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**Item No. 13 on the agenda: Draft Triennial Work Programme 2017-2019**

**Comments received by UNIDROIT active correspondents**

(prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the comments received by the Secretariat on the draft Work Programme for the 2014-2016 triennium</i>
<i>Action to be taken</i>	<i>To take note of the comments</i>
<i>Related document</i>	<i>UNIDROIT 2016 – C.D. (95) 13 rev.</i>

**INTRODUCTION**

1. Article 5(3) of the UNIDROIT Statute mandates the Governing Council to prepare the ground for the adoption by the General Assembly of the new triennial Work Programme by analysing comments and proposals submitted by member Governments and the Institute's correspondents with a view to formulating recommendations. The Secretariat has prepared documents containing comments on the proposed new Work Programme and suggestions for projects and activities to be included in the UNIDROIT Work Programme for the triennium 2017-2019 (cf. UNIDROIT 2016 – C.D.(95) 13 rev. and Addenda).

In accordance with UNIDROIT's usual practice, Institute's correspondents were informed about the status of all items on the current and proposals for the future triennial Work Programme. Some of them submitted comments: Mr Darankoum (Burkina Faso), Ms Fauvarque-Cosson (France), Ms Fresnedo De Aguirre (Uruguay), Mr Kozuka (Japan), Mr Lefebvre (Canada), Mr Morán Bovio (Spain), Mr Stürner (Germany), Ms Veytia (Mexico) and Mr Wallace (United States of America). Those comments are reproduced in the Annex to this document.

2. *The Governing Council is invited to take note of the comments received by the Secretariat.*

**ANNEX****Comments received from UNIDROIT correspondents on the current Work Programme and on the draft future UNIDROIT Work Programme (2017 – 2019)**

(in the original version)

**DARANKOUM Sibidi Emmanuel** (Burkina Faso)

J'ai été récemment en retraite de rédaction d'un projet de recherche sur le nouveau Guide UNIDROIT/FAO/FIDA sur l'agriculture contractuelle.

**FAUVARQUE-COSSON Bénédicte** (France)

Je me réjouis beaucoup de votre invitation à prolonger mes fonctions pour un nouveau mandat. Je suis particulièrement heureuse d'accepter, au vu de l'agenda ; Je suis prête à contribuer, par ma présence dans des groupes de travail et par la diffusion des travaux d'UNIDROIT.

La thématique du Développement m'intéresse. Je suis, en France, membre du Conseil d'administration d'Expertise France (je leur ai déjà parlé du guide sur les contrats agricoles), une grande agence qui est spécialisée dans le développement. Tous les travaux sur le droit des contrats m'intéressent aussi.

En France, notre réforme est en bonne voie (et la cause a disparu, je pense que ce pourrait être le moment de relancer certains projets).

**FRESNEDO DE AGUIRRE Cecilia** (Uruguay)

*1. Legal activities (Work Programme for the 2014-2016 triennium), 7. Transnational civil procedure – formulation of regional rules*

Regarding this topic, I would like to mention that the American Association of Private International Law (ASADIP) is working on the drafting of "ASADIP Principles on Civil Procedure and International Juridical Cooperation". Perhaps some exchange of information could be useful, since the Secretariat will continue working on this topic during the 2017-2019 Work Programme triennium ((UNIDROIT 2016 – C.D. (95) 13, paragraph 25).

*2. Implementation and promotion of UNIDROIT instruments (Work Programme for the 2014-2016 triennium)*

We included the UNIDROIT Principles on Commercial Contracts and the ALI / UNIDROIT Principles on Transnational Civil Procedure in our under graduate and graduate courses since their approval. Several private international law professors have recommended their application in some contractual negotiations and in some transnational civil procedures. However, their judicial application is still scarce and sometimes wrong or distorted. We keep on working on that.

### 3. *Ongoing legislative activities* carried over from the 2014-2016 Work Programme

Regarding the Protocol to the Cape Town Convention on Matters Specific to Agricultural, mining and construction equipment, I consider it would be desirable to maintain it on the Triennial Work Programme 2017-2019, raising its priority level to “high”, due to the importance of the topic.

