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1. The *President of the Institute, Mr Alberto Mazzoni*, welcomed the members of the Governing Council to the Council's 94th session.

2. In his opening address, the President stated that the prior year had been one of the most productive of his tenure and he emphasised key substantive and institutional developments. Regarding substantive developments, he highlighted the development of the Legal Guide on Contract Farming, which was now ready for consideration and adoption; further ratifications of the Cape Town Convention and continued progress on the related Protocols; and the twentieth anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, for which an important conference would be held at the Capitoline Museums the day following the conclusion of the Council's session. Regarding institutional developments, he highlighted the outstanding collaboration between UNIDROIT, the Food and Agriculture Organization (FAO), and the International Fund for Agricultural Development (IFAD), as well as other organisations such as the World Farmers' Organisation (WFO); the arrival of new staff members; and the Government of Italy's efforts in making its annual contribution to UNIDROIT mandatory. The President concluded by noting that none of these developments would have been possible without the dedicated efforts of the Council's members, asking them to continue to look for possible avenues of collaboration. He then declared the session to be open.

Item 1 on the agenda: Adoption of the annotated draft agenda (C.D. (94) 1)

3. *The Governing Council adopted the agenda as proposed in document C.D. (94) 1.*

Item 2 on the agenda: Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (94) 1)

4. *The Governing Council renewed the appointments of Mr Arthur Hartkamp as First Vice-President of the Governing Council and Mr Lyou Byung-Hwa as Second Vice-President, both of whom will serve in these positions until the 95th session of the Council.*

Item 3 on the agenda: Reports

(a) Annual Report 2014 (C.D. (93) 2)

5. The *Secretary-General of UNIDROIT, Mr José Angelo Estrella Faria*, presented the Annual Report for 2014, noting that he would stress, in addition to the main developments highlighted by the President, key points of UNIDROIT's work for that year. In first praising his staff's loyalty and dedication, the Secretary-General stated that he was proud to point out that all of the work reflected in the Annual Report was completed by only 20 staff members, of which less than half were lawyers, and not an abundance of staff as that very significant amount of work would seem to suggest.

6. Turning to the work completed, the Secretary-General stated that the work on the Legal Guide on Contract Farming had been enormous, noting that the completion of a document of such quality and depth within two years was quite a remarkable achievement. That work included not only drafting the Guide, performing the research, and organising the meetings, but also significant outreach thanks to the grant provided by IFAD, which had allowed for four consultation events to be held in Latin America, Asia, Africa, and Europe respectively. As reflected by the Guide's high quality, he said that this time, effort and money was well spent.

7. The Secretary-General then referred to UNIDROIT's work with the Rail Preparatory Commission and the Space Preparatory Commission, which related to the Luxembourg Rail Protocol and Space Protocol to the Cape Town Convention respectively, and stated that these efforts were substantial. Regarding the Rail Protocol, he noted the conclusion of the Registry contract, which amounted to several hundred pages and was the culmination of six years of negotiation. Regarding the Space Protocol, he recognised that there were difficulties, but stressed that the work on the draft Space Registry Regulations was nearing completion thanks to the dedication of Sir Roy Goode, who was responsible for drafting them, and to two productive meetings of the Space Preparatory Commission that had been held.

8. Referring next to the joint project with the European Law Institute (ELI) on the formulation of regional rules in connection with the joint American Law Institute (ALI) – UNIDROIT Principles of Transnational Civil Procedure, he noted that a Steering Committee meeting and joint meeting of the Steering Committee and the Working Groups had been held. He emphasised that this work had been attracting significant attention, including from academia and European institutions, and was contributing to the visibility of UNIDROIT worldwide.

9. He noted as well developments in the work on long-term contracts in connection with the UNIDROIT Principles of International Commercial Contracts. He stated that continuity in the Working Group responsible for proposing adjustments to those Principles had been ensured by including experts who had worked on the Principles in the past, together with new experts who brought with them expertise on the particular topic.

10. The Secretary-General then mentioned the arrival of new staff members, which had allowed for work on two projects to proceed. He noted first the resumption of work on financial markets law, in particular the development of a Legislative Guide of principles and rules capable of enhancing trading in securities in emerging markets. He then noted the work on the drafting of a fourth Protocol to the Cape Town Convention covering agricultural, construction and mining equipment, for which two Study Group meetings had been held.

11. Turning to non-legislative activities, the Secretary-General highlighted the promotional efforts made regarding the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, for which an important conference would be held just after the Council's session to mark its twentieth anniversary. He noted that such efforts were significant and had borne fruit as additional States had recently acceded to the Convention. He then highlighted the Publications Programme, stating in particular that the cooperation with Oxford University Press had proven to be very successful in the managing and distributing the *Uniform Law Review* because an agreement was in place under which UNIDROIT was able to retain intellectual control without having to use its resources in actual production. This agreement, accordingly, had allowed the Secretariat to reorganise its staffing and to use more resources on implementation of the Work Programme.

12. The Secretary-General then mentioned the Library's work, emphasising that it was an important activity mandated by the UNIDROIT Statute and was, in many respects, UNIDROIT's business card. He noted that many research scholars had studied in the Library and stressed that it was a significant stop on many scholars' routes during their trips to Europe. He further noted that it would not be of such importance without the Library staff's efforts.

13. The Secretary-General concluded by stating that UNIDROIT's resources were thin, but that the work achieved, as well as its quality, was very significant. In this regard, he recognised that this high level of work was in many ways attributable to the outstanding experts from various countries who participated in UNIDROIT's work.

14. *Mr Hartkamp, First Vice-President of the Governing Council*, congratulated the Secretariat for the tremendous amount of work done since the last meeting. He expressed his belief that there was a kind of new élan at the Secretariat thanks to financial restructuring and new staff members. He

stated that, in all respects, UNIDROIT was on the right track and thanked, in particular, the President and the Secretary-General in this regard.

15. The *President* stated that he was also proud of the Institute's work. He further stated that the Secretariat worked so well thanks to the Secretary-General's dedication and competence, as well as the staff's efforts, including those members who had recently arrived. Despite the scarcity of resources, the Institute's future was very bright.

16. *Mr Kotzé* echoed Mr Hartkamp's congratulations and thanked the Secretariat for reflecting South Africa's new depositary library in the Annual Report. He then asked whether it would be possible also to reflect in the Annual Report the agreement of 20 October 2014 between UNIDROIT and the Research Centre for Private International Law in Emerging Countries at the University of Johannesburg's Faculty of Law.

17. The *President* responded that that agreement would be added to the Annual Report.

18. *The Governing Council took note of the Secretary-General's report on the activity of the Institute during 2014.*

(b) Report on the UNIDROIT Foundation

19. *Mr Jeffrey Wool, President of the UNIDROIT Foundation (formerly the Uniform Law Foundation)* recalled that the Foundation's core mission was to strengthen UNIDROIT as a centre of excellence in the development of uniform law without duplicating UNIDROIT's work and to support UNIDROIT's finances as much as possible. He further recalled that, as a matter of direction, the Foundation would link its efforts to raise funds to content much more closely than had been done in the past both to enhance fundraising prospects and to inject UNIDROIT into areas that were supportive and complementary of its core function. He described, as an example of this approach, the Foundation's efforts in financing economic assessments of UNIDROIT's projects. He further described how there was a need for such assessments of the economic benefits in connection with law reform, as historically some projects were supported only by anecdotes and conceptual thinking. He then reported that a joint project between the UNIDROIT Foundation and the Commercial Law Centre at Harris Manchester College at the University of Oxford had been agreed to prepare a major research paper and hold a seminar on economic assessment and that the project's first year would be funded by the Aviation Working Group. He hoped that this project would mark an initial undertaking in economic analysis, which would support international law reform and underscore the importance of such work to international funders.

20. Mr Wool noted that another project had been put in place to research best practices for electronic registries and stated that such registries were an important part of many law reform projects, such as those in the Cape Town Convention system. This project would consider systematically international standards and guidelines for liability and cybersecurity, for which there was a great need. He further noted that Aviareto, the joint venture between the Société Internationale de Télécommunications Aéronautiques (SITA) and the Irish Government which served as the International Registry for aircraft objects, had agreed to fund this project for three years, which would also be a joint project between the UNIDROIT Foundation and Harris Manchester College at the University of Oxford.

21. Mr Wool then stated that the fundraising efforts, as well as a contribution from the American arm of the Foundation, had resulted in a conditional commitment of an additional 200,000 USD of funds, based on progress on those projects. He said that these substantive research projects would support UNIDROIT's work, as well as raise more awareness of it and thus promote fundraising. Lastly, he noted that the Board of Governors had held its annual meeting the day prior and had agreed to other complementary projects, including efforts to support the work on the protection of cultural property by proposing the creation of an international electronic information network to serve as a

central point linking various centres and initiatives and the work on agricultural law reform and contract farming by looking into a possible economic assessment study in that area.

22. The *Secretary-General* recalled that the Governing Council had agreed at its 93rd session to allow the Foundation to use the title of UNIDROIT Foundation, as it formerly had been known as the Uniform Law Foundation. He further recalled that the Foundation was an initiative of a former President of UNIDROIT, Mr Luigi Ferrari Bravo, and a former Governing Council member, Sir Roy Goode, as well as Mr Hartkamp. The Foundation was set up as a private institution to raise funds to support UNIDROIT's work and, in its initial years, it had focused primarily on funding the UNILAW database's development and the UNIDROIT Scholarship Programme. Since the discontinuation of the UNILAW database project, the funds had been mostly redirected to scholarships and support of the Library. The funds were largely royalties from sales of the Official Commentaries to the Cape Town Convention and its Protocols, which were owned by Sir Roy Goode, who donated those royalties to the Foundation. Additional funds raised by the Foundation resulted from conferences and other activities, in particular those organised to promote ratification of the Cape Town Convention and Aircraft Protocol by the Aviation Working Group, for which Mr Wool served as the Secretary-General. In recent years, Aviareto had also ordered a large number of copies of the Official Commentary for their purposes and those purchases, in turn, supported the Foundation via the donation of those sales royalties by Sir Roy Goode to the Foundation.

23. The Secretary-General then explained that the Board of Governors had agreed, different from previous years, to raise funds to support two specific research topics, which would be complementary to UNIDROIT's work. First, he discussed the project to research and develop a methodology for economic impact assessments of uniform law instruments. He stated that, from his two decades of experience as an international civil servant dedicated to uniform law, demonstrating economic benefit to States potentially interested in uniform law treaties or projects was of the utmost importance. Such a demonstration, however, had been difficult because there was no methodology in place to guide the necessary economic assessments. He further stated that he was looking forward to the results of this project and had volunteered to be a part of the board overseeing the research. Second, he discussed the project on issues related to the functioning of electronic registries, in particular liability and other issues that might arise. Liabilities of international registries had long been considered as an area for potential harmonisation and this project would be of enormous relevance for all of the registries established under the Protocols to the Cape Town Convention. He mentioned that these projects would be undertaken with the usual assurances of academic and scientific independence. The Secretary-General then referenced the third project that Mr Wool had mentioned regarding support for UNIDROIT's work on cultural property, including the possible development of a network platform to contain and disseminate information on the protection of such property.

24. The Secretary-General thanked Mr Wool for his work and his new perspective in developing the Foundation and pointed out that document A.G. (73) 2, which was from the 73rd session of the General Assembly and available on UNIDROIT's website, provided detailed information on all of the donations received by UNIDROIT and how they were used. He noted that such information made clear that the UNIDROIT Scholarship Programme would not be possible without the substantial support of the UNIDROIT Foundation and he was pleased to know that such support would continue in the future. Lastly, he stated that the relationship between UNIDROIT and the UNIDROIT Foundation would remain one of mutual support, but also of political and substantive independence, as the Governing Council would continue to decide UNIDROIT's Work Programme and the Foundation would support certain activities, in particular non-legislative activities.

25. *Mr Wool* brought to the Governing Council's attention that Article 13(6) of the Statute of the Foundation needed to be amended to meet the requirements of Dutch law and proposed that the Statute be amended to ensure that all surplus assets, in the event that the Foundation was wound up, would be routed to entities qualifying as non-for-profit institutions.

26. *Ms Sabo, the representative of Canada*, stated that she was greatly interested in the two projects, in particular the one focused on international registries. She inquired about the extent to which that project would look to the substantial work that had already been done at the United Nations Commission on International Trade Law (UNCITRAL) in the context of its work on domestic secured transactions regimes and related registries and asked for assurance that the project would not be reinventing the wheel. Lastly, she stated that Canada would likely be very interested in the possible project on the protection of cultural property.

27. *Mr Wool* stated that the work at UNCITRAL on registries would be the starting point for the project as the Oxford researcher would begin by reviewing everything completed thus far. He noted that the structure of the project would be a research paper and then a seminar, to which UNCITRAL would be invited. He further noted that both of the projects went beyond the Cape Town Convention system as many legal regimes were now incorporating registries and related concepts into various areas. He then stated that experience with the Cape Town Convention system had made clear that research in this area was necessary and had the potential to offer significant benefits.

28. *The Governing Council took note of the report by the President of the UNIDROIT Foundation.*

29. *The Governing Council took note of the proposed amendment to Article 13(6) of the Statute of the Foundation so as to meet the requirements of Dutch law concerning the destination of surplus assets of wound-up non-for-profit institutions.*

Item 4 on the agenda: Private law and agricultural development – Adoption of a Legal Guide on Contract Farming (C.D. (94) 3)

30. The *President* introduced the project and noted that it was developed in partnership with the *Food and Agricultural Organization of the United Nations* (FAO) and the *International Fund for Agricultural Development* (IFAD). The *President* further noted that from both legal practitioner and scholarly perspectives, the *Legal Guide on Contract Farming* (the *Guide*) had two intrinsic features. First, he recognised the wisdom of UNIDROIT's strategic choice in getting involved in the field of agricultural development. Unlike international trade, agriculture had had a history characterised by a dependence on localism. He stated that this was no longer the case. Sustainable development, social justice and empowerment of the weakest sections of rural populations could not occur at the pace required unless there was an increase in adequate investment on equitable terms in developing countries. He further stated that a uniform, harmonised legal framework would assist in increasing investment in agricultural projects in developing countries. He said that UNIDROIT had an important role to play in the development of agricultural law from a global perspective, and hoped that the success in this project would allow UNIDROIT to become further involved in agricultural development projects, in partnership with FAO and IFAD.

