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**Item No. 13 on the agenda: Draft Triennial Work Programme 2014-2016**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the draft Work Programme for the 2014-2016 triennium</i>
<i>Action to be taken</i>	<i>To take note of the proposed allocation of resources to carry out the current Work Programme and to make recommendations for the future Work Programme, including the relative priority to be assigned to each activity</i>
<i>Related documents</i>	<i>UNIDROIT 2009 – C.D (88)7; UNIDROIT 2009 – A.G. (65) 10.; UNIDROIT 2010 – C.D (89)7; UNIDROIT 2010 – A.G. (67) 9 rev.; UNIDROIT 2011 – A.G. (69) 11; A.G. (69) 2 rev.; UNIDROIT 2012 – A.G. (71) 2</i>

**Contents**

<b>Introduction</b>	<b>3</b>
<b>A. Work Programme for the triennium 2014-2016: Legislative activities</b>	<b>4</b>
<b>1. International Commercial Contracts</b>	<b>4</b>
(a) <i>Issues relating to long-term contracts, in particular termination for just cause</i> **	4
(b) <i>Issues relating to multilateral contracts, in particular corporate contracts</i> *	5
<b>2. Secured transactions</b>	<b>6</b>
(a) <i>Implementation of the Rail and Space Protocols to the Cape Town Convention</i> ***	6
(b) <i>Preparation of other Protocols to the Cape Town Convention</i>	7
(i) <i>Agricultural, mining and construction equipment</i> **/*	7
(ii) <i>Ships and maritime transport equipment</i> **/*	7
(iii) <i>Off-shore power generation and similar equipment</i> **/*	8
<b>3. Transactions on Transnational and Connected Capital Markets</b>	<b>8</b>
(a) <i>Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets</i> **/*	8
(b) <i>Additional topics</i> *	9

<b>4. Liability for Satellite-based Services **/*</b>	<b>9</b>
<b>5. Private law and development</b>	<b>9</b>
(a) <i>Private law aspects of agricultural financing</i>	9
(i) <i>Contract Farming ***</i>	10
(ii) <i>Possible future work in the field of private law and agricultural development</i>	10
(a) Possible preparation of an international guidance document on land investment contracts *	10
(β) Possible future work in other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing	11
(b) <i>Legal aspects of social business *</i>	11
<b>6. Transnational civil procedure: formulation of regional rules **/*</b>	<b>12</b>
<b>B. Work Programme for the triennium 2014-2016: Implementation and promotion of UNIDROIT instruments</b>	<b>13</b>
<b>1. Depository functions ***</b>	<b>13</b>
<b>2. Promotion of UNIDROIT instruments ***</b>	<b>13</b>
(a) <i>UNIDROIT Principles of International Commercial Contracts</i>	13
(b) <i>UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva, 2009)</i>	13
(c) <i>UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) and 2011 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects</i>	14
(d) <i>Convention on the Form of an International Will (Washington, D.C. 1973)</i>	15
<b>C. Work Programme for the triennium 2014-2016: Non-legislative activities</b>	<b>15</b>
<b>1. UNIDROIT Library and Depository Libraries</b>	<b>15</b>
<b>2. Information resources and policy</b>	<b>16</b>
(a) <i>Uniform Law Review and other publications</i>	16
(b) <i>Website</i>	17
<b>3. Internships and scholarships</b>	<b>17</b>

## **Introduction**

1. The Work Programme of UNIDROIT for the triennium 2011-2013 covers several topics which the Governing Council had originally recommended for inclusion in the Work Programme at its 88<sup>th</sup> session (Rome, 20-23 April 2009) and which were accepted by the General Assembly at its 65<sup>th</sup> session (Rome, 2 December 2009) (see document UNIDROIT 2009 – A.G. (65) 10, paras. 18-27), as well as additional topics proposed by the Governing Council at its 89<sup>th</sup> session (Rome, 10-12 May 2010), and approved for inclusion in the Work Programme by the General Assembly at its 67<sup>th</sup> session (Rome, 1 December 2010).

2. As a result of these recommendations and decisions, and considering the projects that had been completed by the end of 2010, the Work Programme for the triennium 2011-2013 currently includes the following activities (see UNIDROIT 2010 – A.G. (67) 9 rev., Annex):

### **A. *Legislative activities***

1. Principles of International Commercial Contracts (UPICC) – 3<sup>rd</sup> edition
2. Space Protocol to the Cape Town Convention
3. Transactions on Transnational and Connected Capital Markets
  - (a) *Preparation of an instrument on the Netting of Financial Instruments*
  - (b) *Legislative Guide on Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets*
4. Preparation of other Protocols to the Cape Town Convention, in particular on matters specific to agricultural, mining and construction equipment
5. Third Party Liability for Global Navigation Satellite System (GNSS) Services
6. Model Provisions on the Protection of Cultural Property
7. Private law and development
  - (a) *Private law aspects of agricultural financing*
  - (b) *Legal aspects of social business*

### **B. *Implementation and promotion of UNIDROIT instruments – legal co-operation***

1. Depositary functions
2. Promotion of UNIDROIT instruments
3. Legal co-operation

### **C. *Non-legislative activities***

1. UNIDROIT Library
2. Publications
3. Website and Depositary Libraries
4. UNILAW Database

3. At its 89<sup>th</sup> session (Rome, 10-12 May 2010), the Governing Council applied the following criteria in recommending the assignment of relative levels of priority to the various activities under the current Work Programme:

(a) *Priority for allocation of meeting costs:*

- (i) "high priority" – projects that should take precedence over others (never more than two)
- (ii) "medium priority" – projects eligible for being advanced in the event that the costs of high priority projects turn out to be lower than anticipated (e.g., because extra-budgetary funding having been obtained), 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 officers responsible;
- (ii) "medium priority" – not more than 50% of the time of the officers responsible; and
- (iii) "low priority" – not more than 25% of the time of the officers responsible.

