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**Item No. 4 on the agenda: Principles of International Commercial Contracts –  
adoption of the third edition (“UNIDROIT Principles 2010”) and its promotion**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Preparation of a new edition of the UNIDROIT Principles of International Commercial Contracts</i>
<i>Action to be taken</i>	<i>Adoption of the third edition (“UNIDROIT Principles 2010”) and its promotion world-wide</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>On target</i>
<i>Related documents</i>	<i>UNIDROIT 2010 – Study L – Misc. 30; UNIDROIT 2011 – Study L – Doc. 125; Annual Report 2010 (UNIDROIT 2011- C.D. (90) 2, pp. 14-16)</i>

**I. ADOPTION OF THE THIRD EDITION (“UNIDROIT PRINCIPLES 2010”)**

1. At its 89<sup>th</sup> session held in Rome from 10 to 12 May 2010, the Governing Council of UNIDROIT proceeded to an examination of the new draft chapters to be included in the 2010 edition of the Principles of International Commercial Contracts, i.e. the Draft Rules on Restitution (UNIDROIT 2010 – Study L – Doc. 114) (Rapporteur: R. Zimmermann); the Revised Comments to Article 1.4 (UNIDROIT 2010 – Study L – Doc. 115) (Rapporteur: M.J. Bonell), the Draft [Chapter] [Section] on Illegality (UNIDROIT 2010 – Study L – Doc. 116) (Rapporteur: M.J. Bonell), the Draft Chapter on Plurality of Obligors and/or Obligees (UNIDROIT 2010 – Study L – Doc. 117) (Rapporteur: M. Fontaine), and the Draft Chapter on Conditions (UNIDROIT 2010 – Study L – Doc. 118) (Rapporteur: B. Fauvarque-Cosson), in view of their submission to the Working Group for finalisation. After congratulating the Working Group on its impressive achievement, the Council approved the black letter rules and, in substance, the Comments leaving it to the Working Group to refine them wherever it felt it necessary to do so.

2. The Working Group held its fifth session in Rome from 24 to 28 May 2010. In the light of the positive outcome of the Governing Council's consideration of the new draft chapters, it proceeded to a final reading focusing on the Comments and Illustrations. The Group was also seized of a Memorandum by the Secretariat on the placement of the new draft chapters in the 2010 edition of the UNIDROIT Principles (UNIDROIT 2010 – Study L – Doc. 119). After extensive discussion the Group agreed on a number of amendments to the Comments and Illustrations as well as the placement of the new draft chapters.

3. Following the deliberations of the Working Group, the Secretariat proceeded to the incorporation of the new Chapters in the present version of the Principles and, under the supervision of Henry Gabriel, Chairman of the Editorial Committee, to the final editing of the new edition and the harmonisation of style and language throughout the entire volume. In parallel, under the supervision of Marcel Fontaine, Chairman of the Editorial Committee for the French language version, the Secretariat also proceeded to the editing of the French language version of the new edition of the Principles.

4. The draft 2010 edition of the UNIDROIT Principles (UNIDROIT 2011 – Study L – Doc. 125) submitted to the Governing Council at this session for its final approval consists of 211 Articles (as opposed to the 120 Articles of the 1994 edition and the 185 Articles of the 2004 edition) structured as follows: Preamble (*unchanged*); Chapter 1: General provisions (*unchanged*); Chapter 2, Section 1: Formation (*unchanged*), Section 2: Authority of agents (*unchanged*); Chapter 3, Section 1: General provisions (*containing former Articles 3.1 (amended), 3.2, 3.3 and 3.19 (amended)*), Section 2: Ground for avoidance (*containing former Articles 3.4 to 3.16, 3.17 (amended), 3.18 and 3.20, and a new Article 3.2.15*), Section 3: Illegality (*new*); Chapter 4: Interpretation (*unchanged*); Chapter 5, Section 1: Content (*unchanged*), Section 2: Third Party Rights (*unchanged*), Section 3: Conditions (*new*); Chapter 6, Section 1: Performance in general (*unchanged*), Section 2: Hardship (*unchanged*); Chapter 7, Section 1: Non-performance in general (*unchanged*), Section 2: Right to performance (*unchanged*), Section 3: Termination (*containing former Articles 7.3.1 to 7.3.5, 7.3.6 (amended) and a new Article 7.3.7*), Section 4: Damages (*unchanged*); Chapter 8: Set-off (*unchanged*); Chapter 9, Section 1: Assignment of rights (*unchanged*), Section 2: Transfer of obligations (*unchanged*), Section 3: Assignment of contracts (*unchanged*); Chapter 10: Limitation periods (*unchanged*); Chapter 11, Section 1: Plurality of obligors (*new*), Section 2: Plurality of obligees (*new*). Moreover the 2010 edition of the Principles contains a new Foreword and a new Introduction as well as a Table of correspondence of the articles of the three editions of the UNIDROIT Principles.