31. Second, the *President* noted the outstanding quality of the resulting product and his belief that the *Guide* would be successful in achieving its aims. He thanked the *Secretary-General* for his vision and passionate work, which directly contributed to the high legal and practical quality of the *Guide*. He then noted that the contents were debated and drafted by organisations and individuals with significant practical experience in the contract farming field. Although the *Guide* was drafted by lawyers, the collaborative approach to developing the *Guide* had prevented the 'ivory tower' effect. He stated that the purpose of the *Guide* was not to replace local law, but to act as a counterbalancing effect in promoting freedom of contract without leaving the producers defenceless against abuses of such freedom. The *President* concluded by noting his attendance at a World Bank event the previous week in Washington, where a great deal of international interest had been shown in the publication of the *Guide*.

32. *Mr Gabriel* thanked the *President* for setting the tone of the discussion. He noted that the *Guide* allowed integration of international contract and commercial issues with wider social issues and

concerns. He also noted that this project had allowed UNIDROIT to expand successfully into a new field and was an important opportunity to work with other major international organisations, a partnership which had worked exceedingly well. He differentiated the collaboration on the Guide from other UNIDROIT projects, on the basis that FAO and IFAD were full partners in developing the Guide. Mr Gabriel noted that this project had brought together diverse organisations to share resources and expertise, which allowed UNIDROIT to complete a project it would not otherwise be able to undertake and at the same time broadened UNIDROIT'S exposure to a wider legal and economic audience.

33. Mr Gabriel expressed his support for the Guide as a soft law instrument and noted that he expected the Guide would have at least as great an impact as a hard law. He noted from his experience at the global consultation events that many countries had a real need for the Guide, and many countries would look to the Guide for structuring their domestic policies and legislation. He identified non-governmental organisations as a second important group that worked in the agricultural development field who would benefit from the Guide. He emphasised that the Guide was a useful, well-structured product for parties actually entering into agricultural contract farming relationships. The Guide balanced the rights of all respective parties, a result due to the many lengthy consultations with experienced experts and practitioners throughout the development of the guide. Mr Gabriel explained that the Guide was structured like a commercial code and noted the different chapters of the Guide. He noted that the Guide had demonstrated that UNIDROIT had a large amount to offer in the agricultural development field and hoped that it would lead to further work on food security and agricultural development law. Mr Gabriel noted that it was a tremendous honour to chair the project and thanked everyone who worked on the project, with special thanks to Ms Frédérique Mestre (UNIDROIT Secretariat).

34. The *Secretary-General* thanked the President and Mr Gabriel for their initial comments. The Secretary-General noted that, when the Governing Council had first considered a report prepared by the Secretariat on possible work in the agricultural development field in 2009, the Council was initially timid in expressing support. However, the project had been hugely successful, largely due to the partnership developed with FAO and IFAD. He expressed his hope that the project would be the first in a line of projects developed in partnership with those Rome-based organisations, which would enhance the visibility of the Institute in circles where UNIDROIT had previously had little exposure. He noted that it was not for UNIDROIT to get involved in agricultural policy as such, which was why these projects would always be developed in partnership with organisations with expertise in agricultural development. He commended the closeness of the partnership and applauded the level of coordination and the continued involvement of experts from all organisations in the project. He noted that working on the project had been especially enjoyable due to the good team dynamics created by the dedicated work of Ms Mestre. He mentioned that the drafting of the various chapters of the Guide had been a collective effort of the Secretariat, with involvement from Ms Mestre, Ms Anna Veneziano, Mr M. Joachim Bonell and himself. Finally, the Secretary-General noted the extensive consultations involved in the project, which had occurred in Latin America, Asia, Africa and Europe and reached out to both the private sector and member States.

35. Ms Rugarabamu, a representative of FAO, thanked the President and members of the Governing Council for inviting FAO to attend the Council meeting. Ms Rugarabamu expressed her appreciation for the collaborative work undertaken on the project. She noted that the Guide was a particularly important development in the agricultural law field, and was a product of a fruitful relationship between UNIDROIT, FAO and IFAD. The project brought together UNIDROIT'S private law experience, IFAD'S initiatives in promoting smallholder farmers access to markets, technologies and financial services and FAO'S experience in agriculture-related legislation and its field experience in developing regulatory frameworks for contract farming. She then noted her appreciation that the project had brought together a wide variety of stakeholders which ensured the delivery of a comprehensive document. She stated that the project directly fitted into FAO'S strategic framework in adopting a multi-stakeholder approach and delivery of the project as a partnership. She further stated that the success of the project had created interest within FAO for continued collaboration with UNIDROIT on future projects.

36. *Ms Colaiacomo, the representative of IFAD*, thanked the President and members of the Governing Council for inviting IFAD to attend the Council's meeting. She noted that IFAD greatly valued the relationship built with UNIDROIT and wanted to build on it further. She stated that IFAD projects particularly focused on poor rural communities who would benefit most from the strengthening of the rule of law. She then stated that, in her 20 years' experience working in the field, the Guide team was the best team with whom she had ever worked. She expressed her hope that future work on this project would translate into something more practical. Ms Colaiacomo noted that her expectation that the Guide would be utilised to assess existing legal frameworks governing contract farming relationships in IFAD client countries in the near future.

37. *Mr Bodenham, the representative of the World Farmers Organisation (WFO)*, expressed his appreciation that WFO had been invited to participate in the Guide's creation. He noted that WFO represented farmers at a global level and that the drafting of the Guide had been an extremely important opportunity for farmers to express a view on its development, given that farmers were often the weakest link in the supply chain. He noted that WFO had participated enthusiastically in the numerous sessions held, in Europe, North America and Africa, and had provided insights drawn from their practical experience. He also noted WFO participation in the regional workshop in Buenos Aires and was looking forward to WFO promoting the guide at its upcoming General Assembly to be held in Milan in the framework of Milan Expo 2015.

38. *Ms Mestre* noted that the Guide had been prepared by a Working Group, which was comprised of experts with various backgrounds and from different organisations, as listed in paragraph 3 of the Governing Council document. She noted that the main drafters of the Guide were contract law experts and that the knowledge of agriculture came from the partner organisations. She noted that the consultation meetings were extremely useful as they had allowed the core partners to consult stakeholders from across the world, to ensure the Guide was developed in line with local needs. Further, the consultations facilitated the establishment of local networks in a field of work that was new for UNIDROIT. She noted that the reports for the consultations were available online at the UNIDROIT website. She also noted that a final reading still had yet to be undertaken to ensure the language was consistent and accurate throughout.

39. *Mr Leinonen* supported the Guide's adoption and noted that he was very happy with its quality. He congratulated Mr Gabriel, the Secretary-General, and Ms Mestre for all the work done. He noted that he had initially had reservations when the project was first discussed by the Governing Council, however it now seemed there was a lot to be gained from UNIDROIT operating in this field. He expressed that the Guide had value not only in developing countries but also for developed economies and noted that it had inspired colleagues working in contract farming in Finland. He commended the transparency and stakeholder engagement in developing the Guide and praised UNIDROIT for working in partnership with organisations outside the commercial law field. He expressed his support for the Secretariat to carry on work in the agricultural development field and develop further projects.

40. *Mr Acquaticci* welcomed the Guide's finalisation and thanked everyone involved in the project and noted that he was impressed by the wonderful outcome of the project.

41. *Ms Broka* thanked FAO, IFAD and WFO for attending the Governing Council's session, and noted that it was excellent to hear that UNIDROIT's partners had found the experience to be beneficial. She stated that she too had been initially sceptical when the project was first proposed, but was pleased that the project had continued and resulted in such a successful final product. She further stated that the successful completion of the Guide demonstrated that UNIDROIT could successfully branch out from banking and commercial areas of law. Finally, Ms Broka noted that this project had further demonstrated the value of soft law projects.

42. *Mr Kotzé* expressed his gratitude to the team involved in the project, and noted his surprise that such a huge product had been delivered in only two years. He agreed that the collaboration on

this project should be the model for future projects and also reiterated the value of soft law instruments.

43. *Mr Erdem* noted particular interest in the Guide in Turkey, as there was no special legislation that governed contract farming arrangements, and thanked all participants in the project for their efforts.

44. *Mr Tricot* congratulated participants in the project for the rapid completion of the Guide. He noted his support for the development of additional practical products that would complement the Guide, such as contractual forms and recommendations.

45. *Ms Bariatti* thanked participants in the project for their impressive achievement and stated that she was particularly pleased to see UNIDROIT collaborating with other agencies based in Rome.

46. The *Secretary-General* emphasised the significance of the Guide in relation to events which were occurring in the international community in 2015. He noted the celebrations of the anniversary of Italy joining the United Nations, but also the focus of the international community on the development agenda for the future. In this context, this project was an excellent example of how a private law tool could have a significant, positive economic and human impact in enhancing the quality of life in developing communities around the world. He stated that the Guide would assist smallholder farmers to remain on and use their land profitably so as to avoid the rural exodus that had damaged so many developing economies.

47. The *President* then invited comments on the Chapters of the Guide.

48. *Mr Kotzé* presented two proposals drafted by Mr Jan Lambert Neels, whom he represented at the session. Firstly, he suggested that Chapter 1, paragraph 3 of the Guide be redrafted from “. . . and indeed it is unlikely that they would be authorised to do so in many jurisdictions” to “and in some jurisdictions they would not even be authorised to do so.” He suggested that many legal systems allow parties to choose any legal system to apply to their contract in order to give them the opportunity to have the contract governed by a neutral, stable or sophisticated legal system or one that is familiar to both parties. He stated that this proposed change would make the language of the Guide more reflective of international best practice.

49. Secondly, Mr Kotzé also suggested that, in Chapter 1, paragraph 36, the second and third sentences could be changed to provide “these rules differ from jurisdiction to jurisdiction, but in the case of agricultural production contracts, the law of the state where the producer is situated is likely to be found applicable. The decision in this regard will often be based on the residence of the producer, the place of agreed delivery or a combination of factors indicating the closest connection with the contract or the particular obligation concerned.” Mr Kotzé sought the change because, in the law of most countries, the notion of the ‘closest connection’ was often the most significant factor in determining the applicable law.

50. *Mr Király* suggested that Chapter 1, paragraph 32 should refer not only to the UNIDROIT Principles of International Commercial Contracts, but also to the UNIDROIT Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts.

51. *Mr Tricot* congratulated the drafters on the excellent references in Chapter 2 to the UNIDROIT Principles of International Commercial Contracts. He queried whether the first part of Chapter 3 covering risk allocation should be put on a different heading level, as the risk allocation issue was relevant to the entire chapter and was unnecessarily placed under a subordinate heading level.

52. The *Secretary-General* explained that Chapter 3 was the result of the merging of different parts, one of which referred to risk allocation and had originally been included in the Introduction, but was thought to fit more appropriately in the Chapter relating to the parties’ obligations.

53. *Mr Popiolek* highlighted Chapter 7, paragraph 34 which stated “disputes under arbitration cannot be subject to a second settlement under judicial procedures.” He noted that, while this point was likely obvious for lawyers, non-legally trained parties might understand this section to mean that there was no other way to challenge, annul or repeal an arbitral award. He suggested another sentence be added to reflect the fact that practically every jurisdiction had special rules which governed the limited bases on which a party could challenge arbitral awards.

54. *Ms Sabo* noted that Chapter 7, paragraphs 37 and 38 discussed arbitration agreements and clauses and suggested that parties look closely at the drafting of arbitration clauses to ensure enforceability. She further suggested that an additional line be added to provide that the most cost-effective way of achieving that objective was to use standardised arbitration clauses.

55. *Ms Mestre* noted that the Guide would be printed and published as soon as possible, and that the members of the Governing Council would be invited to encourage and take part in the Guide’s dissemination.

56. *The Council commended the Secretariat on the work conducted on the Legal Guide and expressed its gratitude to the partners in the project, the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) for their contribution and constructive co-operation. The Council also expressed its gratitude to the Chairman and the members of the Working Group that prepared the Legal Guide, with a special note of recognition to Professors Marcel Fontaine and Fabrizio Cafaggi for their contributions above and beyond their assigned tasks.*

57. *The Governing Council approved the Guide on Contract Farming, subject to the minor suggestions made by the Governing Council members and the final editing process.*

58. *Ms Mestre* mentioned that, given the Guide’s technical and legal nature, the partner organisations would be working together to develop dissemination tools which would make the Guide more accessible to non-legally trained parties. She noted that the Secretariat and the members of the Working Group would contribute to that process.

59. *Ms Mestre* indicated that a second implementation initiative was being developed jointly between UNIDROIT, FAO and IFAD to establish, under the auspices of the World Bank Global Forum on Law, Justice, and Development (GFLJD), a Community of Practice on the use and application of the Guide. She explained that the GFLJD encouraged the research and dissemination of instruments which would promote law in economic and social development and would be a very advantageous platform for encouraging the implementation of the Guide.

60. *Ms Ambra Gobena, a representative of FAO Legal Division, reiterated that FAO viewed the Legal Guide as the beginning of a long-term partnership with UNIDROIT and that the Legal Guide was a great start to improving contract farming practice. She noted that FAO was following up on several avenues of potential additional work to be undertaken in partnership with UNIDROIT and IFAD. She stated that the preparation of a concept note for a grant proposal had been submitted to IFAD for technical activities and outreach for the Legal Guide and that the proposal had received a positive first assessment. She also stated that FAO would be proposing follow up activities as part of its regular budget, so it should also have some means to collaborate financially. Ms Gobena then noted FAO’s participation in the preliminary meetings relating to the establishment of the Community of Practice and that FAO was keen to maintain its engagement and was optimistic that it would be part of future activities.*

61. *The President* noted the flexible nature of the Community of Practice platform, and emphasised that, while it might be beneficial to consider the structures of other Communities of Practice, the World Bank did not mandate any particular rules about how Communities of Practice should operate.

62. *Ms Colaiacomo* noted that IFAD was committed to exploring opportunities to assist with implementation of the guide. She referenced the 200,000 USD initially contributed to the global assessment of current practices by stakeholders under the Legal Guide project, and further noted that a second bid for an additional 500,000 USD for implementation work was currently under consideration. She stated that the recipient of the second grant would be FAO, with UNIDROIT working in partnership and that the additional grant would *inter alia* finance the preparation of recommendations, which would then serve as a base and reference for future outreach materials. She explained that it would be beneficial for UNIDROIT to participate in an advisory board which would revise and validate materials created under the project. *Ms Colaiacomo* noted that these additional materials would be developed to make the text of the Legal Guide more easily understandable for non-specialised audiences and that context-specific materials would be developed on the basis of the analysis of regulatory frameworks in selected countries in Latin America, Eastern and Southern Africa, the Caribbean, Asia and the Pacific. She also noted that the second bid would facilitate the development of training materials to be used in field workshops and e-learning platforms and help reformulate the existing FAO web-based contract farming resource centre, which was a publicly available online centre established as a knowledge reference source for all issues related to contract farming. It would include an updated and expanded database of contract farming technical publications and sample contracts, and legal contract farming training materials. This online resource centre would link with the GFLJD Community of Practice and incorporate resources allowing for interaction with contract farming stakeholders globally. *Ms Colaiacomo* lastly noted IFAD participation in the contract farming event at the World Bank meeting in November.