#### 4. *International Commercial Contracts*: issues relative to multilateral contracts

I think this topic should be retained in the UNIDROIT Work Programme for the triennium 2017-2019. While dealing with the topic, equity, due balance among contracting parties and substantive justice should be the ultimate target to be kept in mind. The level of priority should be at least medium.

#### 5. *Secured transactions*: Preparation of Protocols to the Cape Town Convention

Ships and maritime transport equipment: a potential Protocol may be useful as far as the areas of the law of proprietary security over ships where there was sufficient demand for an extension of the Cape Town system are adequately identified. The support of shipping industry is important but the codifier must keep its technical independence and the possibility to maintain due balance between opposing interests.

Off-shore power generation and similar equipment: I think a feasibility study on a broader protocol regulating interests in renewal energy equipment would be worth, though perhaps as a low priority.

#### 6. *Capital Markets Law*: additional topics

I think it is worth including all the topics mentioned here in the UNIDROIT Work programme for the triennium 2017-2019.

#### 7. *Private law and development*

Agricultural development: This topic is particularly important for developing countries. Therefore, it seems to me that the Institute should keep on working on it.

Legal aspects of social business: this is a very interesting and original topic. It would be interesting to keep on working on it.

#### 8. *Proposed new legislative activities* for the 2017-2019 Work Programme

Insurance contracts: all the proposals on this topic are interesting. It should be kept in mind that insurance contracts where an individual is a party are generally considered to be a consumer contract and therefore is ruled by national mandatory rules or *lois de police*. The focus should be, thus, on insurance contracts with businessmen or corporations, particularly those that belong to lower-income market and highly vulnerable groups.

Business informatics: the formulation of model laws on this topic would be particularly useful, since there is scarce specific regulation on the matter.

Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law, extended to other texts on the field, would be extremely useful in practice.

9. *Trade facilitation*: best practices in the control and evaluation of the coverage and enforcement of technical regulations

The proposal of Colombia is quite original and tackles a very important issue. I think it is worth including it in the UNIDROIT Work Programme for the triennium 2017-2019.

10. *Implementation and promotion of UNIDROIT instruments*

All these activities are very important. Without implementation and promotion of UNIDROIT instruments, the Institute's work becomes useless.

**KOZUKA Souichirou** (Japan)

I have had the opportunity to read the Draft Triennial Work Programme: 2017-2019 (C.D. (95) 13) (hereinafter as "Draft Work Programme") and hereby submit some thoughts on it.

1. *General Remark on legislative activities*

First of all, I commend the achievements made by Unidroit during the last three years, including the completion of Unidroit/FAO/IFAD Legal Guide on Contract Farming as well as the good progress made with the preparation for the establishment of Rail and Space Registries under the respective Protocols to the Convention on International Interests in Mobile Equipment (hereinafter as "Cape Town Convention"). I hope Unidroit will make as good achievements, both in quality and volume of work, in the coming three years.

As I mentioned in my comments to the last triennial programme (and elaborated in my contribution to the volume in honour of Professor Bonell, which is mentioned in para.117 of the Draft Programme), the uniform law instruments can either be an instrument applicable to a certain industry that addresses issues specific to that industry sector, or an instrument of general application that pursues justice and equity in private law in a more general sense. It is my belief that Unidroit's work programme need to have a balanced mixture of both types.

2. *The Cape Town Convention*

The Cape Town Convention has a unique nature as a uniform law instrument in that it requires, besides the courts of Contracting States, international institutions such as Registry and Supervisory Authority to implement the Convention and Protocols in reality. With this nature in mind, the efforts toward implementation of the two Protocols yet to be in force, namely the Luxembourg Rail Protocol and Space Protocol (para. 31 of the Draft Work Programme), deserve the highest priority.

