. The revised draft had been circulated in August 2010 and the comments received from a number of States and observers were considered by the persons appointed by the Conference to finalise the Official Commentary and the final text, which had been delivered to the Secretariat on 25 August 2011. The Official Commentary had finally been published a few weeks before the meeting of the Committee. The Secretary-General then gave the floor to the Chairman of the Drafting Committee at the diplomatic Conference to adopt the Geneva Securities Convention to make a presentation of the Official Commentary on the Convention.

52. The *representative of Japan, as Chairman of the Drafting Committee established by the diplomatic Conference*, expressed his thanks for the patience of those who had been waiting for the volume and to those who had participated in its preparation. This Commentary was the result of teamwork, and the Preface acknowledged those people who participated in the process of preparation. He wished to thank first of all his colleagues present to the meeting, the principal authors and editors, Mr Mooney and Mr Thévenoz (as well as Mr Béraud who was not present), and then Mr Keyser, who was very helpful and who assisted the authors on behalf of the UNIDROIT Secretariat. He also thanked UNIDROIT, the Secretary-General and the former Secretary-General, Mr Kronke. He indicated that the French version was being taken care of, and for this version he thanked Mr Thévenoz and the UNIDROIT Secretariat. The French version would be published probably around June 2012 by Schulthess in Switzerland together with its partners in France and Canada. He hoped that the Commentary will be helpful to anyone who had been involved in and is interested in this project.

53. The *Secretary-General* recalled that Resolution No. 2 of the Geneva diplomatic Conference in 2009 mandated that the revised final version of the Official Commentary be transmitted by the UNIDROIT Secretariat to all negotiating States and participating observers, as soon as practicable after the conclusion of the Conference. UNIDROIT had since published the Official Commentary through a commercial publisher. The Secretariat had advised the member States and requested that they indicate the person who should officially receive the copy of the Commentary on behalf of their Governments. He was pleased to see that a number of delegates who were official representatives of their States also at the time of the negotiation of the Convention, were present and would therefore receive their copies. The Secretary-General invited some delegates to join him on the podium to receive their copies. Last but not least he called the authors of the Official Commentary to receive their own personal copies for their very hard work, as well as to the coordinator of this work.

54. The *Secretary-General* concluded by stressing how much the Secretariat had enjoyed and appreciated the enormous contribution made by the four authors and also by the initial authors, in what had been a huge collective effort to put together this Official Commentary with the rather unusual and complex process for producing the Official Commentary contemplated by the diplomatic Conference. He emphasised the wisdom with which this process was conducted and how much UNIDROIT owed, not only to the knowledge of the individual authors, but to a very large extent to the extraordinary ability, patience and sensitivity of the Chair of the Drafting Committee, Professor Kanda from Japan. [*Large round of applause*]

#### ***Agenda item No. 7: Consideration of follow-up activities to promote the Convention***

55. The *Secretary-General* recalled that in its Resolution No. 3, the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities invited the Member States of UNIDROIT, and the States, Regional Economic Integration Organisations and Observers participating in the diplomatic Conference, and in particular the States represented on the Committee on Emerging Markets Issues, Follow-Up and Implementation, to cooperate with UNIDROIT in organising activities to promote awareness and understanding of the Convention and assess its continued effectiveness in light of relevant contemporary developments in market circumstances and trends in market regulation, and also with a view to encouraging the Convention's early entry into force and its signature, ratification, acceptance, approval and accession by States and Regional Economic Integration Organisations.

56. He also recalled that the Committee had been set up during the diplomatic Conference and, according to diplomatic practice, it should have exhausted its own functions at the end of the diplomatic Conference itself. But it had been the will of the diplomatic Conference that this

Committee, as an open-ended body should continue playing a role in the promotion of the Geneva Convention. The meetings of this open-ended Committee were not identical with the periodical meetings to review the practical operation of the Convention after the entry into force of the Convention and eventually, and as appropriate, and as needed be, recommend adjustments or amendments to the text of the Convention. But the diplomatic Conference had envisaged for the Committee a role in promoting the Convention further. As already discussed earlier, the Secretary-General suggested that, if the participants in this meeting agree that there was a value in having a group of negotiating States meeting periodically, to send experts in financial and capital markets law, to discuss, for example, the preparation of a further guidance document such as the one discussed in another item of the agenda, then he would be happy to inform the Governing Council and the General Assembly of UNIDROIT so that they may endorse the continued holding of meetings of this nature, by a committee which was basically now an open-ended committee of member States of UNIDROIT that is also open to non-member States of UNIDROIT that have participated in the work that led to the adoption of the Geneva Convention. He also invited participants to think of the proper title to give to the Committee.

57. The *Secretary-General* also stressed the fact that, given its value, the Committee could not be confined to simply producing a legal instrument, because there was an important educational and promotional value in meeting periodically and providing a forum for States for a full exchange of experience and information, and then considering whether there was something else to be done. Given the body of knowledge and experience to be found in the membership of this particular Committee, he very much favoured and welcomed an affirmative indication by the States represented that they would like to proceed with this process and continue the practice of holding periodic meetings – so far, the Committee had only two, and he would not expect them to occur more than, at the most, twice of year, or even once a year or once every other year.

58. The *representative of the Traders Association of Emerging Markets* noted that her understanding from the debates was that many States were very interested in the product that UNIDROIT had produced, but tended to be adopting it by incorporating select provisions of the Convention into revised legal systems that they were adopting on a case-by-case basis. She expressed the feeling that to promote greater understanding and perhaps quicker adoption on a broader basis, proceeding with a small group, as was suggested, to assist in providing more guidance and also to have additional gatherings that perhaps might allow a broader attendance by individuals actually in the industry, in the markets, in the regulatory bodies, in different geographic areas might also work to promote the product in that way.

