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1. The *President* opened the session, welcoming the President of the General Assembly, the members of the Governing Council and the observers from members States that were not represented on the Governing Council.

2. In his opening address, the *President* discussed the role of the Strategic Plan for 2012-2018 in the operation of the Institute and thanked those members of the Governing Council, the member States, other organisations and parties who provided comments to the Strategic Plan, pursuant to the request formulated by the General Assembly at its 71st session. The President also briefly presented the draft Principles on the Operation of Close-Out Netting Provisions and the draft Model Clauses for use by parties of the UNIDROIT Principles of International Commercial Contracts, submitted for approval by the Governing Council, commending the member States and all participants for their hard work in preparing the final drafts, invited the Council to discuss the substantive details of both instruments with a view to approving them during the present session. Finally, the President highlighted the important work underway on a Legal Guide on Contract Farming, the implementation of the Protocols to the Cape Town Convention, and in developing a possible legislative guide to promote securities trading in emerging markets.

Item 1 on the agenda: Adoption of the annotated draft agenda (C.D. (92) 1 rev. 4)

3. *The Governing Council adopted the agenda as proposed in document C.D. (92) 1 rev. 4.*

Item 2 on the agenda: Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (92) 1 rev. 4)

4. *The Governing Council renewed the appointment of Professor Arthur Hartkamp as First Vice-President of the Governing Council and appointed Professor Ioannis Voulgaris as Second-Vice President. Both will serve in their respective positions until the 93rd session of the Council.*

Item 3 on the agenda: Reports

(a) *Annual Report 2012* (C.D. (92) 2)

5. The *Secretary-General* presented the Annual Report for 2012, highlighting staff changes that had taken place during 2012 and summarising the most significant accomplishments of the year, including completion of the Space Protocol to the Cape Town Convention and the meetings of the Preparatory Commission for the purpose of establishing the registry for the Luxembourg Rail Protocol. He noted that, together with the Aircraft Protocol, the Rail and Space Protocols completed the roster of Protocols contemplated by the Convention, but interest had been expressed by member States to continue studying the applicability of the Convention system to other types of asset. Member States had already expressed interest in conducting promotional activities for the new Space Protocol. With regard to the draft Principles on Close-Out Netting, work had been completed in two stages – a study phase carried out by independent experts and an intergovernmental phase involving a Committee of governmental experts – with significant participation in both. He went on to summarise the process that had culminated in the Model Clauses on the UNIDROIT Principles on International Commercial Contracts, and been led by an advisory group of experts on commercial law, contract law, and arbitration. The project had received important input from UNCITRAL and the Hague Conference on Private International Law.

6. Turning to the Principles on International Commercial Contracts themselves, the Secretary-General described their importance across the globe, stressing their influence in practice in several member States. On the issue of contract farming, he noted that the first meeting had taken place in January 2013, bringing together experts on contract law and agriculture, as well as representatives from the agribusiness sector, with the significant participation and co-sponsorship of the United Nations Food and Agricultural Organization (“FAO”), World Food Programme (“WFP”) and International Fund for Agricultural Development (“IFAD”). As to the work on emerging market issues, the Secretary-General referred to the meeting of the Committee on Emerging Markets Issues hosted by the Securities and Exchange Commission of Brazil in March 2012, and noted that there were plans for a further meeting of the Committee with a view to preparing a possible legislative guide. Finally, he noted that Vietnam had expressed interested in joining UNIDROIT and highlighted the continued success of the UNIDROIT Library and the visiting scholar sponsorship Programme.

7. *The Governing Council took note of the Secretary-General’s report on the activity of the Institute during 2012.*

(b) *Management Report for the period 2008-2013 and implementation of the Strategic Plan (C.D. (92) 3)*

8. *The Governing Council took note of the presentation of the document “Management Report for the period 2008-2013 and Implementation of the Strategic Plan” (C.D. (92) 3) and thanked the Secretariat for the cost savings and administrative efficiencies achieved in this period.*

(c) *Report on the Uniform Law Foundation*

9. Sir Roy Goode, member *ad honorem* of the Governing Council and President of the Uniform Law Foundation, explained that the purpose of the three foundations (the Uniform Law Foundation, the American Foundation for International Uniform Law, and the UK Foundation for International Uniform Law) was to raise money in support of UNIDROIT’s activities and that despite the current low revenues, there was evidence of continued interest in the Foundation’s main sources of income – conferences and official commentaries to UNIDROIT Instruments. He noted that interest in the Commentary to the Rail Protocol was expected to increase once the Preparatory Commission had concluded its work and that interest in the Commentary to the Space Protocol was already high.

10. Sir Roy then formally presented Mr Jeffrey Wool, Secretary General of the Aircraft Working Group AWG, who had been appointed to replace him as President of the Foundation on 7 May 2013. He mentioned Mr Wool’s long-standing participation in the work of the Institute and the enormous success of the Aviation Working Group (AWG), led by Mr Wool, in promoting the Cape Town Convention and the Aircraft Protocol, both of which would greatly benefit the Foundation. He also welcomed and congratulated Messrs Alban Caillemer du Ferrage (Partner, Jones Day), Scott Scherer (Senior Vice-President, Boeing Capital Corporation), Claude Brandes (Vice-President, Airbus Industrie) and Georges Affaki (Member, Executive Committee, BNP Paribas), who had also been appointed to the Board of the Foundation on 7 May 2013. Sir Roy noted that, in conjunction with the Foundation’s current sources of revenue, their leadership, experience, and broad range of contacts in the donor community would place the three foundations in an excellent position to support UNIDROIT’s work into the future.

11. Mr Wool expressed his gratitude for the trust placed in him to follow Sir Roy as President of the Foundation. Sir Roy’s unparalleled and unstinting effort and leadership had strengthened the role the Foundation could play in strengthening links between UNIDROIT and third party donors. Mr Wool reiterated the need to continue support for on-going projects where no official funding was available,

to help fund meetings for new projects, to assist in funding the library, to conduct research in the field of private international law and to develop parameters for assessing the economic impact of uniform law. Finally, he stressed it was time to take a fresh look at how the different Foundations worked together, as well as how to add further lustre to the Foundations' trademark. One suggestion he made was to change the name of the Foundations to include the term UNIDROIT in the title, so as to strengthen the link between the Institute itself and the Foundation's fundraising activities.

12. The *Secretary-General* expressed his deepest personal gratitude to Sir Roy for his tireless work with the Foundation and welcomed Mr Wool, thanking him for his leadership and for his willingness to undertake this task. He reiterated the Foundation's commitment to complete transparency regarding the source and destination of all funding, which was reported to the General Assembly on a yearly basis, and which must be in line with the specific goals and purposes of the Institute, in order to ensure that the working methods and the final product remained fully independent from any and all fundraising activities.

13. The Governing Council took note of the report by the President of the Uniform Law Foundation and Mr *Hartkamp*, speaking on behalf of both the Foundation's Board and the Governing Council, expressed his profound appreciation to Sir Roy for his dedicated leadership and for his unstinting devotion of time and expertise to the Foundation and to the work of the Institute.

14. At the request of the President, the *Secretary-General* and several members of the Council discussed the issue of a name change for the Foundation, and in particular whether the word UNIDROIT should be included in the title. It was important to strike a proper balance by clarifying the link between the Institute's work and the fundraising efforts of the Foundation, on the one hand, while ensuring that there was no confusion between the identities and purposes of the two entities, on the other hand. It was agreed that the dialogue on the matter should continue with this goal in mind.

15. *The Governing Council welcomed the appointment of Mr Wool as incoming President of the Foundation, took note of his vision for continuing its important contributions to UNIDROIT, and offered their full support.*

Item 4 on the agenda: Principles of International Commercial Contracts

(a) *Adoption of Model Clauses for use by parties of the UNIDROIT Principles of International Commercial Contracts (C.D. (92) 4(a) rev.)*

16. Mr *Bonell* (UNIDROIT Secretariat) introduced this item, referring to document C.D. (92) 4(a) rev. for detail. He briefly outlined the procedural history after the Council requested the drafting of such Model Clauses at its 91st session in May 2012. It had been decided to set up a restricted Working Group, chaired by Professor Don Wallace and composed of internationally renowned experts in the field of private international law and arbitration. The Working Group had held its working session in Rome from 11 to 12 February 2013, a session which had also been attended by a large number of observers.

17. After discussing the position paper prepared by the Rapporteur (UNIDROIT 2013 – Study L – MC Doc. 1 rev.), the Group had agreed on a revised set of Clauses and asked the Rapporteur to prepare accompanying Commentary. The draft Clauses had then been forwarded to Members and Observers for their final observations and for circulation among judges, arbitrators, lawyers, in-house counsel, etc. Replies had been very favourable and it had accordingly been suggested that the final draft Model Clauses and accompanying Comments be presented to the Council for discussion and approval at its 92nd session (see UNIDROIT 2013 – Study L – MC Doc. 4 rev.).