63. The *Secretary-General* noted that, even though the UNIDROIT component of the additional work was relatively small as compared to the overall project, he hoped that in supporting UNIDROIT's successful entrance into the agricultural development field, the Council would allow him to allocate sufficient staffing resources for the continuing additional activities, for the most part one senior legal officer. He also noted that, as any outreach materials to which UNIDROIT might contribute would be based on the now approved Legal Guide, the Governing Council might wish to give authority to the Secretariat to proceed without the need for further approval from the Governing Council at its 95th session in 2016.

64. *The Council instructed the Secretariat to allocate sufficient resources to allow UNIDROIT to contribute to the dissemination and implementation of the Legal Guide, including the production of additional materials to assist with this process.*

65. In introducing UNIDROIT's proposed additional work in the agricultural development field (as separate from the work associated with the Legal Guide), *Ms Mestre* noted the meeting that was held in 2011 which explored a number of issues in the area of private law and agriculture. She stated that the outcome of that meeting was that UNIDROIT should prioritise the contract farming project, although the meeting specifically discussed additional work in other areas, including reform and modernisation of the land tenure system, agricultural financing and land investment contracts. As these projects were considered as secondary priorities after the contract farming project, the Secretariat had not undertaken any preliminary activities in these other areas. *Ms Mestre* indicated that now might be an appropriate time for UNIDROIT to undertake an initial study as to whether and to what extent UNIDROIT could usefully contribute to the field of land investment contracts.

66. *Ms Colaiacomo* welcomed the suggestion of UNIDROIT undertaking a preliminary study in this area, and indicated that IFAD would like to collaborate on any future product. She noted that there were many opportunities to explore in this vast field, so an initial consideration of where UNIDROIT might be able to contribute was vital to ensure any future project did not negatively impinge on existing projects. She also noted that IFAD would be interested in testing the recently adopted Responsible Investment in Agriculture (RAI) principles and looking at additional work building on them.

67. *Ms Gobena* welcomed the opportunity to continue its close collaboration with the partner organisations and asked partners to move forward on new projects. She specifically noted that land investment contracts might be an area of potential additional work. She further noted that FAO had led a lot of projects in this area and had developed several technical guides, including one aimed at governments, one tailored to the private sector and one for legal service providers. Ms Gobena noted that these projects were linked to the work of FAO's Committee on World Food Security.

68. *The Council instructed the Secretariat to undertake a stocktaking exercise and feasibility study on land investment contracts, in order to decide whether UNIDROIT's particular expertise would be of additional benefit in this field.*

Item 5 on the agenda: International Commercial Contracts – Long-term contracts
(C.D. (94) 4)

69. Introducing this item on the agenda, *Mr Bonell* (Consultant, UNIDROIT) recalled that a memorandum had been submitted to the Governing Council for its consideration at its last session, which had contained a comprehensive survey of the specific issues that might be addressed in the envisaged work on long-term contracts in the context of the UNIDROIT Principles of International Commercial Contracts. He noted that, on the basis of the memorandum, the Council had instructed the Secretariat to establish a restricted Working Group of experts to formulate proposals for possible amendments and additions to the blackletter rules and comments of the 2010 UNIDROIT Principles to address the special needs of long-term contracts. The Working Group was set up with eight members, some of whom had worked on prior versions of the Principles while others were new experts, including Mr Paul-A. Gelinas, Sir Vivian Ramsey, and Mr Christopher Seppälä. The Working Group's first session was held from 19 to 23 January 2015 and Mr Bonell referred the Council to the Report for that session (UNIDROIT 2015 – Study L – Misc. 31 Rev.), which contained in Annex I a list of participants, including members of the Working Group and a number of observers from other organisations and entities.

70. Mr Bonell then stated that, at its first session, the Working Group had considered a position paper (UNIDROIT 2014 – Study L – Doc. 126) and, after careful examination, had decided to focus on nine specific issues which were listed in the document before the Council (C.D. (94) 4). He noted that there were relatively few changes envisaged to the blackletter rules of the current edition of the Principles. He further noted that some, however, were significant, in particular those related to the definition of long-term contracts and to termination of long-term contracts for compelling reasons. He stated that most changes involved amendments or additions to the comments. He said that the work was challenging, but once completed would undoubtedly enhance the importance of the Principles and bring them in line with modern contract law.

71. Regarding the working method and schedule, Mr Bonell stated that the members of the Working Group had divided among themselves the work to be done and that those responsible for providing initial drafts on particular topics were identified in the document before the Council. He further stated that these drafts would be reviewed during the Working Group's second session at which time the proposed amendments to the blackletter rules and comments should be finalised in order for them to be submitted to the Governing Council for final consideration and approval at its next session. Lastly, he noted that the second session would kindly be hosted from 26 to 29 October 2015 at the Max Planck Institute for Comparative and International Private Law in Hamburg.

72. *Mr Acquaticci* expressed Germany's great appreciation for this project as it would close a gap in the UNIDROIT Principles regarding long-term contracts. He recognised the efforts of Mr Bonell, as well as Mr Reinhard Zimmermann of the Max Planck Institute. He stated that Germany also appreciated that the Working Group would conclude its work during autumn, so that it would be available for the Governing Council's next session.

73. The *President* expressed UNIDROIT's gratitude to Germany for the support that it had given to this project and for the kind invitation of the Max Planck Institute.

74. *Mr Bobei* expressed appreciation for the work completed and inquired about the section of document C.D. (94) 4 regarding cooperation between the parties, as well as Article 6.1.11 of the Principles concerning costs of performance. In referring to the portion of the comment addressing tax burdens and reimbursement, he stated that the philosophy behind Article 6.1.11 did not appear to be related to long-term contracts and he asked whether it was possible, taking into account the particularities of long-term contracts, to stipulate a provision providing that the costs of performance of a party might be shared with the other one. He noted that he had served as an arbitrator in an energy dispute where the public authorities enacted a law establishing a tax which was to be paid by the energy producer, but allowed the producer paying the tax to invoice such tax to its partner. He further noted that the partner had stated, however, that it did not have a contract with the energy producer, so it would not bear any of the tax burden. Although the UNIDROIT Principles did not apply to the merits of the contract, he noted that it had seemed appropriate to consider the Principles as soft law and, in particular, Article 6.1.11. He said that, in the context of long-term contracts, an arbitrator's mission was to invite the parties to cooperate during the performance of the contract and that it did not seem very equitable, even if it was not an arbitration in equity, to oblige one party, in these circumstances, to bear the entire tax.

75. *Mr Bonell* stated that this inquiry brought the Governing Council to the core of the envisaged new comments on cooperation in long-term contracts. He then stated that, whatever a contract would provide regarding payment of taxes related to one party's performance and possible reimbursement of these taxes by the other party, the most important question was whether the other party was informed of those tax rules enacted by the local public authorities. In this case, he noted that the first party, resident in that taxing country, would be under an implied duty to inform the other party of those tax rules. He further noted that, if that first party failed to do so, then it might not have fulfilled its duty of cooperation and a question of liability might arise for that failure.

76. *Ms Bariatti* noted that the Working Group had adopted an article by article approach and inquired whether this approach would mean that the rules on long-term contracts would be scattered throughout the Principles instead of in a section dedicated to them. She further inquired whether there would be an introductory commentary identifying the new provisions and providing guidance on them.

77. The *Secretary-General* recalled that the Governing Council had been presented with two options, either preparing an addendum on long-term contracts or conducting a thorough article by article review of the Principles to identify where the current articles and comments might not fit long-term contracts and to modify them. He further recalled that he had strongly advocated for the latter approach because he thought that an addendum would eventually damage the Principles' authority and reputation and that it was better to incorporate any modifications into the body of the Principles. He said that the Working Group had done a very good job thus far using the article by article approach and that, when the new edition of the Principles came out, it would include a portion addressing what amendments had been made, including the new remedy provision regarding termination for long-term contracts for compelling reasons.

78. *Mr Bonell* noted that the Working Group had unanimously favoured the inclusion of references to all the changes made, both with respect to blackletter rules and to the commentary. He further noted that it was likely that a definition of long-term contracts would be proposed for the Governing Council's consideration and that, in such an introductory section, a reader might find it useful to have references not only to the new changes, but also to existing provisions relating to long-term contracts.

79. *Mr Komarov* stated that the UNIDROIT Principles were well-known in Russia and were applied not only in international arbitration, but also by local courts. He further stated that the Principles were

important in the process of reforming Russian civil law and that UNIDROIT's work in further developing the Principles was greatly appreciated. He stressed the Principles' high educational value as they had helped judges, lawyers and businesspeople to understand better different approaches and solutions to contracting, as well as to private law rules in general, and could play an important role for countries in transition.

80. *Mr Bonell* noted that, during the prior year, he had attended a remarkable event in Moscow for the presentation of the Russian translation of the latest edition of the UNIDROIT Principles. He said that it was a full day event that included extremely stimulating discussions and a very large audience of primarily young and smart lawyers from Russia and neighbouring countries. He then noted that, as far as the UNIDROIT Principles' role in Russian case law, two dozen Russian court decisions, mainly concerned with domestic cases referring to the UNIDROIT Principles, had recently been collected.

81. *Mr Hartkamp* noted that he was, in general, favourable towards this project and pleased that it would result in a new edition of the Principles, including some new blackletter text and comment modifications. He then noted, however, that he had some hesitations concerning the proposed article on termination for compelling reasons, which was addressed in section H of document C.D. (94) 4. He said that, when this article was compared to the articles on hardship, there were a lot of differences. For hardship, he noted that it was dealt with in multiple articles, which covered the circumstances giving rise to hardship, the way the remedy functioned, an obligation to renegotiate, and an appeal to the court or arbitrator who might then modify or, ultimately, terminate the contract. The new provision for termination for compelling reasons, however, did not provide such detail, but basically contained the concepts of reasonableness and fairness. He said that his apprehension was that confusion could arise because, if the articles on hardship were not there, the same result might be reached under the new provision. He further said that problems of concurrence might arise between these articles, including hardship and impossibility, and inquired whether guidance on such concurrence would be required. He reflected that, having spent half of his life working on legislation, he had learned that it was essential to be as economical as possible as far as the number of articles and concepts in a particular law. In this regard, he noted that the Dutch Code had addressed this problem through inclusion of only one article in the Code, which was distinct from non-performance and impossibility and dealt with unforeseen circumstances sufficient to require adaptation or termination of the contract, thereby covering compelling reasons, hardship, and other issues. He further noted that the German Code contained an article on termination for compelling reasons, but that he did not know of many others. He then inquired whether the Working Group had considered the possibility of merging termination for compelling reasons with hardship and, if so, why that solution had not been chosen. He concluded by stating that he was not flatly against this possible provision but that he wanted to be convinced that the inclusion of this new article would not push some users away from the Principles.

82. *Mr Bonell* stated that this issue had been very carefully considered and that the envisaged outcome was for one or more provisions on this new remedy of termination of long-term contracts for compelling reasons. Regarding whether one broad provision similar to that found in the Dutch Code would be sufficient, he stated that while that solution worked for a particular domestic legal system with a sophisticated judiciary such as that in the Netherlands, the Principles were rules to be applied worldwide. He further stated that termination for compelling reasons was found not only in the German Code, but also in the new draft of the Swiss Code. Regarding possible conflicts and confusion with other remedies, particularly hardship, he said that certain fact situations might give rise to multiple remedies, including force majeure as well, but that in all other respects the various provisions were completely different. He explained that, for example, hardship meant providing a remedy in a difficult situation that would keep the contract alive by focusing on renegotiation and possibly adaptation and that a main objective was to avoid termination. He further explained that termination for compelling reasons went in the opposite direction, reaching a point where the parties could not go forward with their contractual relationship because it no longer worked. He noted that the language proposed thus far was very stringent, stating in part "having regard to all the circumstances of the specific case and balancing the interests of both parties, it would be manifestly

unreasonable to expect the terminating party to continue the relationship.” He then referred to a decision of Judge Paul Finn of the Federal Court of Australia, who had noted in a case concerning a distributor agreement that had broken down over the years that such a remedy was very much needed in the context of long-contracts. Lastly, he noted that a further draft on this issue was to be developed by two expert rapporteurs, Sir Vivian Ramsey and Mr Zimmermann, from common law and civil law backgrounds respectively.

83. *Mr Tricot* began by noting that France was in the course of introducing hardship provisions into its Civil Code, thereby moving away from an important 19th Century ruling stating that a change of economic circumstances did not allow for the possibility of terminating a contract. He further noted that the UNIDROIT Principles had inspired this change. He stated that, regarding long-term contracts, he approved of the decision not to have an addendum on this topic but to place these amendments directly into a new fourth edition of the Principles. He further stated that he awaited a clearer definition of the term ‘long-term contract’ and that there were other specifications that needed to be made in line with 21st Century conditions, including with respect to contracts with open terms and successive contracts. He expressed his hope that, if there were additional specifications required, the experts would take advantage of this opportunity to explore them further, such as those arising from contracts with open terms and, in connection with that, agreements to negotiate in good faith. He then inquired whether there were more specific good faith requirements in long-term contracts and noted that, in addition to the provisions on good faith, other provisions dealing with supervening events, cooperation between the parties, and post-contractual obligations, could also apply to long-term contracts. Lastly, he expressed hesitation regarding termination for compelling reasons, stating that it was unclear why the Principles should permit a party, independent of hardship, force majeure, or non-performance of an essential condition, to terminate a long-term contract for such reasons. He further expressed that this proposal seemed to create more uncertainty than certainty in the Principles.