59. The *Secretary-General* extended an invitation to the participants, particularly those representing so-called emerging markets, to consider the possibility of hosting a similar event maybe a year later, and suggested that maybe between now and that time, the small group would have had an opportunity to develop further proposals as to what the additional guidance document should look like, what it could cover, and the approach to be taken, the methodology to be developed. The next similar meeting in the future could have a similar format: one or two days of substantive presentations on different topics, essentially focusing on topics that were natural candidates for treatment in the guidance document, and then the following day having a similar meeting as this one to discuss the evolution of the work, the promotion of the Convention, etc. Without willing to put a particular country under pressure, he would very much welcome if before the summer, the Secretariat could have an indication of a country that might be willing to host such a meeting. The small working group might then be working in the meantime, and have some interim work done before the end of the year. He concluded hoping that this process of engaging more and more emerging markets countries in this work could continue.

60. The *representative of Cameroon* reiterated the interest of his country to continue to consider ways to improve the quality of the document, and especially to benefit from the experience of other countries in the regulation of financial markets. For this reason, Cameroon supported the idea of periodical meetings to be determined with other countries. Concerning the invitation made by the Secretary-General to host a meeting of the Committee, he noted that this could be envisaged after Cameroon's accession to the Statute of the Organisation as his country was not yet a member State of UNIDROIT. Finally, he emphasised again the importance of having periodical meetings.

***Agenda item No. 8: Information on current work of UNIDROIT on netting of financial instruments and possible future work by UNIDROIT in the area of capital markets***

***(a) Information on current work of UNIDROIT on netting of financial instruments***

61. The *Secretary General* started by indicating where the Institute stood from an institutional point of view on the work on close-out netting. The proposal for UNIDROIT to work on close-out netting – and at that time, the form of the instrument was not at all clear – was first tabled at UNIDROIT back in 2008. Then a study had been commissioned to a scholar to assess the basis of the proposal which was put before the Governing Council in 2009 sufficiently ahead of time to allow the members of the Council to consult internally. There was unanimous approval to undertake work on netting and, on that basis, it was put before the General Assembly in 2009 and was approved for inclusion in the Work Programme, with the highest level of priority, and again overwhelming support not only from a technical/legal point of view but also from a political point of view.

62. As to procedure, he explained that a study group was established, as it was the practice at UNIDROIT, where there had soon been a discussion about the nature of the instrument. At this point in time, the working assumption was a set of principles followed by explanations, very much like what was coming out of the Financial Stability Board or the Cross-Border Resolution Board and other similar bodies. In establishing the study group, the Secretariat this time opted for a larger group than the group that was at the origin of the conceptual phase of the Geneva Securities Convention – the group currently had 15 members – all invited by the Secretariat – being a mix of academics, regulators, representatives of international Organisations, and industry representatives or lawyers in private practice with experience in netting and derivatives law (lawyers from Europe, North America, Latin America, Asia, Africa). The study group met three times and the Secretary-General would soon seek from the UNIDROIT Governing Council permission to put the draft principles on netting before a committee of governmental experts to be convened, for the first time, later this year.<sup>4</sup> The assumption then would be that it should be feasible for the project to be completed within two sessions of a committee of governmental experts and, if this could be done within the first half of 2013, there was a strong possibility that by then these UNIDROIT principles on close-out netting might be taken into account and incorporated in the new assessment tools that the IMF would be approving in the summer of 2013, and that would immediately bring this product into the tools used by the IMF to assess the stability of financial markets around the world and that of course would be extremely valuable in terms of promoting adherence to these standards around the world.

63. The *Secretary-General* turned to substance illustrating what the instrument covered (general definition of “close-out netting provision”, “eligible party” and “eligible obligation” followed by explanations) and the provisions envisaged to be in the instrument. He explained the first set of

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<sup>4</sup> The first meeting of the committee of governmental experts will meet in Rome from 1 to 5 October 2012.

three principles relating to formal requirements for close-out netting provisions, bearing in mind that the tenure of the principles was to uphold the enforceability of close-out netting. Then he emphasised the heart of the Principles, i.e. the enforceability of close out-netting (very much inspired by the European Financial Collateral Directive), and explaining that the opening, commencement of insolvency proceedings should not affect the enforceability of close-out netting, and that close-out netting should be enforceable according to its own terms, on the basis of the principle of party autonomy. Even more importantly, a close-out netting should remain enforceable even if one or more of the obligations covered are or remain unenforceable or ineligible (known in many so-called netting-friendly statutes and also under the ISDA Model Act). After having developed the principle protecting netting from insolvency, the Secretary-General presented the last principle which would open up a window for that protection of netting to be temporarily set aside by entities exercising resolution powers, but mainly, or rather essentially, as regards a temporary stay of the netting.

64. To conclude, the Secretary-General indicated that the study group was still considering conflict of laws which was of an extraordinary complexity in this field, in particular within the European Union. The Principles, together with the additional one on conflict of laws to be finalised, would be submitted to the committee of governmental experts.