(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 "high priority" by their very nature, which is why they are supported by a pool of human and financial resources especially designated for that purpose.

4. An overview of the action taken in 2012 to implement the legislative activities that appear on the Work Programme of the Institute is contained in the Annual Report 2012.<sup>1</sup> Information, in monetary terms, on the allocation of resources to the various projects and activities of the Institute in the financial year 2012 is contained in the Secretary-General's summary of the Organisation's activity in 2012 (UNIDROIT 2012 – A.G. (71)2), presented to the 71<sup>st</sup> session of the UNIDROIT General Assembly (Rome, 29 November 2012).

5. The following paragraphs contain suggestions for projects and activities to be included in the UNIDROIT Work Programme for the triennium 2014-2016.<sup>2</sup>

## **A. Draft Work Programme for the triennium 2014-2016: Legislative activities**

### **1. International Commercial Contracts**

#### **(a) *Issues relating to long-term contracts, in particular termination for just cause* \*\***

6. The UNIDROIT Principles 2010 cover virtually all the most important topics of general contract law, such as formation, interpretation, validity, performance, non-performance and remedies, assignment, set-off, limitation periods, etc. However, while the UNIDROIT Principles, whose main source of inspiration was the United Nations Convention on Contracts for the International Sale of Goods (CISG), can undoubtedly be considered a sort of "general part" of international sales law and

<sup>1</sup> Cf. UNIDROIT 2013 – C.D. (93) 2.

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

other contracts to be performed at one time, it remains to be seen to what extent they provide adequate solutions also for contracts to be performed over a period of time, or so-called long-term contracts. In fact, while the UNIDROIT Principles as they now stand already contain a number of provisions particularly suited to the special needs of this latter type of contract, there are still issues requiring further consideration which could be the subject of additional provisions or explanations in the comments.

7. For instance, Article 2.1.15, which sets out in general terms the parties' duty to negotiate in good faith (or, more precisely, not to negotiate in bad faith), may need additional specification with respect to long-term contracts involving (re-)negotiation of specific terms in certain circumstances. Likewise, since long-term contracts typically evolve as a result of a changes of circumstances, so that the parties' obligations cannot be fully determined in advance, Article 5.1.1, which provides that the parties' obligations are not limited to those expressly stipulated in the contract but may also be implied, may require further elaboration. The same is true of Article 5.1.3 which states in general terms the parties' duty of co-operation, which is particularly relevant in the context of long-term contracts. Even more important, the UNIDROIT Principles do not address the question as to whether, and if so, to what extent, parties to long-term contracts in general and to so-called "relational" contracts in particular, are entitled, even in the absence of any special provision to this effect in the contract, to terminate their contract for irreparable breakdown of their mutual trust and confidence (so-called "termination for just cause"). This topic was chosen by the Governing Council in 2005 for inclusion in the third edition of the UNIDROIT Principles, then about to be prepared, but after a first reading of the respective draft chapter, the Working Group decided not to continue work on the topic but to take it up in another context at some time in the future.

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

8. Commercial contracts are traditionally and to this day, still predominantly so-called exchange contracts, i.e., agreements between two parties whereby one party undertakes to render a performance to the other party in exchange for a performance to be rendered by that other party. Exchange contracts are by their very nature bilateral, irrespective of whether each side of the contract consists of only one party or whether the contractual promises are made by or to two or more persons, so that there is either more than one debtor or more than one creditor. By contrast, agreements whereby two or more parties associate for a common purpose differ from exchange contracts: such agreements may be called associative contracts. If, as is often the case, they are entered into by more than two parties, they may be referred to as multilateral contracts.

9. International uniform law instruments have traditionally focused on exchange contracts such as sales contracts, transport contracts, banking and other financial services contracts, etc. The UNIDROIT Principles of International Commercial Contracts, too, are basically modelled on the exchange contract prototype. On the contrary little, if any, attention has so far been paid, at least at a universal level, to associative contracts notwithstanding the peculiar problems they pose especially in the case of multilateral contracts.