18. In the discussion that followed this brief introduction, Mr *Sorieul* (Secretary, United Nations Commission on International Trade Law) reiterated UNICTRAL's endorsement of the text of the UNIDROIT Principles of International Commercial Contracts and fully agreed that the Principles could be used by parties to supplement the 1980 Vienna Convention on the International Sale of Goods ("CISG"), as provided for in the Model Clauses. However, he requested clarification concerning those Clauses that pertained to the joint application of these instruments, particularly the issue of party autonomy under the Principles and mandatory application of the CISG. In this regard, he inquired whether it would be possible to revise the proposed text so as to ensure that the CISG applied in the latter case and could be supplemented by the UNIDROIT Principles only in the former.

19. On this particular question, the *Secretary-General* recalled that it was indeed the Working Group's intention to make this distinction. In order to meet Mr *Sorieul*' concerns, the Secretary-General proposed the following language to be included after the first sentence in Comment 3 to Model Clause Number 4: "In particular, as far as the CISG is concerned, it should be noted that Article 7 lays down the criteria for an autonomous interpretation of the Convention, and that the 'general principles on which [the Convention] is based' referred to in Article 7(2) are as such not identical with the UNIDROIT Principles. By using this Model Clause the parties would impliedly derogate from Article 7(2) CISG by indicating that gaps in the Convention are to be filled in conformity with the UNIDROIT Principles and as a last resource with reference to the applicable domestic law. However, contrary to the effects of Model Clause No. 3, under this Model Clause the UNIDROIT Principles would act as gap-filler only with respect to issues governed by the CISG but not expressly settled in it, whereas issues outside the scope of the CISG would be governed by the applicable domestic law." Mr *Bonell* confirmed that this language essentially reflected the intentions of the Working Group.

20. During a lively debate, the Governing Council members commented on the practical nature of the Model Clauses and on their flexibility for use within different legal systems and during different stages of a contract. Members also commented favourably on the Clauses as a tool designed for use by practitioners and on the important role they could play in encouraging parties, judges and arbitrators to use the UNIDROIT Principles in their contracts and in the settlement of disputes.

21. Before approving the text, several members raised issues for further clarification and made several suggestions to further improve the text- Mr *Sołtysiński* suggested that careful consideration be given to the references to trade usages in the commentary, so as not to create the impression that they could supersede the Principles; Mr *Tricot* advised combining Sections 1 and 2 of the Clauses so as to present a single clause for application in all domestic settings; and various members of the Council, including Ms *Broka*, Mr *Deleanu*, Mr *Gabriel*, Mr *Govey*, Mr *Opertti* and Ms *Bouza Vidal*, agreed to include a consensus text to clarify the interrelation between the Principles and the CISG, based on the language proposed by the Secretary-General.

22. Mr *van Loon* (Secretary General, Hague Conference on Private International Law) commented that the Model Clauses provided an excellent tool to build on the importance of the UNIDROIT Principles, which had become a global standard. He also urged that the Council bear in mind that the Hague Conference was currently working on non-binding principles on applicable law, and that in his view, the two projects could be of great mutual assistance to one another. He explained that the Hague Working Group was currently drafting commentary from which to draw conclusions and eventually propose rules within a two- to three-year timeframe. He accordingly proposed that the Governing Council consider including a reference to this work and to potential future rules on principles on applicable law.

23. The Governing Council agreed to include such a reference to the Hague Conference work. Members also suggested that the Hague Conference, UNCITRAL and UNIDROIT consider preparing a joint document with a view to publishing and disseminating the Model Clauses.

24. The Governing Council then proceeded formally to adopt the Model Clauses in their finalised form with the amendment suggested by the Secretary-General and requested the Secretariat to take steps to further their wide-spread dissemination and use.

(b) *Possible future work on long-term contracts* (C.D. (92) 4(b))

25. Mr *Bonell* introduced this item, briefly summarizing document C.D. (92) 4(b), and indicating that the UNIDROIT Principles as presently drafted did cover long-term contracts. However, the present version of the Principles was not considered wholly satisfactory to address all the needs of long-term contracts. Since the use of the Principles in arbitration practice related to long-term contracts and investment contracts had grown substantially over time, consultation with the group of Correspondents had now evidenced initial support for possible future work on long-term and investment contracts.

26. Mr *Bonell* explained that there were three basic approaches that might be adopted in tackling this work. The first approach would be to analyse the black letter rules and comments to the present version of Principles, with a view to formulating changes the better to accommodate long-term and investment contracts. This would result in a new edition of the Principles. The second approach would be to draft a separate instrument or supplement, structured in a manner similar to the current Principles, but addressing only long-term contracts. The third approach could be the preparation of a "Legal Guide to the Use of the UNIDROIT Principles of International Commercial Contracts 2010 in Long-term Contracts and Investment Contracts", indicating how parties might adapt or supplement the black letter rules of the Principles to meet the special needs of long-term contracts.

27. All the speakers in the ensuing debate expressed support for what could be an interesting and important topic for future work, although there was some concern regarding the potential structure of the new instrument, the costs involved in undertaking this work, and its possible negative impact on the authority, operation, format and content of the Principles in their current form.

28. With regard to the approach to be taken, some Council members expressed support for the idea of incorporating new principles into the existing text. Mr *Hartkamp*, for example, felt that having a separate instrument would limit the ability of the new document to incorporate and make reference to all the current Principles. In contrast, other members expressed doubts as to the possible amendment of the current text. Mr *Gabriel* and Mr *Bollweg* stated that it would be difficult to tailor the current Principles to the new needs without 'watering them down' or otherwise affecting the existing text. Mr *Tricot* cautioned against taking up the Principles again so soon after completing the 2010 edition, which might incur criticism that they were incomplete and in need of further adjustment. Ms *Sabo* agreed and stated that any work on the topic must ensure that it did not undermine the current Principles in any way.

29. Several Council members, including Messrs *Bollweg*, *Operti*, *Kiraly*, and Ms *Sabo* expressed a preference for the second approach – a supplement or pamphlet – which would accommodate possible work on the topic while reducing the possible negative impact on the current Principles.

30. The only opinion on the third approach – to consider drafting a contract guide – came from Mr *Hartkamp*, who was not, however, in favour of the idea. He felt that a guide could give the impression that long-term contracts were somehow less important (either legally or economically) than other commercial contracts, which was not, of course, the case.

31. Several Council members noted that any decision should be based on a better understanding of the potential scope of work on long-term contracts. Mr *Bollweg* took the view that the scope could be limited to termination clauses, where there was the greatest need. Mr *Operti* and Mr *Carbone* felt that it would be necessary to distinguish between business-to-business contracts and state-related contracts. Ms *Sabo* also cautioned that the scope of any potential work on the issue should have a narrow focus and should distinguish between types of contract.

32. Other members, including Mr *Govey* and Ms *Sandby-Thomas*, recommended that the Governing Council should select a methodology only after further consideration by the Secretariat of the advantages and disadvantages of all options – balancing the potential impact of a new instrument with the time and resources required for its drafting and with the need to preserve the importance of the 2010 Principles.

33. *In light of these discussions, the Governing Council invited the Secretariat to undertake preliminary in-house steps to identify the issues related to investment and other long-term contracts not adequately addressed in the 2010 edition of the UNIDROIT Principles of International Commercial Contracts and to report on the matter at a future session of the Council.*

Item 5 on the agenda: International Interests in Mobile Equipment

(a) *Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (92) 5(a))*

34. Ms *Veneziano* (UNIDROIT Deputy Secretary-General) presented this topic, referring to document C.D. (92) 5(a). With regard to the Rail Protocol, Ms *Veneziano* stated that the negotiating team appointed by the Preparatory Commission to conduct negotiations with the Registrar (SITA SA) for the conclusion of the registry contract had met at UNIDROIT's Headquarters in Rome on 4 and 5 February 2013 to finalise the draft contracts for the operation of the International Registry for international interests in rail equipment.

35. With regard to the Space Protocol, Ms *Veneziano* recalled that Resolution 1 of the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets had established a Preparatory Commission to act as the Provisional Supervisory Authority for the establishment of the International Registry for Space Assets. The first session of the Preparatory Commission had been held at UNIDROIT's Headquarters in Rome on 6 and 7 May 2013 (immediately before the present session of the Governing Council), and good progress had been made in preparing the relevant documentation, including the draft regulations for the future registry and the essential elements of the request for proposals for the selection of the registrar. She also reported substantial progress in the selection of a Supervisory Authority, for which the International Telecommunication Union (ITU) had been proposed. ITU had been present at the Preparatory Commission's first session to consider becoming the Supervisory Authority upon entry into force of the Protocol and had agreed to announce its decision on the matter at the next session in 2014.