65. The *representative of France* thanked the Secretary-General for his extensive presentation of the netting project in which France was actively participating and was eager to attend the very detailed discussions at the committee of governmental experts. He stressed that this project had obviously to be put in context, and in particular in the new regulatory context derived from the G20 of the regulation of derivatives markets. As to procedure, he emphasised the importance of the articulation between the work planned at UNIDROIT and the work underway within the FSB indicating there was a real important issue of articulation on a number of issues that came directly from requests made by Heads of States. He also noted that there would be a detailed discussion in particular on the scope of the Principles as all legislations did not have the same types of devices, in particular the application of close-out netting. Another fundamental question was the articulation with resolution regimes under preparation or already adopted in some States and envisaged at European level. He concluded by agreeing that the conflict of laws issue was extremely complex in the European Union in particular.

66. The *representative of the American Association of Private International Law (ASADIP)* complimented the Secretary-General and also the study group on their excellent work. She expressed support for the principles and rules which on the one hand, were very clear and precise, and on the other hand, were flexible and very realistic at the same time. She stressed that they take into account the limits of private law in this important area, and also give answers to the main points of the question of enforceability of netting agreements. She indicated that ASADIP was in favour of the inclusion of provisions on conflicts of law, and also further studies in this important field.

67. The *Secretary-General* thanked the two speakers for the support they expressed for the project and reassured the representative of France that good coordination with the Financial Stability Board work was essential. That is also why, for example, the study group waited for the recommendation of the FSB on the issue of the carve-out for financial resolution powers to develop its own set of rules. The Secretary-General also took this opportunity to appeal to all the member States' representatives participating in the meeting to ensure that every effort is made to ensure that Governments would be sending people who can ensure the highest possible co-ordination with what their own Governments are doing in this field.

**(b) Possible future work by UNIDROIT in the area of capital markets**

68. The *Secretary-General* gave the floor to Professors Thévenoz and Kanda to make comments on the scope they saw for the future work on the legislative guide and on possible future work by UNIDROIT in the area of capital markets.

69. Professor Thévenoz recalled that capital markets was a very busy area, a very busy and powerful industry, but it was also an area where there was a lot of international consultation and regulation. The successful activity of UNIDROIT in this field, with the Geneva Securities Convention, and then with the new endeavour about close-out netting agreements, showed that there was something to be done, also from a private law perspective also because regulators in particular tend to forgo the private law issues. UNIDROIT should then maintain and intensify its cooperation with institutions like IOSCO, the FSB, national regulators, market regulators, banking regulators, central banks, as they all had a very strong interest in the functioning of capital markets.

70. On this basis, and after the indication given by the *Secretary-General* that UNIDROIT would produce an instrument on netting which would not be a binding instrument but which would be recognised as a standard, and that might be integrated in the technical assistance programs of other international bodies, such as the IMF, he suggested to offer the same thought to the Geneva Securities Convention and proposed that UNIDROIT consider promoting not only one, but two instruments as standards for assessment. In fact, the Convention was of great interest to capital markets, to the regulators of capital markets, and to Governments, because it contributes to financial stability, to the smooth functioning of the market, and to a sound and reliable operation of capital markets, and it would be a pity to omit this completed instrument from the co-operation that UNIDROIT currently had with the FSB and IMF, the World Bank, etc. Professor Thévenoz also recalled that emerging markets clearly said during this meeting that they were very much interested in the Convention and the principles that were enshrined in the Convention and called for technical expertise. He therefore suggested that UNIDROIT should somehow maintain, co-ordinate, favour, a network of experts willing and capable to assist emerging markets and other jurisdictions to implement the principles in the Geneva Securities Convention, possibly leading to ratification of the Convention as it was very much in the interests of UNIDROIT that the Convention remained not only principles, but would actually enter into force. To do this, the support of the IMF, the World Bank or the EDB would be very necessary because they had significant programmes of technical assistance and funds which UNIDROIT did not have.

71. Concerning future work of UNIDROIT in respect of capital markets, Professor Thévenoz mentioned the possibility of future work by UNIDROIT in the area of trusts. He believed that trusts used for commercial or financial transactions were an area in need of further study and harmonisation. He recalled that there was a successful 1985 Hague Convention on conflict of laws, but in many jurisdictions where trusts were not native to the legal culture, there was some legal device missing that would achieve the ring-fencing needs of certain commercial and all financial transactions. Capital markets did rely on trusts to secure a number of transactions, and there was no-one in the world – be it IMF, World Bank – which was now considering this. He emphasised that there were needs, that there had been several attempts to attend to those needs (one private initiative by his university for a EU Directive and a heavy chapter on trust in the Draft Common Framework of Reference) but that narrowing this concept down to commercial transactions and financial transactions, he felt that there was an interesting area for future work by UNIDROIT.

72. *Professor Kanda* first, on the issue of promotion of the Geneva Securities Convention, agreed with Professor Thévenoz's proposal as to tying the promotion of the Convention to some other Organisations (assessment programs for example). On substance, he stressed that the Committee should continue to meet, and agreed with the idea of a meeting once a year or every other year, to be updated as to the development of these markets characterised by speed and contingency.

73. As to possible future work, Professor Kanda also agreed with Professor Thévenoz' proposal to perhaps think about the commercial trust, a very important area for financial and commercial transactions, but it was the area where one had seen much less harmonisation in the past. For the purpose of discussion, Professor Kanda indicated two further areas for UNIDROIT to study. One was some areas of corporate law, already related in the past and current work of UNIDROIT, e.g., in the Geneva Securities Convention. He mentioned in particular voting arrangements which were very important in today's markets, indicating that there were many legal issues and questions that remained uncertain and certainly these legal rules were not being harmonised. UNIDROIT might therefore be interested in one of these limited areas of corporate law – in connection with the existing instruments. The second area he mentioned was securitisation as, as already recalled, UNIDROIT had experience in matters of commercial contracts as well as in the finance areas. There were many legal issues outstanding in respect of securitisation, and if the matter had been discussed in the context of the financial crisis, harmonisation had not been attempted in this area and he felt that there were a couple of specific issues on which harmonisation might be called for.