10. One of the most important examples of associative contracts in cross-border trade relationships is the so-called joint venture contract, i.e., agreements entered into by two or more parties – be they individuals or companies – from different countries, with a view to facilitating commercial co-operation with respect to a specific project or to the joint carrying out of an economic activity on a more or less durable basis. Joint ventures may take the form of either contractual joint ventures or corporate joint ventures, depending on whether the partners wish to rely on their contractual agreement(s) alone or whether they decide to set up a new entity – usually a corporation – as the legal form through which to pursue their shared undertaking. In both cases, there will be a general agreement between the partners setting out the basic terms of the joint venture (e.g., the object, structure and duration of the joint venture; the contributions of each party, the applicable law and dispute resolution) followed by several ancillary agreements specifying in detail the organisation and management, accounts, representation, share in profits and losses, exclusion and withdrawal of

a party, termination of the joint venture, etc. In the case of corporate joint ventures, agreements of this latter kind may give rise to problems due to the fact that they must conform to the domestic law governing the corporation and/or the corporation statutes if and to the extent that that law or the statutes may not be modified by agreement between the shareholders. In this respect, mention may be made, among others, of so-called "governance agreements", including "director-restricting agreements", "shareholder voting agreements", "standstill agreements", "buy and sell agreements", etc.

## **2. Secured transactions**

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

11. Special efforts should be made by the Secretariat to implement the 2007 *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* and to establish the Registry under the 2012 *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets*. As to the Rail Protocol, since its last full session in 2011, the Preparatory Commission (established by Resolution No. 1 of the Diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment - Luxembourg, 12-23 February 2007) has appointed a negotiating team to conduct negotiations with SITA SA for the conclusion of the contract with the Registrar. The Secretariat will concentrate its efforts on supporting the definitive completion of the negotiations as early as possible in 2013 and on implementing the International Registry through the preparation of its Regulation and Procedures by the Preparatory Commission. The establishment of a International Registry is a necessary condition to be able actively to promote the ratification of the Rail Protocol, which is a task that the Secretariat considers as a priority for the triennium 2014-2016.

12. The *Protocol to the Cape Town Convention on Matters specific to Space Assets* (hereinafter: "the Space Protocol") was adopted during a diplomatic Conference convened by the Government of the Federal Republic of Germany in Berlin from 27 February to 9 March 2012. The Space Protocol was opened to signature at the closing ceremony of the Conference on 9 March 2012, when it was signed by three States (Burkina Faso, Saudi Arabia and Zimbabwe). Germany signed the Space Protocol on 21 November 2012. UNIDROIT was designated Depositary of the Space Protocol.

13. Since the Conference, the Secretariat has published the final text of the Space Protocol, the final versions of the Final Act and the reports of the Conference. The Secretariat has also undertaken the necessary preliminary steps for the establishment of the Preparatory Commission to act with full authority as Provisional Supervisory Authority for the future International Registry for space assets in accordance with Resolution 1 of the diplomatic Conference, in order to foster the early entry into force of the Space Protocol. At the same time, the Secretariat has pursued informal negotiations with ITU/UIT regarding the possibility of that Organisation's agreeing to take on the function of Supervisory Authority for the Space Registry.

14. The Secretariat expects to be in a position to announce the final composition of the Preparatory Commission for the establishment of an International Registry for space assets pursuant to the Space Protocol within the first quarter of 2013, so that the Preparatory Commission could convene its first meeting in late Spring 2013 (immediately before the 2013 session of the Governing Council). This would allow the ITU/UIT to consider whether to assume the role of Supervisory Authority at its Council in June 2013 preparatory to submitting the issue for decision to its Assembly of the Plenipotentiaries in 2014.

15. During the triennium 2014-2016, the Secretariat intends to advance the promotion of the Space Protocol through the activity of the Preparatory Commission in setting up the definitive Supervisory Authority and in designating the Registry, as well as in drafting and implementing the Registry Regulations. In addition, the Secretariat will explore the possibility of organising seminars

concerning the Space Protocol with the purpose of enhancing awareness of the instrument and of its potential benefits.

**(b) Preparation of other Protocols to the Cape Town Convention**

**(i) Agricultural, mining and construction equipment**

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16. On 10 November 2011, the Secretariat convened a forum on "Possible Benefits of Extending the Cape Town System to Agricultural, Mining and Construction Equipment". The forum, which was part of the UNIDROIT Colloquium on "Promoting Investment in Agricultural Production: Private Law Aspects", was chaired by Mr H.-G. Bollweg (member of the UNIDROIT Governing Council) and included academics, government representatives, international organisations and industry experts. The Secretariat also agreed with the Center for the Economic Analysis of Law (CEAL) (Washington D.C.) that the latter would prepare, without cost to the Secretariat, an economic impact analysis of a possible fourth Protocol. The Secretariat has also pursued its consultations with relevant industry representatives.

17. The CEAL submitted its report on 5 December 2012. All in all, the report is favourable to a Protocol on agricultural, mining and construction equipment, offering examples of the effects of such a Protocol on obtaining credit. However, it does not enter into detail as to what equipment would be covered by the Protocol, nor does it analyse what the relationship of an international registry would be with national registries or explain how the equipment would be, or would be rendered, uniquely identifiable. Admittedly, in these fields the high number of different solutions adopted at national level explains the need felt by the author to use generic terms rather than to enter into a detailed and lengthy analysis. The Secretariat has raised a number of questions and requested CEAL to provide more specific information in its conclusions, with a view to permitting the Council to take a final decision as to the pursuit or otherwise of work on a fourth protocol to the Cape Town Convention. The revised report will be submitted to the Governing Council at its 92<sup>nd</sup> session in 2013 as soon as the Secretariat receives it.