36. Several Council members expressed their satisfaction with the progress recorded in the Rail Preparatory Commission's negotiations for the establishment of an international rail registry and with the results of the first meeting of the Space Preparatory Commission for the establishment of the International Registry for the Space Protocol. The Governing Council also requested the Secretariat to continue assigning high priority to the dissemination and promotion of both Protocols.

37. Mr *Sanchez Cordero* stated that the real work usually began after a Convention had been agreed upon, and invited the Council to consider holding a seminar in Mexico to promote the Space Protocol – a proposal which was well received by other members.

38. The *Secretary-General* noted that the Secretariat would seek to obtain private funding for promotional activities in respect of the Space Protocol.

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

(i) Agricultural, mining and construction equipment (C.D. (92) 5(b))

39. Ms *Peters* (UNIDROIT Secretariat) presented this topic, referring to document C.D. (92) 5(b), on the desirability and feasibility of preparing a fourth Protocol, on mining, agricultural and construction equipment (MAC).

40. Ms *Peters* recalled the decision taken at the 91st Council session to explore the possible benefits of extending the Cape Town System to MAC equipment, and briefly outlined the study presented by the Center for the Economic Analysis of Law (CEAL), which had concluded that a MAC Protocol could facilitate approximately \$2 trillion in financing for mining, agricultural and construction equipment, with expanded reach for increase in world GDP by as much as \$3 trillion.

41. Referring to concerns expressed by the Governing Council in 2012, Ms *Peters* described the manner in which the Study discussed the extent to which financing of MAC equipment is provided by domestic financial institutions or international institutions, the economics of repossession in the context of MAC equipment, the mobility of MAC equipment in practice, the practice outside Europe and the USA, and whether a MAC Protocol would act as a substitute for a domestic registration regime. Ms *Peters* also referred to several letters that had been received from trade associations and interested government agencies and that expressed themselves in favour of a MAC Protocol.

42. Mr *Voulgaris* stated that he had no objection as such to extending the Cape Town Convention system to a fourth Protocol on MAC equipment, but cautioned that negotiations must bear in mind that this type of equipment could be and frequently was affixed to land and would thus require coordination with real property rights.

43. Mr *Bollweg* also expressed support for a Protocol on MAC equipment, noting that Germany had also made strong economic projections for MAC equipment financing in Mid-European States.

44. Ms *Sabo* recalled that she had expressed scepticism with regard to this Protocol in the past and had suggested that more information was needed before making a decision. There was now more information, but she remained unconvinced with regard to the need for this Protocol for various reasons, including the question of whether the equipment to be covered by the Protocol was internationally mobile, and the question of whether a MAC Protocol would seek to cover an economic and legal area that was the purview of domestic legislation. Independently of potential growth in equipment exports, she questioned whether it was opportune to move forward with a Protocol on equipment that typically moved across borders only in the original sale transaction. She cautioned that UNIDROIT should not advocate the creation of an international regime in circumstances where it might be more beneficial for local economies and international actors to create a properly functioning domestic system. She suggested that, if the Governing Council should decide to move forward with this work, it should seek outside funding for the drafting process and assign low priority to the work.

45. Mr *Gabriel* recalled that the major question on the mind of the Governing Council at its 91st session had been whether industry support existed for its development. Given the substantial

expressions of support received by the Secretariat, he now felt that there was a great deal of industry support, indeed, and accordingly expressed his full support for moving forward with this work.

46. Ms *Bouza Vidal* likewise expressed her support for this project, recalling that the main advantage of the Cape Town Convention system was the registry created by each Protocol. She felt that the creation of an international registry in this case would ensure the validity of security interests in MAC equipment in those countries that did not have properly functioning registry systems of their own.

47. Mr *Elmer* expressed misgivings with regard to this project, recalling that the great majority of the equipment covered by the proposed Protocol was neither high-value nor internationally mobile, these being the two basic requirements of the Cape Town Convention system.

48. Ms *Sandby-Thomas* expressed concern about the scope of the work, but declared herself neutral as to whether the proposal should move forward, stating that there might be more promising issues that UNIDROIT could consider with its limited resources.

49. Mr *Govey* recalled that the Governing Council, which had been discussing this Protocol for years, had requested evidence whether it would be economically beneficial and whether industry support existed for its development. The answer to both queries could not be any clearer, and he accordingly fully supported the idea of moving forward with this work.

50. Messrs *Hartkamp, Tricot, Sanchez Cordero* and *Voulgaris* likewise expressed support for the project, suggesting that the Cape Town system could produce significant economic benefits for new sectors.

51. The *President* summarised the discussion by stating that a large majority of members were in favour of moving forward with a MAC Protocol. The Governing Council had agreed to proceed with preliminary work on a potential Fourth Protocol on agricultural, mining and construction equipment and assigned medium priority – with the possibility of increasing it to high priority should additional resources become available. The Council also encouraged the Secretariat to obtain external funding for this work.

(ii) Ships and maritime transport equipment (C.D. (92) 5(c))

52. Mr *Böger* (UNIDROIT Secretariat) presented the preliminary study on the question as to whether it would be feasible to extend the Cape Town Convention system to ships and maritime transport equipment, referring to document C.D. (92) 5(c) for detail. He recalled that a discussion on the potential inclusion of ships in the Cape Town Convention system had in fact taken place right at the outset, when drafting the Convention itself. Mr Böger noted, however, that the idea of including such a fourth Protocol had been dropped at that time due to the then recent approval of the 1993 International Convention on Maritime Liens and Mortgages, which had been expected to play an influential role in terms of such a potential Protocol. Twenty years on, Mr Böger stated, the 1993 Convention had not received a large number of ratifications, so that the time might be ripe to reconsider whether an additional Protocol to Cape Town might fill the void.

53. With regard to the suitability of the Cape Town Convention System for ships and maritime transport equipment, Mr Böger summarised the main aspects of ships and maritime transport equipment as registrable assets, the potential rules on registration and priority, and the possibility of enhanced publicity under an international registry system. He also highlighted general restrictions with respect to consensual security on ships, potential conflicts with other international instruments, as well as potential conflicts with retention of title and leasing systems under national law. Finally, he

examined the question of which international organisations might play the role of supervisory authorities for registration purposes.

54. Mr *Carbone* congratulated the Secretariat on its helpful report, adding that in principle, ships were the mobile goods most suitable for the framework of the Cape Town Convention. He therefore strongly recommended going ahead with the project. Several other members of the Governing Council agreed with Mr *Carbone*, including Ms *Broka*, Mr *Govey*, Ms *Sabo* and Mr *Voulgaris*. Several Council members also advocating giving high priority to this Protocol.

55. Ms *Sabo* noted that industry support would have to be secured for the Protocol. Mr *Elmer* echoed this sentiment, pointing out that without industry support, UNIDROIT would be hard-pressed to move forward with this work.

56. Mr *Gabriel* and Mr *Mo* both came out in favour of unification in this field of law. They recalled, however, that industry's response to the idea of such a Protocol had thus far been in the negative. In fact, Mr *Gabriel* stressed that not only had industry shown no inclination in favour of moving forward with the Protocol, it was actually opposed to it. As a result, it would be necessary to consult industry stakeholders again, to see whether this position had changed and whether work should proceed on this Protocol.

57. The *President* stated that there appeared to be a majority in favour of work on this subject, but that all were agreed that industry support must first be ascertained before moving forward. He pointed out that the Council could revisit the merits of the project at a later stage. The Governing Council accordingly requested the Secretariat to prepare a feasibility study to determine whether satisfactory conditions existed for a Protocol dealing with ships and maritime transport equipment.

(iii) Off-shore wind power generation and similar equipment (C.D. (92) 5(d))

58. Mr *Böger* summarised the preliminary study on the feasibility of extending the Cape Town Convention system to off-shore wind power generation and similar equipment, referring to document C.D. (92) 5(d) for detail. The report concluded that, although the market for offshore wind energy was still small, it was expected to reach 100 billion Euros by 2020 – increasing the need for financing in this sector. Mr *Böger* outlined the potentially difficult legal issues that would have to be examined with regard to wind energy equipment, including the nature of assets affixed to towers, which were in turn affixed in territorial waters or in the exclusive economic zone. Among the substantive issues to be examined, he mentioned the need to determine whether such equipment would be considered real or movable property and which law should apply in the exclusive economic zone. In some States, conflict-of-laws rules helped to provide answers, but there was as yet no case-law on the issue to provide guidance. Finally, he listed additional issues to be considered for equipment that was transported across borders, for repair or other reasons.

59. Mr *Böger* concluded that the Cape Town Convention system could provide solutions to some of these issues: first, to determine which law applied, and second, to establish whether a tower affixed in the seabed was real or movable property. He concluded by pointing to the need for more information from the industry concerning on the need for financing.