84. *Mr Bonell* stated that the remedy of termination for compelling reasons went beyond termination for non-performance and force majeure because it addressed situations where, in the context of a long-term contract, one party, possibly without any fault, disturbed the other party to the point that performance was no longer possible. In such situations, the facts would not constitute fundamental non-performance, nor an impediment sufficient for force majeure. These facts could arise, for example, in distributorships, agency relationships, or joint ventures. Regarding hardship, the effects were opposite because a party would invoke hardship not to terminate the contract, but to readjust it and go on with the relationship. Lastly, he stated that even French law, by introducing hardship provisions, had come to the point of acknowledging that the classical conception of *imprévision* was no longer meeting the needs of commercial contracts.

85. *Mr Tricot* stated that judges knew very well how, on the basis of fundamental non-performance, to sanction a series of even moderate non-performances which, taken together, demonstrated that there was a party that did not want to play the game and would therefore terminate the contract.

86. *Mr Moreno-Rodriguez* referred to the Hague Principles on Choice of Law in International Commercial Contracts and noted that UNIDROIT had been represented at their negotiation by Mr Bonell, who made important contributions on various topics, in particular on recognition of non-State law as an option for the parties to select if they would so desire. He further noted that Paraguay had recently enacted a law on international commercial contracts drawing upon the Hague Principles and that it was the first law in the world to recognise the validity of the selection of non-State law without the necessity of having an arbitration clause. He expressed his hope that other countries would follow suit as the Hague Principles promised to increase awareness and use of the UNIDROIT Principles. He said that Latin American countries were interested in the Working Group’s high-quality work on long-term contracts, which was to be encouraged. He also expressed his appreciation to the Secretary-General for his strong support to the American Association of Private International Law (ASADIP), which was comprised of leading jurists of private international law and uniform law in the Americas

and was recognised as an Observer at UNCITRAL, the Hague Conference of Private International Law (the Hague Conference), and the Organization of American States. In particular, he mentioned the Secretary-General's participation as a speaker in ASADIP's annual conference, which included a presentation on the UNIDROIT Principles and thus raised awareness in the region.

87. *Mr Wilkins* stated that the Principles were one of UNIDROIT's key achievements and that it was thus important to be careful about what was done to them. He noted that, like Mr Tricot, he had reservations regarding the remedy of termination for compelling reasons and that some courts in Australia had taken this issue too far, creating uncertainty and depriving parties of autonomy in contract. He then inquired how, as a practical matter, parties could nominate the UNIDROIT Principles to apply in their contracts and whether it would be clear for parties how to exclude certain provisions, such as the possible provision on termination for compelling reasons.

88. *Mr Bonell* stated that a new edition of the UNIDROIT Principles was envisioned and that, as such, parties might refer to them as the rules governing the contract irrespective of whether the contract is an ordinary exchange contract or a long-term one. Regarding the concern about excluding specific provisions, he noted that parties were absolutely free to do so according to the Principles themselves. In this regard, he further noted that, if there was something new that was not wanted, it would not be, as currently envisaged, of mandatory application, so the parties would be free to exclude the remedy's application altogether or indicate in their contract limited instances that would qualify for such a remedy.

89. *Ms Pauknerová* stated that she was pleased that the decision had been made to incorporate the new content on long-term contracts into a new edition of the Principles instead of an addendum. She said that a single set of rules was preferred by lawyers and that it would of course be possible to contract out of certain provisions. She then remarked that the current Principles were to a certain extent reflected in the new Czech Civil Code. Lastly, she inquired about the relationship between the Principles' potential provisions on long-term contracts and contract templates prepared by the International Federation of Consulting Engineers (FIDIC) and stressed that that relationship should be clearly defined.

90. *Mr Bonell* stated that FIDIC contract templates, as such, were akin to standard terms prepared by a single organisation to address particular issues in a given field that parties might adopt for their specific contract. The UNIDROIT Principles, however, were more of a general part of contract law, so the two could easily coexist. He stated that, for example, parties could incorporate the FIDIC template into their contract and then resort to the UNIDROIT Principles to fill any gaps. He further stated that, if there was overlap, then FIDIC in that example would be the *lex specialis* and thus prevail over the Principles.

91. *Mr Király* noted that many important proposals and provisions regarding long-term contracts were included in the work completed thus far. Regarding the notion of long-term contracts and the proposal reflected in section A of document C.D. (94) 4, he said that he welcomed the proposed modification of Comment 1 to Article 7.3.6 to make reference to long-term contracts and to abandon the reference to turn-key contracts as contracts to be performed at one time. He further said that this modification was a very reasonable development because, behind turn-key contracts, there was long-term cooperation, renegotiation was sometimes needed between the parties, and the relationship might last for years. Regarding the debate on termination for compelling reasons, he remarked that he was persuaded by the documents and views presented that such a provision was needed because this special problem of divorce in long-term commercial relationships was not properly addressed by existing provisions.

92. The *Secretary-General* noted that the Report would faithfully reflect the debate and indicate that the Working Group was requested to look into the issue of termination for compelling reasons again and to try to find a way to clarify, as Mr Hartkamp had suggested, the relationship between this new remedy and other remedies. He proposed that a possible solution could be to insert into the

proposed new rule on termination for compelling reasons after “balancing the interest of both parties” the language “and for reasons other than” and then to cross-reference those other remedy provisions before picking up with “it would be manifestly unreasonable” and the remainder of the proposed language. He then noted that it might be that the Working Group would respond by stating that it had considered this proposal, that it believed that sometimes there were the same circumstances, and that it could be artificial to force parties to go through the negotiation process envisaged by the hardship provisions if they were to know in advance that they would not agree because the nature of their relationship had become so sour over the years. He stated that the Report would reflect the Governing Council’s invitation to the Working Group to consider this issue further.

93. *Mr Bonell* recalled that there were many possibilities of causes for termination for compelling reasons which had so far not been mentioned. He then referred, as an example, to the case of a contractual joint venture which had proceeded smoothly until one of the corporations involved was taken over by a competitor. He stated that, at that point, there would be no remedy to help the other parties to the joint venture to end immediately the relationship because of the takeover by the competitor. He further stated that, in his view, this case would be an appropriate one for termination for compelling reasons.

94. The *President* stated that he had considered that termination for compelling reasons posed a problem of what remedy was to be provided in this respect. He suggested that it was necessary to find a middle of the road solution between the remedy in cases of fault, which meant that the entire responsibility for the breach fell upon one party, and the remedy in cases of force majeure, which allocated the risk to the creditor. He noted that, in his view, termination for compelling reasons was a perfect opportunity for the middle of the road standard of equitable indemnity to be used, such as in cases of necessity where there would be a sharing of the costs. He said that it would be inappropriate to have one party bear all of the costs, particularly in cases of termination for compelling reasons, because it was not based on fault. He further said that there was a hint of this equitable apportionment in the Report of the Working Group’s first session and that it was a very important point.

95. *Mr Meier* stated that, if it was not possible to finalise the proposed amendments and additions at the second meeting in Hamburg, then a third meeting could potentially be held, in coordination with Ms Chappuis, a member of the Working Group, at the University of Geneva.

96. The *Secretary-General* expressed his appreciation to Mr Meier for his suggestion. He then drew the attention of the Governing Council to the Working Group’s mandate, which called for the submission of the proposed amendments and additions to the Council for consideration at its next session. He stated that the Secretariat would be very grateful to discuss with Ms Chappuis and the University of Geneva the possibility of organising events in Geneva to promote and disseminate the envisaged new version of the Principles.

97. *The Council expressed its appreciation for the progress made by the Working Group during its first session in January 2015. The Council noted the scheduling of the second Working Group meeting in October 2015 and requested the Working Group to finalise the proposed amendments and additions to the Principles at that meeting, with a view to their submission to the Council for consideration and approval at its 95th session in 2016.*

Item 6 on the agenda: International Interests in Mobile Equipment

(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (94) 5(a))

98. The *Deputy Secretary-General of UNIDROIT, Ms Anna Veneziano*, introduced this item on the Agenda. Regarding the Luxembourg Rail Protocol, she stated that it was a momentous year and that

the time to push for ratification had come. She highlighted that, in July 2014, the Preparatory Commission's appointed negotiation team had reached agreement with SITA on the International Registry contract and related services agreement, which were approved at the following session of the Preparatory Commission. The Registry contract, as a whole, was signed by the Secretary-General, as a representative for the Preparatory Commission and the new Registrar, Regulis SA. As a result, the Registrar was now in place and steps were underway to get the Registry up and running. She then said that the Preparatory Commission had also approved the baseline Regulations for the Registry, subject to updates, and that the European Union had approved the Protocol, which meant that the door was now open for EU member States to ratify or accede to the Protocol.

99. The Deputy Secretary-General then stated that a Ratification Task Force had been established to raise awareness of the Protocol's importance for financing railway rolling stock and to seek ratifications and accessions. The task force included the Preparatory Commission's co-chairs, Finland and the United States of America, Luxembourg, UNIDROIT, the Intergovernmental Organisation for International Carriage by Rail (OTIF), and the Rail Working Group. She further stated that the task force was working under a tight schedule, meeting frequently and mostly via teleconference to set priorities and to work on materials, such as economic assessment documents. She noted that the task force was an open group if there would be any interest among members in participating. She further noted that there had been informal discussions with the Organisation for Economic Co-operation and Development (OECD) regarding financing practices and whether a Cape Town Convention discount would be an important tool in this sector for lowering the cost of credit.

100. Regarding the Space Protocol, she stated that the Preparatory Commission had held its latest meeting in September 2014, at which nearly final Regulations for the International Registry were achieved, with the exception of the issue of identification of parts for satellites, thanks to the efforts of Sir Roy Goode and a former Deputy Secretary-General of UNIDROIT, Mr Martin Stanford. She explained that a consultation procedure had been used, whereby an agreed draft text was circulated along with a questionnaire concerning identification issues to different branches of the industry. Recognising that there were an array of interests that were not necessarily converging, she reported that the consultation effort had reached out to the full array of stakeholders and had received a significant number of responses, which were listed in document C.D. (94) 5(a). Based on those responses, Sir Roy Goode had drafted a paper setting out proposed modifications to the draft Regulations as a basis for the Preparatory Commission's consideration and for moving forward. She then noted that some member States of the International Telecommunication Union (ITU) had supported the role of ITU as the Supervisory Authority, but no decision had been taken on this issue and thus it remained an open question.

101. She then briefly discussed promotional events held since the last Council session. She pointed out that the Rail and Space Protocols were considered at a session devoted to the Cape Town Convention system at the International Congress of Comparative Law, which included reports from 22 different countries. She also pointed out that the German Ministry of Justice had organised in Berlin an event on the Rail Protocol which was attended by the Secretary-General of UNIDROIT and the Secretary-General of OTIF and that another important event was held at the University of Macau, at which the President, the Secretary-General and former Deputy Secretary-General Stanford had participated. Regarding the latter event, she noted that the Official Commentary on the Rail Protocol had been published in Chinese and had already sold more than 600 copies.

102. *Mr Acquaticci* stated that, regarding the Rail Protocol, Germany welcomed the conclusion of the negotiations with SITA and the efforts of the Rail Working Group, UNIDROIT, and other in pushing for ratifications as four more were needed for the Protocol to enter into force. He then stated that the Space Protocol had particular importance for Germany as it would bring great advantages for the industry on the financing of satellites and the diplomatic Conference had been hosted in Berlin. He noted the Space Preparatory Commission's progress, including on the nearly final Regulations and on the search for a Registrar, and expressed that Germany would continue to support the Commission's work.

103. *Mr Kotzé* expressed South Africa's gratitude for the progress made.

104. *Ms Pauknerová* stated that it was now time to persuade important stakeholders in the rail industry, including in the Czech Republic, and inquired about the main reasons for ratification. She also inquired about the extent to which ratification of the Rail Protocol was connected to the Cape Town Convention and its other Protocols.

105. The *Secretary-General* noted that ratification of the Cape Town Convention went together with the ratification of at least one Protocol because the Convention would not enter into force in a Contracting State unless that State had also ratified one Protocol as the registries were Protocol-specific. He then stated that it was possible to go on for a long time regarding the potential economic benefits of the Cape Town Convention, which were not exactly the same between the rail and aviation industries. He further stated that, in the rail industry, more private financing was expected in the future as the industry had traditionally benefited from public funding. He suggested that an informational meeting could be organised in the Czech Republic or that the economic impact study being developed by the Rail Working Group could be disseminated there.

106. *Mr Leinonen* stated that Finland would, in all likelihood, eventually ratify the Cape Town Convention and the Aircraft Protocol, as well as seriously contemplate ratification of the Rail Protocol. He then inquired whether it was possible for the required number of ratifications to be achieved and for the Rail Protocol to come into force prior to getting the International Registry up and running and, if so, whether there were any risks in this regard.

107. The *Deputy Secretary-General* noted that there was both the number of ratifications necessary for the Protocol to enter into force and the number necessary for being able to maintain a viable Registry. She further noted that this latter issue had been addressed in the Registry contract, which included a schedule of activities and objectives that would need to be reached in order for the Registry to start working. She stated that the Ratification Task Force would ensure that these steps were taken.

108. The *Secretary-General* stated that a provision of the Registry contract contemplated that the Preparatory Commission, in consultation with the Registrar, would establish a start date for the Registry on the basis of a market assessment of the likelihood of the Registry being sustainable at that time.

109. *Ms Shi* congratulated the exciting progress made in this area and acknowledged the importance of promoting UNIDROIT's instruments in China, which was the largest emerging market and home to many rapidly expanding industries. She appreciated that the purchases in China of the Official Commentary to the Rail Protocol had been mentioned, but noted that there was potential for much more growth in that regard. She further noted the importance of cooperation between UNIDROIT and the Chinese Government, as the Ministry of Commerce was well placed to promote UNIDROIT instruments to Chinese industries. She suggested co-organising a conference in China to show the importance of these instruments to Chinese stakeholders and stated that both her university and law school would be interested in assisting with such an event.

110. The *Secretary-General* recognised the importance of promotional activities in China. He thanked the Chinese Government for its support on the Space Protocol as China had been one of the most active delegations at the diplomatic Conference and had participated in the work of the Preparatory Commission.

111. The *President* stated that he had been teaching in China and that he was very much interested in promoting UNIDROIT in China.