## **II. PROMOTION OF THE THIRD EDITION OF THE UNIDROIT PRINCIPLES WORLD-WIDE**

5. As was the case with the first two editions of the Principles, it will be of utmost importance to promote the new edition among the international legal and business communities.

6. In the course of 2010 a number of events focusing on the UNIDROIT Principles were held, such as a seminar organised in Duesseldorf in January by the German Institution of Arbitration on "The UNIDROIT Principles on International Commercial Contracts and their practical application in arbitral proceedings" (with presentations by H. Kronke and J. Kleinheisterkamp), a joint lecture held at the Lalive Law Firm in Geneva in October by M.J. Bonell and M.E. Schneider as part of a master course on international commercial contracts organised by the University of Fribourg, and a moot arbitration case organised in Brussels in December by P. Billiet in the context of the International Business Arbitration Postgraduate Programme of the Vrije Universiteit Brussel.

7. With respect to the new edition of the UNIDROIT Principles some important initiatives for its promotion are already underway.

- The *Uniform Law Review* will devote one of its forthcoming issues to the UNIDROIT Principles 2010: in addition to the black letter rules in English and in French, it will contain a number of articles dealing with the new chapters and the impact of the Principles on the international contract and arbitration practice.
- In October 2011 an international symposium to present the new edition will be held at Georgetown University (Washington, D.C.) with the participation of a number of eminent experts from the North and South America as well as from Europe.
- Similar events are envisaged at the I.C.C. International Court of Arbitration (Paris), and in Italy (Rome or Milan) sponsored by the Italian legal journal "Diritto del Commercio Internazionale".
- A presentation of the UNIDROIT Principles 2010 will be made among others at two seminars for Russian lawyers to be held at UNIDROIT in April and in May 2011, one organised by Capital Business Events (U.K.) and the other by the International Union of Lawyers (Moscow).
- In September the new edition of the UNIDROIT Principles will be presented at the 2011 Trade Law Symposium, organised by Andrew Percival, Counsel at the Corrs, Chambers, Westgarth Law Firm, in conjunction with the Law Council of Australia, the Attorney-General's Department and the Department of Foreign Affairs and Trade.

8. The Governing Council may wish to discuss the possibility of organising additional events to promote the new edition of the Principles in the various parts of the world. To this effect the Secretary-General had already contacted the members of the Governing Council and received encouraging responses from N. Bouza Vidal, S. Deleanu, A. Harmathy, B.H. Lyou, B. Sen, D. Tricot and I. Voulgaris.

9. Once the new edition of the UNIDROIT Principles has been formally adopted by the Governing Council, publication of the volume in the English and French language versions will follow within 2-3 weeks, while the Italian and Spanish language versions are under preparation and are expected to be published in the Autumn. Translations into Chinese, Farsi, Japanese, Portuguese and Russian are forthcoming (with the Portuguese and Russian translations of the black letter rules already available). As was the case with the previous editions of the UNIDROIT Principles the Secretariat will carry out a publicity campaign for the sale of the volume world-wide.

10. Monitoring of the use in practice of the UNIDROIT Principles will continue on a systematic basis also with respect to the new edition. At present UNILEX, the database of international caselaw and bibliography on the UNIDROIT Principles <<http://www.unilex.info>> visited by an average of 350 visitors daily from all over the world, contains 156 arbitral awards and 91 court decisions referring in one way or another to the Principles, while bibliographic references are more than 850. Following the adoption of the 2010 edition of the UNIDROIT Principles the database will be updated to include the text of the new edition as well as a list of relevant issues connected to each of the new provisions.

11. Since most of the decisions applying the UNIDROIT Principles are arbitral awards, which for not always compelling reasons of confidentiality remain unpublished, UNILEX can only offer a selection of all the relevant decisions actually rendered worldwide. It can only be hoped that more and more international arbitration centres will be willing to provide regular information about awards rendered under their supervision concerning the UNIDROIT Principles. The Governing Council may wish to consider how to ensure exhaustive and timely information by international arbitration centers on arbitral awards concerning the UNIDROIT Principles.

12. A significant contribution to the promotion of the 2004 edition of the UNIDROIT Principles was its formal endorsement by the United Nations Commission on International Trade Law (UNCITRAL) at its 40<sup>th</sup> session in 2007 (see Report of the Commission on the work of its 40th session (A/62/17, part I), 2007, paras. 209-213). The Governing Council may wish to instruct the Secretariat to contact UNCITRAL with a view to obtaining endorsement also of the 2010 edition of the UNIDROIT Principles.