60. Mr *Elmer* congratulated the Secretariat on its report but expressed doubt as to whether the Cape Town System would provide the most suitable framework for security interests in off-shore equipment. These concerns were echoed by Ms *Sandby-Thomas*, who professed to scepticism that UNIDROIT was the best forum in which to address the numerous unresolved legal issues which undoubtedly remained.

61. Ms *Bouza Vidal* suggested that the study might be expanded to apply also to pipelines on the seabed.

62. Mr *Bollweg* welcomed the study but pointed out that, even though this sector was growing fast, off-shore wind energy was an economic activity of interest to some, but by no means all States. He suggested conducting further study to determine whether there was industry support to proceed with this work.

63. Mr *Mo* and Mr *Lyou* agreed that this was a complicated area from the standpoint of domestic and private international law, and suggested that more research might be necessary before the Council could take a decision in the matter.

64. *The President summarised the discussion, noting that, although there was agreement that significant legal issues needed to be addressed, and that there was a growing need for financing of this equipment, opinions varied on whether the Cape Town Convention system could be tailored to provide adequate solutions. As a result, the Governing Council mandated the Secretariat to maintain a potential Protocol on off-shore wind power generation and similar equipment on its work programme, but at a low-level of priority.*

Item 6 on the agenda: Transactions on Transnational and Connected Capital Markets

(a) *Adoption of the Principles on the Operation of Close-out Netting Provisions*
(C.D. (92) 6(a))

65. Mr *Böger* introduced this item, referring to document C.D. (92) 6(a) for detail. He briefly outlined the procedural steps of the project on netting, starting with the decision of the General Assembly at its 67th session (December 2010) to assign the highest level of priority to the development of a set of draft Principles. The task was initially entrusted to a Study Group, which met on three occasions (April and September 2011 and February 2012). The draft submitted by the Study Group was examined by the Governing Council at its 91st session (May 2012), which provided comments on the draft text and endorsed a proposal to convene a Committee of governmental experts for consideration and finalisation of the draft Principles on the Operation of Close-out Netting. The Committee of governmental experts, in turn, had met twice (October 2012 and March 2013) and approved a revised set of Draft Principles on the Operation of Close-Out Netting Provisions, which had been forwarded for adoption by the Governing Council at its present session.

66. Mr *Böger* also explained the differences between the Draft Principles as presented to the Governing Council at its 91st session and the new version submitted for approval at the 92nd session. He also reiterated some of the issues raised during the 91st session of the Governing Council as to whether the Draft Principles should be a hard law or a soft law instrument, and recalled that the Committee had accepted the soft law approach as laid down in the set of draft Principles prepared by the Study Group that had been recommended to the Committee by the Governing Council. On the issue of private international law, Mr *Böger* pointed out that an additional Draft Principle on conflict-of-laws issues had been prepared following the 91st session of the Governing Council and presented to the Committee, with a view, in particular, to reflecting recommendations that the proper law of the close-out netting agreement, rather than the law of the forum of the insolvency proceedings, should determine whether parties and obligations might be eligible for netting. After extensive consideration, however, the Committee had decided that the Draft Principles should not include a specific provision covering issues of private international law.

67. On the general question of whether the Draft Principles properly reflected the arguments of some legal scholars and economists who – contrary to what appeared to be the majority of regulators world-wide – advocated a more restrictive approach towards netting, Mr Böger noted that the Committee had agreed that it should be clarified that the Draft Principles should not, for instance, affect the application of rules on the avoidance of fraudulent transactions in insolvency and likewise should not restrict the exercise of powers in the context of resolution of financial institutions.

68. Mr Böger also referred to the discussions at the 91st session of the Governing Council concerning the question whether sufficient justification existed to support a deviation from otherwise applicable mandatory rules of national insolvency law in general, which in some jurisdictions were thought to argue against the enforceability of close-out netting provisions. On this matter, Mr Böger noted that the Committee had discussed these questions as issues concerning the scope of application of the Principles. An alternative drafting proposal had been discussed which reflected a significantly more restrictive approach than that featured in the original draft in relation both to the eligible parties and the eligible obligations. While an earlier version of this alternative drafting proposal had not found general support within the Committee, an amended version of this alternative proposal, based on broad inter-sessional consultations, had in the end secured its backing. The core idea of this new draft was to limit the scope of application of the Principles to a minimum level of harmonisation for situations involving some kind of increased risk, especially systemic risk, where qualifying financial market participants or, in the case of public authorities, other public interests were involved, while not preventing implementing States from protecting the operation of close-out netting provisions in other situations as well.

69. *Mr Sołtysiński* commented on the differences between the 2012 and 2013 versions of the Draft Principles, mentioning that the adjustments made the final version clearer and fairer with regard to the priorities of all creditors in insolvency. However, he felt that the changes did not go far enough and remained unconvinced that the enforceability of close-out netting provisions would generally reduce systemic risk. He also expressed the view that the Draft Principles failed to address serious criticism of close-out netting legislation by several legal and economic scholars and maintained that UNIDROIT support for special status of close-out netting in bankruptcy laws constituted an unjustified departure from the principle of equal treatment of creditors and, in effect, shifted the risk of insolvency from the financial sector to the real economy business actors. He also pointed out that granting special priority to derivatives, over traditional forms of financing, might be attractive to creditors because they required less collateral and enabled banks to enjoy a reduction of capital requirements for such transactions. He warned, however, that such advantage was gained at the expense of increased systemic risk and disadvantaged the remaining creditors in the event of insolvency. Additionally, he argued that States should be free to impose restrictive requirements that went beyond the terms of the close-out netting provisions, for example by limiting the effectiveness of the transactions covered in the case of lack of compliance with reporting or registration requirements. Mr Sołtysiński pointed out that no thorough economic impact assessment had been undertaken in the course of the netting project and suggested that some of the prominent academic critics of close-out netting could have been invited to contribute to the work of the Study Group.

70. The *Secretary-General* summarised the procedure that led to the drafting of the Principles and reiterated the open nature and structure of the Study Group, which was composed of renowned experts representing regulatory agencies, international organisations, legal practice and academia from both developed and developing countries. He also recalled the transparent nature of the Committee of governmental experts in which all UNIDROIT member States were invited to participate, and in which member States, from both emerging and developed markets, were represented by delegations that included relevant regulators, ministries and central banks, as well as experts from the private sector and academia. He stressed that the text submitted for approval at the present

session comprised the collective input and unanimous consent of all participants in the drafting process.

71. Mr *Gabriel* expressed his approval of the proposed Principles as drafted, but pointed out that paragraph 141 of the commentary appeared to contradict the text of the relevant principle and requested its deletion.

72. Mr *Mo* described the manner in which the Draft Principles addressed concerns regarding the autonomy provided to the parties to a close-out netting contract and their relationship with relevant government regulators. On this issue, he agreed in part with the comments made by Mr *Sołtysiński* but saw no risk of a grave imbalance, in particular because consumer transactions had been excluded from the scope of application of the Principles.

73. Mr *Bollweg* thanked the Secretariat for its work on this instrument and noted that, although it was not possible to draft a convention, it was his impression that States and other participants in the process were pleased with this soft law instrument, which presented several advantages over a hard law approach. Referring to previous interventions, he observed that the Study Group and the Committee of intergovernmental experts had discussed these issues extensively and commented that the Council's task was now simply either to approve or disapprove the results of the process, not to amend the text in substance or in detail. He agreed that after due consultation with the relevant authorities, the Principles would be worthy of approval in the version as drafted.

74. Mr *Tricot* referred to the challenges present in the process and in the practice of close-out netting, and expressed his approval of the Principles in the version as drafted and submitted by the Committee of governmental experts, including paragraph 141.

75. Mr *Hartkamp*, Ms *Sandby-Thomas* and Ms *Sabo* fully endorsed the adoption of the Principles as they stood, without changes to the text, and recommended that the Governing Council approve the document.

76. After the *President* had requested Mr *Kanda* and Mr *Böger* to describe the substance and usefulness of paragraph 141 as drafted and agreed to by the Committee, there proved to be insufficient support in the Council to delete the paragraph.

77. The Governing Council then commended the Committee of governmental experts for its completion of the Draft Principles on the Operation of Close-out Netting Provisions and proceeded to adopt them, together with the accompanying comments, without change.

78. *The Council requested the Secretariat take steps to promote the wide-spread dissemination and national implementation of the Principles.*

(b) *Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (92) 6(b))*

79. Mr *Wilson* (UNIDROIT Secretariat) introduced this item, making reference to document C.D. (92) 6(b), which details its procedural and substantive background, recalling that the Governing Council had, during its 89th session, requested the examination of potential efforts to draft a Legislative Guide on Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets. However, he noted that the Council had, during this same period, committed itself to the work on the UNIDROIT Principles on the Applicability of Close-Out Netting Provisions – assigning low priority to the work on a Legislative Guide.