112. *The Council expressed its appreciation for the progress made in the establishment of an International Registry for the Luxembourg Rail Protocol and for the negotiations conducted by the Space Preparatory Commission for the setting up of an International Registry for the Space Protocol.*

(b) Fourth Protocol of the Cape Town Convention on matters specific to mining, agricultural and construction equipment (C.D. (94) 5(b))

113. *Mr William Brydie-Watson* (UNIDROIT Secretariat) introduced the item and noted that the last 12 months had been a very productive period in developing a future fourth Protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment (fourth Protocol). He noted that the future fourth Protocol had been on UNIDROIT'S Work Programme since the Governing Council's 84th session in 2005, and the rationale behind it was two-fold: (1) to give those engaged in agriculture, construction and mining, especially in the developing world, the ability to acquire equipment they would otherwise not be able to acquire and thus to permit them to optimise their activity; and (2) the desire of producers of equipment to export to markets that without such a protocol would remain closed to them.

114. *Mr Brydie-Watson* noted three points regarding the historical development of the project. First, he highlighted that, consistent with the development of the previous Protocols to the Cape Town Convention, the future fourth Protocol was being developed in the closest possible collaboration with the private sector stakeholders who were producing, using and financing the equipment. In particular, he noted domestic private sector consultations in the United States of America and Germany in 2010, the Agricultural Investment Colloquium hosted in Rome in 2011 and the Washington Issues Dialogues held in November 2013 and January 2014. Through these consultations, and additional consultations conducted by the National Law Center for Inter-American Free Trade, consultations with various elements of the private sector had been held in 19 countries across 6 continents.

115. *Mr Brydie-Watson* noted the establishment in February 2015 of the Working Group to the future fourth Protocol, which would facilitate, coordinate and represent private stakeholder interests in the Protocol. It was noted that the Working Group was led by *Mr Philip de Leon* (an expert working in the agricultural machinery field), and *Mr Phillip Durham* (an expert in secured interests in mobile equipment and a member of the Aircraft Working Group). *Mr Brydie-Watson* stated that it was anticipated that additional members would be added to the leadership team to ensure that the Working Group had members from all regions and across all three of the agricultural, construction and mining sectors.

116. *Second*, *Mr Brydie-Watson* stated that all consultations had indicated broad general support for the project, from both the public and private sectors. In particular, he noted the comprehensive questionnaire presented to the Governing Council at its 86th session in 2007, which was circulated to member and non-member States to assess the desirability of the development of a future fourth Protocol. While the responses to the questionnaire lacked sufficient detail to address specifically what types of equipment should be included, 20 of the 31 States which responded to the Questionnaire explicitly indicated their support for the preparation of a fourth Protocol.

117. *Third*, he indicated that there was a strong economic rationale supporting the development of a fourth Protocol. He noted that the Cape Town Convention had had a very positive economic impact by reducing the risks and associated costs with lending, by allowing mobile equipment to serve as good collateral in jurisdictions in which it would not otherwise permit it, and by allowing for businesses to access better equipment, in turn facilitating higher profits and increases in GDP. He noted the report prepared by the Center for the Economic Analysis of Law, which estimated that the future fourth Protocol could facilitate the use of 2 trillion USD in agricultural, construction, and mining equipment over a period of 5-7 years and increase global GDP by as much as 3 trillion USD. While *Mr Brydie-Watson* acknowledged the difficulty in determining economic benefits by relying on the modelling based on the Aircraft Protocol, he noted it was still reasonable to draw the conclusion that

there was a very clear and undisputed economic benefit associated with the development of a fourth Protocol.

118. He then summarised the progress made over the past 12 months under the auspices of the Study Group, comprised of five international experts in secured transactions law from Canada, France, Germany, Spain, and the United States of America and chaired by Germany's Governing Council member, Mr Hans-Georg Bollweg. Mr Brydie-Watson noted that the Study Group had met twice, the first meeting occurring between 15-17 December 2014 and the second between 8-10 April 2015. The Study Group was attended by observers from other relevant international organisations, such as UNCITRAL, FAO and IFAD.

119. He stated that the Study Group had focused on resolving the major legal issues associated with the development of the future Protocol and had prepared an initial draft of the Protocol itself. He highlighted that the Study Group was particularly concerned with delineating the scope of the future Protocol to ensure that it only covered agricultural, construction and mining equipment that was high value, mobile and uniquely identifiable. In this regard, the Study Group had decided there was no need to include a definition of mobility in the future fourth Protocol and noted that the description of 'railway rolling stock' did not contain a definition of mobility. Further, Mr Brydie-Watson noted that taking into account the hundreds of thousands of registrations under the Aircraft Protocol, the International Registry had estimated that approximately 50% of all registered aircraft were operated domestically and never cross international borders, a fact that had not impacted negatively on the outstanding success of the Aircraft Protocol.

120. Mr Brydie-Watson then noted that to ensure the future fourth Protocol covered high value equipment, the Study Group had endorsed the use of the Harmonized Commodity Description and Coding System (HS System), a system utilised by more than 200 countries for the main purposes of establishing customs tariffs and compiling trade statistics. He explained that the HS System covered about 98% of all international trade, breaking trade down into 5,205 six digit groups and that the future fourth Protocol would only cover the types of agricultural, construction and mining equipment identified by HS codes explicitly listed in the Annexes to the Protocol. This approach allowed for consideration of types of equipment on a case by case basis as to whether they warranted inclusion under the future fourth Protocol. He noted that, while the Study Group would make an initial judgment as to which HS codes were most desirable for inclusion, the decision of which codes should be included or excluded would be left to a Committee of Intergovernmental Experts.

121. Mr Brydie-Watson also noted that the Study Group had discussed whether the fields of agriculture, construction and mining were sufficiently similar to warrant coverage in the same Protocol. The policy adopted was that severance of one class of equipment from the future fourth Protocol should only be contemplated if it became clear that one or more of the classes of equipment were radically different to the others and very difficult to deal with together. While the Study Group had identified a possible divergence in the treatment of agricultural equipment in relation to insolvency, which was being further researched by the Secretariat, it appeared that this divergence was not significant enough to warrant severing agricultural equipment from the draft Protocol. He further noted that the Study Group had concluded that the future Protocol should be maintained as a single protocol, while allowing States to opt out of any of the three categories (agricultural, construction and mining) of equipment.

122. Mr Brydie-Watson then mentioned that the future Protocol was very likely to cover certain types of equipment that required at least temporary affixation to land in order to be operated. Initially the Study Group had discussed whether it would be desirable to exclude all types of equipment that might require affixation. However, having considered the initial list of equipment provided by the private sector, it became readily apparent that there were many types of equipment which might require some degree of affixation. This led to a discussion as to whether international security interests under the Protocol should retain priority over domestic immovable property interests. He noted that, while the Secretariat continued to give this issue further consideration, the

tentative conclusion reached by the Study Group was that where agricultural, construction or mining equipment became affixed to immovable property but retained its individual identity, it should retain priority over domestic secured interests.

123. Mr Brydie-Watson noted that the initial list of 103 HS codes provided by the private sector contained 22 codes that covered engines and 25 codes that covered parts. The Study Group adopted the policy that, consistent with the Aircraft Protocol's approach, unless there was widespread commercial practice of separate financing of accessions to agricultural, construction and mining equipment, then accessions would not be separately registerable under the fourth Protocol. He further noted that the Study Group had also given consideration to other issues such as the treatment of multiple purpose equipment, whether a public service exception was needed and insolvency remedies.

124. Mr Brydie-Watson then drew the Governing Council's attention to the third annotated draft Protocol. He noted that, in order to preserve the integrity of the Cape Town system, the Study Group had deliberately tried to follow the drafting approach of previous Protocols wherever possible, and had only diverged where it had been strictly necessary. Specifically, he stated that, of the 27 Articles in the draft Protocol, 23 closely replicated the approaches of previous Protocols. He further stated that the current list of 103 HS codes contained in the draft Annexes to the Protocol had been suggested by private industry in the United States over two rounds of consultations during the previous 12 months and that there was a high likelihood that additional codes would be added and existing codes removed from the list.

125. Mr Brydie-Watson lastly noted that the next and likely final Study Group meeting had been tentatively scheduled for 19-21 October 2015, during which the Study Group would continue to refine the draft Protocol and resolve the outstanding legal issues, as well as work with the Working Group in involving the private sector in the process.

126. *Mr Gabriel* thanked the Secretariat for the update and noted his continued support for the project. He noted that over the past few years he had attended several industry events which consistently showed support for the project and that his own personal academic research also indicated that the future Protocol would have a significant economic impact. He then mentioned that he would be chairing a panel on the future Protocol at the Cape Town Convention Academic Project Conference at Oxford University in September 2015.

127. *Mr Sandoval* thanked the Secretariat for the report. He noted the importance of consistent references in relation to 'States Party' and 'Contracting Parties' in the future Protocol, and that any inconsistency might create interpretation issues under the Vienna Convention on the Law of Treaties.

128. The *Secretary-General* thanked Mr Sandoval for his intervention and noted that this issue would be examined further and that references to 'States Party' and 'Contracting States' would be consistent in the final draft.

129. *Mr Acquaticci* noted the strong support in Germany for the future Protocol and thanked the Secretariat for its work.

130. *Mr Kotzé* thanked the Secretariat for the report and for the latest version of the draft Protocol, and noted that he would distribute the draft Protocol among interested parties in South Africa. He further noted the scheduling of the next Study Group session for October 2015 and queried whether it was anticipated that the upcoming Study Group session would be the final one.

131. The *Secretary-General* replied that the project was progressing quickly and that there were several issues that required further attention before the next Study Group session. He noted that Mr Phillip Durham from the Working Group was working to gather further vital information from the private sector, especially in relation to the financing of engines and other accessions. He also noted that the Secretariat had been working to encourage participation in the Working Group from

companies across all regions, however the North American manufacturers continued to be the most responsive, while European manufacturers had indicated that their views were already being represented by the North American industry. The Secretary-General highlighted the need to conduct further legal research, especially in relation to special insolvency regimes for small farming enterprises. Finally, he stated that the Secretariat would utilise the network of UNIDROIT correspondents to assist in undertaking the required research.

132. *The Council expressed its appreciation for the progress made at the first and second Study Group sessions held in December 2014 and April 2015 respectively. The Council noted the scheduling of a third Study Group session in October 2015.*

Item 7 on the agenda: *Transactions on Transnational and Connected Capital Markets - Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets* (C.D. (94) 6)

133. *Mr Neale Bergman* (UNIDROIT Secretariat) introduced this item, recalling that the prospective Legislative Guide, like the Geneva Securities Convention and the Netting Principles, was part of UNIDROIT's study on transnational and connected capital markets and was the final step in that study. He further recalled that the work on the Legislative Guide was being considered within the Committee on Emerging Markets Issues, Follow-Up and Implementation, which had been established at the final session of the diplomatic Conference that adopted the Geneva Securities Convention in 2009. The Committee, which was co-chaired by Brazil and China, had since met three times: first in Rome in September 2010 at UNIDROIT's headquarters; second in Rio de Janeiro in March 2012 at the kind invitation of the Brazilian Securities and Exchange Commission; and third in Istanbul in November 2013 at the kind invitation of the Capital Markets Board of Turkey.

134. Mr Bergman reviewed the progress made at these three meetings, noting in particular the narrower outline of issues, which included mainly private law topics, but also some regulatory aspects with direct relevance to party transactions, that had been agreed by consensus at the Istanbul meeting as a way forward. He also noted that an informal working group, which had been established to work on the project at the Rio meeting and had been supplemented at the Istanbul meeting, currently included the co-chairs of the Committee, Brazil and China, and France, Germany, Italy, Japan, the Russian Federation, South Africa, Switzerland, and the United States of America.

135. He stated that the reports from these three Committee sessions, as well as the reports from the Governing Council's sessions, had provided a substantial amount of guidance. He further stated that they generally reflected, as contemplated thus far and subject to ongoing review, that the prospective Guide was intended to give legislators, regulators and policymakers, in particular those from emerging markets, insights into matters not covered by the Convention that were to be dealt with by a Contracting State itself. For such matters, the Legislative Guide was to provide a menu of options taken from various legal systems around the world for States to consider in establishing an intermediated securities holding system or evaluating an existing system. It had been stressed that the importance of the Guide was to explain, in this way, that the Convention was capable of accommodating different domestic systems and of permitting them to dialogue with each other. The Guide was not intended, however, to offer interpretation of the Convention for judges, arbitrators or practitioners as the Official Commentary already provided such comprehensive guidance. For its part, the Legislative Guide was to promote both the Convention's use and the development of internally sound and compatible sets of legal rules for intermediated securities, thereby enhancing legal certainty in this important area.

136. Regarding drafting of the Guide, Mr Bergman noted that the Secretariat had engaged an expert consultant to prepare an initial draft. He further noted that the consultant had taken the agreed outline of issues from the Istanbul meeting as his starting point and adapted it into two main parts. He stated that the consultant's proposed Part I covered both the structure and attributes of an

intermediated holding system and the legal nature of intermediated securities, including a historical background, an overview of the Convention, and identification of essential attributes of intermediated holding systems and differences in their regulation. He then stated that the consultant's proposed Part II covered the interaction between the Convention and the substantive law of Contracting States through the Convention's references to non-Convention law, addressing them from the perspective of account holders, intermediaries, transferees of intermediated securities, and collateral takers. He described how drafting was underway, although not on the schedule initially envisioned because of difficulties faced by the consultant. He further described how initial portions of the draft had been received and feedback had been provided, but that the draft was not yet ready for circulation to the members of the informal working group. He then discussed how the remaining portions of the initial draft were expected to be submitted to the Secretariat within the next two months, as well as revisions to the portions already received and stated that the draft would be circulated to the informal working group in the following months. It was hoped that substantial progress could be achieved through this informal process.

137. Regarding the Committee's next meeting, he noted that preparations were underway to hold the fourth meeting. He recalled that, as the Secretary-General had reported to the Finance Committee in April, it had been hoped that the fourth meeting would be held in 2015. Unfortunately, however, the emerging market country that had agreed in February to host that meeting in the fall of 2015 rescinded their agreement and cancelled the meeting for budgetary reasons. He then stated that the Secretariat was planning to schedule the fourth meeting in early 2016 and it would likely follow a similar format to prior meetings by beginning with a Colloquium on financial markets law after which the Committee would reconvene to consider the items on its agenda, including the reception given to the Convention in various countries, reviewing in detail the draft of the Legislative Guide, and discussing proposals for follow-up promotional activities regarding the Convention and the Netting Principles.

138. *Mr Kotzé* expressed his gratitude for the update and the resumption of work on the project as South Africa was involved in the informal working group. He requested clarifications on the proposed timetable for the project, asking whether it was expected to take another two to three years or if the Guide would be ready for the Governing Council's next session. He then inquired whether a Colloquium would be held before the fourth meeting.

