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(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Adoption of the draft Work Programme for the 2020-2022 triennium</i>
<i>Action to be taken</i>	<i>To take note of the proposed allocation of resources to carry out the Work Programme, to approve the insertion of new subjects and to determine the priority to be assigned to each subject</i>
<i>Related documents</i>	UNIDROIT 2019 – C.D. (98) 14 rev. 2 ; UNIDROIT 2019 – C.D. (98) 17 ; and UNIDROIT 2019 – C.D. (98) Misc. 2 ;

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Introduction

1. In accordance with Article 5(3) of the Statute, the Governing Council at its 98th session (Rome, 8-10 May 2019), following an examination of proposals submitted by Member States and international organisations, with comments and input from industry and UNIDROIT correspondents (see [UNIDROIT 2019 – C.D. \(98\) 14 rev.2](#)), decided on recommendations for the new Work Programme for the triennial period 2020-2022 to submit to the General Assembly for adoption. To this end, the Governing Council applied the following criteria to determine the level of priority to grant the different activities on the Work Programme:
 - (a) *Priority for allocation of meeting costs:*
 - (i) “*high priority*” – project that should take precedence over others (never more than two)
 - (ii) “*medium priority*” – projects eligible for being initiated or advanced in the event that the costs of high priority projects turn out to be lower than anticipated (e.g. because the Secretariat obtains extra-budgetary funding), thus freeing resources under the regular budget; and
 - (iii) “*low priority*” – projects that should only be advanced after completion of other projects or on the basis of full extra-budgetary funding.
 - (b) *Priority for allocation of human resources:*
 - (i) “*high priority*” – at least 70% of the time of the responsible officers;
 - (ii) “*medium priority*” – not more than 50% of the time of the responsible officers; and
 - (iii) “*low priority*” – not more than 25% of the time of the responsible officers.
 - (c) *Indispensable functions:* Indispensable functions are those that are either imposed by the Statute of UNIDROIT (e.g. library, governance) or are otherwise necessary for its operation (e.g. management and administration). These functions are by their very nature “*high priority*”, which is why they are supported by an especially dedicated pool of human and financial resources.
2. As a result of these recommendations and decisions, and considering the projects that had been completed and those assigned a low priority in the course of the Work Programme for the 2017-2019 triennium, the Governing Council agreed to recommend to the General Assembly that the following Work Programme be adopted for the 2020-2022 triennium with the levels of priority indicated:

A. Legislative activities

1. Secured Transactions

Continuation of existing work:

- (a) Implementation of Rail and Space Protocols: high priority
- (b) Implementation of the Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment: high priority
- (c) Preparation of other Protocols to the Cape Town Convention:
 - (1) Ships and maritime transport equipment: low priority
 - (2) Renewable energy equipment: low priority

The Governing Council agreed that, after the adoption of the MAC Protocol by the Pretoria Diplomatic Conference, it should have the opportunity in 2020 to discuss a promotion of one of the other Protocols already inserted in the Triennial Work Programme to a higher priority.

2. **Private law and agricultural development**

Continuation of existing work:

- (a) Preparation of an international guidance document on agricultural land investment contracts: high priority

New work:

- (b) Legal structure of agricultural enterprises: medium priority

The assigned level of priority was merely formal. The Governing Council agreed that funds allocated for this project could only be used to analyse its feasibility and potential impact, as well as to further define its scope. Subject to a more defined proposal, it would be reassessed by the Governing Council at its 99th session, where its priority might be redefined.

3. **Transnational civil procedure**

Continuation of existing work:

- (a) Formulation of Regional Rules of Transnational civil procedure: high priority

New work:

- (b) Principles of effective enforcement¹: medium priority

The assigned level of priority was merely formal. The Governing Council asked the Secretariat to conduct further research and provide a more defined scope for the project. There was substantial agreement on the importance of the topic and on the impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note to be presented at the 99th session, the Governing Council would reconsider giving the project a high priority status.

- (c) International Civil Procedure in Latin America: low priority

4. **International sales law**

Continuation of existing work:

Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law: high priority

¹ The pre-existing project on enforcement was to be enhanced and its scope redefined, hence that project is included here as new work.

5. **International commercial contracts**

Continuation of existing work:

Formulation of Principles of Reinsurance Contracts: low priority

6. **Cultural Property**

Continuation of existing work:

Private Art Collections: low priority

7. **Leasing and Factoring**

New work:

(a) Model Law on Factoring: high priority

(b) Guide for enactment of the UNIDROIT Model Law on Leasing: low priority

8. **Insolvency law**

New work:

The harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases: medium priority

The assigned level of priority was merely formal. The Governing Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global institution. This would include including exploring parts (b) and (c) of the original proposal. There was agreement on the importance of the topic and on the possible impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note, the 99th session of the Governing Council would reconsider the status of the project.

9. **Law and technology**

New work:

Artificial Intelligence/Smart Contracts/Distributed Ledger Technology: medium priority

The assigned level of priority was merely formal. The Secretariat was asked by the Governing Council to conduct further research to narrow down the scope of the project, which, based on the conclusions of a joint colloquium with UNCITRAL, would initially be confined to digital assets as well as to the drafting of a taxonomy/glossary of concepts used in the subject matter. The Governing Council, at its 99th session, would adopt a decision on the final scope and reassess the level of priority. The proposed form of the joint work with UNCITRAL would also be reassessed at the 99th session of the Governing Council. The Council also recommended that the Secretariat conduct additional research on the impact of Smart Contracts/DLT/AI on existing UNIDROIT instruments.

B. Implementation and promotion of UNIDROIT instruments

1. Depositary functions: high priority

2. Promotion of UNIDROIT instruments

(a) UNIDROIT Principles of International Commercial Contracts: high priority

(b) UNIDROIT/FAO/IFAD Legal Guide on Contract Farming: high priority

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects: high priority

3. Information, in monetary terms, on the allocation of resources to the various projects and activities of the Institute in the financial year 2019 is contained in the Secretary-General's summary of the Organisation's activity in 2019 (UNIDROIT 2019 – A.G. (78) 2).
4. The following paragraphs contain suggestions submitted by the Secretariat on the basis of proposals submitted by Member States and international organisations and endorsed by the Governing Council for projects and activities to be included in the UNIDROIT Work Programme for the 2020-2022 triennium.²

² The level of priority proposed by the Secretariat is indicated as follows: high * * * – medium * * – low *.

A. Draft UNIDROIT Work Programme for the 2020-2022 triennium: Legislative activities

1. Secured transactions

(a) Implementation of the Rail and Space Protocols to the Cape Town Convention ***

5. During the 2020-2022 triennium, the Secretariat intends to continue its activity to promote and implement both the 2007 Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock ("Rail Protocol"), and the 2012 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets ("Space Protocol"), pursuant to its institutional mandate.

6. In relation to the Rail Protocol, the past three years were very fruitful in terms of new signatures and ratifications as well as institutional and promotional activities towards entry into force of the Protocol and implementation of its International Registry. After the signatures by Mozambique and the United Kingdom in 2016, the Protocol was signed in 2017 by France and Sweden. In 2018, the Rail Protocol was ratified by two States, Gabon and Sweden, bringing the number of contracting States up to three (in addition to the 2014 approval of the European Union as a Regional Economic Integration Organisation), and thus nearing the threshold of four ratifications needed to allow the instrument's entry into force.

7. From an institutional perspective, the Intergovernmental Organisation for International Carriage by Rail (OTIF), in its role as co-sponsoring institution and as Secretariat of the future Supervisory Authority, approved the draft Statute and Rules of Procedure of the Supervisory Authority at its 13th General Assembly on 25 September 2018. At its 8th Session (Rome, 6-7 December 2018), the Preparatory Commission for the Establishment of an International Registry under the Rail Protocol (established pursuant to Resolution 1 of the Final Act of the Diplomatic Conference in Luxembourg (UNIDROIT-OTIF 2007 – DC10 – DCME- RP- Doc.44)) considered the documents relating to the Supervisory Authority and addressed other key issues pertaining to the Protocol's implementation. The Preparatory Commission Session was attended by over 30 delegations of States as well as by representatives of the Rail Working Group and the International Registries.

8. As far as promotional activities are concerned, the Ratification Task Force (RTF) – established by the Preparatory Commission and composed of its Co-Chairs, Luxembourg, the Rail Working Group, the designated Registrar, OTIF and UNIDROIT – continued its coordination work (mostly via teleconferences). The RTF, as well as the Rail Working Group and the UNIDROIT Secretariat have organised and participated in a number of workshops, seminars, governmental meetings and other events in various countries, including China, Hungary, India, Indonesia, Spain, Sweden, Ukraine, the United Kingdom, and Kenya, as well at UNIDROIT's seat. More information is provided in AG (78) 2, and more detail will be provided in the Annual Report 2019 next May 2020.