As regards the preparation of additional Protocols, I believe the Protocol on Mining, Agriculture and Construction equipment (hereinafter "MAC Protocol") (para.16 of the Draft Work Programme) is ripe to proceed to the Governmental negotiations stage, given that the relevant industry has at least indicated interests in, and understanding of, the work. On the other hand, it may be appropriate to keep the Protocol on ships and maritime transport equipment (paras.29-33 of the Draft Work Programme) on the agenda without engaging in active works at this point, since the International Working Group on Ship Financing Security Practices of the Comité Maritime International has just started to examine whether the shipping industry finds sufficient needs for such an instrument.

### *3. Capital Markets Law*

The Capital Markets Law is also the type of uniform law addressed to a specific sector of industry. It is commendable that the Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets is anticipated to be ready for adoption in 2017 (para.20 of the Draft Work Programme). The completion of the work should, of course, be given the highest priority.

Once the work is completed and the resources devoted for it is freed, I support the idea of starting another topic in this category. The trust law (para.39 of the Draft Work Programme) may deserve being pursued with the middle priority, on condition that the work is limited to trust of commercial nature and relevant to the financial market (as opposed to trust in general, which will connote a variety of applications and legal issues). Alternatively, integration of regional exchanges as proposed by the Government of Colombia (para.80 of the Draft Work Programme) may be a topic that deserves the middle priority. Given that the latter subject is proposed with the background of actual integration plans being in operation, spending resources on the latter topic first may make better sense. That work may be followed by the study of trust law, which will probably be the agenda for the triennium after the next.

### *4. International Commercial Contracts*

The UNIDROIT Principles of International Commercial Contracts (UPICC) are a great achievement that belong to the uniform law of general nature. With this understanding, I am not entirely convinced that the addition of issues on multilateral contracts (para.26 of the Draft Work Programme) will add much value to the UPICC, because the existing rules on such contracts in some domestic laws are mostly addressed to industry specific problems or concerned with competition law aspects. It has not been proven that there are private law principles of general nature, common to every type of multilateral contracts independent of industry-specific policy considerations.

It will rather be useful to give the middle level priority to the proposed formulation of principles of reinsurance contracts (paras.64-67 of the Draft Work Programme). Although the subject itself deals with industry-specific issues, the work plans to refer to the UPICC as the underlying general contract law rules and will, therefore, be a good occasion to test how the general contract law rules as embodied in the UPICC can serve as the basis to build industry-specific rules on. It is also notable that the work has its own funding and the financial burden on UNIDROIT will be very limited.

The work on the model laws on business informatics, as proposed by the Government of Hungary (para.69 of the Draft Work Programme), may also deserve studying. The subject could involve some non-traditional issues, such as privacy, digital rights or data policy, whose private law aspects are still largely underdeveloped. I would point to the fact that a working group within the International Bar Association (IBA) has been working on the principles on data collection and an individual's "digital identity" and has already made preliminary studies on the practices among platform service providers. It may be appropriate for Unidroit to liaise with IBA and make a preliminary study on the subject, with middle to low priority.

### *5. Transnational Civil Procedure*

The Transnational Civil Procedure rules are also products of uniform law instrument with a general nature. Finalising the work on regional rules in collaboration with the European Law Institute (ELI) (para.25 of the Draft Work Programme) deserves the highest priority, as it is going to be a very fruitful instrument.

I note that there is a proposed follow-up project on the principles of effective enforcement (paras.74-78 of the Draft Work Programme). While the effective enforcement is an indispensable institutional element to achieve justice, the feasibility of the project may need to be carefully examined, given that the enforcement is closely intertwined with the local context, including how the state organ is structured, and therefore is a tough subject for introducing uniform rules. Based on this understanding, I am of the view that middle to low priority is appropriate for the proposed subject.

#### *6. Private Law and Development*

It is a fortune for UNIDROIT to have established a collaborative relationship with two international organisations, FAO and IFAD, through the work on the Legal Guide on Contract Farming. I believe it will be fruitful to develop this collaboration by pursuing another subject related to law and development. Some form of work on land investments, proposed by the Government of the United States (para.50 of the Draft Work Programme), may be an appropriate subject to complement the successfully concluded work on the Legal Guide on Contract Farming. As the term "land investment" is broad enough to include various transactions, such as development of a shopping mall, it is my view that the subject may better be limited in scope so that it becomes evident that only the land investment for the sake of agricultural and similar activities is dealt with. With this condition, I believe the subject deserves middle level priority.