139. *Mr Bergman* responded that the Colloquium, as has been the practice of the Committee, would be held immediately prior to the Committee's session, so it was to be planned together with the fourth meeting. He noted that it was hoped that the fourth meeting, including the Colloquium, would be held in early 2016. Regarding the remaining duration of the project, he stated that an initial draft of the Legislative Guide was expected to be submitted within the next two months and that, as soon as the draft was sufficiently ready, it would be circulated to the informal working group so that significant progress could be made in advance of the fourth meeting. He further stated his hope that a robust and thorough draft of the Guide could be submitted to the Council for consideration at its next session.

140. The *Secretary-General* stated that the Committee had agreed on working, from the beginning, in a mixed-format with an academic and scientific colloquium followed by the intergovernmental meeting. He further stated that this format had been used in Rome, Rio, and Istanbul. Regarding timing, he noted that it had been hoped to hold the fourth meeting in September 2015, but that the meeting had now been pushed into early 2016.

141. *Mr Tricot* expressed gratitude for the update. Recalling the Governing Council's prior deliberations in 2014 and the importance of addressing various intermediated holding systems and not just a single system, he inquired about the consultant's proposed structure for the initial draft of the Guide. He noted that the consultant's proposal would reverse the order of the outline of issues agreed at the Istanbul meeting by placing the part on non-Convention law after the part on

alternative structures and attributes of intermediated holding systems, and he expressed support for the consultant's proposal.

142. *Mr Bergman* confirmed that the consultant's proposal, subject to the Committee's subsequent review, was to reverse the order of the agreed outline of issues. The consultant's proposal was to first lay out the historical background and provide an overview of the Convention, then to describe the various holdings systems, and lastly to address, from the perspective of market participants, relevant non-Convention law and the Convention's references to such law.

143. *The Council noted the activities undertaken by the Secretariat to develop a Legislative Guide on principles and rules capable of enhancing trading in securities in emerging markets and noted the scheduling of a Committee meeting in early 2016.*

Item 8 on the agenda: Transnational civil procedure - formulation of regional rules
(C.D. (94) 7)

144. The *Deputy Secretary-General* introduced this project, noting that it was a joint European Law Institute (ELI) and UNIDROIT project that represented the first step towards implementation of the *American Law Institute (ALI) / UNIDROIT Principles of Transnational Civil Procedure*, adopted by the Governing Council in 2004. She said that those Principles were designed to be accompanied by rules developed at the regional level and that the ELI-UNIDROIT project would pave the way to analogous efforts in other regions.

145. Highlighting some of the developments that took place during a year of intensive work on the project, she noted that first ELI and UNIDROIT had signed a Memorandum of Understanding, which defined the roles and limits of responsibility of each organisation consistent with the guidance that the Governing Council had provided. She then noted that a Steering Committee, co-chaired by the Secretary-General of UNIDROIT and the President of ELI, and Working Groups had been established. She said that the Working Groups were working independently and were either financed by ELI or other sources. She also said that Working Groups had initially been established for three topics: access to information and evidence; provisional and protective measures; and service of documents and due notice of proceedings. These initial topics were selected pursuant to the structure of the ALI/UNIDROIT Principles. At the November 2014 joint meeting of the Steering Committee and Working Groups held at UNIDROIT's headquarters, two additional Working Groups were established on *lis pendens* and *res judicata* and obligations of the parties and lawyers respectively. After that, at the most recent meeting held by ELI in Brussels in April, two further Working Groups were established on costs and appeals and types of judgements respectively. She then said that the Working Groups reflected legal and professional diversity, as well as the interest of various institutions, including the Hague Conference, the European Commission, Parliament, and Court of Justice, professional associations, and research institutions such as the International Association on Procedural Law, the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, and the ALI. She noted that, in conjunction with the Brussels meeting, there was a hearing on the project in the EU Parliament's Committee on Legal Affairs, in particular with the JURI Committee, which had resulted in the creation of a research unit to follow and work on this topic.

146. She said that advanced drafts had been received from the initial three Working Groups at the Steering Committee's last meeting in Brussels, which allowed for discussion about both the approach and particular rules, and that additional drafts would be available for the next meeting in late autumn. She then said that the drafts were not yet in the public domain, but that they would be available in conjunction with the autumn meeting. She noted that significant information was already available in the reports of the first two Steering Committee meetings and that more information would be made available in connection with the ELI General Assembly meeting in September. She also noted that, for those members of the Governing Council who had expressed interest, letters had

been sent inviting them to serve as advisors. Regarding the timetable, she stated that a relatively tight timeline had been agreed, which called for a product by 2017.

147. *Mr Gabriel* inquired whether there had been any tentative thoughts on expanding this project to other regions beyond those covered by ALI and ELI.

148. *Mr Moreno-Rodríguez* noted that ASADIP had been conducting important work on civil procedure in the Americas and that a collaboration with an Ibero-American network of judges had been established, for which an important summit would take place in Asunción the following May. He hoped that ASADIP could join efforts with UNIDROIT and requested that the Secretary-General explore collaboration in this matter.

149. *Ms Broka* expressed support for the project and suggested consideration of which institutions and professionals should be involved. She noted that it was important to include notaries and court officers, especially on issues of evidence and digitalisation, which affected the cost and speed of proceedings.

150. The *Deputy Secretary-General* responded that both the Council of the Notariats of the European Union and the International Union of Judicial Officers were Observers to the project and were providing input to the Working Groups. She further responded that electronic notice and evidence issues had been discussed extensively thus far, in particular finding the right balance of speed, modernisation, and security of proceedings.

151. The *Secretary-General*, noting that the Work Programme would be reviewed for the following triennium at the Council's next session, stated that a potential topic related to the execution and enforcement of judgments, which was not dealt with in the ALI/UNIDROIT Principles. He further stated that some of the experts were eager to embark upon a project on best practices or standards in this area once the current project was complete. He said that it had the potential to be a very important project that would increase the visibility of UNIDROIT.

152. *Ms Bariatti* expressed her interest in the project and requested inclusion in the group of advisors. Regarding future work, she said that the topic of enforcement of judgments was crucial and that, in Italy, the commission that had been established to review insolvency law would address this topic with the support of the Banca d'Italia because it was very important to make judicial decisions effective. She stated that the possible UNIDROIT project could complement well the work of other organisations, such as the Hague Conference. She also mentioned work in the area of insolvency law, noting that a conference had recently been held in Riga, Latvia, and inquired whether UNIDROIT was following these developments.

153. The *President* recalled that insolvency law was currently dealt with by UNCITRAL and, as he was personally very interested, he was following those developments as a delegate to UNCITRAL.

154. *Mr Király* stated that the work completed over the last year had demonstrated that the project's higher priority was justified and that it had created a remarkable synergy between various organisations. He requested that the draft rules be made available as soon as possible as there were codification efforts ongoing in Hungary and other EU countries.

155. The *Deputy Secretary-General* responded that the transparency point was an important one, but cautioned that underdeveloped drafts might not be very useful as models. She then said that the aim was to make the drafts available as soon as possible.

156. *Ms Pauknerová* noted that the development of rules of civil procedure was contentious in the European Union because of differing opinions on the allocation of competencies. She said that, in the European Union, civil procedure had traditionally belonged to each State, which was anxious to maintain its legal culture and might not be interested in uniform legislation regarding internal civil procedure. She further said that consideration of these issues should be taken into account. She

then stated that it appeared that most of those engaged in the project were academics and suggested that more practicing lawyers, notaries and judges be included in the process as this participation would be important for promotion.

157. The *Deputy Secretary-General* noted that, regarding competence, the project was to produce a soft-law instrument identifying minimum standards which might be useful to legislators in Europe. Regarding composition, she stated that each of the Working Groups had at least one judge and one practicing lawyer, not counting the academics who were also practicing lawyers.

158. *Mr Leinonen* noted that this project was in a very sensitive field and hoped that it would continue to progress. Regarding costs and the speed of proceedings, he said that Finland did not have the notary system which was present in some other European countries. He then inquired whether a notary system was needed in an increasingly electronic world.

159. *Mr Tricot* commended the speed, efficacy, and thoroughness of the work completed thus far. Recounting the Working Groups and their topics, he then inquired what further topics were to be covered. He further inquired whether the timetable was too strict, noting that the Working Group members might feel considerable time pressure to complete their work quickly and that academics, for example, would be conflicted between the will to move forward rapidly and the fear of not doing their work properly.

160. The *Deputy Secretary-General* noted that she was particularly sensitive, as a scholar herself, to Mr Tricot's concern. Regarding the timetable, she referred the Governing Council to the timetable annexed to the Report of the November meeting (UNIDROIT/ELI 2014 Study LXXVIA – Doc. 5, Annex 2). That timetable was arranged so that drafts from all Working Groups were expected by early 2017. She further noted that at the April meeting it was decided to create, in addition to the five existing groups, two new Working Groups on costs and appeals and types of judgements respectively. She then drew the Council's attention to efforts made to ensure that there was some kind of cross-fertilisation between the groups, as there were overlapping members.

161. The *Secretary-General* noted that the timetable was ambitious and explained that he was putting some pressure on the Working Groups to make progress. He acknowledged, however, that the work might not be fully completed by 2017. He recognised the time and quality dilemma faced by academics, as well as the complexity arising from Europe's various languages and the need to include a broad spectrum of participants, but hoped that the work could be completed by 2017. He then noted that the UNIDROIT General Assembly had not given a blank check to co-finance work without a particular timetable, but said that the Secretariat was flexible as long as the General Assembly was willing to maintain the project.

162. *The Council noted the progress made by the Secretariat in implementing the project on transnational civil procedure – preparation of regional rules.*

Item 9 on the agenda: Promotion of UNIDROIT instruments (C.D. (94) 8)

163. *Ms Marina Schneider* (UNIDROIT Secretariat) presented this item on the agenda, referring first to the fundamental importance of promoting the instruments that UNIDROIT had developed. She stated that ratifications of UNIDROIT instruments were continuing, even of older UNIDROIT instruments, such as Australia's recent accession to the Convention providing a Uniform Law on the Form of an International Will, which was adopted in 1973. She further stated that this Convention was one that UNIDROIT would like to promote more and that Australia's accession might provide momentum towards additional ratifications of the Convention. She then noted that UNIDROIT served as the Depositary for five instruments, which were priorities for the Institute. In this regard, she mentioned in particular the 2009 Convention on Substantive Rules for Intermediated Securities, which was promoted through the Accession Kit available on UNIDROIT's website and the ongoing work on

developing a Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets.

164. She recalled that the Governing Council had identified three instruments as particular priorities for promotion, including the Cape Town Convention and the Aircraft Protocol, the UNIDROIT Principles of International Commercial Contracts, and the Convention on Stolen or Illegally Exported Cultural Objects (the Cultural Property Convention). She further recalled that the Council had adopted in 2012 new strategic goals for the Institute and three of these goals related to promotion. First, the Institute was to work more in synergy with other international organisations on a technical level. Second, the Institute was to achieve greater interaction between legislative activities and non-legislative activities. Third, the Institute was to double its promotional resources in order to promote its instruments. She noted that the Annual Report reflected how the Institute had worked towards these objectives, including by working together with other organisations and by helping States to sign or ratify UNIDROIT instruments.

165. Regarding conferences and educational courses, she highlighted the conference organised by the Italian Society for International Organization (SIOI) and the Italian Ministry of Foreign Affairs in Rome, which had dealt with investment security in North Africa and had included a presentation on the UNIDROIT Principles and international contracting. She also highlighted that universities were holding an increasing number of courses on UNIDROIT instruments, noting in particular the UNIDROIT Principles, the Cape Town Convention, and the Cultural Property Convention.

166. Regarding signatures and ratifications, she mentioned that document C.D. (94) 8 reflected that four States had deposited their instruments of ratification or accession to the Cape Town Convention and to the Aircraft Protocol and that two States had deposited such instruments to the Cape Town Convention. She also mentioned that Angola and Algeria had deposited, for the Cultural Property Convention, their instruments of accession with the Italian Government. She noted in this regard that Algeria's accession was particularly important, that Morocco had begun the procedure of accession, and that Mauritania was at the point of beginning such a procedure.

167. She emphasised the importance of the Cultural Property Convention, noting the ongoing mass destruction of cultural property and the UN Security Council's adoption on 12 February 2015 of Resolution 2199, condemning the destruction of cultural heritage and countering illicit trafficking of cultural property from Iraq and Syria. She recalled how international organisations were to work towards the implementation of that resolution and noted the Secretary-General's participation, at the invitation of the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Ms Irina Bokova, in a meeting at UNESCO at which the importance of the Cultural Property Convention had been stressed. She further noted her upcoming participation at a conference in Cairo, which would bring together five countries in that region and include discussion of the Cultural Property Convention. She then highlighted the conference that would be held the following day on the Cultural Property Convention, which would seek to assist judges and lawyers in understanding and applying the Convention.

168. *Mr Sánchez Cordero* stated that UNIDROIT should be very proud of the Cultural Property Convention, as it had given to the international community an important tool for the protection of cultural objects.

169. The *Secretary-General* praised Ms Schneider's efforts on promoting the Cultural Property Convention, noting that he too had participated in meetings related to cultural property because of the issue's political sensitivity. Such participation raised UNIDROIT's profile and aligned it with other organisations in a joint effort to tackle cultural heritage problems which had reached dramatic dimensions. He then noted that the promotion of the Cape Town Convention was to a very large extent handled by the Aviation Working Group, which had developed a promotional team and plan. He further noted that, in connection with that effort, it was helpful for the Secretariat to participate in

consultations. He mentioned that considerable work had been done to make UNIDROIT's Depository functions run smoothly and the information on the website in this regard more user-friendly.

170. Regarding promotion of the UNIDROIT Principles, he noted Mr Bonell's efforts and those of the Secretariat more generally. He said that, similar to the Cape Town Convention, there was now a network of scholars, practitioners, and arbitrators who were familiar with the Principles and promoted them. In this regard, he stressed the importance of the network of scholars of transnational commercial law, which had proven to be very useful in promoting the Principles. He then mentioned the Willem C. Vis International Arbitration Moot Court Competition, which brought students together from around the world in Vienna and created each year groups of students who were very knowledgeable about the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles. He also discussed his efforts to intensify links with the CISG Advisory Council, which was a group of expert scholars working to promote uniform interpretation of the CISG.