74. The *Chairperson* thanked the two speakers for their very interesting and helpful suggestions for the future work UNIDROIT and the Committee which would be discussed after the meeting. She welcomed a very positive reply for those suggestions.

***Agenda item No. 9: Other business***

77. No other questions having been raised, *the co-Chairpersons* closed the meeting.



**APPENDIX I****LIST OF PARTICIPANTS IN THE COMMITTEE MEETING/  
LISTE DES PARTICIPANTS A LA REUNION DU COMITE****LIST ESTABLISHED BY UNIDROIT ON THE BASIS OF OFFICIAL ANNOUNCEMENTS / LISTE ÉTABLIE PAR  
UNIDROIT SUR LA BASE D'INFORMATIONS OFFICIELLES****STATES / ETATS \*****AUSTRALIA / AUSTRALIE**

The Honourable Justice Nye PERRAM  
Federal Court Judge  
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Sydney

**BRAZIL / BRESIL \***

Co-Chair of the Committee on emerging  
markets issues, follow-up and implementation /  
*Co-Président du Comité sur les marchés  
émergents et les questions de suivi et de mise en  
œuvre*

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Attorney General  
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(CVM)  
Rio de Janeiro

Mr Luis Antonio BALDUINO CARNEIRO  
Diretor do Departamento de Assuntos  
Financeiros e Serviços

Ms Julya Sotto MAYOR WELLISCH  
Federal Attorney  
Brazilian Securities and Exchange Commission  
Rio de Janeiro

Mr Henrique LEITE CAVALCANTI  
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Mr Luís Carlos CAZETTA  
Advogado especializado em direito bancário e  
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\* States indicated by an asterisk are members of the Committee on emerging markets issues, follow-up and implementation / *Les Etats indiqués par une astérisque sont membres du Comité sur les marchés émergents et les questions de suivi et de mise en œuvre.*

**CAMEROON / CAMEROUN \***

Mr Richard AMBASSA NTEDE  
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 Ministry of External Relations  
 Yaoundé

Mr Sidi MOUGNAL  
 Chief  
 Unit of Agreements and Conventions  
 Division of Judicial Affairs  
 Ministry of Finance  
 Yaoundé

M. Samuel TELA  
 Chef de Cellule de la législation  
 Ministère des Finances  
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Miss Marissa REICHBERG STEINBERG  
 Lawyer - Fiscalía de Valores  
 Superintendencia de Valores y Seguros  
 Santiago

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 CHINE (REPUBLIQUE POPULAIRE DE) \***

Co-Chair of the Committee on emerging  
 markets issues, follow-up and implementation /  
*Co-Président du Comité sur les marchés  
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<b>ITALY / ITALIE</b>	<p>Mr Federico de TOMASI Senior Legal Counsel Bank of Italy Rome</p>
<b>JAPAN / JAPON *</b>	<p>Mr Hideki KANDA Professor of Law University of Tokyo Tokyo</p>
<b>MALTA / MALTE</b>	<p>Dr Robert VELLA-BALDACCHINO Deputy General Manager (CSD &amp; Custody, Market Operations &amp; Compliance) Member Executive Committee Malta Stock Exchange plc Valletta</p>
<b>NIGERIA *</b>	<p>Mr Reginald Chukwudi KARAWUSA Assistant Director Head, Enforcement &amp; Compliance Department Securities &amp; Exchange Commission Abuja</p> <p>Mr Luqman Olu Segun SANNI Head, Investor Services Stanbic IBTC Bank Plc Lagos</p>
<b>PAKISTAN</b>	<p>Mr Muhammad ALI (TBC) Chairman Securities and Exchange Commission</p> <p>Mr Sultan Mazhar SHER KHAN General Counsel Securities and Exchange Commission of Pakistan Islamabad</p>
<b>POLAND / POLOGNE</b>	<p>Mr Piotr PIŁAT Director of Financial Market Development Department, Ministry of Finance Warsaw</p> <p>Mr Michał STĘPNIEWSKI Member of the Management Board of the National Depository for Securities Warsaw</p>

**REPUBLIC OF KOREA /  
REPUBLIQUE DE COREE \***

Mr PARK Churl Young  
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**SOUTH AFRICA / AFRIQUE DU SUD \***

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Mrs Maria Rosina VERMAAS  
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M. Luc THÉVENOZ  
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**UNITED STATES OF AMERICA /  
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Mr Timothy SCHNABEL  
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Office of the Legal Adviser  
Department of State  
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Prof. Charles W. MOONEY, Jr.  
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University of Pennsylvania Law School  
Philadelphia, PA

**REGIONAL ECONOMIC INTEGRATION ORGANISATION  
ORGANISATION REGIONALE D'INTEGRATION ECONOMIQUE \*\***

**EUROPEAN UNION /  
UNION EUROPEENNE**

Ms Olga TYTOŃ  
Legal officer  
European Commission  
Directorate General Internal Market and  
Services  
Unit G.2 Financial Markets Infrastructure  
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**INTERGOVERNMENTAL ORGANISATIONS  
ORGANISATIONS INTERGOUVERNEMENTALES**