9. During the 2020-2022 triennium, the Secretariat is planning to concentrate on achieving the goal of the Rail Protocol's entry into force. To this end, it intends to actively take part in the initiatives of the Preparatory Commission and the RTF, including participation in, and organisation of, seminars with representatives of the public and private sectors. It will also strengthen cooperation with other global and regional organisations in order to maximise efforts towards dissemination of information and early implementation. Preparatory work for the setting up of the definitive Supervisory Authority for the operation of the International Registry is also needed and envisaged.

10. In relation to the Space Protocol, the 2017-2019 triennium also saw an intense period of activity for UNIDROIT and the Preparatory Commission for the establishment of an International Registry under the Space Protocol, which had been set up pursuant to Resolution 1 of the Final Act of the

Diplomatic Conference in Berlin (UNIDROIT 2012 – DC12 – DCME – SP – Doc. 45). At the Preparatory Commission's 5th session (Rome, 6 December 2017), the Commission's members agreed to constitute a Sub-Group to reassess industry participation for the promotion and development of the Space Protocol, and that Sub-Group met several times via teleconference throughout 2018. UNIDROIT continued to be invited to, and to participate in, institutional, academic and industry events to present and discuss the functioning and the advantages of the Space Protocol, as detailed in the 2018 Annual Report (see [UNIDROIT 2019 – C.D. \(98\) 2](#)) and in the dedicated Governing Council document (see [UNIDROIT 2019 – C.D. \(98\) 3](#)). The issue of appointing a Supervisory Authority was also discussed within the International Telecommunication Union (ITU) pursuant to ITU's engagement in the work of the Preparatory Commission. The ITU, at its Plenipotentiary Conference held in Dubai from 29 October to 16 November 2018, resolved not to accept the role of Supervisory Authority under the Space Protocol at this stage, but left open the possibility for UNIDROIT to submit a further invitation to reconsider the issue at a future Plenipotentiary Conference, and instructed the ITU Secretary General to continue to participate in the work of the Preparatory Commission and its working groups and to report to the ITU Council accordingly.

11. During the 2020-2022 triennium, the Secretariat – while mindful of the need to prioritise the implementation of the Rail and the finalisation of the MAC Protocol – intends to promote the Space Protocol through the activity of the Preparatory Commission and the ad-hoc Sub-Group, as well as through participation in institutional events, seminars and conferences, in order to enhance awareness of the instrument and its potential benefits.

12. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to maintain this project at high priority level.*

**(b) Implementation of the Protocol to the Cape Town Convention
on Matters Specific to Mining, Agricultural and Construction
Equipment *****

13. At its 95th session (Rome, 18-20 May 2016), the Governing Council agreed to include the preparation of a Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment (the "MAC Protocol") in the 2017-2019 Work Programme as a high priority project (UNIDROIT [2016 – C.D. \(95\) 15](#)).

14. At its 97th session (Rome, 2-4 May 2018), the Governing Council approved the convening of a Diplomatic Conference in 2019 to formally adopt the MAC Protocol. At the kind invitation of the Government of the Republic of South Africa, the Diplomatic Conference is now being held in Pretoria from 11 to 22 November 2019. It is expected that the MAC Protocol will be adopted at the Diplomatic Conference at the end of said period.

15. Article XXIV of the draft MAC Protocol provides that two elements are required for entry into force: (i) confirmation that the International Registry is fully operational and (ii) five ratifications by States. Achieving these two aims will be the focus of the MAC Protocol project between 2020 and 2022.

16. Consistent with past practice for Protocols to the Cape Town Convention, it is anticipated that a Preparatory Commission will be established by resolution of the Pretoria Diplomatic Conference to work towards the Protocol's entry into force. Membership in the Preparatory Commission is likely to be limited to States that have signed the MAC Protocol. The Preparatory Commission will act as a provisional Supervisory Authority, establishing its own rules of procedure, overseeing the appointment of a Registrar to operate the International Registry and developing the International Registry's regulations. The UNIDROIT Secretariat will have responsibility for administering the Preparatory Commission, including communicating with members, scheduling meetings and preparing

documentation. The Preparatory Commission will also be a forum for assisting States in their ratification of the MAC Protocol.

17. In addition to administering the Preparatory Commission, the Secretariat intends to work closely with the MAC Working Group in a broader international promotional campaign to encourage States to ratify the Protocol. The Secretariat will undertake this promotional work in collaboration with partner organisations (such as, *inter alia*, the World Bank), liaising with established regional organisations (for example, the EU, the OAS or OHADA), or utilising relevant fora such as APEC to maximise effectiveness.

18. Over the past three years, the MAC Protocol project has generated increasingly strong support from both negotiating States and the private sector. These high levels of support aided the instrument's rapid progression through the Committee of Governmental Experts in 2017. It is important that the MAC Protocol project maintains this momentum to facilitate the earliest possible entry into force following the Diplomatic Conference. To ensure that the project's momentum is maintained, the Governing Council was encouraged to assign the MAC Protocol project a priority that is sufficient to effectively complete the activities required for the treaty's entry into force.

19. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to maintain this project at high priority level.*

(c) Preparation of other Protocols to the Cape Town Convention

*(i) Ships and maritime transport equipment **

20. Based on the Governing Council's recommendation, the General Assembly at its 75th session (Rome, 1 December 2016) decided to retain in UNIDROIT's Work Programme for the 2017–2019 triennium, at a low level of priority, the preparation of an additional Protocol to the Convention on International Interests in Mobile Equipment on matters specific to ships and maritime transport equipment.

21. Consistent with the assigned level of priority, the Secretariat has continued to monitor the following developments: (a) the ongoing work by CMI's International Working Group on "Ship Financing Security Practices"; (b) the continued interest of the African Shipowners Association in the possible preparation of a Protocol on matters specific to ships and maritime transport equipment; and (c) UNCITRAL's preparation of an instrument on judicial sales of ships in order to ensure that any potential friction between that possible instrument and a possible Maritime Protocol is avoided.³

22. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to maintain this project at a low priority level. In light of this decision, the Secretariat will continue to monitor developments in this regard and renew consultations with the African Shipowners Association and other stakeholders in order to study further the Protocol's feasibility. In this way, the Governing Council would be in a position to determine, upon completion of the MAC Protocol or at a later time, whether to proceed with the preparation of a Maritime Protocol.*

*(ii) Renewable energy equipment **

23. At its 95th session (Rome, 18-20 May 2016), the Governing Council agreed to include the preparation of a Protocol to the Cape Town Convention on matters specific to renewable energy

³ See Report of the United Nations Commission on International Trade Law, UNGA Doc. A/73/17 (51st session, 25 June – 13 July 2018), para. 252, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>; see also UNIDROIT 2016 – C.D. (95) 13 Add. 4, paras. 12-14 (discussing potential areas of friction between the two possible instruments).

equipment (the “Renewable Energy Protocol”) in the 2017-2019 Work Programme as a low priority project ([UNIDROIT 2016 – C.D. \(95\) 15](#)).

24. Consistent with that low priority, throughout the 2017–2019 triennium the Secretariat has conducted background research to further determine the viability of a future Protocol on renewable energy equipment.

25. Despite the record levels of investment in renewable energy over the past few years, it is clear that there continues to be a significant investment gap for renewable energy financing, especially in developing countries. It appears that the Cape Town Convention could provide a potential international solution to address some of the legal issues constraining the availability of finance for renewable energy projects. However, further consultations are required to determine whether the Cape Town Convention’s international asset-based secured financing framework is the most appropriate vehicle to address these issues.

26. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to retain this project on the 2020-2022 Work Programme at low priority. The Secretariat will continue to have consultations with the international Organisations involved in the renewable energy sector to discuss the prospect of extending the Cape Town Convention to renewable energy generation equipment. Further consultations with the renewable energy industry, financiers and manufacturers of renewable energy equipment will also be required. Moreover, in the context of the activities of the Queen Mary-UNIDROIT Institute of Transnational Commercial Law, and as part of an international conference on Energy Law to be held in June 2020, the general matter of asset-based financing and the more particular benefits of a new Protocol to the Cape Town Convention will be analysed by experts and members of the UNIDROIT Secretariat.*

2. Private law and agricultural development

(a) Preparation of an international guidance document on agricultural land investment contracts ***

27. UNIDROIT’s work, in collaboration with FAO and IFAD, in the area of private law and agricultural development traces its origins to a Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects” (Rome, 8-10 November 2011). Arising from that Colloquium, the UNIDROIT Governing Council, in consultation with FAO and IFAD, decided to develop as a matter of priority an instrument on contract farming. Following the preparation of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and its adoption by the Governing Council at its 94th session (Rome, 6-8 May 2015), the Governing Council requested that the Secretariat study the feasibility of conducting work in the area of contracts for investment in agricultural land. At its 95th session (Rome, 18-20 May 2016), the Governing Council considered the Secretariat’s feasibility study and took note of it, ultimately recommending that work on an international guidance document on agricultural land investment contracts be included in the 2017-2019 Work Programme with a high level of priority. The General Assembly then endorsed that recommendation at its 75th session (Rome, 1 December 2016).