80. From a logistical standpoint, the preliminary work on the Legislative Guide had been assigned to the Committee on Emerging Markets Issues, which had met on two occasions (in Rome in 2010 and in Rio de Janeiro in 2012) to discuss the possible scope of this work and topics to be included in a legislative guide. The Committee had also set up an informal working group to propose a possible methodology and time-table for completion of the Guide.

81. Mr *Wilson* announced that the next meeting of the Committee was scheduled for November 2013, at which time it might agree on the scope of the Legislative Guide, as well as the methodology and timetable for its completion.

82. *The Governing Council took note of the report of the Secretariat and encouraged the Committee to establish the scope and methodology for drafting a possible Legislative Guide on Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets and to consider including issues related to commercial trusts.*

Item 7 on the agenda: Private law and development

(a) Preparation of a Legal Guide on Contract Farming (C.D. (92) 7(a))

83. Ms *Mestre* (UNIDROIT Secretariat) introduced this topic, making reference to document C.D. (92) 7(a) on the preparation of a legal guide on contract farming. She noted that the Working Group was chaired by Mr Gabriel and was composed of members representing academia, experts on contract law, stakeholders in contract farming, and world farming organisations. Contact had also been made with firms in the agribusiness sector. She also highlighted the role of other international organisations, in particular the Rome-based United Nation agencies, which had taken a very active part in the proceedings of the Working Group, and which were participating as co-sponsors of the Guide.

84. Ms *Mestre* stated that the preliminary document had been prepared by the Secretariat. In general, the Guide sought to provide best practices for the parties to a contract. It was not intended to provide any legislative suggestions or propose changes to national law. She further clarified that the Guide would cover certain types of operation, and that its Chapters would follow a conventional format and cover the basic considerations for contract farming arrangements. These included a chapter on parties to the contract, on form of the contract, on effectiveness, on applicable law, on duration, and on the settlement of disputes. Ms *Mestre* added that the Guide might also consider questions related to property rights, as well as partnership arrangements among the parties. Finally, she recalled that the first meeting of the Working Group had been held in January 2013 and that a second meeting would be held in June 2013.

85. *The representative of the United Nations Food and Agriculture Organization* underscored the importance of the Guide to FAO's constituency. She explained that the role of FAO as co-sponsor was to assist in the development of the Guide and to link it with its resources and programmes, to ensure that the resulting product would have an immediate impact at the practical level and in the field with core users of contract farming arrangements. She reiterated that FAO was pleased to be part of the Working Group and was fully committed to participating in the completion of the Guide and its implementation in the field.

86. *The representative from the International Fund for Agricultural Development* also expressed her Organisation's satisfaction at being part of this process. She explained that IFAD operated at two levels: the policy level and the financing level. At the policy level, IFAD was keen to have an instrument like the Guide since it was frequently asked to help countries develop their local

framework and practices. At the financing level, the Guide would be of even greater assistance, providing a framework for contracting parties to set sound business practices and to create links between private sector actors in order to increase financing and capital availability for these transactions.

87. The *Secretary-General* thanked the FAO and IFAD for their assistance and participation in this process. He stressed that their input was vital to the final product and stated that their participation as fully-fledged partners would help to ensure the success and utility of the Guide.

88. In the debate that followed, all the members of the Council expressed strong support for the Contract Guide, with individual members stressing its importance in enhancing agricultural production, providing flexible solutions that could be tailored to the realities of different locations, and redressing the significant imbalances between parties in contract negotiations at the agricultural and/or rural levels. Ms *Sabo* further stated that the Canadian International Development Agency provided useful input for the project and might consider funding part of the work.

89. *The Governing Council took note of the report on the preparation of a Legal Guide on Contract Farming and agreed to give the topic high priority with a view to its completion in 2014. The Governing Council also thanked the FAO, IFAD and WFP for their important participation in the preparation of the Guide.*

(b) *Possible future work on private law aspects of agricultural investment and financing*
(C.D. (92) 7(b))

90. Ms *Mestre* presented this topic, referring to document C.D. (92) 7(b) for detail. She noted that the issue built on the contributions made at the November 2011 Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects,” as well as on consultations with potential partner multilateral organisations.

91. As a first subject that might be addressed, she recalled that the Council had considered whether UNIDROIT could provide its expertise for the possible preparation of an international guidance document on land investment contracts, where information gathered to date highlighted that large-scale investments in agricultural land were developing in many regions of the world, with complex and often critical economic, social and environmental implications. In this context, she explained that the contract had a key role in regulating the investment from the transactional perspective and in ensuring a balanced relationship, especially in consideration of the prevailing weakness of the national legislative framework in some countries. Ms *Mestre* also highlighted the importance of the *Principles of International Commercial Contracts*, together with continued participation by FAO and IFAD, which had expressed an interest in the potential usefulness of this initiative.

92. As a second subject possibly to be addressed, Ms *Mestre* described potential work on reform and modernisation of land tenure regimes, the legal structure of agricultural enterprises and an international guidance document on agricultural financing.

93. With regard to issues of timing, the *Secretary-General* pointed out that a key factor in determining if and when it might be useful to proceed with this work, was whether it would be useful to FAO, IFAD and other international organisations. The Secretariat would therefore maintain communications with all stakeholders and revert back to the Council when it next met, before moving forward with the work.

94. *The Governing Council reaffirmed its interest in possible future work on private law aspects of agricultural investment and financing (including land investment contracts, land tenure regimes, legal*

structure of agricultural enterprises and others) and encouraged the Secretariat to revisit these issues once the Legal Guide on Contract Farming had been completed.

Item 8 on the agenda: Third Party Liability for Global Navigation Satellite Systems (GNSS) Services (C.D. (92) 8)

95. Ms *Peters* presented this topic, making reference to document C.D. (92) 8. By way of background, Ms *Peters* recalled that, pursuant to requests from the Council, the UNIDROIT Secretariat had organised three informal consultation meetings in Rome. At their third meeting, participants had been informed of the preparation by the EU Commission of an impact assessment intended to evaluate the need for a European regulation on the liability of GALILEO. It had been felt that such an assessment would also be of interest to the informal group, and that its publication would assist in deciding whether to move forward with work in this field at the Institute.

96. The *Secretary-General* suggested that, once the impact assessment had become available, the Secretariat might organise another round of consultations of an informal nature. He recalled that the publication of the impact assessment had already been postponed twice, first until November 2012, then until March 2013 and indeed, had not yet been published even now. Leaving aside the desirability and feasibility of an instrument on this subject, he stressed that it would be impossible to decide what direction UNIDROIT should take until the impact assessment had been published and he therefore suggested that the topic be kept on the programme, at its current level of priority.

97. Mr *Bollweg*, Mr *Gabriel* and Ms *Sabo* suggested that while this topic might be of regional interest in the European Union because of GALILEO, they saw no universal appeal for moving forward with this project, also because the EU was considering its own specific actions on the matter.

98. Ms *Broka* countered that this project could nonetheless be of great importance and suggested that UNIDROIT continue to monitor developments within the European Commission. Other Council members agreed and requested the Secretariat to continue monitoring European Union work on third party liability for global navigation satellite system services, so as to determine whether there was room for potential future work on this topic on the UNIDROIT Work Programme.

Item 9 on the agenda: Promotion of UNIDROIT instruments (C.D. (92) 9)

99. Ms *Schneider* (UNIDROIT Secretariat) presented this topic, referring to document C.D. (92) 9. In detailing the actions taken to promote UNIDROIT instruments, she highlighted the endorsements received for UNIDROIT instruments by other international organisations, as well as partnerships established (and activities undertaken) with other international organisations, non-governmental organisations and academic institutions, for purposes of the Institute's promotional work. Ms *Schneider* updated the Council on the status of the Conventions of which UNIDROIT is depository and concluded her remarks by presenting the priority areas under consideration for promotional activities in the upcoming triennial period.

100. *The Governing Council took note of the progress recorded by the Secretariat over the past year in promoting UNIDROIT instruments and several members reported progress in their respective States towards accession to UNIDROIT instruments, in particular the Cape Town Convention and the Convention providing a Uniform Law on the Form of an International Will. The Council further requested the Secretariat to continue to give the highest level of priority to its promotional work, and agreed to assign high priority to the promotion of the following instruments in 2014-2016:*

- UNIDROIT Principles of International Commercial Contracts 2010
- Cape Town Convention and Protocols
- UNIDROIT Convention on Substantive Rules for Intermediated Securities
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
- Convention providing a Uniform Law on the Form of an International Will.

Item 10 on the agenda: Correspondents (C.D. (92) 10)

101. Ms *Schneider* presented this topic, making reference to document C.D. (92) 10, containing the Report and Recommendations of the Governing Council Sub-committee on UNIDROIT Correspondents for the revitalization of the UNIDROIT network of correspondents. Ms *Schneider* described the importance of correspondents to the Institute's research and study groups, in proposing and selecting topics relevant for future study, in promoting UNIDROIT instruments, and in fostering close relations with industry, civil society and academic institutions, as well as with member and non-member States.