**INTERNATIONAL MONETARY FUND (IMF) /  
FONDS MONETAIRE INTERNATIONAL  
(FMI)**

Mr Wouter BOSSU  
Senior Counsel - Legal Department  
Washington, DC  
United States of America

\* \* \*

**NON-GOVERNMENTAL ORGANISATIONS  
ORGANISATIONS NON GOUVERNEMENTALES \*\***

**ASADIP**

Ms Nadia DE ARAUJO  
Professor  
Rio de Janeiro  
Brazil

**ASIA-PACIFIC CSD GROUP (ACG)**

Ms NIU Wenjie  
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Legal Affairs Department  
China Securities Depository and Clearing  
Corporation Ltd (SD&C)  
Beijing  
People's Republic of China

Mr Yoshinori TAKATA  
Manager  
Corporate Planning Department  
Japan Securities Depository Center, Inc.  
Tokyo  
Japan

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\*\* Regional economic integration organisations and International Organisations indicated by a double asterisk are members of the Committee on emerging markets issues, follow-up and implementation; those indicated by a triple asterisk are Observers to the Committee / *Les Organisations régionales d'intégration économique et les Organisations internationales indiquées par une double astérisque sont membres du Comité sur les marchés émergents et les questions de suivi et de mise en œuvre; celles indiquées par une triple astérisque sont Observateurs auprès du Comité.*

**TRADE ASSOCIATION FOR THE EMERGING  
MARKETS (EMTA)**

Ms Sandra M. ROCKS  
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**UNIDROIT SECRETARIAT / *SECRETARIAT D'UNIDROIT***

Mr Jose Angelo ESTRELLA-FARIA

Secretary General / *Secrétaire Général*

Ms Marina SCHNEIDER

Senior Officer / *Fonctionnaire principal*

**LIST OR PERSONS REGISTERED WITH THE COMISSÃO DE VALORES MOBILIÁRIOS (CVM) TO ATTEND THE COLLOQUIUM ON FINANCIAL MARKETS LAW / LISTE DES PERSONNES INSCRITES AUPRES DE LA COMISSÃO DE VALORES MOBILIÁRIOS (CVM) POUR PARTICIPER AU COLLOQUE SUR LE DROIT DES MARCHES FINANCIERS (27 MARS 2012)**

<b>País / Organização &amp; Nome</b>	<b>Cargo</b>	<b>Instituição</b>
<b>Africa do Sul</b>		
Rebecca Tee		
Maria Rosina Vermaas	Chefe do Departamento Jurídico	Strate Ltd
<b>Arabia Saudita</b>		
Bassam Bin Mohammed Al Saleh		
<b>Austrália</b>		
Nye Perram		
<b>Brasil</b>		
Adriana Cristina Dullius	Procuradora Federal	Cvm
Adriana Lazaroni	Advogada	Medina Osório Advogados
Adriano Cardoso Henrique	Procurador Federal	Procuradoria Federal Junto A Previc
Alexandre Chede Travassos	Advogado	Carvalhosa E Eizirik Advogados
Alexandre Couto Silva	Sócio	Bm&A Advogados
Alexandre Pinheiro Dos Santos		
Alvaro Barbosa		TozziniFreire Advogados
Ana Gabriela de Gouvêa Dantas M. Kurtz	Advogada	Mattos, Muriel, Kestener Advogados
Ana Luísa Gomes	Analista De Enquadramento	Bny Mellon
Ana Paula Reis	Sócia	Scarponi Advogados
Ana Paula Zanetti De Barros Moreira	Superintendente - Jurídico	Bram - Bradesco Asset Management Dtm
André Quadra	Gerente Jurídico	BANCO BRADESCO BBI S.A.
Antonio Carlos Berwanger	Gerente De Aperfeiçoamento De Normas	Cvm
Antonio Fonseca	Subprocurador Geral da República e Coordenador da 3ª CCR	
Antonio Lopes Emygdio	Analista	Cvm
Augusto Carneiro de Oliveira Filho	Advogado	Siqueira Castro Advogados
Caio Oliveira	Analista De Mercado De Capitais	Cvm
Carla Frazão Soares Piazza Gaglianone	Analista	Cvm
Carla Madeira	Advogada	Chediak Advogados
Carlos Arnaldo	Diretor Superintendente	Planner
Célia Maria Silva de Moraes Bittencourt	Chefe	SOI/COE - CVM
Celso Arruda França	Primeiro Secretário	Ministério das Relações Exteriores
Claudia Hasler	Assistente	Cvm
Cláudio Gheventer	Procurador da República PR/RJ	
Cristiano De Oliveira Lopes Cozer	Procurador Geral Adjunto	Banco Central Do Brasil
Daniel De Miranda Faco	Sócio	Machado Meyer
Daniel Penteado	Agente Executivo - Ger-2	Cvm
Daniela Sanchez Andrei	Gerente executiva juridica	Banco Votorantim S.A.
Daniella Maria Neves Reali Fragoso	Sócia	Bm&A Advogados
Danielle Oliveira Barbosa	Procuradora Federal	Cvm