**(ii) Ships and maritime transport equipment**

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18. In the first stages of the project that was later to become the Cape Town Convention, it had been envisaged that security over ships and maritime transport equipment might be covered (see Article 2(1)(c) of the first set of draft articles of a future UNIDROIT Convention on Interests in Mobile Equipment, March 1996, Study LXXII – Doc. 24). However, these expectations subsequently failed to materialise. Even in the early stages of the project, strong reservations emerged to the possibility of extending the system of the future Convention on Interests in Mobile Equipment to ships, and that criticism was at that time also shared by the maritime industry. The main reasoning brought forward against the inclusion of security over ships was summarised in a Secretariat memorandum of August 1996 (Study LXXII – Doc. 29). First, the preparation of international rules governing ships and shipping was described as an issue that was traditionally the preserve of specific international organisations with full participation of shipping circles. Second, it was feared that there might be conflicts with the then newly drafted International Convention on Maritime Liens and Mortgages adopted by the United Nations<sup>3</sup>.

19. In the afore-mentioned memorandum of 1996, the Secretariat argued that the merits of the inclusion or exclusion of ships under the UNIDROIT Convention system could best be assessed only once the rules of the Convention were finalised. Now that the system of the Cape Town Convention has become a resounding success, the Secretariat takes the view that the need and feasibility of extending the internationally harmonised rules for proprietary security under the Cape Town

<sup>3</sup> Adopted on 6 May 1993 at Geneva by the United Nations/International Maritime Organization Conference of Plenipotentiaries held at Geneva from 19 April to 7 May 1993 (United Nations, *Treaty Series*, vol. 2276, p. 39).

Convention to ships should be reevaluated, all the more so since the 1993 International Convention on Maritime Liens and Mortgages has not attracted wide-spread participation, whereas the Cape Town Convention enjoys strong support both from States and from the aircraft industry. The issue was raised at the 91<sup>st</sup> session of the Governing Council in May 2012 (see UNIDROIT 2012 – C.D. (91) 15, paras. 43 and 138).

20. The Secretariat accordingly seeks the authorisation of the Governing Council to conduct a preliminary study, which should first identify and describe the legal obstacles faced by market participants in the shipping industry concerning security over ships and maritime transport equipment in cross-border situations, and give an overview of the status and development of internationally harmonised rules in this field of law. On this basis, it could then be considered whether market practice has found or could find alternative solutions in the absence of internationally harmonised rules and whether the extension of the Cape Town Convention system to ships could be a suitable response to the legal challenges in this respect. Depending on the outcome of this study and on further consideration by the Governing Council, these issues would then have to be examined in greater depth in a feasibility study to be conducted in close co-operation with the relevant bodies of the shipping industry.

**(iii) Off-shore power generation and similar equipment**

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21. On 10 September 2011, the Secretariat received a proposal by the German Federal Ministry of Justice to consider the preparation of an additional protocol to the Cape Town Convention on matters specific to off-shore power generation and similar equipment. It was explained that in Germany, the industry had expressed an interest in the possibility of arranging for registered security rights in particular for wind-energy equipment. The growth of the market for renewable energies was said to create a significant need for investment, which could be facilitated through the availability of effective proprietary security rights. The German Federal Ministry of Justice expressed its interest in the preparation of an international instrument with harmonised rules on proprietary security for such equipment. It was submitted that, in particular, off-shore wind-energy equipment poses problems calling for a solution at an international level, due to the fact that the components of such equipment are frequently transported across borders prior to installation. This was said to raise *inter alia* difficult issues in determining the applicable law.

22. The Secretariat has taken note of that proposal and intends to prepare a first study on the issue, which could tentatively address the main legal concerns currently faced by the industry, the economic data, the question whether existing legal solutions, either at national or international level, can be regarded as adequate, and the suitability of the Cape Town Convention system for application to off-shore power generation and similar equipment. Depending on the outcome of this first study, the next step to be undertaken would be the preparation of a broader feasibility study for which the Secretariat would call in expert advice and start consultations with industry representatives.

**3. Transactions on Transnational and Connected Capital Markets**

**(a) *Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets***

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23. The possible scope of a future Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets was discussed at the second post-conference meeting of the Committee on Emerging Markets Issues, Follow-Up and Implementation established by the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities (Rio de Janeiro, 27-28 March 2012). The Secretariat is currently consulting with an informal working group set up in Rio de Janeiro and outside experts on the subjects that might be developed in the future Legislative Guide and the methodology to be used for the work. The working

group will report back to the Committee at its next session which might be held in an emerging country in 2013.

**(b) Additional topics**

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24. At the more general level of possible future work by UNIDROIT in the area of capital markets, it was suggested that UNIDROIT might bring its competence in the field of private law harmonisation to the subject of trust and examine how this institution might be used to improve the security of financial transactions.

25. Support was also expressed at the Committee meeting for the idea of turning the Geneva Securities Convention into an assessment standard and, in respect of future work, it was suggested that the company law aspects mentioned in the Convention be examined more closely, such as, for example, voting rights or securitisation.