171. The Secretary-General stated that the travel budget for promotional activities had been increased by shifting budgetary allocations to allow it. He noted that some promotional activities paid for themselves and that most of the promotional costs related to the Cultural Property Convention were covered by UNESCO, but not the conference of the following day which was funded with savings from the previous financial year. He mentioned that the Finance Committee had agreed to this reallocation of savings to promotional activities and that a future event on the relationship between the CISG and the UNIDROIT Principles might also be held using these reallocated funds.

172. *Ms Schneider* recognised the efforts of Mr Stefano Muscatello and Ms Isabelle Dubois (UNIDROIT Secretariat) in assisting with the Depository functions, particularly with respect to the management of UNIDROIT's website. She also recognised the importance of the Scholarship Programme, which had brought a number of scholars to UNIDROIT to study and had created a significant network of scholars around the world to promote UNIDROIT's instruments.

173. *Mr Moreno-Rodriguez* noted that the UNIDROIT Principles would be published in Paraguay the following month. He joined the Secretary-General in emphasising the importance of international moot court competitions and stated that such competitions in Vienna, Hong Kong, and Madrid had made express reference to the Principles. He suggested that the Secretariat should seek to have the Principles incorporated into moot competitions. He noted that the four Paraguayan judicial decisions referencing the Principles were drafted by courts of appeal which had former moot participants among their law clerks. He then noted that Paraguay was considering the ratification of the Cape Town Convention and that, upon his request, he had received favourable feedback and assistance from the Secretariat in this regard.

174. *Mr Wilkins* noted that he was currently President of the Financial Action Task Force (FATF), which was an intergovernmental body based in Paris that examined terrorism financing. He further noted that FATF had just completed a report on funding sources for the Islamic State for Iraq and the Levant and that a minor but significant component of funding came from the illicit trade in cultural products. He said that it would be useful for UNIDROIT to provide better information on exactly how the Cultural Property Convention could be used to counter ISIL as it was an opportunity for promotion of the Convention and for collaboration with FATF.

175. The *Secretary-General* stated that examining the link between financing of terrorism and looting of cultural property had been the main reason that Director-General Bokova had convened the meeting at UNESCO. He further stated that, in that meeting, he had stressed the importance for market countries for cultural property to have in place a legal framework that would facilitate restitution as a preventative and discouraging tool for the illicit trade. He noted that there was indeed an opportunity to raise the level of attention on the link between the Cultural Property Convention and combatting terrorism financing and that practical steps were being taken in this regard.

176. *Ms Schneider* also noted the link between terrorism financing through the illicit selling of artefacts and terrorist attacks, which was to be the subject of the meeting that she would attend the following week in Cairo. She noted that that meeting had been organised by the Egyptian Government, together with the Antiquities Coalition and the Middle East Institute.

177. *Ms Pauknerová* noted that the Czech Republic was currently examining ratification of the Rail Protocol to the Cape Town Convention. She then stated that the results achieved by the UNIDROIT Principles in the Czech Republic were rather modest and that it was probably best to translate the 2010 edition of the Principles instead of waiting for the next edition. She further stated that she had persuaded the Ministry of Trade to engage in promotional efforts so that they could be used in contracts with other parties from countries where the Principles were better known, such as Russia, and that, for these efforts, a translation was needed.

178. *Mr. Kotzé* stated that South Africa was in the process of ratifying the Cultural Property Convention. He further stated that he would ensure that his colleagues working on antiterrorism issues were made aware of the discussion concerning the link between terrorism financing and the illicit trade in cultural property.

179. *Ms Bouza Vidal* noted that Spain had decided to ratify the Cape Town Convention and that an issue had arisen between Spain and the EU Commission regarding who had competence to make declarations under the Convention. She further noted that this issue was not just one for Spain but for all EU member States and that some EU member States, such as Luxembourg and the Netherlands, had already joined the Convention and made declarations. She said that this issue could become a problem if the EU Commission were to consider that it alone had competence to make declarations. She then inquired whether UNIDROIT could provide any guidance with respect to this issue.

180. The *Secretary-General* stated that there was a complex allocation of competences between the European Union and its member States on some of the matters covered by the Cape Town Convention. He said some of the matters were clearly within the EU Commission's competence, in particular jurisdiction and applicable law. When it came to insolvency law, however, he noted that there was no consensus on the boundaries between EU and member States' competence. He then noted that UNIDROIT's advice to EU member States was reflected in a report (document DC9/DEP – Doc. 8) of a meeting convened with legal experts from various EU member States and that the advice mainly was to encourage EU member States to follow the path set forth by the EU Commission in the instrument of accession by the European Union to the Cape Town Convention. He said that, accordingly in the area of insolvency law, member States would refrain from making declarations, but were free to adopt any of the alternatives under the Aircraft Protocol into their domestic law because they had retained that power. He further said that it was UNIDROIT's understanding that this issue did not arise with respect to the designation of an entry point for the International Registry because that was not a matter of European competence.

181. *Mr Sono* stated that there was a negotiation and arbitration moot in Japan that had been going on annually for 14 years and that the UNIDROIT Principles were the applicable law in the arbitration portion. He further stated that more than 100 students, including foreign students, participated in the moot every year and that the moot had become a very important vehicle in promoting the Principles in the region.

182. The *President*, in concluding the discussion, invited all colleagues to promote the UNIDROIT Principles in the capacity in which they regularly acted. He noted that he had taught the Principles at the Catholic University of Milan as part of his course on transnational commercial law and that, now that he had retired, he taught them in courses in China and Sweden. He further noted that Mr Bonell had similarly taught the Principles on many occasions, and he asked everyone to support the Principles on an individual basis in this way.

183. *The Council noted the initiatives of the Secretariat to promote UNIDROIT instruments and stressed their importance.*

Item 10 on the agenda: Correspondents (C.D. (94) 9)

184. The Secretary-General introduced this item, recalling that the Governing Council had debated the criteria for correspondents for some time and had decided in 2006 that the list of correspondents should be examined with a view to reduce it to a list of active correspondents by moving any inactive correspondents to an *emeritus* list in recognition of their past support of UNIDROIT. He stated that correspondents played an important role in promoting awareness of UNIDROIT and in obtaining information for UNIDROIT beyond what was available through the library. Referring to document C.D. (94) 9, he asked the Governing Council to note that the reappointment procedure would begin to take place in 2015, whereby correspondents would be invited to confirm their interest in being an actively participating correspondent. Any correspondents not replying or declining an active role would be placed on the *emeritus* list. He also asked the Council to continue thinking about possible additional nominees to be correspondents.

185. The Secretary-General then asked the President to request the Council's consideration of the two individual candidates and the one institutional candidate proposed to be correspondents at the current session. Noting that Mr Hideki Kanda had been unable to attend and thus could not present the candidature of Professor Hiroo Sono, he stated that it was his honour to submit his nomination to the Governing Council. He further noted that Mr Sono's biography was extensive despite his young age and that Mr Sono was an expert in international commercial law and had served as Counsellor at the Japanese Ministry of Justice, in which role he was instrumental in Japan's ratification of the CISG.

186. *Mr Király* first expressed his support for the nominations of Mr Sono and the Hellenic Institute of International and Foreign Law as correspondents. He then presented his nominee, Dr Tamás Szabados, who belonged to a new generation of talented scholars in Hungary. He noted that Mr Szabados was able to speak several languages and had expertise in company law and contract law, in particular in the European aspects of these fields, and had translated the UNIDROIT Principles of International Commercial Contracts into Hungarian. He further noted that Mr Szabados would be a motivated and active correspondent and that he hailed from Eastern Europe, which was an underrepresented region on the list of correspondents.

187. *Mr Vrellis* recalled that, at the Governing Council's last session, he had indicated that the Hellenic Institute of International and Foreign Law might be interested in serving as an institutional correspondent. He stated that he had since checked with those responsible at the Hellenic Institute and received a very rapid positive response. He noted that the Hellenic Institute was a public entity which operated under the aegis of the Greek Ministry of Justice and Ministry of Foreign Affairs, that it was experienced in providing information regarding Greek laws, as well as international legal regimes, and that it had provided, for example, such information to foreign authorities pursuant to the European Convention on Information on Foreign Law. He further noted that the information provided was neutral, and that he was very pleased to submit the nomination.

188. *Mr Gabriel* expressed support for the individual and institutional candidates and thanked the Secretariat for better structuring the Correspondent system. He then drew the Council's attention to the table in Annex VII showing the distribution of active correspondents of the Institute by region and by country and stated that the Council might wish to think about underrepresented regions and addressing such underrepresentation in the future.

189. *Ms Pauknerová* expressed support for all of the candidates, in particular the Hellenic Institute. She stated that, having interacted with the Hellenic Institute in the past, it was small, efficient, and engaged in the study of comparative law, including publication of the prestigious *Revue hellénique de*

droit international. She then mentioned that the regional distribution of correspondents warranted further discussion.

190. *Mr Tricot* supported the nominations and expressed appreciation for the use of the active and *emeritus* lists of correspondents. He stated that this new system met prior concerns and was a very positive sign for the future of UNIDROIT. He further stated that he supported the increase in institutional correspondents from three to four as there were 47 individual correspondents. He then inquired whether the Council was in favour of encouraging the addition of more institutional correspondents, stating that he personally thought it was a good idea as it would respond to the need for stability, openness, and enrichment to UNIDROIT. If such addition was encouraged, he further inquired whether institutional correspondents should have longer appointment terms than individual correspondents, suggesting that an appropriate term would be five years.

191. The *Secretary-General* stated that the Secretariat would welcome expanding the circle of institutional correspondents, bearing in mind that different ones might play different roles. He then proposed that, in the case of institutional correspondents, the triannual review process be bypassed by considering an institutional correspondent to be automatically renewed for the following three-year term, thereby resulting in a term length similar to that proposed by Mr Tricot.

192. *Mr Meier*, referring to the point raised by Mr Gabriel on geographical representation, noted that there were currently 40 individual correspondents from Europe and the Americas and only 7 from other regions. He further noted that it was a very good idea to appoint the current nominees from Japan and Eastern Europe. He then supported what was said by Mr Tricot, stating that the appointment terms of institutional correspondents should not have to be renewed every three years. Lastly, he pointed out the youth of the nominees to be individual correspondents, noting that while they might not have as much experience as older colleagues, they might have more time to promote UNIDROIT and hold events at their respective universities.

193. *The Council approved the appointments of Professor Hiroo Sono and Dr Tamas Szabados as correspondents and the Hellenic Institute of International and Foreign Law as an institutional correspondent.*

194. *The Council noted the reappointment procedure which will be launched in 2015 for correspondents with mandates expiring on 30 April 2015, and noted the need to identify nominees for correspondents coming from non-represented geographical areas.*

Item 11 on the agenda: Library and research activities (C.D. (94) 10)

195. *Ms Bettina Maxion* (UNIDROIT Library) introduced this item on the agenda by referring to document C.D. (94) 10, which described the Library, its collections and its role, both for the work of the Institute and for visiting scholars. She noted in particular that in 2014 the Library continued to strengthen cooperation with both local and foreign libraries and highlighted new partnerships with the library of the University of Siena and the library of the Christian-Albrechts-Universität zu Kiel in Germany. She further noted that the electronic database search system had been upgraded to its latest version without interruption to the library services.

196. Ms Maxion stated that in 2014 the UNIDROIT Library had had 1,316 visitors, including foreign guests from 31 different countries. She noted that the UNIDROIT Secretariat had benefitted from 19 young lawyers and students completing internships, which included Ms Andrea Piccolo Brandao (Brazil) and Mr Ernesto Vargas (Chile), who were part of an institutional cooperation programme with New York University School of Law. She also noted the one month secondment of Ms Sigita Formičova, Judicial Assistant at the Supreme Court of Lithuania. Ms Maxion stated that UNIDROIT continued its Research Scholarships Programme and highlighted that 15 scholars from 10 different countries were hosted in 2014 and 19 scholars from 15 different countries would be hosted in 2015.

She thanked the contributors that provided voluntary financing for the scholarships programme, including the UK Foundation for International Uniform Law, the Transnational Law & Business University (TLBU) of the Republic of Korea, the Government of the Netherlands, the UNIDROIT Foundation, members of the Governing Council on a personal basis, and the President of UNIDROIT.

197. *Ms Shi* queried how the process for secondments to the Institute operated and whether research scholarship recipients had to be students or scholars in order to qualify for the programme.

198. The *Secretary-General* responded that UNIDROIT did not receive many secondees because a secondee was a civil servant of a member State and the employing member State continued to pay the salary and costs of the secondee during their secondment to UNIDROIT. The Research Scholarships Programme was a different programme of a modest size, under which scholarships were granted for a period of research at the library of typically two months to allow a student or scholar from a developing country to cover living costs in Rome while writing on a matter relevant to UNIDROIT. UNIDROIT received a large number of applications and the Secretary-General noted that it was possible for government officials to qualify for such scholarships.

199. *Ms Maxion* noted that, during the Council's meeting 93rd meeting in 2013, the Library had been requested to investigate whether digitisation of part of the library's paper collection was possible. She further noted that digitisation would enhance access to and preservation of the Institute's existing research material. However, digitisation was a complex process which involved delicate copyright issues. She stated that in-house digitisation was not economically viable, given the costs involved in obtaining the technical infrastructure, selection and preparation of the materials, quality control of the images and staffing costs. She further stated that initial estimates indicated that of UNIDROIT's collection of 140,000 books, at least 50,000 should be digitised.

200. *Ms Maxion* noted that an alternative path to digitisation would be for UNIDROIT to apply to become part of the Google Books project. If accepted as a partner library, Google would cover the costs and technical specifications of digitising books in the UNIDROIT Library, which would give UNIDROIT free access to the electronic copies of all books digitised. She noted that many prominent libraries around the world were part of the Google Books project, including the Austrian National Library, the New York Public Library and Harvard University Library. She acknowledged that there were some copyright issues related to the Google Books project, with one current copyright case currently being litigated in the United States of America. She suggested that UNIDROIT should continue to explore opportunities to digitise the UNIDROIT Library collection, including the possibility of partnering with the Google Books project.

201. *Mr Gabriel* thanked the UNIDROIT Library for its detailed report and noted his support for any efforts that would allow UNIDROIT to digitise its existing collection. He queried whether the 1321 new books acquired in 2014 were all paper copies. *Ms Maxion* confirmed that the new acquisitions were indeed paper copy books.

202. *Mr Kotzé* echoed Mr Gabriel's comment and noted that the Google Books project appeared to be the best option going forward.

203. *Ms Sabo* also expressed Canada's support for the digitisation project and noted that any written agreement with Google should be carefully examined, even though its terms were unlikely to be negotiable.