102. As the principal measure in revitalizing the network, Mr *Gabriel*, Chair of the Sub-Committee, presented the following proposal for consideration by the Governing Council: appointments of members of the correspondents' network should be for a term of three years renewable; reappointments should not be automatic; correspondents should be asked whether they sought reappointment and if so, how he or she intended to contribute to the work of the Institute. Mr *Gabriel* noted that the Sub-committee's report had recommended that correspondents who had been inactive for a considerable period of time would not be reappointed. He also described the format and content proposed for the letter of appointment and reappointment to be sent to current and future correspondents.

103. *The Governing Council took note of the Secretariat's report, generally endorsed the recommendations for revitalising the correspondents' system presented by the Chair of the Governing Council's Sub-committee on UNIDROIT Correspondents (C.D. (92) 10 – Annex I), and created a Standing Sub-committee to implement its recommendations. The Council further agreed that the Sub-committee should review the responses received with a view to making appropriate recommendations to the Council at its 93rd session.*

Item 11 on the agenda: Library (C.D. (92) 11)

104. Ms *Maxion* (UNIDROIT Library) presented this topic, making reference to document C.D. (92) 11, which describes the Library's co-operation and networking process with other Rome-based and foreign libraries, the objective of which is to share resources and produce economies of scale in the acquisition of materials. Ms *Maxion* also referred to the increased use of subscription-based services to provide broad access to primary and secondary legal materials while containing costs, and provided specific information regarding the acquisitions, donations and exchanges that had affected Library holdings since the last report. She supplied figures relating to foreign and local visitors to the Library. With regard to acquisitions, the *Secretary-General* commented that the Library had also begun a process of strategic acquisition, which placed increased priority on materials related to the current work of the Institute. Ms *Maxion* and the *Secretary-General* concluded their remarks by thanking the President of UNIDROIT for his fundraising efforts, which have been greatly instrumental in maintaining the level of acquisitions and Library services.

105. *The Governing Council took note of the report on the Library, and congratulated the Secretariat for its extensive collaboration with other library systems as well as the shift in resources toward the strategic acquisition of materials directly related to topics on the Work Programme of the Institute.*

Item 12 on the agenda: UNIDROIT information resources and policy (C.D. (92) 12)

(a) Uniform Law Review/Revue de droit uniforme and other publications

106. Ms *Veneziano* presented this topic, making reference to document C.D. (92) 12, which highlighted both the Institute's paper-based and electronic resources. With regard to the Uniform Law Review, Ms *Veneziano* reminded the Council that the Secretariat had received an offer from Oxford University Press (OUP), on 1 July 2011, for the editing, type-setting and distribution of the Review. She mentioned that the final agreement, signed in July 2012 for an initial duration of five years, allowed UNIDROIT to retain editorial and content control, while providing access to OUP's publishing infrastructure, expertise and marketing network. That formula would help to preserve the reputation and high quality of the Review, while broadening its circulation. She added that OUP was also planning to offer the journal in electronic format.

107. *The Governing Council welcomed the completion of the agreement with Oxford University Press regarding outsourcing of the Uniform Law Review and took note of the positive impact that this agreement would have on the quality and distribution of the Law Review, and of the opportunity it afforded to redirect resources to other functions of the Institute, while allowing the Institute to ensure the highest editorial and quality control.*

(b) The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation

108. Ms *Peters* presented UNIDROIT's new website, which would reorganise the current content in a more user-friendly manner and in a modern format. Ms *Peters* conducted a page-by-page comparison of sample sections of the website, displaying the new format from its beta site. She also demonstrated the new navigation system, which was based on a standardised menu that would make site functions available from individual webpages. In conclusion, she noted that the new website would be deployed on the current www.unidroit.org URL as soon as all French documents had migrated, in late summer 2013.

109. *The Governing Council welcomed the development of a new UNIDROIT webpage, which improved the design and technological features and organised the content in a more intuitive and user-friendly manner. The Council congratulated the Secretariat on this initiative and requested it to complete the considerable task of migrating the French and English information and documentation from the previous system in 2013.*

Item 13 on the agenda: Proposals for the Work Programme for the triennial period 2014 – 2016 and comments received by the Secretariat (C.D. (92) 13, 13 Add., 13 Add. 2 and 13 Add. 3)

110. The *Secretary-General* presented the Proposals for the Work Programme for the triennial period 2014 – 2016 (contained in document C.D. (92) 13), as well as the comments received by the Secretariat from member States and UNIDROIT Correspondents (contained in documents C.D. (92) 13 Add., 13 Add. 2 and 13 Add. 3).

111. In the discussion that followed, the Governing Council took note of the proposed Work Programme and Comments, and agreed to recommend to the General Assembly that it adopt the Work Programme for the triennium 2014 – 2016 with the following level of priorities:

A. Legislative activities

1. International Commercial Contracts:
 - (a) Issues relating to long-term contracts: low priority
 - (b) Issues relating to multilateral contracts: low priority
2. Secured transactions
 - (a) Implementation of Rail and Space Protocols: high priority
 - (b) Preparation of other Protocols to the Cape Town Convention
 - (1) Agricultural, mining and construction equipment: medium/high priority
 - (2) Ships and maritime transport equipment: medium priority
 - (3) Off-shore power generation and similar equipment: low priority
3. Transactions on Transnational and Connected Capital Markets
 - (a) Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets: medium priority
4. Liability for Satellite-based Services: low priority
5. Private law and development
 - (a) Contract farming: high priority
 - (b) Possible work in private law and agricultural development: low priority
6. Legal aspects of social business: low priority
7. Transnational civil procedure – formulation of regional rules: medium priority

B. Implementation and promotion of UNIDROIT instruments

1. Depository functions: high priority
2. Promotion of UNIDROIT instruments: high priority

C. Non-legislative activities

1. UNIDROIT Library and Depository Libraries: high priority
2. Information resources and policy: high priority
3. Internships and scholarships: high priority

Item 14 on the agenda: Legal Co-operation Programme (C.D. (92) 14)

112. The Governing Council then discussed the Legal Co-operation Programme as set out in document C.D. (92) 14, in particular the implementation of the research scholarships programme which, it agreed, was an important educational, research and training instrument for students, practitioners and academics alike. The Council also reaffirmed the significant impact made by the Legal Co-operation Programme in developing and promoting the work of the Institute and welcomed the Secretariat's proposal to seek ways to ensure that the programme was funded entirely from outside sources, beginning in 2014.

Item 15 on the agenda: Preparation of the draft budget for the 2014 financial year (C.D. (92) 15)

113. The *Secretary-General* presented the draft budget for the 2014 financial year, as set out in document C.D. (92) 15, based on the first estimates of receipts and expenditure, (document F.C. (73) 2, examined by the Finance Committee at its 73rd session, 13 March 2013). He described the new budget format in which some stand-alone budget items had been consolidated into more accurate groupings and labelled the more properly to reflect the types of expenditure in question. The *Secretary-General* proceeded to clarify each chapter of the expenditures section of the draft budget, including cost reductions in the field of maintenance, utilities and publications. He then explained the proposed 3.2 per cent increase in the unit of contribution for member States, which was needed to cover increases in expenditure, including facilities charges for UNIDROIT intergovernmental meetings held at FAO, the rising cost of interpretation and language services, modest increases in library acquisitions, inflation in some areas including social security costs, and the need to re-build the professional and administrative staff which had been depleted by nearly 25 per cent since 2008, in a period of increased mandates.

114. Ms *Wieser*, Representative of Austria and Chair of the Finance Committee, presented the report of the 73rd session of the Finance Committee, held on 13 March 2013, contained in document F.C. (73) 3. She explained that 2014 would be the first budget under the new financial regulation and described the process for its approval, which would consist of the initial discussion at the 73rd session of the Finance Committee, consultation by the present session of the Governing Council, consultation with member States, agreement by the 74th session of the Finance Committee, and final approval by the 72nd session the General Assembly, to be held on 5 December 2013. She added that the revised budget format described by the *Secretary-General* had been well received by the Finance Committee, as had been the cost-saving measures that had been implemented, including the agreement with Oxford University Press with regard to publication of the *Uniform Law Review*. The Finance Committee advocated seeking further co-operation agreements of that type. With regard to the proposed 3.2 per cent increase in the unit of contribution, which she pointed out would in part cover any adjustments to inflation for which no automatic adjustment was provided under current regulations, she pointed out that the discussion had taken place in the context of zero nominal growth – the policy of several member States in respect of international organisations – and that the Finance Committee had accordingly requested a table of real figures of increased contributions. The real increase, she noted, even for Category 1 States, would be approximately €4,000 per year, with more than half of the member States registering an increase of less than €1,000 per year. On the issue of personnel, she noted the significant reduction in staff over the last several years and informed the Council that the Committee had requested the Secretariat to prepare a paper on the salary system applied by UNIDROIT, for discussion at an informal meeting of the Committee on the salary structure of the Institute. She concluded by stating that the Finance Committee had taken note of the Secretariat's request for an moderate increase in the value of the unit of contribution and that one member State had expressed reservations to endorsing the proposal at this stage. The Finance Committee had decided to await the opinion of the Governing Council before reconsidering the issue in September 2013.