The Secretariat might also be advised to consider liaising with the FAO and IFAD with regard to the MAC Protocol to the Cape Town Convention, already discussed above, because financing the equipment is an essential part of development of farming.

#### *7. Non-Legislative activities*

In my comments on the last triennial work plan, I wrote "[w]ith due regard paid to the budgetary constraint, the importance of non-legislative activities cannot be overemphasised. This is because legal instruments can be meaningful only if they are used by people, in particular legal experts, who have good understanding of them. In this sense, drafting a convention or other instrument should not be the end of the work." I do not see any need for modifying what I said three years ago. In fact, it seems to me that the experiences with the implementation of the Cape Town Convention have highlighted the importance of such educational and promotional activities more than ever.

I welcome the new format of publication of *Uniform Law Review*, in particular its inclusion in the database of Hein Online. I also encourage continuation of internships and scholarships. Again, I refer to my comments of three years ago which suggested that more efforts be made to make the outcome of the visiting scholars' researches public by creating, for example, a website for posting their papers (possibly under the title of "Unidroit Working Paper Series") or a blog-style forum for contributing their views and comments on them by experts.

#### **LEFEBVRE Guy** (Canada)

Pour faire suite à votre lettre du 15 février 2016, je demande, par la présente, le maintien de mon statut à titre de correspondants d'Unidroit. Au soutien de ma demande, j'ai le plaisir de vous soumettre mon bilan d'activité au cours de la période 2013-2016. Ce bilan est constitué principalement d'activité relativement la promotion des instruments d'UNIDROIT dans mon champ de spécialisation qui concerne la vente internationale de marchandises et ses contrats ancillaires.

Voici donc mes réalisations qui comprennent évidemment celle qui englobe les principes d'Unidroit dans une démarche plus globale visant à les situer par rapport aux autres instruments internationaux. Ce rapport contient également la participation au développement international ainsi que des prix, mentions et honneurs reçus entre 2013 et 2016:

#### 1. Recherche

- RIGAUD, Marie-Claude e LEFEBVRE Guy, Os usos e costumes do comércio internacional: Em que pé estamos? Em que pé eles estao ?, Partie 1, Informativo Juridico Consultex, Brésil, no 25, 24 de junio de 2013, pages 5-11. (Portugais)
- RIGAUD, Marie-Claude e LEFEBVRE Guy, Os usos e costumes do comércio internacional: Em que pé estamos? Em que pé eles estao ?, Partie 2, Informativo Juridico Consultex, Brésil, no 26, 1 de julho de 2013, pages 6-11. (Portugais)
- RIGAUD, Marie-Claude e LEFEBVRE Guy, Os usos e costumes do comércio internacional: Em que pé estamos? Em que pé eles estao ?, Partie 1, Informativo Juridico Consultex, Brésil, 2013, à [www.consultex.com](http://www.consultex.com), (texte intégral - Portugais)
- JIAO Jie et Guy LEFEBVRE, Mélanges Michael Joachim Bonell, UNIDROIT, Rome, " L'utilisation du terme de commerce FOB: une incertitude pour les commerçants !", accepté pour publication, 27 p., 2016
- LEFEBVRE Guy et VAN OVERMEIRE Xavier, Transactions commerciales internationales, ouvrage, (à paraître, 1<sup>ère</sup> version rédigée)
- LEFEBVRE Guy, "La vente documentaire internationale", dans LEFEBVRE, Guy et ROUSSEAU, Stéphane (dir.), Introduction au droit des affaires, Montréal, Les Editions Thémis, 2<sup>ème</sup> édition, à paraître.