28. Consistent with the high level of priority, the Working Group on Agricultural Land Investment Contracts was constituted – with experts, international Organisation representatives and stakeholders – in early 2017. Since then the Working Group has held four meetings (3-5 May 2017; 13-15 September 2017; 25-27 April 2018; and 9-11 October 2018), collectively resulting in a draft Legal Guide on Agricultural Land Investment Contracts which builds upon UNIDROIT’s existing instruments and offers guidance on making such contracts and the contracting process consistent with international principles and standards.

29. Given the various important issues treated by the draft Guide (e.g. land tenure, human rights, investment, sustainable development), it was determined that it should be submitted to broad and

extended consultations to raise awareness about the Legal Guide and to seek stakeholder input on the draft in order to ensure a high-quality product that responds to actual needs and complies with ascertained best practices. On the basis of the feedback received, the draft would subsequently be revised in coordination with the Working Group prior to the Guide's finalisation and adoption. This course of action was endorsed by the Governing Council at its 98th session (Rome, 8-10 May 2019).

30. The Secretariat held an open online consultation – as was done for the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming – by which the draft was made publicly available on UNIDROIT's website for review and submission of comments from 1 June until 31 October 2019. The ALIC Zero Draft was also featured on a number of other key online platforms in this area, including the Global Forum on Food Security and Nutrition (FSN Forum) hosted by FAO (online consultation from 4 September to 8 October) and the Land Portal. Thanks to the generous provision of a "micro-grant" from IFAD for this express purpose, the Secretariat also held a series of regional consultation events around the world, in coordination with Working Group experts. These events were held in Beijing (8 July), Sao Paulo (8 August), and Nairobi (23 October). Following the conclusion of the consultation, review and revision process, it is envisaged that the Guide will be ready for consideration and adoption by the UNIDROIT Governing Council at its 99th session to be held in May 2020.

31. *The Council agreed to recommend to the General Assembly to retain this project on the 2020-2022 Work Programme at high priority ([UNIDROIT 2019 – C.D. \(98\) 17](#)).*

(b) Legal structure of agricultural enterprises **

32. This line of work was introduced following the Colloquium held in Rome on 8-10 November 2011 on "Promoting Investment in Agricultural Production: Private Law Aspects" and has thus far resulted in the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and the current draft of the future Legal Guide on Agricultural Land Investment Contracts.⁴ In addition to contract farming and agricultural land investment contracts, that Colloquium also contemplated possible work in the following areas: (a) title to land; (b) legal structure of agricultural enterprises; and (c) the financing of agriculture.⁵

33. With respect to new possible areas of work in the area, the Governing Council authorised, at its 91st session (Rome, 7-9 May 2012), the Secretariat "to monitor – resources permitting – developments at the international and national level in respect of reform and modernisation of land tenure regimes; and to take note of possible future projects in respect of the legal structure of agricultural enterprises and of an international guidance document to agricultural financing, with a decision to be taken at a later date, in light of the work which will by then have been carried out by UNIDROIT in the field of agriculture."⁶

34. By communication dated 3 December 2018, the United States Department of State transmitted to the Secretariat a document containing a proposal supporting future work in this area.⁷ In particular,

⁴ See Section A.2 (a) above regarding the ongoing preparation of an international guidance document on agricultural land investment contracts.

⁵ The Acts of the Colloquium were published in the Uniform Law Review, XVII UNIF. L. REV. (2012-1/2).

⁶ [UNIDROIT 2012 – C.D. \(91\) 15, para. 99.](#)

⁷ See [UNIDROIT C.D. \(98\) 14 rev. 2, Annex 2](#), (stating that "[t]he current work UNIDROIT is pursuing on guidance on land investment contracts is an important next step. We believe this work usefully could be expanded through the development of model legislative provisions that states could use to reform their domestic laws to ameliorate some of the legal issues that arise in this area and to establish a level playing field in discussions between investors and local communities. Model provisions on several topics might be helpful: (a) recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land, to enable foreign investors to easily identify and compensate those who lack title but have existing use rights; (b) enabling the establishment of community trust funds or similar mechanisms to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole; and (c) valuation of communal land, to facilitate the calculation of compensation when land is held at the village level. This work could be among the most valuable contributions that UNIDROIT could make in terms of the potential impact on development.").

the US proposal supported the “development of model legislative provisions” in the following areas: (a) recordation and recognition of legitimate occupancy and use rights; (b) community trust funds or similar mechanisms; and (c) valuation of communal land.

35. Considering the above, the areas of possible future work could be summarised as follows:

- *Legal structure of agricultural enterprises*, for which preliminary research indicates that there seems to be a gap in existing guidance with respect to preparing for, establishing and implementing enterprises that are inclusive of smallholder farmers and legitimate tenure right holders (e.g. joint ventures and partnerships, including PPPs) and for which any work could interface well with the Legal Guide on Contract Farming and the future Legal Guide on Agricultural Land Investment Contracts;
- *Title to land*, which could address reform and modernisation of land tenure regimes and appears to overlap with – and could potentially include – work on “recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land”;
- *Agricultural finance*, which could seek to improve access to financing – a key impediment to efficiency and technology improvements in the agricultural sector – and could build upon UNIDROIT’s work on leasing and factoring, as well as the future MAC Protocol;
- *Community trust funds or similar mechanisms*, which could seek “to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole” and could build upon the future Legal Guide on Agricultural Land Investment Contracts’ brief treatment of such funds and mechanisms and provide more detailed guidance; and
- *Valuation of communal land*, which could seek “to facilitate the calculation of compensation when land is held at the village level”.

36. *Following a thorough debate at the Governing Council, and after consultations with UNIDROIT’s partners of the two previous projects (FAO and IFAD), there was consensus that work should be continued in the area, and, amongst the different options, preference was clearly expressed for the one on Legal Structure of Agricultural Enterprises. Hence, the Governing Council, at its 98th session, agreed to recommend to the General Assembly to put Legal structure of agricultural enterprises on the 2020-2022 Work Programme at a medium priority. The assigned level of priority is merely formal. The Council agreed that funds allocated to this project could only be used to analyse its feasibility and potential impact, as well as to further define its scope. Subject to a more defined proposal, it would be reassessed by the Council at its 99th session, where its priority might be redefined.*

3. Transnational civil procedure

(a) Formulation of regional rules ***

37. In 2014, UNIDROIT and the European Law Institute (ELI) agreed to undertake a joint project for the development of regional rules of European civil procedure based on the American Law Institute (ALI)–UNIDROIT Principles of Transnational Civil Procedure, which were prepared by a joint ALI/UNIDROIT Working Group and adopted by both organisations in 2004. The project, authorised by the UNIDROIT General Assembly at its 72nd session (Rome, 5 December 2013), was developed within the framework of the newly established institutional cooperation between UNIDROIT and ELI. A joint Steering Committee was set up and the drafting was entrusted to a total of nine Working Groups

(WGs) created by ELI, so as to provide coverage of most of the issues addressed in the ALI-UNIDROIT Principles and for which European rules were considered to be both useful and feasible (“Access to Information and Evidence”, “Provisional and Protective Measures”, “Service of Documents and Due Notice of Proceedings”, “Res Judicata and Lis Pendens”, “Obligations of Parties, Lawyers and Judges”, “Costs”, “Judgments”, “Parties” and “Appeals”). The WGs started functioning in successive waves, finalising their drafts for inclusion in a consolidated text reviewed by an overarching “Structure Group”, set up to provide substantive coordination. Bi-annual plenary meetings of the Steering Committee and active WG’s Co-Reporters (and members), hosted by the two sponsoring organisations, were held to discuss draft texts. The Steering Committee further decided to invite to the annual plenary meetings a number of institutional observers, such as intergovernmental Organisations (in particular the Hague Conference on Private International Law (HCCH)), European institutions, professional associations and research centres as well as ALI). Finally, a list of advisers drawn both from academia and the legal profession, among which a number of members of the UNIDROIT Governing Council, was set up. More information on the development of the project until now and the activities undertaken by the Secretariat in connection to this topic can be found in AG (78) 2.

38. At the joint project’s most recent plenary meeting (Rome, 25-26 February 2019), the latest version of the consolidated draft set of rules and comments were fruitfully discussed. The discussion included: the updated structure of the draft; an introductory part containing the general rules; the revised output of five WGs, an additional set of rules on pleadings developed by the Structure Group; and near to finalised drafts of the remaining WGs. Taking into account the remaining tasks of producing a coordinated text of the black-letter rules and comments in English and French from both a substantive and linguistic point of view, and the need to fill in the remaining gaps, an expedited reasonable timeframe for completion of the instrument was agreed upon with project Reporters and with ELI.