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

26. On 11 November 2011, the UNIDROIT Secretariat organised an informal consultation meeting on "*Risk Management in GNSS Malfunctioning*", a meeting held in the context of the proposed project on *Third party liability for Global Navigation Satellite System (GNSS) Services*. The meeting, to which a limited number of academics, government representatives, international organisations and industry experts were invited, was intended to define the possible scope of a future project and to clarify its essential features. The Secretariat has since followed developments in this area and is awaiting the publication of an impact assessment study currently being prepared by the European Commission so as to evaluate the opportuneness and scope for further activity by UNIDROIT.

27. The most recent report from the European Commission submits that the impact assessment has been completed, and is currently undergoing the internal adoption process (Impact Assessment Board and thereafter College of Commissioners). The report is expected to be made public in March 2013. The report will be submitted to the Governing Council, if available before the 92<sup>nd</sup> session.

**5. Private law and development**

**(a) Private law aspects of agricultural financing**

28. Following the Secretariat's proposal to open a new line of work in the field of private law and development, particularly in the field of investment and agricultural production, the Governing Council recommended to the General Assembly that this subject be included in the UNIDROIT Work Programme. The General Assembly endorsed the Council's recommendation at its 67<sup>th</sup> session (1<sup>st</sup> December 2010).

29. In 2011, the Secretariat organised a Colloquium on "Promoting Investment in Agricultural Production: Private Law Aspects" (Rome, 8-10 November 2011), for the purpose of exploring the kind of contribution that UNIDROIT might be able to offer to ongoing international efforts to meet global food security objectives through its particular mandate and expertise in the formulation of uniform rules in the area of private law and the comparative law method it applies in its work. The Acts of the Colloquium were published in the *Uniform Law Review* 2012-1/2.

30. Building upon the contributions made at the November 2011 Colloquium as well as on consultations with potential partner multilateral organisations, the Governing Council, at its 91<sup>st</sup> session (Rome, 7-9 May 2012), decided on a course of action as regards future subjects that may be developed in the area of private law and agricultural development.

**(i) Contract Farming**

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31. As the first subject to be addressed, the Council considered that UNIDROIT could bring its expertise to bear on the area of contract farming arrangements and decided to authorise the establishment of a Study Group for the preparation of a legal guide on contract farming, inviting the interested international organisations to participate in its work. The high priority status proposed for this project in the triennium 2014-2016, as compared to its current low priority, responds to the high level of interest shown in this project at the 91<sup>st</sup> session of the Governing Council (see UNIDROIT 2012 – C.D. (91) 15, paras. 91-95).

32. The activities of the Secretariat in 2012 focused on co-ordination with interested international organisations, in particular, the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the World Food Programme (WFP), on the identification of experts to participate in the Working Group and on the preparation of documents for the first meeting of the Working Group, which will be held in Rome from 28 to 31 January 2013. Consultations with FAO and IFAD and the preliminary research carried out by the Secretariat suggest that such an instrument could be useful to these organisations in the framework of their co-operation programmes in the developing countries. The World Farmers' Organization has also expressed strong support for the preparation of an instrument capable of furthering the goal of developing lasting commercial partnerships and of becoming an important source of reference for support programmes designed to assist farmers and national public authorities.

33. It is anticipated that altogether, four sessions of the Working Group will be necessary to complete the preparation of the envisaged Legal Guide on Contract Farming, the second and third sessions being tentatively scheduled to be held in 2013 and the fourth session during the second quarter of 2014. It would be desirable to leave afterward sufficient time to allow the appropriate editorial work by the UNIDROIT Secretariat under the supervision of the Chairman of the Working Group. This timeframe would also allow to take into account, to the extent necessary, of the *Principles for responsible agricultural investments* ("RAI Principles") to be endorsed by the Committee of World Food Security in October 2014. Under such circumstances, the future UNIDROIT Guide might be formally adopted by the Governing Council at its 2015 session.

**(ii) Possible future work in the field of private law and agricultural development**

34. At its afore-mentioned 91<sup>st</sup> session, the Governing Council decided on the following course of action as regards future subjects that may be developed in the area of private law and agricultural development.

*(a) Possible preparation of an international guidance document on land investment contracts*

35. The Governing Council authorised the Secretariat to pursue – resources permitting – its consultations and preliminary work with a view to the possible preparation, in the future, of an international guidance document on land investment contracts, taking account, in particular, the *UNIDROIT Principles of International Commercial Contracts* (see UNIDROIT 2012 – C.D. (91) 15, para. 98).

36. Information gathered to date, in particular as it emerged from the contributions made at the November 2011 Colloquium, highlights both the key role of the contract in ensuring a balanced investment relationship and the general weakness of the legislative environment in an area where huge economic, social and environmental issues are at stake. While the complexity of this subject, which touches upon various sensitive areas of the law, should not be underestimated, the expertise gained with the *Principles of International Commercial Contracts* might enable UNIDROIT, together with other Organisations, in particular FAO – which has already indicated that it recognises the usefulness of such an initiative – to envisage the preparation of an instrument that would serve as a

guide and a repository of “best practices” especially designed for land investment contracts. Such an instrument would offer an in-depth legal analysis of the different aspects of the problem and suggest balanced and sustainable solutions. It might be used in drafting contracts, and as a reference for national legislators engaged upon improving the domestic legislative and regulatory framework.