#### 2. Conférences

- Convention de Vienne et principes d'UNIDROIT
- Conseil canadien de droit international, 42e conférence annuelle, Ottawa, novembre 2014
- University of Macau, décembre 2013
- Universidade Federal de Santa Catarina, Brésil, octobre 2013
- Zhongnan University of Economics and Law, Wuhan, Chine, octobre 2014

#### 3. Participation au développement international

Directeur du projet, Compétence pour l'emploi au sein de la Francophonie, "Partenariat universitaire Maroc/Liban", Affaires mondiales Canada, 4 millions de dollars, proposition acceptée suit un concours, 2016-2021 (comprend l'évaluation de l'adéquation des programmes en droit international des affaires et en droit maritime et leur reformulation)

#### 4. Prix, mentions et honneurs

- Adjunct Professor, faculté de droit, University of Macau, 2015-2018, 2012-2015
- membre du conseil d'administration et trésorier de l'Organisation universitaire interaméricaine (OUI), 2015-2019 (regroupant plus de 350 universités organismes)
- Honorary Professor (nommé à vie), East China University of Political Science and Law (ECUPL), Shanghai (titre octroyé en Chine selon la réglementation du Ministère de l'Education "à un éminent professeur qui a contribué de façon exceptionnelle à la vie académique, tout en étant un scientifique hautement reconnu et qui a joué un rôle important dans le développement de sa discipline à l'Université qui émet le titre"), 2014

- chercheurs les plus visibles dans le monde dans les médias publiés en anglais et en français dans le domaine des Sciences sociales et humaines, Classement 2013 des chercheurs de l'Université de Montréal dans les médias électroniques : Guy Lefebvre, droit des affaires (CIRANO), 2013
- Membres d'honneur, Association Henri-Capitant, Cambodge, 2013
- Prix d'excellence de l'internationalisation des programmes - Université de Montréal, prix remis à Guy Lefebvre, au nom de la faculté de droit (nouveau prix), 2013
- Directeur canadien, chercheur senior et co créateur, Sino-Canadian Law Research Center, China University of Political Science and Law (CUPL), Beijing, depuis 2013
- Professeur invité régulier, China University of Political Science and Law (CUPL), Beijing, nommé par le Président Huang Jin, 2013-2016 et 2009-2013.

**MORÁN BOVIO David** (Spain)

This is a reply to that invitation as a way to contribute to UNIDROIT work. Prior to anything else I would like to congratulate the UNIDROIT Secretariat for that excellent document and for its preceding extensive work.

The answer is organized following the marginal numbers in the referred document.

17. MAC Protocol it is a good tool for development and I should prefer to raise its priority level to "high".
20. Congratulations for the new.
28. The issue should be retained. Its priority: "medium".
38. Feasibility study should be included.
41. The issue of securitisation always deserve more study.
56. Authorization to the Secretariat seems perfect.
61. In favour of the recommendation.
68. Also in favour of recommendation (it is a clear area for cooperation).
70. Something needed.
73. Perhaps one of the top issues.

On possible new proposals I must confess that still I am considering the opportunity to work on the Account Principles moreover once that EU [Regulation 1606/2002] decided to follow so strictly the International Accounting Standards. But still I did not have enough time or occasion to consider the question in order to prepare a first draft for that study.

**STÜRNER Rolf** (Germany)

See document C.D.(95) 13 Add. 2 containing the 'Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement'.

**VEYTIA Hernany** (Mexico)

I am delighted in supporting the Institute works, especially please note my interest in: a) private art collections (Mexican Initiative); b) reinsurance contracts (currently I am advising cat funds for the mining industry); c) Contract farming (I sit in the board of Intelligent Farming Ltd and the FAO/UNIDROIT has been of inspiration for our business plan on forestry and fishery projects).

**WALLACE Don** (United States of America)

As for program ideas, I have studied the proposed program, priorities and addenda, including that of the US. I remain interested in having UNIDROIT identify itself directly with the priorities of the poorest countries and the poorest populations (since so much useful work already facilitates the movement of capital), and therefore again press for work such as that on land tenure and its protection (but I realize the priorities are elsewhere).