39. At its 98th session (8-10 May 2019), the Governing Council received the most advanced draft text available, with a clear indication of the parts where work is still needed ([UNIDROIT 2019 - C.D. \(98\) 6\(a\) rev.](#)). The Secretariat further expects that a finalised consolidated set of draft rules and related comments in English will be submitted to the ELI Council for approval in early 2020, and simultaneously to Governing Council members in electronic form for information and comments. The finalised instrument, both in English and French, will be submitted to the Governing Council in May 2020 for approval.

40. *In light of the foregoing, the Secretariat intends to continue its cooperation with ELI on this project during the 2020-2022 Work Programme – with a reduced budget in the first part of 2020 – by participating in the meetings of the Steering Committee and by supporting the work of the Structure Group towards finalisation of the instrument, including through managing the master copy of the consolidated draft and cooperating in the French translation. The Secretariat also intends to take part in promotional events co-organised with ELI. The Governing Council, at its 98th session, agreed to recommend to the General Assembly to maintain this project at high priority level.*

(b) Principles of effective enforcement **

41. On the basis of a preliminary feasibility study conducted by Professor Rolf Stürner, former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure, the Secretariat submitted a proposal to develop “Principles of effective enforcement” to the Governing Council at its 95th session (Rome, 18-20 May 2016), as a follow up to the work already accomplished in the field of civil procedure. The study emphasised that the right to effective enforcement represented an integral part of a fair and effective procedure. Moreover, the economic significance of effective enforcement mechanisms, both in decision-making and in contractual execution, could not be overemphasised, and international financial institutions as well as national governments increasingly considered them as a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. Notwithstanding this, however, while there were single international instruments containing

specific rules in this area, there was so far no general guidance document at the international level addressing the most relevant issues and providing a detailed set of principles embodying best practices. Transnational principles of enforcement could be helpful guidelines for legislators wishing to improve their domestic law, while at the same time contributing to the emergence of common minimum standards for domestic procedures as a necessary basis for improvement of international cooperation in this area. The project was introduced in the 2017-2019 Work Programme with a low level of priority, pending the conclusion of the ELI-UNIDROIT project on regional rules (see Section 3 above).

42. During the 2017-2019 triennium, the Secretariat undertook limited research work on this topic, in view of its low priority status and the prioritisation of the ELI-UNIDROIT project. In particular, it produced basic documents focusing on existing international instruments addressing, one way or the other, issues of enforcement, including a study on the recently issued *Global Code of Enforcement of the International association of judicial officers / Union Internationale des Huissiers de Justice (UIHJ)*.

43. The importance of the topic is not fully mirrored by an abundance of relevant work in the international legal community. While thorough analysis exists and very valuable attempts at identifying best practices have been realised, the complexity of the topic and the different approach adopted by the disparate legal cultures has possibly stood in the way of a global international standard. Following the request for proposals for work to be conducted in the 2020-2022 triennium circulated by the Secretariat in June 2018, UNIDROIT received a request by the World Bank to work towards a document that identifies the main problems existing in practice and codifies workable, practical solutions. The project would address both in-court and out-of-court procedures as well as the different institutions and professionals involved, and would examine the challenges that creditors and debtors face during the enforcement process and the tools for overcoming those obstacles. Given the sensitivity of the topic, the Secretariat considers paramount that the instrument reflects consideration of the legal diversity in this area and contemplates the different approaches to enforcement existing in the disparate legal families. And yet, a clear set of recommendations that overcomes the said differences should be identified and spelt out.

44. As a global inter-governmental Organisation, UNIDROIT is well positioned to work on this topic. Given its nature as a global legal institution, it has traditionally been respectful with the tenets of disparate legal traditions and has the potential to extract the best of different systems, reaching a consensus that ensures adequate relief to all the parties involved in the enforcement process. It would also flow naturally from the activities in UNIDROIT's 2017-2019 Work Programme. Indeed, work on enforcement had already been included in that Programme, with low priority until the joint ELI-UNIDROIT work on the regional rules is finalised (see Section A.3 (a) above), and the finalisation of that joint work is foreseen for the beginning of 2020. A feasibility study on enforcement, moreover, was already drafted in 2017, and further work elaborating on the said study was conducted in 2018. Consideration could be given to prioritising the enforcement project as soon as the work with the ELI is completed.

45. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to assign medium priority to this proposal. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as an enhanced feasibility analysis. There was substantial agreement on the importance of the topic and on the impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note to be presented at the 99th session, the Governing Council would reconsider giving the project a high priority status.*

(c) International Civil Procedure in Latin America *

46. In a letter dated 18 April 2019, the Department of International Law of the Organisation of American States (OAS) formally expressed its interest in exploring joint work with UNIDROIT concerning

international civil procedure. Drawing from informal exchanges and conversations, and consistently with the limited geographical mandate of the proponent, the work would be limited to an instrument – possibly a Guide – that would focus on the Latin American jurisdictions. This type of work would be similar to previous work conducted by UNIDROIT together with the American Law Institute and the current joint work with the European Law Institute. The generality of the proposal does not allow for any detailed consideration at this stage.

47. *The Governing Council, at its 98th session, accepted the proposal to recommend to the General Assembly to include the possibility of future work on the topic, subject to further consultation with OAS, a feasibility analysis and availability of resources.*

4. International Sales Law: Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law ***

48. On 14 December 2015, the Secretariat received a communication from the Secretariat of UNCITRAL, inviting UNIDROIT and the Hague Conference on Private International Law (HCCH) to cooperate on a project for the “creation of a roadmap to the existing texts in the area of international sales law (sales contracts) prepared by each organisation, primarily the CISG, the UNIDROIT Principles, and the Hague Principles, and providing an assessment of interactions between the texts, their actual and potential use, application, and impact, all with the goal to facilitate promotion of their appropriate use, uniform interpretation, and adoption.” The topic was included in the 2017-2019 Work Programme with a high level of priority. The three cooperating Organisations set up a restricted joint group of experts who worked almost exclusively through email exchanges and teleconferences due to the lack of dedicated funding. An outline of the guidance document (“the Guide”) was agreed upon in 2017 (Introduction, Determination of the Law Applicable to International Commercial Contracts, Substantive Law of Sales, Recurring Legal Issues Arising in Connection with Sales Contracts, Guidance for Specific Business Sectors), and each chapter was assigned to an expert or a sub-group. The three Secretariats also agreed to consult relevant stakeholders, including associations of judges and practitioners, for comments, before seeking formal approval from their respective governing bodies. In this context, the concept of the Guide was presented at the International Bar Association’s Annual Conference (Rome, 8-12 October 2018).

49. *A first non-consolidated draft, which was produced by the experts in February 2019, will be subject to substantive and linguistic revision as well as to further input by the experts – if feasible, through one face-to-face meeting – before circulation for external consultation. As far as the timeline for approval of the Guide is concerned, UNCITRAL has expressed its wish to have the Guide, following completion of consultations, approved by its organs by July 2020, in conjunction with the CISG’s 40th anniversary. The three Secretariats agreed on this timeline. Consistent with that timeline, the draft Guide is to be submitted to the Governing Council in May 2020 for approval.*

5. International Commercial Contracts: Formulation of Principles of Reinsurance Contracts *

50. In July 2015, the Secretariat was approached by a group of scholars and practicing lawyers – led by Professors Anton K. Schnyder and Helmut Heiss (University of Zurich, as “Lead Agency”), Martin Schauer (University of Vienna), and Manfred Wandt (University of Frankfurt) – who were examining the feasibility of formulating “Principles of Reinsurance Contract Law” (PRICL). The project’s purpose was to formulate a “restatement” of existing global reinsurance law, which is largely embedded in international custom and usage, but is seldom the object of legislation. The project leaders expressed the view that the proposed principles presupposed the existence of adequate rules of general contract law. Rather than attempting to re-create such rules, the proposed new principles had to be drafted in such a way as to ensure consistency between the PRICL and the UNIDROIT Principles of International Commercial Contract (UPICC) and, as a result, UNIDROIT was invited to participate. The project was

financially self-sufficient because it received support from the Swiss National Science Foundation, the German Research Foundation and the Austrian Research Promotion Fund. In addition to the project managers and the international research team, two advisory groups made up of representatives of the global insurance and reinsurance markets advised the research team. The project was included in the 2017-2019 Work Programme as a low priority activity. The Secretariat actively participated in all sessions of the Working Group, with the main purpose of ensuring that the PRICL were in line with the UPICC both substantively and systematically and to provide interpretation and examples of the UPICC's practical application.

51. The Working Group concluded the first part of its work at its last two meetings (Vienna, 16-17 January 2018; Frankfurt, 6-8 June 2018). The following topics were included: "Chapter I: General Part; Chapter II: Duties; Chapter III: Remedies; Chapter IV: Aggregation; Chapter V: Allocation". The relationship of the drafted Principles to the UPICC is expressly addressed and explained at the relevant points in the Comments to the Articles. Consistent with the announced timeline for the project, [the Principles of Reinsurance Contract Law](#) (black-letter rules and comments) was presented to the Governing Council at its 98th session (Rome, 8-10 May 2019) ([UNIDROIT 2019 - C.D. \(98\) 7](#)).