37. It should be noted that several international initiatives are underway in this area, most notably the preparation, within the Committee on World Food Security (CFS), of a set of *Principles for Responsible Agricultural Investments* (“RAI Principles”) (see above, para. **Errore. L'origine riferimento non è stata trovata.**), to be endorsed by CFS in October 2014. The Secretariat suggests that any decision regarding work actually undertaken by UNIDROIT in preparing an international guidance document on land investment contracts should await the adoption of the future RAI Principles and build upon the experience which UNIDROIT will by then have acquired with the preparation of a legal guide on contract farming, and upon the co-operation established in the meantime with the Committee on World Food Security and other international Organisations active in the agricultural area. Although a first approach to the subject could be made by the Secretariat in 2014 – resources permitting – by monitoring ongoing initiatives and issues, it would accordingly seem prudent to defer to 2015 the preparation of a preliminary study on the subject, to be submitted to the Governing Council at its 2016 session.

(β) *Possible future work in other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing*

38. At its 91<sup>st</sup> session, the Governing Council authorised 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 (see UNIDROIT 2012 – C.D. (91) 15, para. 99). The Governing Council further mandated the Secretariat to promote – resources permitting – those UNIDROIT instruments in the area of finance that are of particular relevance to agricultural financing, in particular the UNIDROIT Conventions on International Financial Leasing and on International Factoring, as well as the UNIDROIT Model Law on Leasing (see UNIDROIT 2012 – C.D. (91) 15, para. 100).

39. In view of its work in preparing a guide on contract farming, which is to be completed by 2014, and of the suggested preparation of a preliminary study on an international guidance document on land investment contracts for consideration by the Governing Council in 2016, the Secretariat suggests that, if resources were available to engage in preliminary work on any of these three areas, the Governing Council decide their priority in the light of consultations to be undertaken with interested international Organisations in due course.

**(b) Legal aspects of social business**

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40. The General Assembly included this topic in the Work Programme of the Institute at its 67<sup>th</sup> session (Rome, 1 December 2010) following a suggestion by the International Development Law Organisation (IDLO), on the understanding that the latter would undertake to raise the necessary funding through an appeal to external donors.

41. A preliminary study presenting possible Guidelines for a legal framework for social enterprises (or for a certain type of social enterprise) was submitted by the Secretariat to the Governing Council at its 2010 session (UNIDROIT 2010 C.D. (89) 7 Add. 5). This study highlights the special legal features of these forms of enterprise in relation to the traditional corporate model – not-for-profit organisations and the classic commercial company – and reports on both the growing institutional, conceptual and practical recognition of such enterprises and those national laws having established special legal frameworks for this type of enterprise. It concludes by suggesting that

there is a case for guidelines for a legal framework for social enterprises (or for a certain type of social enterprise) and formulates proposals for the methodology that might be employed in developing such guidelines.

42. Since that time, however, the general topic of microfinance has become of lesser priority for IDLO. UNIDROIT itself has not pursued this topic any further, in view of the need to complete other projects that had precedence under its Work Programme. There can be no doubt, however, that creating an enabling environment for social business remains highly topical, at a time when economic and social conditions in the less well-off sections of the population in all countries are steadily deteriorating, and when there is a growing need for appropriate public policy support – in particular in the field of social finance – for the various kinds of social enterprise and for the different forms of networks and partnerships existing between such enterprises.

43. The Secretariat notes that UNCITRAL has in recent years paid increasing attention to legal aspects of microfinance, including corporate aspects of small and medium enterprises. Even though the two topics do not necessarily overlap, the Secretariat sees several direct links between UNCITRAL's general line of work on microfinance and the legal issues involved in creating an enabling environment for social business. The Secretariat believes that this topic could offer an opportunity for a joint project between the two Organisations, whereby UNIDROIT could undertake some of the preparatory work and then assist UNCITRAL, as required, in the subsequent stages of the project.

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

44. The ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute/ UNIDROIT Study Group and adopted in 2004 by the Governing Council of UNIDROIT, aim at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones. They are accompanied by a set of "Rules of Transnational Civil Procedure", which were not formally adopted by either UNIDROIT or ALI, but constitute "the Reporters' model implementation of the Principles, providing greater detail and illustrating concrete fulfillment of the Principles". The Rules may be considered either for adoption "or for further adaptation in various legal systems," and along with the Principles can be considered as "a model for reform in domestic legislation" (Reporters' Study, Rules on Transnational Civil Procedure, Introductory Note, Cambridge University Press, 2006, 99).

45. The Secretariat believes there is a case for considering the resumption of work on the development of the "Rules", with particular focus on regional implementation and on adapting the Principles to the peculiarities of specific legal systems. In this respect, it submits that in the short term, the most promising partner for institutional co-operation regarding civil procedural law may be represented by the newly founded European Law Institute (ELI), created with the aim to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. Recent years have seen the emergence of a growing body of rules at European level in the field of procedural law, in the wake of the enlargement of the EU competences towards judicial co-operation. A joint ELI/UNIDROIT project on the development of regional rules based on the adaptation of the ALI/UNIDROIT Principles would serve as a useful tool to avoid a fragmentary and haphazard growth of European civil procedural law, while at the same time supporting the promotion of the ALI/UNIDROIT Principles. Furthermore, it would respond to the interest expressed by ELI in co-operating with UNIDROIT in areas of common interest. It could also represent a first attempt towards the development of other regional projects by adapting the ALI/ UNIDROIT Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules.