David Menegon	Analista De Mercado De Capitais	Cvm
Eduardo Lobo Fonseca	Diretor	Souza Barros
Eduardo Rodrigues Junior	Advogado	Siqueira Castro Advogados
Eliane Nery	Advogada	Demarest e Almeida
Elizabeth Benamor	Conselho Fiscal	Ibri
Fabiano de Melo Ferreira	Associado Pleno na área de Mercado de Capitais	Albino Advogados Associados
Fábio Medina Osorio	Advogado	Medina Osório Advogados
Fabiola Cavalcanti		BM&A - Barbosa, Mussnich & Aragão
Felipe Demori Claudino	Sócio	Leblon Equities Gestão De Recursos Ltda.
Fernando Almeida Prado		Pinheiro Neto Advogados
Flávio Salem Maldonado	Advogado	Leite, Tosto e Barros Advogados
Gilberto Oliveira	Diretor Jurídico	Itau Bba
Gisele Menezes	Sócia	Menezes Emídio Sociedade de Advogados
Guilherme Erichsen	Analista Júnior	Bny Mellon
Guilherme Lopes	Analista Da Cvm	Cvm
Helena Coelho Romero	Advogada	Siqueira Castro Advogados
Henrique Leite Cavalcanti	Advogado	Sturzenegger Advogados
Hermes Fernandez Lucas De Souza	Analista	Norte Investimentos Administradora De Recursos
Ilene Patricia De Noronha Najjarian	Procuradora Federal	Cvm
Isabel Cantidiano	Advogada	Motta, Fernandes Rocha - Advogados
Isabel Zaganelli	Advogada	Motta, Fernandes Rocha - Advogados
Isabella Gonçalves	Assistente Jurídica	Prece - Previdência Complementar
João Almeida	Advogado	Demarest e Almeida
João Laudo de Camargo	Sócio	Bocater, Camargo, Costa e Silva - Advogados Associados
Jorge Rojas	Advogado	Aasp
José Alexandre Cavalcanti Vasco	Superintendente	SOI - CVM
José Antonio Fichtner	Advogado	Andrade & Fichtner Advogados
José Carlos Torres Neves Osorio	Advogado	Osório E Maya Ferreira Advogados
José de Araujo Barbosa Junior	Procurador Federal	Cvm
Julian Fonseca Peña Chediak	Presidente Do Conselho De Autorregulação	Chediak Advogados
Juliana Azevedo	Advogada	Bny Mellon
Juliana Botini hargreaves Vieira	Advogado	Carvalhosa E Eizirik Advogados
Julya Sotto Mayor Wellisch		
Koffi Djima Amouzou	Professor Universitário	Faculdades São José
Leandro Loiola	Advogado Associado	Bocater, Camargo, Costa E Silva - Advogados Associados
Leonardo Araújo	Agente Executivo	Cvm
Livia De Almeida	Estagiário	Scarponi Advogados
Luciana Gomes	Procuradora Da Fazenda Nacional	Procuradoria Da Fazenda Nacional
Luciana Maria Rocha Moreira	Gerente De Projeto	Secretaria do Tesouro Nacional
Luciana Miranda Moreira	Procuradora da Fazenda Nacional	
Luís Carlos Cazetta	Advogado	Sturzenegger Advogados
Luis Claudio Coutinho Abreu	Advogado	Machado Meyer
Luiz Augusto	Procurador Regional da República - 1ª região	



Luiz Carlos Sturzenegger	Advogado	Sturzenegger Advogados
Luiz Felipe Calabró	Gerência Jurídica	BM&FBovespa - Supervisão de Mercado - BSM
Marcelo Gomes Garcia Lopes	Analista	Cvm
Marcelo Muriel	Advogado	Mattos, Muriel, Kestener Advogados
Marcelo Pereira	Procurador Federa	Cvm
Marcelo Ronchini Brito	Ag. Executivo	SOI/COE - CVM
Marcelo Tourinho	Advogado	MFRA Advogados
Marcio Antonio De Carolis	Superintendente De Custódia	Bny Mellon
Marcos Davidovich	Procurador Federal	Cvm
Marcos José Rodrigues Torres	Diretor de Autorregulação - BSM	BM&FBovespa - Supervisão de Mercado - BSM
Marcus Henriques De Freitas	Advogado	Carvalhosa E Eizirik Advogados
Maria Cibele Santos	Sócia	Siqueira Castro Advogados
Maria da Graça Pedretti de Britto Vianna	Sócia	Felsberg, Pedretti e Mannrich Advogados e Consultores Legais
Maria Helena Caldas Osorio	Advogada	Osório E Maya Ferreira Advogados
Maria Isabel Do Prado Bocater	Advogada	Bocater, Camargo, Costa E Silva - Advogados Associados
Maria Salles Coelho de Mello Franco	Estagiária	Cvm
Marina Alvim Messeder Pereira	Analista De Enquadramento	Bny Mellon
Mauricio Veiga da Silva	Estudante de Direito	FGV Direito Rio
Milla De Aguiar Vasconcellos Ribeiro	Procuradora Federal	Cvm
Monica Esther Martinez Ruiz	Deputy Director Of Compliance	Cnbv
Nathalia Reginatto	Advogada	Machado Meyer
Nicole Strougo	Dir. Jurídico	Ágora Ctvm S/A
Patrícia Fesch	Gerente De Estudos Regulatórios	Anbima
Paula Margarita Andrea Cares Bustamante	Professora	Universidade Estadual de Montes Claros - Departamento de Economia
Pedro da Cunha e Silva de Carvalho	Estagiário	Siqueira Castro Advogados
Rafael Padilha Calabria	Sócio	Bm&A Advogados
Raquel Passarelli De Souza Toledo De Campos	Procuradora Federal	Cvm
Renata Brandão Moritz Serpa Coelho	Advogado	Carvalhosa E Eizirik Advogados
Renata Peçanha Moraes	Advogada	Cetip S.A. Mercados Organizados
Renata Weingrill Lancellotti	Socio	MFRA Advogados
Renato Sterental Goldberg	Analista	Cvm
Ricardo Pena	Assessor	Ministério Da Fazenda
Rodrigo Almeida Simões da Silva	Ag. Executivo	SOI/COE - CVM
Rodrigo Guimarães Taveira	Analista De Enquadramento	Bny Mellon
Sandra Chalu Barbosa	Juíza Federal	Justiça Federal
Sergio Henrique Sbunioto	Analista	Cvm
Soraia Ghassan Saleh	Advogada	Leite, Tosto e Barros Advogados
Taimi Haensel	Gerência Jurídica	BM&FBovespa - Supervisão de Mercado - BSM
Tania Cristina Lopes Ribeiro	Subprocuradora-Chefe Pfe/Cvm/Gju-3	Cvm
Thiago Fernandes	Analista De Enquadramento Pleno	Bny Mellon
Thiago Giantomassi	Advogado	Demarest e Almeida
Thomás Tosta de Sá	Ex-Presidente	IBMEC
Valdir Carlos Pereira Filho	Gerente de OMBUDSMAN	BM&FBovespa