52. On 22 December 2018, the Secretariat received a communication from one of the project leaders that the Working Group had received funding from the Swiss National Science Foundation and the German Research Foundation, which would support the project for another triennium (1 July 2019 – 30 June 2022), with the understanding that there would be no further prolongation after this period. The topics scheduled to be addressed are: "Chapter VI: Back-to-back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; Chapter IX: Limitation periods". Due to the connections between a number of these topics and the UPICC, and the desirability that this second part of the PRICL continued to refer to the UPICC both in the general choice-of-law clause and in the specific black-letter rules and comments, the PRICL Working Group asked UNIDROIT to continue its involvement under the same conditions as before (i.e. in-kind contribution through participation of a representative in the biannual Working Group meetings).

53. *The Council agreed to recommend to the General Assembly to retain 'Formulation of Principles of Reinsurance Contracts' on the 2020-2022 Work Programme at low priority.*

6. Cultural Property – Private art collections *

54. Consistent with this project's inclusion in the 2017-2019 Work Programme as a low priority activity, the Secretariat continued to seek to identify the private law aspects that fall within its mandate through its participation in a number of relevant workshops and international conferences, including, most recently, an international conference held on the subject in Poland in June 2019.

55. UNIDROIT continued to evaluate the project's potential and worked with students to develop some aspects of it (e.g. historical and legal perspectives, reports on private collections in some countries). In particular, the work on private art collections is closely linked with the promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and especially the diligence collectors should exercise when they acquire objects of art.

56. *In light of the foregoing, the Governing Council encouraged the Secretariat to retain the project on Private art collections during the 2020-2022 Work Programme as a low priority activity.*

7. Leasing and Factoring

(a) A Model Law on Factoring ***

57. In December 2018, and in response to the call for proposals for the 2020-2022 Work Programme, the World Bank formally requested UNIDROIT to develop a Model Law on Factoring. The

proposal is based on the pressing needs of markets in which access to credit is limited, coupled with the fact that existing international rules and standards are largely focused on international or cross-border transactions and fail to provide sufficient guidance to States to develop functional domestic factoring frameworks.

58. The World Bank states in its proposal that “[L]egal gaps in the treatment of accounts receivable financing, assignment and discounting, [...] continue to exist at the national and cross-border level, which negatively affect factoring and accounts receivable-based lending and create disincentives for lenders to develop and use such financing tools. [...] As a result, it becomes important that an internationally approved model law for factoring is developed and approved to provide needed guidance to states in developing their own legislation for factoring in both seller-centric and buyer centric models”.⁸

59. Access to credit is a problem globally. In less developed economies, international financial institutions report the existence of a large credit gap,⁹ with millions of businesses struggling to reach adequate levels of financing in the market. But even in the more advanced markets, access to financial capital is difficult for micro, small and medium enterprises, which constitute more than 90% of businesses worldwide. In this context, factoring has become an extremely important legal tool: capable of facilitating credit both to sellers/suppliers and buyers, it allows businesses to rationalise cash flows, reduce transaction costs and to improve the organisational structure of market participants. The importance of these potential benefits is higher, the less developed the jurisdiction. International financial institutions report the frequent lack of adequate, complete, modern laws on factoring, that cover standard and reverse factoring, supply chain financing or that incorporate e-invoice and other IT-based systems that reduce the transaction costs and help foster the formal economy. Stand-alone laws on factoring would also help complement a modern registry-based system of secured transactions.

60. In light of the above, the drafting of a model law on factoring would fill a pressing need in the existing legal infrastructure. Given the nature of the topic, and considering its previous experience in this field, UNIDROIT is best placed to undertake this project. It would complement and conceptually update the Ottawa Convention on International Factoring (1988), therefore drawing and capitalising on UNIDROIT’S previous work. It would also be consistent with UNIDROIT’S mandate to focus work in areas in which it has substantial expertise. Similarly, the model law would complement the UN Convention on the Assignment of Receivables in International Trade (2001), which has a predominant international component. The potential synergies between a model law on factoring and the existing conventions and best practice-based secured transactions instruments would seem self-evident. Access to credit, especially for the smaller businesses, is nowadays urgent. Making a modern model law on factoring available along the lines expressed would not only help create an international standard but also offer lawmakers across the globe the missing piece needed to complete a set of rules aimed at lowering the cost of credit, enhancing its availability and fostering economic growth. Based on the foregoing as well as on the input provided by international institutions working on the ground, the Secretariat regards this activity as deserving of a high priority.

61. *The Governing Council, at its 98th session, agreed to unanimously recommend to the General Assembly to allocate high priority to the development of a model law on factoring as part of the Institute’s Work Programme for 2020-2022.*

⁸ See [UNIDROIT C.D. \(98\) 14 rev. 2, Annex 3](#).

⁹ See, for example, the World Bank Group’s Finance Gap website: <https://www.smefinanceforum.org/data-sites/msme-finance-gap>.

(b) Guide for enactment of the UNIDROIT Model Law on Leasing*

62. On 13 November 2008, a joint session of the UNIDROIT General Assembly and an *ad hoc* Committee of Governmental Experts adopted the Model Law on Leasing. In May 2010, the Governing Council approved the publication of the Official Commentary to the Model Law on Leasing. The Model Law and its explanatory commentary have served their purpose well, influencing the legislation of several nations and assisting the World Bank and other international organisations in their mandate to modernise the legal framework for credit infrastructure. However, by the time the new Work Programme starts, more than ten years will have passed since that Model Law's adoption. In that time, other relevant international texts have been approved (i.e., UNCITRAL's Model Law on Secured Transactions), and substantial experience has accumulated in economies across the globe. In light of these developments, the World Bank – which participated very actively in the drafting of the 2008 Model Law – has formally requested that UNIDROIT consider the drafting of a detailed Guide to Enactment, which would serve the purpose of providing further guidance to domestic legislators in the implementation of their leasing system, helps to ensure a streamlined and more uniform adoption of that Law, and aligns the understanding of the instrument with the most recent developments of the system of secured transactions. Despite its practical importance, given the limited resources available, the Secretariat suggested to the Governing Council that this project be recommended, but with a low priority level.

63. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to place this item on the 2020-2022 Work Programme on low priority to monitor developments in the area. The Secretariat would return to the Council to seek approval if it determined that any additional work was necessary.*

8. Insolvency law: the harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases **

64. In response to the call for proposals for the 2020-2022 Work Programme, the Bank of Italy and the European Banking Institute (EBI), a Frankfurt-based, pan-European think tank composed of highly-regarded European universities in the fields of banking and financial law, presented proposals to work on matters related to bank resolution and cross-border cooperation and collaboration.

65. The potential for enormous damage and the rapid and wide-encompassing risk of contagion of bank insolvencies were apparent outcomes of the recent global financial crisis. Central banks and global institutions designed to preserve financial stability managed to agree on a number of best practice solutions that had to be implemented both at national and international levels to stave off systemic risk. Clear examples of these measures are the Financial Stability Board's "Key Attributes of Effective Resolution Regimes for Financial Institutions" or, at a regional level, the European Union's Bank Recovery and Resolution Directive (Directive EU 2014/59). Together with legislative initiatives, institutional collaboration and cooperation was increased substantially. Today's legal and institutional framework is more apt to deal with financial crises than before 2008. And yet, the risk remains and action on the legal front is far from complete. While systemic institutions, either at a domestic or an international level (G-SIFIs), have been given much attention at a regulatory level, the reality is different for the smaller financial entities. Whereas there is consensus as to what constitutes adequate preventive and early-action mechanisms, certain areas of the treatment of actual bank insolvencies remain almost untouched, especially concerning liquidation.

66. The difficulties created by the existing gaps and its pressing relevance is shown by the requests received, almost simultaneously – but independently – by the Bank of Italy, which symbolises the concern of national central banks, and by EBI, a most acute observer of the international legal framework on banking and financial markets. The Secretariat considers that UNIDROIT is well positioned to undertake work that seeks to remedy such gaps. Work could consist of the drafting of a legal guide that identifies best practices and solutions or, following a thorough assessment and further

consultations, even of a model law. The content should aim to cover, at least, the following matters: (i) the most efficient institutional mechanism for bank liquidation (e.g. judicial system versus administrative model, or a hybrid system); (ii) the type of powers that ought to be assigned to the court/administrative authority; (iii) the entry gate to liquidation proceedings and its coordination with banking resolution systems; (iv) which rules of general corporate insolvency proceedings should apply to the liquidation of banks; and (v) the rules of coordination between national courts/administrative authorities in case of cross-border cases. Further, outside liquidation and from the standpoint of resolution measures, an international standard and coordination mechanisms could be envisaged concerning (a) the domestic system of priorities in insolvency and its relationship with bail-in rules (“no creditor worse off” principle and Total Loss Absorbing Capacity (TLAC) rules); (b) aspects of recognition of resolution measures; and (c) the mechanisms for recognition of contractual clauses that subject banks to resolution systems.