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

### **1. Depositary functions \*\*\***

46. UNIDROIT is the Depositary of the Cape Town Convention and its Protocols and of the Geneva Securities Convention. Depositary functions include 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; it also involves providing the Supervisory Authority and the Registrar with a copy of each instrument, of each declaration or withdrawal or amendment of a declaration, and of each notification of denunciation.

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

### **2. Promotion of UNIDROIT instruments \*\*\***

48. The promotion of all UNIDROIT instruments should be regarded as an indispensable function and, as such, as the object of high priority for the purpose of allocation of human and financial resources. While the activities of the Secretariat should ideally cover all instruments prepared and adopted by the Organisation, the Secretariat is compelled, for 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 triennium 2014-2016.

#### **(a) UNIDROIT Principles of International Commercial Contracts**

49. UNIDROIT is currently preparing Model Clauses, together with appropriate explanations, for use by parties intending to include more precise indications in their contract as to how they wish to see the UNIDROIT Principles used during the performance of their contract or in the event of a dispute arising. To this effect, the Governing Council decided to set up a restricted Working Group, composed of internationally renowned experts in the field of private international law and arbitration, which will hold its first session in Rome from 11 to 12 February 2013. Upon completion of that project, with the expected adoption of the Model Clauses by the Governing Council at its 92<sup>nd</sup> session (to be held in Rome from 8 to 10 May 2013), the Secretariat will incorporate the promotion of the Model Clauses as part of its promotion of the UNIDROIT Principles.

50. In particular, the Secretariat intends to publish the Model Clauses, together with comments, in a paper-based booklet and to post them on the Institute's website so as to give them the widest possible publicity. Moreover, the Secretariat will circulate the Model Clauses among interested circles (judges, arbitrators, lawyers, in-house counsel, etc.) worldwide, inviting comments and observations.

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

51. During the Committee's discussion on possible future work by UNIDROIT to promote the Geneva Securities Convention and, in general, its work in the area of capital markets, it was pointed out that the financial markets community, and regulators in particular, were currently heavily engaged in international consultations and that UNIDROIT's involvement in this area, with the Geneva Convention and its work on netting, showed that private law aspects played an important role, a point that tended to be overlooked by regulators. Since the Geneva Securities Convention was germane to the interests of regulators and Governments in that, among other things, it reduced systemic risk, it was suggested that UNIDROIT envisage promoting the Convention as an assessment standard (such as might be done by the Financial Accounting Standards Board in other areas),

similarly to the Secretariat's intentions for netting principles vis-à-vis the International Monetary Fund.

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

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

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

- a seminar in Oman (planned for end-January or the beginning of February 2013) – organised at the specific request of Oman in order to improve its understanding of the 1970 UNESCO and 1995 UNIDROIT Conventions in view of accession;
- a Regional Seminar for Syria (in Amman) (February 2013) – organised together with neighbouring countries to strengthen the legal protection of cultural objects and fight against illicit traffic due to armed conflict in the region;
- a training workshop in Morocco (2013, to be confirmed);
- follow-up training workshops in Latin America (Andean region) : 2<sup>nd</sup> semester 2013 (to be confirmed).

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

55. UNIDROIT was one of the institutional partners closely involved in the preparation of a "Study on prevention and fighting illicit trafficking in cultural goods in the European Union" – October 2011 – carried out by CECOJI-CNRS at the request of the European Commission in response to the need to

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

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

56. The Convention providing a Uniform Law on the Form of an International Will was adopted in Washington on 26 October 1973 (hereinafter: "1973 Washington Convention") and currently has 11 States Parties. The Secretariat believes that there may now be scope for attracting more political attention for the Convention given the dramatic growth of migration in recent years. If the Governing Council agrees with this assessment, the Secretariat would approach other international Organisations that might have an interest in this area with a view to developing a joint promotion strategy.

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

57. The various non-legislative activities of UNIDROIT enjoy varying 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."

58. 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 triennium 2014-2016.

**1. UNIDROIT Library and Depository Libraries**

59. The Institute's co-operation 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, with a second meeting scheduled for April 2013 and organised together with the David Lubin Memorial Library of the Food and Agriculture Organization of the United Nations (FAO). The theme of that second meeting will be "Networking" (Second meeting of Roman Libraries). The idea is to inaugurate a series of regular library meetings in order to strengthen inter-library co-operation and networking and to improve library services at a time when almost all institutions are economising on all fronts. The following libraries will attend: FAO, OEKM, *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 proposal to establish such a Roman library network and to meet regularly has met with great interest by all participants.

60. In 2012, a very fruitful collaboration programme was established with the Library of the Italian Constitutional Court in Rome, with a view to sharing resources, in particular legal periodicals, and thereby freeing resources, in particular for the acquisition of monographs. A collaboration programme was also established with the UNCITRAL Library in 2012 which, among other advantages, will secure access for UNIDROIT to EBSCO Academic Search Premier, a major database, and online access to a variety of journals. In order to improve the services offered by the Library – in particular the accessibility of books and periodicals – without actually purchasing the requisite material, UNIDROIT has concluded an amended agreement with GVB – *Gemeinsamer Bibliotheksverbund* – enabling it to request books on loan as well as articles from various German and Austrian library networks.