Vanessa Constantino Brenneke	Advogada	Autonoma
Vinicius Figueiredo Chaves	Estudante De Mestrado Em Direito Público	Unesa
Vivian Monique Ribeiro Arrais	Assistente	Anbima
<b>Camarões</b>		
Samuel Tela		
<b>Chile</b>		
Marissa Reichberg Steinberg		
Guillermo Fernando Caballero Germain		Universidade Adolfo Ibáñez- Viña del Mar
<b>China</b>		
Mr Bo Chen		
Niu Wenjie	Dir. da Cia Chinesa de Liquidação e Custódia de Valores Mobiliários SD&C	
<b>Estados Unidos</b>		
Charles W. Mooney, Jr.		Universidad da Pennsylvania
Timothy Schnabel		
<b>França</b>		
Jean-Jacques Barberis		
Julien Jardelot	Advisor	Autorité Des Marchés Financiers
Philippe Langlet		
<b>India</b>		
Ranganayakulu Jagarlamudi	Diretor Executivo Jurídico	Comissão de Valores Mobiliários da Índia
Thomas Mathew		
Chandra. S. Mohapatra		
Umasankar Yedla		
Praveen Trivedi		
<b>Italia</b>		
Federico De Tomasi		
<b>Japão</b>		
Hideki Kanda		
Yoshinori Takata		
<b>Malta</b>		
Robert Vella-Baldacchino		
<b>Mexico</b>		
Ms Monica Martinez Ruíz	Deputy Director of Compliance	CNBV - National Banking and Securities Commission
<b>Nigéria</b>		
Reginald Chukwudi Karawusa		
Luqman Olu Segun Sanni		
<b>Paquistão</b>		
Mr. Sultan Mazhar Sher Khan	General Counsel	SEC - Securities and Exchange Commission Pakistan
<b>Polonia</b>		
Piotr Pilat		
Michal Stepniewski		

<b>Suiça</b>		
Luc Thévenoz		
<b>ASADIP</b>		
Nadia De Araujo		
<b>EMTA</b>		
Sandra M. Rocks		
<b>FMI</b>		
Wouter Bossu	Departamento Jurídico	Fundo Monetário Internacional
<b>UNIÃO EUROPEIA</b>		
Olga Tyton		
Rogier Wezenbeek		

Maria Helena Santana	Presidente da CVM	Cvm
Cícero Augusto Vieira Neto	Diretoria Executiva de Operações Clearing e Depositária	BM&FBOVESPA
Otavio Yazbek	Diretor da CVM	Cvm
Cristiano de Oliveira Lopes Cozer	Procurador-Geral Adjunto do Banco Central do Brasil	Banco Central Do Brasil
Newton de Lucca	Presidente do Tribunal Regional Federal da 3ª Região São Paulo	Tribunal Regional Federal da 3ª Região São Paulo

Graciela Casanova Barros		Velloza e Giroto Advogados Associados
Gabriela de Carvalho Fernandes	Advogada - Coordenadora de Suporte Jurídico e Normas	Cetip S.A.
Celso Luiz Rocha Serra Filho	Procurador Federal	Cvm
Áderson Vieira Leite	Delegado de Polícia Federal/ Chefe da Divisão de repressão a Crimes Financeiros e Lavagem de Dinheiro	DCOR/DPF
Tácio Muzzi Carvalho e Carneiro	Delegado de Polícia Federal	
Carlos Augusto Junqueira	Sócio	Souza, Cescon Advogados
Gabriela Codorniz	Chefe de Gabinete da Presidência	Cvm
Aline Reginato	Superintendente de Governança Corporativa	Ativa S/A Corretora de Titulos Cambio e Valores
Eduardo Pereira	Associado	Souza, Cescon Advogados
Mariana Durão	Imprensa/press	Agência Estado
Adriana Chiarini	Imprensa/press	Bloomberg
Juliana Ennes	Imprensa/press	Valor Econômico
Marcelo Mota	Imprensa/press	Valor Econômico
Vinícius Neder	Imprensa/press	O Globo
Alana Gandra	Imprensa/press	Agência Brasil

João Carlos Mançal Monteiro	ASC	Cvm
Paloma Ferraz e Ferraz	ASC	Cvm
Beatriz Pataro Pacobahyba	ASC	Cvm
Francisco Satiro de Souza Junior		Satiro e Ruiz Advogados
Renato Paulino de Carvalho Filho	Procurador Federal	Cvm
Marcia Paim Romera	Gerência de Estratégia de Financiamento	Secretaria do Tesouro Nacional
Raul José Linhares Souto	Procurador Federal	CVM
José Alexandre Tavares Guerreiro	Professor	Universidade de São Paulo-USP
Juliana Schincariol	Imprensa/press	Reuters