67. This type of work requires international expertise and a strong interdisciplinary component. The topic includes elements of banking law, international law, capital markets, contract law and secured transactions, areas which lay already at the core of UNIDROIT’s work. Due to its highly technical nature and its rapidly evolving content, the work would be best executed by a nimble inter-governmental Organisation that can complete the work quickly. The proponents of the work strengthen even further the case for UNIDROIT to undertake such work: a central bank and a highly relevant, fully independent academic think tank in the area of international banking law.

68. *The Governing Council, at its 98th session, agreed to recommend to the General Assembly to assign medium priority to this proposal. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global institution. This would include exploring parts (b) and (c) of the original proposal. There was agreement on the importance of the topic and on the possible impact of the work to be conducted. Subject to agreement with the Secretariat’s enhanced note, the 99th session of the Governing Council would reconsider the status of the project.*

9. Law and technology: Artificial Intelligence/Smart Contracts/DLT **

69. In 2015, the UNIDROIT Secretariat received a proposal from the Ministry of Justice of Hungary to take into consideration the development of model laws in the domain of business informatics, in relation to platform services, software services, hardware services, database handling, and cloud computing. In November 2016, the Ministry of Industry and Trade of the Czech Republic sent the UNIDROIT Secretariat a proposal to include two main topics in the Work Programme: distributed ledger (or block chain) technology and inheritance of digital properties ([see UNIDROIT 2017 – C.D. \(96\) 5, Appendix II](#)). This proposal was submitted to the attention of the General Assembly at its 75th session (Rome, 1 December 2016), and later to the Governing Council at its 96th session (Rome, 10-12 May 2016), during which the Governing Council concluded that the Secretariat should continue to follow developments in this regard (see [UNIDROIT 2017 – C.D. \(96\) 15, para. 58](#)). Upon receipt of the Secretariat’s Note Verbale of 18 June 2018 requesting proposals for the 2020-2022 Work Programme, the Czech Republic submitted a second proposal to UNIDROIT, reiterating prior proposals and expressing the need to assess what would be a fair distribution of rights and obligations in contracts for provision of intelligent products and services and to draft model rules for this specific type of a contract. Similarly, the Czech Republic presented a proposal to the UNCITRAL Secretariat requesting that UNCITRAL closely monitors developments relating to legal aspects of smart contracts and artificial intelligence and report back to the Commission on areas that might warrant uniform legal treatment, with a view to undertaking work in those fields if and when appropriate. Following proposal, at its 51st session (New York, 25 June-13 July 2018), the Commission decided that “[t]he Secretariat should compile information on legal issues related to the digital economy, including by organizing,

within existing resources and *in cooperation with other organizations*, symposiums, colloquiums and other expert meetings, and to report that information for its consideration at a future session.”¹⁰

70. In line with the joint proposal of the Czech Republic and having received a similar mandate from their governing bodies, UNIDROIT and UNCITRAL have agreed to explore the possibility of future joint work in this area. In order to identify the specific topics that could be, if feasible, the scope of the work, a joint, by-invitation only workshop was convened at UNIDROIT’s seat (Rome, 6-7 May 2019). The workshop gathered leading experts, particularly in the fields of distributed ledger technology (DLT), smart contracts and areas of artificial Intelligence possibly linked with private law. For further information, the Summary of the Discussion and Conclusions from that workshop can be found here.¹¹ The purpose of the workshop was not to create yet another forum for discussion on these topics or to go into detailed expert analysis of specific items, but rather – and *exclusively* – to identify the most suitable topic(s) for future work by both Organisations. The workshop featured a final panel addressing conclusions, during which it was proposed that a future workshop be organised to narrow down the scope of the work to be undertaken with a view to clearly identifying the specific areas that were most feasible and best suited for the development of international instruments. While the importance of the topic and its rapid development would appear to favour classifying the project as a high priority one, given the lack of determination of its scope, the Secretariat considered it prudent to wait until the Governing Council’s 99th session in May 2020 to define the adequate level of priority.

71. *The Governing Council, at its 98th session, recommended to the General Assembly that it include this item on medium priority on the 2020-2022 Work Programme. The level of priority assigned was merely formal. The Secretariat was asked by the Council to conduct further research to narrow down the scope of the project, which, based on the conclusions of a joint colloquium with UNCITRAL, would be initially confined to digital assets. The Council, at its 99th session, would adopt a decision on the final scope of the project and reassess its level of priority. The proposed form of the joint work with UNCITRAL would also be reassessed at the 99th session of the Council. The Council also recommended that the Secretariat conduct additional research on the impact of Smart Contracts/DLT/AI on existing UNIDROIT instruments.*

B. Draft Work Programme for the 2020-2022 triennium: Implementation and promotion of UNIDROIT instruments

1. Depositary functions ***

72. UNIDROIT is the Depositary for the Cape Town Convention and its Protocols and for the Geneva Securities Convention. Depositary functions include, *inter alia*: providing assistance to States that contemplate becoming Parties to the Conventions and Protocols (e.g. on the procedure to follow and by drafting documents such as model instruments of ratification, declarations memorandum, etc.); informing all Contracting States of each new signature or deposit of an instrument of ratification; acceptance, approval or accession, of each declaration made in accordance with the Convention and Protocols, of the withdrawal or amendment of any such declaration and of the notification of any denunciation. Such functions also involve providing the Supervisory Authority and the Registrar with a copy of each instrument, declaration or withdrawal or amendment of a declaration, and of each notification of denunciation. UNIDROIT also maintains a specific Depositary section on its website for the relevant instruments.

73. As Depositary of the Cape Town Convention and its Protocols, UNIDROIT also prepares reports as to how the international regime established by this Convention has operated in practice. For this

¹⁰ See Report of the United Nations Commission on International Trade Law, UNGA Doc. A/73/17 (51st session, 25 June – 13 July 2018), para. 253, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement> (emphasis added).

¹¹ <https://www.unidroit.org/english/news/2019/190506-unidroit-uncitral-workshop/conclusions-e.pdf>.

purpose, the Depositary considers the reports of the Supervisory Authority concerning the functioning of the international registration system.

74. These functions should be regarded as indispensable and, as such, as high priority activities for the purpose of allocation of human and financial resources.

2. Promotion of UNIDROIT instruments ***

75. The promotion of all UNIDROIT instruments should be regarded as an indispensable function and, as such, as high priority activities for the purpose of allocation of human and financial resources. While the Secretariat's activities should ideally cover all instruments prepared and adopted by the Institute, the Secretariat is compelled, due to a lack of resources, to prioritise its promotion activities and to rely heavily on partnerships with interested organisations. The following paragraphs suggest a few priority areas for the 2020-2022 triennium.

76. The Secretariat anticipates that two instruments will be submitted for adoption in the year 2020, namely the ELI-UNIDROIT Regional (European) Rules of Civil Procedure and the Legal Guide on Agricultural Land Investment Contracts. The Secretariat intends to devise and submit the relevant promotion strategy for the Governing Council's 99th session (May 2020), which would be implemented subject to their adoption.

(a) UNIDROIT Principles of International Commercial Contracts

77. In 2016, the fourth edition of the Principles of International Commercial Contracts was approved by the Governing Council. Since then, the Secretariat has undertaken a host of promotional activities to disseminate knowledge on the Principles and to enhance their worldwide practical application. These efforts, coupled with the activities undertaken by the members of the Governing Council and former members of the Working Group, were instrumental in raising awareness on the variety of uses of the Principles, particularly as a tool in the drafting and interpretation of contracts and in dispute resolution.

78. Similar to what was done in the previous triennium, the Secretariat will continue to cooperate with the International Bar Association and will otherwise promote the Principles through cooperation with other organisations, conferences and lectures, and anticipates retaining the promotion of the Principles as a priority area for the next triennial Work Programme.

(b) UNIDROIT/FAO/IFAD Legal Guide on Contract Farming

79. Co-authored by UNIDROIT, the Food and Agriculture Organisation of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming was published in 2015 in English and French, and in 2017 in Spanish. Under an implementation programme financed by IFAD, and relying on UNIDROIT's cooperation, in 2016-2017, FAO prepared outreach materials, knowledge and implementation tools based on the Legal Guide, to be used in local capacity building and development programmes in diverse contract farming contexts.

80. As part of the promotion plan of the Legal Guide, which was focused in particular on legal aspects, UNIDROIT launched a Forum intended as a platform to promote sharing and dissemination of knowledge, as well as projects pursued individually by partners and members, or on the basis of joint initiatives, in order to strengthen the legal environment for contract farming operations. Actions in the 2017-2019 triennium included the translation of the Legal Guide in Portuguese and Chinese as a basis for the preparation of dissemination tools, as well as academic or regulatory projects developed in South American countries. Over the triennial period 2020-2022, the UNIDROIT Secretariat intends to develop a global project of preparation of country-specific Legal Guides tailored to the particular

context of each jurisdiction, which will significantly increase the operational impact of the Legal Guide for users in domestic environments.