61. In addition to intensifying co-operation with other libraries, particular attention will be given to completing the electronic catalogue and expanding the availability of electronic databases. The last missing portion of the library's electronic catalogue (the United Nations collections, some 1000 documents in all) will be completed in the next triennium. The Authority Files for Corporate Authors' Names is now complete. As to databases, UNIDROIT currently subscribes to three electronic resources that cover several civil law, common law and mixed jurisdictions: HeinOnline, West Law International and Sistema Pluris On-Line. The Library is evaluating additional subscriptions to French and Spanish law resources (in particular the Westlaw France and Westlaw Spain databases), in recognition of their importance for the Institute's scientific work, and to various other databases which offer legislative materials from non-English-speaking countries. The provision of additional databases, especially in areas hitherto not covered, would make a significant contribution to improving research conditions for the Secretariat staff, scholars and independent visiting researchers.

62. The third priority action for the Library in the triennium 2014-2016 will be the development of a more sharply focused acquisition policy. In 2012, the Library's holdings increased by 968 titles, of which 425 were purchased outright, 220 were obtained on an exchange basis for a total value of € 16.125, while 323 further titles were received as gifts for a total value of € 22.170. The expansion of the Library's holdings has been hampered by steady increases in the price of publications and a chronic lack of resources.

## **2. Information resources and policy**

63. In the course of 2012, the Secretariat initiated a policy of co-ordination of the Organisation's different sources of information which hitherto had been managed by different members of staff, with a view to a more coherent and cost-effective management. The sources of information on UNIDROIT materials and work have a central role to play in the promotion of the Organisation. In particular, the electronic tools currently available to the Secretariat have a potential of penetration that far exceeds the impact of paper-based tools, even if they do complement each other. To some extent, they also compensate for the meagre resources allocated to the promotion of UNIDROIT instruments. In consideration of 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.

### **(a) Uniform Law Review and other publications**

64. In June 2012, an agreement was signed with the Oxford University Press (OUP), under which the OUP will take over the publication of the *Uniform Law Review* starting with volume XVIII (2013). The initial agreement is for a period of five years, renewable. At the same time, membership in the Editorial and Advisory Boards<sup>4</sup> has been revised. The Review will be available in three formats: print only, online only, or print and online both. Contributions submitted to the Review for publication will be subject to peer review, meaning that they will be reviewed by experts in the field before they are accepted. The Secretariat trusts that in the 2014-2016 triennium, the distribution and penetration of

<sup>4</sup> See [http://www.oxfordjournals.org/our\\_journals/ulr/editorial\\_board.html](http://www.oxfordjournals.org/our_journals/ulr/editorial_board.html).

the Review will be facilitated both by the OUP network and by the introduction of the peer review system.

65. Other UNIDROIT publications are linked to specific projects of the Organisation, either completed or underway. Thus, 2013 will see the publication of the third edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, the second 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*, and the first edition of the *Official Commentary on the Convention and Space Protocol*, all three authored by Professor Sir Roy Goode.

66. The Secretariat is also in the process of preparing the publication of short booklets containing the text of the instruments adopted by UNIDROIT, to serve as hand-outs at conferences and meetings and which can be mailed wherever necessary at a very limited cost.

67. In 2012, publications linked to the work of UNIDROIT, but published and distributed commercially, were: the Spanish version of the *UNIDROIT Principles of International Commercial Contracts 2010*, published by *La Ley* in Spain; the Italian version of the Principles, published by Giuffrè in Italy; special editions of the English and French versions of the Principles, published in Canada by *Éditions Yvon Blais* (Thomson Reuters) using pdf versions of the editions published by UNIDROIT in Rome; the English-language version of the *Official Commentary on the UNIDROIT Convention on Substantive Rules for Intermediated Securities*, published by the Oxford University Press the French version of which was published by Schulthess in Switzerland. In the forthcoming triennium, the effectiveness (including the cost-effectiveness) of these different ways of publishing and publicising its work will be evaluated by the Organisation.

#### **(b) Website**

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

### **3. Internships and scholarships**

69. The Secretariat continues to encourage new donors to support its Scholarships Programme and is committed to instituting joint scholarships with national universities or research centres, in line with the objectives of these various institutions. The Scholarships Programme also functions as a catalyst to induce researchers to attend the Library on an independent basis and make use of its resources. Changes to the Programme in the triennium 2014-2016 will include a more distinct connection between the scholars' research topic and the Organisation's current work programme to serve as a selection criterion, as well as activities to provide a structured framework for scholars to share information and experience among themselves (by way, for example, of periodic meetings), and the possibility to exchange ideas with and obtain feedback from Secretariat staff and experts.

70. As to internships, UNIDROIT will continue to honour existing co-operation agreements and promote the establishment of new co-operative frameworks. In addition, UNIDROIT will seek to develop agreements with member State institutions (such as national Ministries or courts of law) interested in seconding members of their staff for a period of work at UNIDROIT.