**APPENDIX II****AGENDA**

1. Opening of the meeting
2. Adoption of the Agenda
3. Colloquium on Financial Markets Law
4. Consideration of the reception given to the UNIDROIT Convention on Substantive Rules for Intermediated Securities in the various countries, in particular in emerging countries
5. Consideration of legislative measures to implement the Convention and incorporate it in domestic law
6. Presentation of the Official Commentary on the Convention
7. Consideration of follow-up activities to promote the Convention
8. Information on current work of UNIDROIT on netting of financial instruments and possible future work by UNIDROIT in the area of capital markets
9. Other business

## APPENDIX III

COLLOQUIUM <sup>5</sup>**PROMOTING INVESTOR CONFIDENCE AND ENHANCING LEGAL CERTAINTY FOR SECURITIES TRADING IN EMERGING MARKETS****TUESDAY 27 MARCH 2012**

9:00 am – 10:00 am Arrival and Registration of Participants

10:00 am – 10:15 am **Opening Session**

*Chairperson* Ms Maria Helena Santana, Chairperson, Brazilian Securities and Exchange Commission (CVM), Rio de Janeiro and Chair, IOSCO Executive Committee

*Welcome Address* – Mr José Angelo ESTRELLA FARIA, Secretary-General, UNIDROIT

*Opening remarks* –

Mr Alexandre PINHEIRO DOS SANTOS, Attorney General, Brazilian Securities and Exchange Commission (CVM), Rio de Janeiro

Ms NIU Wenjie, Director, Legal Affairs Department, China Securities Depository and Clearing Corporation Ltd (SD&C), Beijing

*Supporters* –

Mr Celso ARRUDA FRANÇA, Head of Financial and Tax Division, Ministry of External Relations of Brazil (Itamaraty)

Mr Cícero Augusto VIEIRA NETO, Executive Director for Operations, Clearing and Depository, BM&FBOVESPA

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<sup>5</sup> The presentations, as far as authorised by the speakers, are to be found on the UNIDROIT website at the following page: <<http://www.unidroit.org/english/documents/2012/study78b/s-78b-cem02-programme-e.pdf>>.

10:30 am – 1:00 pm

**1<sup>st</sup> Session - *Achievements and challenges in the regulation of securities markets***

*Chairman* Mr Alexandre PINHEIRO DOS SANTOS, Attorney General, Brazilian Securities and Exchange Commission (CVM), Rio de Janeiro

Achievements and challenges in the regulation of Brazilian Financial System – *Mr Celso ARRUDA FRANÇA, Head of Financial and Tax Division, Ministry of External Relations of Brazil (Itamaraty)*

The Dodd-Frank Act: selected aspects – *Professor Charles W. MOONEY, Jr., University of Pennsylvania, Philadelphia*

Private Law Underpinnings of Public Debt Securities Markets – *Mr Wouter BOSSU, Legal Department, International Monetary Fund*

12:30 pm – 1:00 pm    Comments/Questions by Participants

1:00 pm – 2:30 pm                      Lunch

2:30 pm – 3:45 pm

**2<sup>nd</sup> Session - *Measures to ensure integrity and effectiveness of securities holdings and settlement systems***

*Chairman* Mr Otavio Yazbek, Commissioner, Brazilian Securities and Exchange Commission

Main Legal Issues of the Special System for Settlement and Custody (SELIC) – *Mr Cristiano de OLIVEIRA LOPES COZER, Chief Counsel, Central Bank of Brazil*

Methods and rules for the segregation of securities – *Dr Maria VERMAAS, Head, Legal Services Strate Ltd, South Africa*

Implications of the Final Beneficiary Model for Exchange and Clearing Processes – *Mr Cícero Augusto VIEIRA NETO, Executive Director for Operations, Clearing and Depository, BM&FBOVESPA*

Major changes in Russian legislation concerning financial markets – *Mr Aleksandr SINENKO, Deputy Head, Federal Financial Markets Service, Russian Federation*

3:45 pm – 4:15 pm    Comments/Questions by Participants

4:15 pm – 4:30 pm Coffee break

4:30 pm – 6:30 pm

**3<sup>rd</sup> Session - Consequences of unauthorised disposition of securities in financial and capital markets, with an emphasis on Brazilian jurisprudence**

*Chairman* Ms Julya SOTTO MAYOR WELLISCH, Federal Attorney, Brazilian Securities and Exchange Commission (CVM), Rio de Janeiro

Consequences of unauthorised disposition of securities in financial and capital markets, with an emphasis on Brazilian jurisprudence – *Mr. Newton DE LUCCA, President-elect of the Brazilian Regional Federal Court of the 3th Region (São Paulo)*

Unauthorised disposition of securities and Innocent Acquirer Rule: theory and reality. The Chilean case – *Professor Guillermo Fernando CABALLERO GERMAIN, Universidad Adolfo Ibáñez, Viña del Mar, Chile*

Liability of intermediaries for shortfalls or unauthorised disposition – *Mr Segun SANNI, Head, Investor Services, Stanbic IBTC Bank PLC, Nigeria*

6:00 pm – 6:30 pm Comments/Questions by Participants

6:30 pm – 7:00 pm **Closing remarks**

*Mr José Angelo ESTRELLA FARIA, Secretary-General, UNIDROIT*