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

81. The UNIDROIT Secretariat is often asked to offer technical assistance in connection with the 1995 Convention and in respect of the 2011 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects, owing, among other things, to the upsurge in trafficking in cultural objects, the adoption by the UN Security Council and General Assembly of various resolutions and the legislative activity of the European Commission in this field. UNIDROIT is one of the competent inter-governmental Organisations called upon to facilitate the implementation of such resolutions, also within the UN's Informal Task Force to promote ratification of the 1995 Convention.

82. On 19 January 2019, the European Parliament adopted a resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars. In this report, the European Parliament asks Member States to accede to the 1995 Convention and the European Commission, in its future work, to take into account or incorporate the principles set out in the 1995 Convention on issues relating to rules on provenance research, documentary records or transaction registry, cooperation with third countries, and to establish fruitful partnerships favouring the return of cultural property. UNIDROIT has been approached to collaborate.

83. UNIDROIT's excellent collaborative links with other organisations active in the field of cultural property have, in recent years, done much to compensate for the lack of funds. UNESCO regularly involves UNIDROIT to attend national and regional capacity building seminars on the fight against illicit traffic in cultural property, and important meetings are already planned for the coming months (e.g. regional and national seminars organised at the specific request of countries in order to improve their understanding of the 1970 UNESCO and 1995 UNIDROIT Conventions in view of accession).

84. Beside UNESCO, at the institutional level, UNIDROIT intends to pursue its close collaboration with several other organisations in this field, often becoming a member of ongoing expert groups, such as the European Union, the Council of Europe and its Parliamentary Assembly, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Customs Organisation (WCO), the International Council of Museums (ICOM) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) in Rome and in Sharjah, United Arab Emirates.

85. The Academic Project on the 1995 Convention (UCAP) created in 2018 is attracting institutional and individual partners to develop projects and raise awareness of UNIDROIT's instruments in this field (e.g. among universities, the judiciary, practising lawyers etc.). UCAP, together with the UN Informal Task Force, have been acknowledged by the UN General Assembly in its Resolution 73/130 on the "Return or restitution of cultural property to the countries of origin" adopted in December 2018.

C. Draft Work Programme for the 2020-2022 triennium: Non-legislative activities

86. UNIDROIT's various non-legislative activities enjoy differing degrees of priority. Consistently with Objective No. 5 of the Strategic Plan developed by the Governing Council, UNIDROIT should "clearly link its non-legislative activities to the Organisation's mandate and the instruments it prepares," and give priority to those non-legislative activities "that support the research projects needed to carry out the Organisation's legislative Work Programme, add value to the dissemination of information on UNIDROIT work and on the promotion of UNIDROIT instruments and offer a satisfactory level of returns, in terms of visibility and recognition."

87. With these objectives in mind, the following paragraphs indicate the priorities and policy guidelines proposed by the Secretariat for the Institute's non-legislative activities in the 2020-2022 triennium.

1. UNIDROIT Library and Depository Libraries

(a) Cooperation

88. The Institute's cooperation strategy with other Roman and non-Roman libraries should be further pursued and intensified. A first inter-library meeting took place at UNIDROIT in April 2011, organised together with the David Lubin Memorial Library of the Food and Agriculture Organization of the United Nations (FAO). Numerous meetings have subsequently been organised in recent years with the participants of the library network (e.g. FAO, Biblioteca Hertziana, Biblioteca Vaticana, Académie Française, Beniculturali, Università La Sapienza, ILO, ICCROM, ISS, Banca d'Italia, British School of Rome, Pontificia Università S. Tommaso D'Aquino, Biblioteca della Corte Costituzionale). The idea is to continue a series of regular library meetings in order to strengthen inter-library cooperation and networking and to improve library services at a time when almost all institutions are economising with respect to library expenses. The proposal to establish such a Roman library network and to meet regularly has met with great interest from all participants, and this very fruitful collaboration is to be intensified in the coming years.

(b) Resource sharing

89. In times of general budget shortages for libraries, cooperation and resource sharing is of the utmost importance. Since 2012, fruitful collaboration programmes have been established with numerous Italian and foreign libraries – with a view to sharing resources, in particular, legal periodicals – thereby freeing resources for the acquisition of monographs. In order to improve the services offered by the Library without actually purchasing the requisite material, UNIDROIT endeavours to continue entering into partnerships with other libraries to offer library guests excellent and up-to-date material for their research.

(c) Catalogue enrichment, databases, digitisation

(i) Catalogue enrichment

90. In addition to intensifying cooperation with other libraries, in the 2020-2022 triennium, particular attention will be given to enriching the electronic catalogue, expanding the availability of electronic databases, and the digitisation of parts of the Library's collection. In the age of e-books, Internet bookstores and similar services, the demands on library catalogues have fundamentally changed. Users have come to expect, in addition to the bibliographic information, further additional information such as orientation and guidance in the selection of literature. With the so-called catalogue enrichment, libraries can offer their users crucial added value: direct and free access to additional information about titles found, paired with additional research enabled by the full text search in the table of contents.

(ii) Databases

91. As to databases, UNIDROIT currently subscribes to various electronic resources that cover several civil law, common law and mixed jurisdictions: HeinOnline, West Law International, Sistema Pluris On-Line, and Beck Online. In addition, in recognition of their importance for the Institute's scientific work, the Library holds a subscription to Lexis Nexis France, which covers in particular French law and offers legislative materials from non-English-speaking countries. The provision of additional databases, especially in areas of Spanish law, would make a significant contribution to improving research conditions for the Secretariat's staff, scholars and independent visiting researchers.

(iii) *Digitisation*

92. Research libraries are increasingly called upon to collect, manage, and preserve digital assets. Users have come to expect ubiquitous access and delivery and are looking to exploit technology for research. A robust and flexible digital infrastructure has become critical to meeting user expectations and desires, as well as the demands of collecting digital assets. The digitisation project is part of the library's overall strategy and has multiple objectives: to protect and preserve the original text, image and sound documents for cultural memory, and to radically improve the visibility, access to and usage possibilities of the UNIDROIT Library's own resources for science and research, education and culture.

93. In the 2020-2022 triennium, the UNIDROIT Library therefore intends to continue with the challenging project of the digitisation of library materials, in particular with the ongoing digitisation of monographs of the "Gorla collection". The "Gorla Collection" was donated to the UNIDROIT Library in 1987 by Professor Gino Gorla, formerly Professor of Comparative Law at the University of Rome "La Sapienza". It is a collection of rare, antique books, which served as a support to his research on case law in Europe from the 17th to the early part of the 19th Century. It contains over 550 titles comprising about 900 volumes and including treatises, commentaries, collections of *decisiones*, *resoluciones*, *consilia*, *responsa*, *allegationes* and *controversiae forenses*, as well as a number of books dealing specifically with commercial law and maritime law.

94. Thanks to the advanced technical equipment that has been available to the UNIDROIT Library since 2018 (i.e. book scanner, special software for processing digital objects, etc.), the digitisation can be carried out directly in the UNIDROIT Library.

(d) Acquisition Policy

95. The fourth priority action for the library in the 2020-2022 triennium will be the development of a more sharply focused acquisition policy. In 2018, the UNIDROIT Library's holdings increased by 989 titles, of which 563 were purchased outright, 132 were obtained on an exchange basis, and 294 further titles were received as gifts. The expansion of the UNIDROIT Library's holdings has unfortunately been hampered by steady increases in the price of publications and a chronic lack of resources.

(e) Information resources and policy

96. The sources of information on UNIDROIT materials and work have a central role to play in the Institute's promotion. Even though paper-based publications are still central to the promotion of the Institute's work and mandate, electronic tools are rapidly growing in importance, thanks in large part to their powerful capacity for easily reaching a widespread audience which far exceeds the impact of traditional paper-based tools. To some extent, they also compensate for the meagre resources allocated to the promotion of UNIDROIT's instruments. Considering the importance of the sources of information in promoting the Organisation and its work, it is submitted that the collective project "Information resources and policy" should be given high priority.

2. Uniform Law Review and other publications

97. In June 2012, an agreement was signed with Oxford University Press (OUP), under which OUP took over the publication of the *Uniform Law Review* starting with volume XVIII (2013). The initial agreement was for a period of five years, which was tacitly renewed in 2018. The Review is available in three formats: print only, online only, or both print and online. Contributions submitted to the Review for publication are subject to peer review, meaning that they are reviewed by experts in the field before they are accepted. The yearly Publisher's Reports indicate that while subscriptions to the paper copy of the Review have decreased, subscriptions to the electronic version – in particular when the Review is part of the collection subscriptions offered by OUP – have increased steadily. Also of

note, the electronic version has extensive world-wide distribution; in fact, more than 800 recipients in developing countries benefit from free or discounted subscriptions. Interest in the Review from scholars in developing countries can be evinced from the number of articles submitted for publication by scholars from Africa and the Middle East. Subjects of interest in this context include the UNIDROIT Principles of International Commercial Contracts and the Cape Town Convention system. Information on UNIDROIT instruments and projects – thanks to the Uniform Law Review – therefore spreads world-wide, far beyond what the resources available to the Institute for the promotion of its instruments would normally allow.