204. *Mr Hartkamp* expressed his scepticism as to whether the digitisation project would benefit UNIDROIT member States and whether those benefits would justify the staffing costs involved.

205. *Ms Maxion* noted that the digitisation project would have benefits for member States by allowing them to access the Library's collection electronically. She clarified that, if the process was done in partnership with Google Books, there would be no additional staffing costs.

206. The *Secretary-General* noted that no agreement had been made with Google Books at that point. He further noted that it was a positive sign that other larger, reputable libraries had become partners in the Google Books project. He clarified that it was the Secretariat's understanding that, if UNIDROIT was made a partner of the project, then Google would assume the entire costs associated with the digitisation process, which would avoid all the difficulties and costs of doing the digitisation in-house. He noted that an additional benefit would be that Google Books would assume the risk for copyright issues if they digitised the collection, whereas UNIDROIT would assume liability if it was completed in-house.

207. The *Secretary-General* identified two advantages to digitisation: (1) nationals from member States that were geographically far from Italy would have better access to the UNIDROIT Library collection, and (2) digitisation would allow the Institute to grant priority access to the electronic collection to private sector institutions that were supporting UNIDROIT.

208. *Mr Gabriel* queried whether the digitisation project would allow for free access to all people wanting to access the Library's resources. The *Secretary-General* responded that access would be open, however UNIDROIT would be able to negotiate restrictions in access to the collection when and if necessary.

209. *Mr Lyou* expressed his support for the digitisation project as it would be beneficial in raising the Institute's profile in the commercial law sector and the private sector more broadly.

210. *Mr Meier* also expressed his support for the project and noted that, when the Swiss Government provides research funding, one of the key elements is ensuring that the research would be freely available online.

211. *Mr Tricot* queried whether mass digitisation was necessary, and noted that it might be more prudent to allow for users of the Library to apply to have certain books digitised on a case by case basis and pay for the costs of that digitisation themselves.

212. *Ms Broka* noted her support for the Google Books project and that UNIDROIT should not ignore the technological changes in the way legal research was being conducted. *Ms Broka* stated that, if the Google Books project was going to be approved, then the Council would need to see a more detailed analysis on how it would proceed, including contractual terms.

213. The *Secretary-General* noted that the Secretariat was unable to answer specific questions until discussions had been formally opened with Google. If Google was interested in digitising the UNIDROIT Library, then details regarding timeframes, ease of access, costs and contractual terms would then become available.

214. *The Council took note of developments in the library, its policies and acquisitions, and expressed its appreciation for its promotion of research through the Scholarships Programme.*

215. *The Council instructed the Secretariat to continue investigating available options in order to digitise the existing collection of the UNIDROIT library.*

Item 12 on the agenda: UNIDROIT information resources and policy (C.D. (94) 11)

216. Introducing this item on the agenda, *Ms Lena Peters* (UNIDROIT Secretariat) recalled that the Annual Report 2014 (C.D. (94) 2) and the relevant document (C.D. (94) 11) contained the details of what had happened during 2014 and early 2015 in relation to publications and other sources of information.

217. Regarding the statistical information on the sales of the UNIDROIT Principles of International Commercial Contracts (all three editions) and the Official Commentaries on the Convention on International Interests in Mobile Equipment and Protocols thereto on Matters Specific to Aircraft Equipment, Railway Rolling Stock and Space Assets contained in document C.D. (94) 11, she observed that the number of countries in which sales of these volumes had occurred was greater than the number of member States of the Institute. Despite this widespread dispersion of publications, she further noted that the number of sales in the various countries was smaller than anticipated.

218. Ms Peters noted that the sales of publications entrusted to commercial publishers was also lower than anticipated. The English version of the *Official Commentary on the UNIDROIT Convention on Substantive Rules for Intermediated Securities*, published by Oxford University Press (OUP), had sold only nine copies in the last year, however the sales of the Chinese translations of the Official Commentaries on the Cape Town Convention and Aircraft and Railway Protocols were more encouraging.

219. Regarding the website, Ms Peters explained that over 70% of users had accessed the website by means of a Google search, which seemed to indicate that they were not familiar with the organisation or that they did not know that UNIDROIT had been responsible for the creation of the instrument that they were researching. Another important source of access was Wikipedia, which prompted the observation that greater attention should be devoted to Wikipedia and the entries it contained on the Institute and its work. She noted that UNIDROIT had previously had problems with Wikipedia when the general description of the Institute that had been inserted by UNIDROIT itself onto Wikipedia's website was deleted as infringing copyright because that text was also on UNIDROIT's website. The attempts by the Deputy Secretary-General to attest to the correctness of the entry and to the consent given by UNIDROIT to the description being posted on Wikipedia had been to no avail. She also observed that it was desirable for the content of the different language versions of Wikipedia to contain the same information.

220. Turning to the content of the website consulted by users, the impression that UNIDROIT was known mainly for the UNIDROIT Principles of International Commercial Contracts was confirmed by the findings. Examining the top 200 pages consulted, it was clear that the pages most consulted belonged to the Principles. Otherwise, the pages consulted most were those of the texts of the instruments already adopted, whereas the pages dealing with the current projects of the Institute were not frequently consulted.

221. Ms Peters noted that the possibility of hosting conferences on the website, both for live streaming and subsequently storing them in a special section, was being examined. She suggested that the possibility of having videos on the website introducing the projects and the publications of UNIDROIT should also be examined. She also suggested that the presentation of the entries on the website should further be standardised and tags be inserted on those entries to facilitate searches through search engines. Lastly, she urged Council members to inform the Secretariat of any event at which the Institute and its work and publications might be publicised.

222. *Mr Király* informed the Council of the publication of a bilingual edition (Hungarian-English) of the black-letter rules of the 2010 UNIDROIT Principles of International Commercial Contracts in both a paper version and an e-book.

223. *Mr Kotzé* referred to document C.D. (94) 11 which pointed out the need to make an effort to publicise the work of UNIDROIT in countries outside Europe and wondered if a strategy had been elaborated for Africa. In relation to the *Uniform Law Review*, he wondered whether steps had been taken to accredit it with the International Bibliography of Social Sciences (IBSS) as he was aware of one instance in which an author had decided not to submit an article because of the lack of IBSS accreditation.

224. *Ms Peters* stated that no strategy had been prepared specifically for Africa and indicated that suggestions were very welcome. In relation to the *Uniform Law Review*, the Editorial Board was scheduled to hold its next meeting with OUP on 9 June 2015 and the accreditation of the Review was an item on the Agenda. The question had been raised by the Deputy Secretary-General in 2014 and the members of the Board were looking forward to hearing what developments had taken place in that respect.

225. *Ms Shi* observed that Wikipedia was difficult to access in China and that a Chinese electronic encyclopaedia, Baidu Encyclopaedia, was used in its place. She indicated that she would take steps to insert a UNIDROIT page on that encyclopaedia. Lastly, she suggested that the website of the World Trade Organization (WTO) should be looked at, as its presentation of WTO instruments was very user-friendly.

226. *The Council* took note of the developments that had taken place in relation to the UNIDROIT information resources and policy, as well as of the data deriving from the monitoring of these resources and the Secretariat's proposed actions.

Item 13 on the agenda: Preparation of the draft Budget for the 2016 financial year (C.D. (94) 12)

227. The *Secretary-General* presented the draft Budget for the 2016 financial year (document C.D. (94) 12). He explained that the 2016 draft Budget was consistent with the previous year, with an increase of only €189.40. He noted that the draft Budget proposed a modest increase in meeting and travel costs which were partially related to the costs of convening the Governing Council, as member States were not sponsoring the travel costs of the Governing Council members. He further noted there were very minor increases in relation to salaries and allowances and a decrease in relation to social security charges, as new staff members had elected to maintain their existing social security schemes at a lower cost than the Italian system. He also noted minor proposed increases in expenses including postage, decreases in maintenance and heating costs and a proposed increase in the cost of software for the Library to allow for database subscriptions in English, French, German, Italian and possibly Spanish.

228. *Mr Gabriel* noted that the Library's budget now represented approximately 5% of the Institute's overall budget and should not be cut any further.

229. *Mr Kotzé* commended the Secretary-General for achieving a zero growth budget.

230. *Ms Sabo* congratulated the Secretary-General on his excellent financial management of the Institute and expressed that Canada was very pleased with the current state of affairs. She noted her support for the activities of the Library, which needed to be considered in the context of UNIDROIT's institutional priorities. She expressed a cautious hope that in coming years there might be the potential for more financial support for the Library without sacrificing other priorities.

231. *Mr Tricot* inquired about the relationship between the Work Programme, the Strategic Plan and the Budget. The *Secretary-General* explained that over recent years the Budget has been tailored in a more focused manner to ensure that the available resources were used efficiently to achieve the Institute's strategic priorities as detailed in the Work Programme. He noted that UNIDROIT was keenly aware of the ongoing difficult global economic conditions, especially in Europe where the largest group of UNIDROIT member States were located, and that the restructuring of the budget to better address the Institute's strategic priorities was part of the zero growth policy. He further noted that the Institute's budget was a fraction of other comparable international organisations and that UNIDROIT would continue to strive to achieve as much as possible with the modest resources available. Lastly, the Secretary-General noted that the Secretariat was intending to prepare a similar forward draft Budget in 2016.

232. *The Council took note of the draft Budget for the 2016 financial year.*

***Item 14 on the agenda: Date and venue of the 95th session of the Governing Council
(C.D. (94) 1)***

233. *The Council agreed that the 95th session of the Governing Council should be held from 18-20 May 2016, at the seat of UNIDROIT in Rome.*

Item 15 on the agenda: Any other business

234. *No points were raised under this item on the agenda.*

Item 16 on the agenda: International Colloquium "20 Years of UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects" (8 May 2015)

235. *The Council adjourned for the International Colloquium celebrating the twentieth anniversary of the adoption of the Convention on Stolen or Illegally Exported Cultural Objects.*

APPENDIX I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS**

(Rome, 6 – 8 May 2015 / *Rome, 6 – 8 mai 2015*)

**MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

| | |
|----------------------|---|
| Mr Alberto MAZZONI | President of UNIDROIT / <i>Président d'UNIDROIT</i> |
| Mr Marco ACQUATICCI | Head of Legal and Consular Office Embassy of Germany in Italy Rome (Italy) <i>Representing Mr Hans-Georg Bollweg</i> |
| Ms Stefania BARIATTI | Professor of International Law School of Law Università degli Studi di Milano Milan (Italy) |
| Mr Radu Bogdan BOBEI | Attorney; Professor Faculty of Law University of Bucharest Bucharest (Romania) |
| Ms Núria BOUZA VIDAL | Professor of Private International Law Pompeu Fabra University School of Law Law Department Barcelona (Spain) |
| Ms Baiba BROKA | Adviser to the Minister of Environmental Protection and Regional Development Riga (Latvia) |
| Mr B. Bahadır ERDEM | Professor of Law İstanbul Üniversitesi Hukuk Fakültesi Lawyer İstanbul (Turkey) |

| | |
|-----------------------------|---|
| Mr Henry D. GABRIEL | Professor of Law School of Law Elon University Greensboro, North Carolina (United States of America) |
| 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) |
| Mr Miklós KIRÁLY | Professor of Law Dean of the Faculty of Law Eötvös Loránd University Budapest (Hungary) |
| Mr Alexander S. KOMAROV | Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation) |
| Mr Theunis KOTZE | State Law Adviser (IL) Department of International Relations and Co-operation Pretoria (South Africa) <i>Representing Mr Jan Lambert Neels</i> |
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| | |
|----------------------------------|--|
| Mr José Antonio MORENO RODRÍGUEZ | Professor of Law; Attorney Asunción (Paraguay) |
| Ms Monika PAUKNEROVÁ | Professor of Private International Law and International Commercial Law Faculty of Law Charles University Prague 1 (Czech Republic) |
| Mr Wojciech POPIOŁEK | Associate Professor of Law; Lawyer ADP Popiołek Advocates and Advisers, Law Firm Katowice (Poland) |
| Mr Jorge SÁNCHEZ CORDERO | Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico) |
| Mr Álvaro SANDOVAL BERNAL | Ambassador de Colombia en Egipto Embajada de Colombia en Egipto El Cairo (Egypt) |
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| Mr Hiroo SONO | Professor of Law Hokkaido University, School of Law Sapporo <i>Representing Mr Hideki Kanda</i> |
| Monsieur Daniel TRICOT | Président de l'Association française des docteurs en droit (AFDD) Arbitre et médiateur en affaires Soc. DTAM Paris (France) |

Mr Spyridon VRELLIS
 Emeritus Professor of Law;
 Director
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Deputy Secretary-General / *Secrétaire Général adjoint*
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Senior Officer / *Fonctionnaire principale*
Senior Officer / *Fonctionnaire principale*
Senior Officer / *Fonctionnaire principale*
Legal Officer / *Juriste*
Legal Officer / *Juriste*
Librarian / *Bibliothécaire*

APPENDIX II**ANNOTATED DRAFT AGENDA**

1. Adoption of the annotated draft agenda (C.D. (94) 1)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (94) 1)
3. Reports
 - (a) Annual Report 2014 (C.D. (94) 2)
 - (b) Report on the Uniform Law Foundation
4. Private Law and Agricultural Development - Adoption of a Legal Guide on Contract Farming (C.D. (94) 3)
5. International Commercial Contracts - Long-term contracts (C.D. (94) 4)
6. International Interests in Mobile Equipment
 - (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (94) 5(a))
 - (b) Fourth Protocol of the Cape Town Convention on matters specific to mining, agricultural and construction equipment (C.D. (94) 5(b))
7. Transactions on Transnational and Connected Capital Markets - Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (94) 6)
8. Transnational civil procedure - formulation of regional rules (C.D. (94) 7)
9. Promotion of UNIDROIT instruments (C.D. (94) 8)
10. Correspondents (C.D. (94) 9)
11. Library and research activities (C.D. (94) 10)
12. UNIDROIT information resources and policy (C.D. (94) 11)
13. Preparation of the draft budget for the 2016 financial year (C.D. (94) 12)
14. Date and venue of the 95th session of the Governing Council (C.D. (94) 1)
15. Any other business
16. International Colloquium "20 Years of UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects" (8 May 2015)

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. 14 – Date and venue of the 95th session of the Governing Council

2. The Governing Council may wish to consider holding its 95th session on 25 to 27 of April, 11 to 13 May, 20 to 22 May or 25 to 27 May 2016.