115. In the discussion that followed, the Governing Council took note of the Secretariat's first estimates of receipts and expenditures for 2014, the revised budget format, the proposed increase in member State contributions, and the Finance Committee's report. Ms *Broka*, Mr *Govey*, Ms *Jametti* and Ms *Sandby-Thomas* thanked the Secretariat for the economic efficiencies achieved and expressed their support for the budget as well as the increase in the unit of contribution. Ms *Sabo* and Mr *Bollweg* confirmed that their countries had zero nominal growth policies for international organisations, but stated, as did Ms *Bouza Vidal*, that they would recommend approval of the budget and the proposed increase.

116. *The Council as a whole commended the positive impact of cost-saving measures and management efficiencies over the past five years – a notable achievement in a period in which there had been no increase in the member States’ unit of contribution despite significant inflationary pressures – and expressed their unanimous support for the proposed budget and the revised budget format.*

Item 16 on the agenda: Strategic Plan – comments received by the Secretariat

(C.D. (92) 16)

117. The *President* opened the floor to the comments received by the Secretariat on the Strategic Plan, set out in document C.D. (92) 16. With regard to the comments from the Government of the United States of America, Mr *Gabriel* pointed out that, in light of the limited resources available, it was recommended to partner with outside organisations and to secure outside funding to maximize the number of projects that could be developed and promoted. In particular, he hoped that the Council would approve his Government’s proposal for UNIDROIT to partner with UNCITRAL on substantive programmatic work, as detailed in document C.D. (92) 16, Annex II. Together, UNIDROIT and UNCITRAL would be able to achieve greater economies of scale, increase technical expertise and foster broader engagement with member States and other stakeholders. Ms *Sabo*, Ms *Jametti*, Ms *Broka* and Mr *Hartkamp* expressed their approval of this proposal.

118. The *Secretary-General* noted that the proposal dovetailed well with the Institute’s work programme and with the methodology followed by UNIDROIT in respect of many of its international instruments, where initial technical work was conducted by UNIDROIT with subsequent finalisation, approval, adoption and/or implementation carried out in other fora. He reminded the Council that the mechanics of collaboration would require adherence to the rules, procedures and organs of each organisation, but that the proposal in itself did not represent anything radically new or incompatible with the structure of the Institute.

119. On behalf of UNCITRAL, Mr *Sorieul* expressed his full support for joint work with UNIDROIT on substantive issues, echoing the Secretary-General’s statement that this was not a new idea, but one that was reflected in the history and work product of UNCITRAL as well. He argued that such an approach would be of great impact, considering the level of mandates and the scarcity of resources in each organisation.

120. *The Governing Council took note of the additional comments received on the Strategic Plan and requested the Secretariat to provide clarifications and amend the Strategic Plan as requested in State Comments. The Council again expressed its particular interest in the suggestion made by the Government of the United States that UNIDROIT and UNCITRAL explore the possibility of carrying out projects on suitable topics as equal partners. The Council invited UNIDROIT member States that are members of both organisations to promote consideration of this matter at UNICTRAL.*

Item 17 on the agenda: Extension of the appointment of the Secretary-General

121. *The Governing Council unanimously accepted the President’s recommendation to extend the appointment of the Secretary-General for a second term.*

Item 18 on the agenda: Date and venue of the 93rd session of the Governing Council

(C.D. (92) 1 rev. 4)

122. *The Governing Council set the date for its 93rd session, to be held in Rome from 7 to 9 May 2014.*

**APPENDIX I
ANNEXE I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS(Rome, 8 – 10 May 2013 / *Rome, 8 – 10 mai 2013*)**MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

Mr Alberto MAZZONI	President of UNIDROIT / <i>Président d'UNIDROIT</i>
Mr Michael Kaase AONDOAKAA	former Attorney-General of the Federation and Minister of Justice Abuja (Nigeria) <i>excused</i>
Mr Hans-Georg BOLLWEG	Head of Division Federal Ministry of Justice Berlin (Germany)
Ms Núria BOUZA VIDAL	Professor of Law Pompeu Fabra University School of Law Law Department Barcelona (Spain)
Ms Baiba BROKA	Legal Adviser Ministry of Justice Lecturer Riga (Latvia)
Mr Antonio Paulo CACHAPUZ DE MEDEIROS	Consultor Jurídico Ministério das Relações Exteriores Brasilia, DF (Brazil) <i>excused</i>
Mr Sergio CARBONE	Professor of Law at the University of Genoa Studio Carbone Genova (Italy)
Monsieur Sergiu DELEANU	Maître de Conférences Faculté de droit de l'Université "Babes Bolyai" Cluj-Napoca (Roumanie)
Mr Michael B. ELMER	Judge, Vice-President Danish Maritime and Commercial Court Copenhagen (Denmark)

Mr Henry D. GABRIEL	Professor of Law School of Law Elon University Greensboro, North Carolina (United States of America)
Mr Ian GOVEY	Chief Executive Officer of the Australian Government Solicitor Barton ACT 2600 (Australia)
Mr Arthur Severijn HARTKAMP	former Procureur-Général at the Supreme Court of The Netherlands; Professor of European Private Law Radboud University, Nijmegen Den Haag (The Netherlands)
Mme Monique JAMETTI	Vice-directrice Office fédéral de la justice Berne (Suisse)
Mr Miklós KIRÁLY	Professor of Law Dean of the Faculty of Law Eötvös Loránd University Budapest (Hungary) <i>Representing Mr Attila Harmathy</i>
Mr Yasuhiko KOBAYASHI	Counsellor Civil Affairs Bureau Ministry of Justice Tokyo (Japan) <i>Representing Mr Itsuro Terada</i>
Mr Ricardo Luis LORENZETTI	Chief Justice Supreme Court of Justice Buenos Aires (Argentina) <i>excused</i>
Mr Byung-Hwa LYOU	President and Professor of Law TLBU Graduate School of Law Seoul (Republic of Korea)
Mr MO John Shijian	Dean Faculty of International Law China University of Political Science and Law (CUPL) Beijing (People's Republic of China)
Mr Didier OPERTTI BADAN	former Ambassador; former Minister of Foreign Affairs; Legal Adviser; Professor of International Law Montevideo (Uruguay)

Ms Kathryn SABO	General Counsel /Avocate générale International Private Law Section /Section du droit privé international Department of Justice Canada / Ministère de la Justice Ottawa, Ontario (Canada)
Mr Jorge SÁNCHEZ CORDERO	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)
Ms Rachel SANDBY-THOMAS	Solicitor and Director-General Legal Services Group Department of Business, Innovation and Skills London (United Kingdom)
Mr Narinder SINGH	Member of the International Law Commission formerly Head of the Legal and Treaties Division of the Ministry of External Affairs New Delhi (India) <i>Representing Mr Biswanath Sen</i>
Mr Stanislaw SOLTYSINSKI	Professor of Law A. Mickiewicz University, Poznan; Soltysinski Kawecki & Szlezak Warsaw (Poland)
Monsieur Daniel TRICOT	Président de l'Association française des docteurs en droit (AFDD); Arbitre et médiateur en affaires Soc. DTAM Paris (France)
Monsieur Ioannis VOULGARIS	Professeur émérite de droit international privé et de droit comparé à l'Université Demokritos de Thrace; avocat honoraire du Barreau d'Athènes Athènes (Grèce)

OBSERVERS / OBSERVATEURS:

Ms Marieclaire COLAIACOMO	Counsel International Fund for Agricultural Development (IFAD) Rome (Italy)
Sir Roy GOODE	Emeritus Professor of Law University of Oxford Honorary member of the Council and President of the Uniform Law Foundation /

Mr John GRAHAM	<i>Membre honoraire du Conseil et Président de la Fondation de droit uniforme</i> Assistant General Counsel International Development Law Organization (IDLO) Rome
Ms Jonela KITA	Senior Legal Consultant International Development Law Organization (IDLO) Rome
Mr Blaise KUEMLANGAN	Chief Development Law Service (LEGN) Food and Agriculture Organization (FAO) Rome (Italy)
Mr David SADOFF	General Counsel International Development Law Organization (IDLO) Rome
Mr Renaud SORIEUL	Director International Trade Law Division United Nations Commission on International Trade Law (UNCITRAL) Vienna (Austria)
Mr Hans VAN LOON	Secretary-General Hague Conference on Private International Law The Hague (The Netherlands)
Mr Don WALLACE, Jr	Professor International Law Institute Washington (United States of America)
Mr Jeffrey WOOL	Secretary-General Aviation Working Group President-elect of the Uniform Law Foundation / <i>Président élu de la Fondation de droit uniforme</i>