98. Monographs published by UNIDROIT are linked to, or the product of, specific projects of the Institute. Thus, 2019 will see the publication of the fourth edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, and the third edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Luxembourg Protocol thereto on Matters specific to Railway Rolling Stock*. The first edition of the *Official Commentary on the Convention and Space Protocol* was published in 2013, while the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Mining, Agricultural and Construction Equipment* will be published in 2020. All four Official Commentaries are authored by Professor Sir Roy Goode.

99. In 2017 the *Principles of International Commercial Contracts 2016*, the fourth edition of the Principles, were published in English and French. The Spanish edition was published in 2018 and will be published in special editions in 2019 in Mexico, Paraguay, Colombia and Chile, on the basis of agreements concluded with the publishers thanks to the good offices of Messrs Sánchez Cordero, Moreno Rodríguez, Jorge Oviedo Albán and Álvaro Rodrigo Vidal Olivares respectively. Translations into Chinese and Korean are expected in 2019, while Romanian and Russian translations were published in 2018. The importance of the Principles and its increased use is evidenced also by the cases decided, both by domestic courts and arbitral tribunals, and reported on in the UNILEX database. UNILEX is regularly fed with case reports submitted by correspondents. It should also be noted that to ensure that it can be consulted by users world-wide, that database's software was completely updated in 2018.

100. In 2015 the UNIDROIT/FAO/IFAD *Legal Guide on Contract Farming* was published in both English and French and the Spanish version appeared in 2017. A Chinese translation was published by Peking University Press and a Portuguese translation was published by Editora Universidade de Viçosa, both in 2018. Earlier instruments include the *UNIDROIT Guide to International Master Franchise Arrangements* (1998; 2^{ed.} 2007). It should also be noted that in 2020 the publication of the *Legal Guide on Agricultural Land Investment Contracts* is anticipated, with the publication of the *ELI/UNIDROIT Rules of European Civil Procedure* expected soon after they have been adopted by both organisations, probably in late 2020 or early 2021.

101. In 2013 the Secretariat started publishing UNIDROIT instruments (previously only available for download and print in A4 format) in booklet form to serve as hand-outs at conferences and meetings and which can be mailed wherever necessary at a very limited cost. Since 2013, all the most recent instruments have been printed in booklet form and are reprinted as necessary.

102. A major effort, which enhanced the importance of both the work of UNIDROIT and its mandate, was the preparation of the Essays in the honour of a long-standing collaborator of the Institute, Professor Michael Joachim Bonell, coordinator of the Working Group for the Preparation of Principles of International Commercial Contracts, celebrating his 70th birthday. Over 150 academics and other experts contributed to the publication.¹² Most articles deal with uniform or comparative law subjects, often UNIDROIT instruments and in particular the Principles of International Commercial Contracts.

¹² See Eppur si muove: *The age of Uniform Law – Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday*, UNIDROIT (edit.), 2016.

Although recognised as a work of high quality and interesting contributions, the meagre resources at the disposal of the Secretariat for the promotion of the two volumes comprising this publication have limited its dissemination. Despite this, the Essays have been sold as far afield as Japan and Argentina.

(a) Website

103. The UNIDROIT website was first created in the 1990s. In 2012, the Secretariat started work on the creation of a new, more user-friendly website, using up-to-date technology. The new website was launched on 10 January 2014 and has been under continual review to update it as needed.

104. However, the time has come to again update the website completely. Rapid technological development and the need to make the website ever more attractive and user-friendly have prompted the Secretariat to begin preparations for a revamped website. It is not yet possible to fix a timeline for the launch of the new website, however, the possibilities offered by new technology are being explored, bearing in mind that the architecture of the website and its aesthetic appearance must always serve its contents. The importance of the website cannot be over-stated. The Secretariat is convinced that the website is a crucial tool to enhance UNIDROIT's visibility and to disseminate information, which must be kept up-to-date both as to technology and content.

(b) Social Media

105. The purpose of the Institute's social media programme is to promote UNIDROIT's work to a wider audience in an innovative, efficient and cost-effective manner.

106. UNIDROIT launched its social media programme during the Institute's 90th anniversary celebrations in April 2016. UNIDROIT currently maintains accounts on LinkedIn (2016), Facebook (2016), Twitter (2018) and YouTube (relaunched in 2019). Maintaining a presence on LinkedIn allows the Institute to inform practitioners and legal professionals about its projects, whereas Facebook promotes UNIDROIT to a younger generation of lawyers, academics and students. UNIDROIT expanded its presence on social media by establishing a Twitter profile in February 2018, to allow UNIDROIT to reach an additional audience. Twitter also allows researchers, visiting professionals, interns and other stakeholders to interact with UNIDROIT in a more dynamic manner. At the start of 2019 UNIDROIT relaunched its presence on YouTube in order to promote videos of expert presentations made at the Institute by international legal experts and visiting scholars.

107. The three key performance indicators for the Institute's social media programme are (i) number of followers, (ii) its "reach" (the total number of people who see UNIDROIT social media content) and (iii) the number of referrals to the UNIDROIT website. Since its launch, the UNIDROIT social media programme has exceeded expectations on all three key performance indicators. As of 7 November 2019, the Institute had 7,598 followers on [LinkedIn](#), 3,253 followers on [Facebook](#), and 569 followers on [Twitter](#) who receive regular updates on UNIDROIT activities. These figures represent growth rates of 108% for LinkedIn, 17% for Facebook, and 68% for Twitter followers in the past six months. In relation to the Institute's "reach" on social media, UNIDROIT content was delivered to 155,944 people on Facebook, while it was displayed on news feeds 357,999 times on LinkedIn, and around 215,000 times on Twitter over the past twelve months. In 2019, UNIDROIT also started to build its [YouTube](#) channel. So far, the Institute's YouTube channel has 78 subscribers, and has uploaded 6 videos which have collectively been viewed almost 1,000 times. In 2019, social media referred 3367 people to the UNIDROIT website, making it the largest source of referrals for the website outside of search engines. 68% of these referrals came from Facebook, highlighting the continued importance of UNIDROIT's presence on that particular platform.

108. UNIDROIT has achieved these outcomes by adopting a social media strategy based on: (i) frequent posts (ii) content tailored to the audience on relevant social media platforms (iii) diverse content and (iv) partnerships with relevant entities. For instance, UNIDROIT participates in a Social

Media roundtable organised by the US Mission to the UN Agencies in Rome which brings together the social media officers of the largest Rome-based international agencies to share knowledge and coordinate promotional campaigns. This has allowed UNIDROIT to benefit from the expertise and experience of larger organisations which have entire teams dedicated to digital communication.

109. None of UNIDROIT’s social media accounts require subscription fees. UNIDROIT utilises a program called SocialChamp to simultaneously post content to its different platforms, which significantly lowers the amount of time required to maintain UNIDROIT’s social media presence. SocialChamp also allows for posts to be scheduled in advance so that UNIDROIT can promote content at strategic times to ensure maximum engagement.

110. General Assembly members are invited to follow UNIDROIT on Facebook, LinkedIn, Twitter and YouTube.

3. Internships and scholarships ***

111. UNIDROIT’s Research Programme and Internship Programme are important tools for promoting UNIDROIT’s work and related research in the field of international and comparative law.¹³

112. UNIDROIT’s internship programme hosts each year a select number of interns to participate in the work of the Secretariat. Interns are generally expected to conduct research on specific aspects of the selected subject and assist members of staff. In 2019, 18 interns from 10 countries¹⁴ worked alongside the Secretariat for a short period of time.

113. While most of scholars and researchers were hosted on an independent basis, often funded by their university, or under cooperation schemes with academic institutions, twelve Scholars from nine countries received a scholarship under the UNIDROIT Scholarships Programme¹⁵ thanks to contributions from the Ministry of Commerce of the People’s Republic of China (MOFCOM), the UNIDROIT Foundation, as well as from members of the UNIDROIT Governing Council. The Secretariat expresses its gratitude to all donors in 2019 and hopes that they will wish to renew their financial commitment, and that new donors may join them.

¹³ For a full presentation of the Research Programme and the Internship Programme, including a list of current and former guests see: <https://unidroit.org/research-and-internships>.

¹⁴ Australia, France, Hong Kong, Italy, Japan, Mexico, People’s Republic of China, South Africa, Spain, Vietnam.

¹⁵ Australia, Egypt, Italy, Jordan/Palestine, Korea, People’s Republic of China, Poland, Spain, Venezuela.