UNIDROIT MEMBER STATES / ETATS MEMBRES D'UNIDROIT

AUSTRIA / AUTRICHE	Ms Katharina WIESER Minister Embassy of Austria in Italy Chair of the Finance Committee / <i>Présidente de la Commission des Finances</i>
CHILE / CHILI	Ms Alejandra GUERRA Counsellor Embassy of Chile in Italy

COLOMBIA / <i>COLOMBIE</i>	H.E. Mr Juan PRIETO Ambassador of Colombia in Italy Embassy of Colombia in Italy Chairman of the General Assembly / <i>Président de l'Assemblée Générale</i>
	Mr Felipe STEINER First Secretary Embassy of Colombia in Italy
CROATIA / <i>CROATIE</i>	Ms Ines ŠPREM Third Secretary Embassy of the Republic of Croatia in Italy
CZECH REPUBLIC / <i>REPUBLIQUE TCHEQUE</i>	Mr David MULLER Head of European and International Law Department Ministry of Industry and Trade Prague
IRAN (ISLAMIC REPUBLIC OF) / <i>IRAN (REPUBLIQUE ISLAMIQUE DE)</i>	Mr S. Kamal MIRKHALAF Counsellor Embassy of the Islamic Republic of Iran in Italy
LUXEMBOURG	M. Michel GRETHEN Premier Secrétaire Ambassade du Luxembourg en Italie
MEXICO / <i>MEXIQUE</i>	Mr Alan ROMERO ZAVALA Second Secretary Embassy of Mexico in Italy
NORWAY / <i>NORVEGE</i>	Ms Camilla HAUGLAND FISCHER Intern Embassy of Norway in Italy
PARAGUAY	Ms Lorena PATIÑO First Secretary Embassy of Paraguay in Italy
RUSSIAN FEDERATION / <i>FEDERATION DE RUSSIE</i>	Ms Anastasia ORLOVA Legal Department Ministry of Economic Development of the Russian Federation Moscow
SAN MARINO / <i>SAINT-MARIN</i>	Mme Marina EMILIANI Conseillère Ambassade de la République de Saint-Marin en Italie
SLOVAK REPUBLIC / <i>REPUBLIQUE SLOVAQUE</i>	Mrs Lubica MIKUSOVA Third Secretary Embassy of the Slovak Republic in Italy

SOUTH AFRICA / *AFRIQUE DU SUD*

Mr Theunis KOTZE
State Law Adviser (IL)
Department of International Relations and Co-
operation
Pretoria

SWEDEN / *SUEDE*

Mr Tobias AXERUP
Counsellor
Embassy of Sweden in Italy

Ms Amanda JARLMAN
Intern
Embassy of Sweden in Italy

VENEZUELA

Mr Luis Alberto ALVAREZ FERMÍN
Ministro Consejero
Permanent Representation of the Bolivarian Republic
of Venezuela to FAO

Ms Claudia SILVA
Assistant
Permanent Representation of the Bolivarian Republic
of Venezuela to FAO

UNIDROIT

Mr José Angelo ESTRELLA FARIA

Secretary-General / *Secrétaire Général*

Mrs Anna VENEZIANO

Deputy Secretary-General / *Secrétaire Général adjoint*

Mr Michael Joachim BONELL

Consultant

Ms Frédérique MESTRE

Senior Officer / *Fonctionnaire principale*

Ms Lena PETERS

Senior Officer / *Fonctionnaire principale*

Ms Marina SCHNEIDER

Senior Officer / *Fonctionnaire principale*

Mr John WILSON

Senior Officer / *Fonctionnaire principal*

Mr Ole BOEGER

Associate Officer / *Fonctionnaire associé*

Ms Bettina MAXION

Librarian / *Bibliothécaire*

APPENDIX II**REVISED ANNOTATED AGENDA**

1. Adoption of the revised annotated draft agenda (C.D. (92) 1 rev. 4)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (92) 1 rev. 4)
3. Reports
 - (a) Annual Report 2012 (C.D. (92) 2)
 - (b) Management Report for the period 2008-2013 and implementation of the Strategic Plan (C.D. (92) 3)
 - (c) Report on the Uniform Law Foundation
4. International Commercial Contracts
 - (c) Adoption of Model Clauses for use by parties of the UNIDROIT Principles of International Commercial Contracts (C.D. (92) 4(a) rev.)
 - (d) Possible future work on long-term contracts (C.D. (92) 4(b))
5. International Interests in Mobile Equipment
 - (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (92) 5(a))
 - (b) Possible preparation of other Protocols to the Cape Town Convention
 - (i) Agricultural, mining and construction equipment (C.D. (92) 5(b))
 - (ii) Ships and maritime transport equipment (C.D. (92) 5(c))
 - (iii) Off-shore wind power generation and similar equipment (C.D. (92) 5(d))
6. Transactions on Transnational and Connected Capital Markets
 - (a) Adoption of the Principles on the Operation of Close-out Netting Provisions (C.D. (92) 6(a))
 - (b) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (92) 6(b))
7. Private Law and Agricultural Development
 - (a) Preparation of a Legal Guide on Contract Farming (C.D. (92) 7(a))
 - (b) Possible future work on private law aspects of agricultural investment and financing (C.D. (92) 7(b))
8. Third Party Liability for Global Navigation Satellite System (GNSS) Services (C.D. (92) 8)

9. Promotion of UNIDROIT instruments (C.D. (92) 9)
 - (a) UNIDROIT Principles of International Commercial Contracts 2010
 - (b) Cape Town Convention and Aircraft Protocol
 - (c) UNIDROIT Convention on Substantive Rules for Intermediated Securities
 - (d) UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and UNESCO/UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects
 - (e) Convention providing a Uniform Law on the Form of an International Will
10. Correspondents (C.D. (92) 10)
11. Library (C.D. (92) 11)
12. UNIDROIT information resources and policy (C.D. (92) 12)
 - (a) Uniform Law Review/ *Revue de droit uniforme* and other publications
 - (b) The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation
13. Proposals for the Work Programme for the triennial period 2014 – 2016 and comments received by the Secretariat (C.D. (92) 13, 13 Add., 13 Add. 2 and 13 Add. 3)
14. Legal Co-operation Programme (C.D. (92) 14)
15. Preparation of the draft budget for the 2014 financial year (C.D. (92) 15)
16. Strategic Plan – comments received by the Secretariat (C.D. (92) 16)
17. Extension of the appointment of the Secretary-General
18. Date and venue of the 93rd session of the Governing Council (C.D. (92) 1 rev. 4)
19. Any other business

ANNOTATIONS

Item No. 2 – Appointment of the First and Second Vice-Presidents of the Governing Council

1. Since 1977, the Governing Council has at its annual session elected a First and a Second Vice-President who, in accordance with Article 11 of the Regulations of the Institute, hold office until the following session. At present, the post of First Vice-President is occupied by the *doyen* of the Council and that of Second Vice-President by one of the most senior Council members, the latter on the basis of the criterion of rotation since 1994.

Item No. 13 – Proposals for the Work Programme for the triennial period 2014 – 2016

2. Pursuant to Article 11(2) of the Statute of UNIDROIT, the Governing Council draws up the Work Programme of the Institute and makes a proposal to the General Assembly which is then called to approve it (Article 5(3) of the Statute). The Governing Council will be called to make such a proposal at its 92nd session in 2013, on the basis of proposals by the Secretariat and suggestions received from member States, correspondents and other individuals and entities to whom the Secretariat's proposals (see document C.D. (92) 13) have been circulated.

Item No. 17 – Extension of the Appointment of the Secretary-General

3. The Secretary-General was appointed by the Governing Council, at its 87th session (Rome, 21-23 April 2008), for a period of five years, in accordance with article 8, paragraph 2, of the UNIDROIT Statute, which will expire on 30 September 2013.

4. In the exercise of his prerogative under article 8, paragraph 1, of the UNIDROIT Statute, the President seeks the approval of the Governing Council to offer the Secretary-General an extension of his appointment for a second term.

Item No. 18 – Date and venue of the 93rd session of the Governing Council

5. In accordance with the decision taken by the Governing Council at its 91st session (Rome, 7-9 May 2012) that its future sessions should start on Wednesdays, rather than Mondays, and avoiding weeks that include Easter holidays, the Governing Council may wish to consider holding its 93rd session on 2 to 4 April 2014, 9 to 11 April 2014, or 7 to 9 May 2014.