



EN

GOVERNING COUNCIL
95th session
Rome, 18 - 20 May 2016

UNIDROIT 2016
C.D. (95) 13 rev.
Original: English
April 2016

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

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the draft Work Programme for the 2017-2019 triennium</i>
<i>Action to be taken</i>	<i>To take note of the proposed activities to carry out the current Work Programme and to make recommendations for the future Work Programme, including the relative priority to be assigned to each activity</i>
<i>Related documents</i>	<i>Strategic Plan (UNIDROIT 2012 – A.G. (71) INF 2); Work Programme for the 2014-2016 triennium (UNIDROIT 2013 - A.G. (72) 4 and UNIDROIT 2013 – A.G. (72) 9)); UNIDROIT 2013 –C.D (92) 13 and Addenda 1-3; UNIDROIT 2013 – C.D. (92) 5 (c) and (d); UNIDROIT 2013 – C.D. (92) 7 (b)</i>

Contents

Introduction	5
A. Ongoing legislative activities carried over from the 2014-2016 Work Programme	7
1. Secured Transactions	7
(a) <i>Implementation of the Rail and Space Protocols to the Cape Town Convention</i>	7
(b) <i>Preparation of a Protocol to the Cape Town Convention on Matters Specific to Agricultural, mining and construction equipment</i>	8
2. Capital Markets Law: Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets	9
3. Transnational civil procedure: formulation of regional rules	9
B. Low-priority legislative activities under the 2014-2016 Work Programme	11
1. International Commercial Contracts: issues relative to multilateral contracts	11
2. Secured transactions: Preparation of Protocols to the Cape Town Convention	11
(a) <i>Ships and maritime transport equipment</i>	11
(b) <i>Off-shore power generation and similar equipment</i>	12
3. Capital Markets Law: additional topics	13

4. Liability for Satellite-based Services	13
5. Private law and development	14
(a) <i>Possible future work on private law and agricultural development</i>	14
(i) Possible preparation of an international guidance document on land investment contracts	14
(ii) Possible future work in other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing	15
(b) <i>Legal aspects of social business</i>	15
C. Proposed new legislative activities for the 2017–2019 Work Programme	16
1. International Commercial Contracts	16
(a) <i>Insurance contracts</i>	16
(i) Formulation of general principles of insurance contracts	16
(ii) Formulation of general principles of inclusive insurance	17
(iii) Formulation of principles of reinsurance contracts	17
(b) <i>Formulation of model laws on business informatics</i>	18
(c) <i>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</i>	18
2. Transnational Civil Procedure: principles of effective enforcement	19
3. Capital Markets Law: mechanisms for the integration of regional securities exchanges	20
4. Cultural Property: private art collections	20
5. Private Law and Development: contractual practices of co-operatives	21
6. Trade facilitation: best practices in the control and evaluation of the coverage and enforcement of technical regulations	21
D. Implementation and promotion of UNIDROIT instruments	21
1. Depositary functions	21
2. Promotion of UNIDROIT instruments	22
(a) <i>UNIDROIT Principles of International Commercial Contracts</i>	22
(b) <i>UNIDROIT/FAO/IFAD Legal Guide on Contract farming</i>	22
(c) <i>UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) and 2011 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects</i>	23
(d) <i>UNIDROIT instruments on capital markets</i>	23
(e) <i>Convention on the Form of an International Will (Washington, D.C. 1973)</i>	24
E. Non-legislative activities	24
1. UNIDROIT Library and Depository Libraries	24
(a) <i>Cooperation</i>	24
(b) <i>Resource sharing</i>	25
(c) <i>Catalogue enrichment, databases, digitization</i>	25

(i) Catalogue enrichment	25
(ii) Databases	25
(iii) Digitisation	25
<i>(d) Acquisition Policy</i>	26
2. Information resources and policy	26
<i>(a) Uniform Law Review and other publications</i>	26
<i>(b) Website</i>	27
3. Internships and scholarships	27
Conclusion	28
ANNEX 1 – MEXICAN PROPOSAL (16 October 2015)	29
ANNEX 2 – HUNGARIAN PROPOSAL (27 November 2015)	30
ANNEX 3 – UNITED STATES OF AMERICA PROPOSAL (30 November 2015)	31
ANNEX 4 – COLOMBIAN PROPOSAL (3 December 2015)	33
ANNEX 5 – UNCITRAL PROPOSAL (14 December 2015)	34
ANNEX 6 – PROPOSAL ON PRINCIPLES OF REINSURANCE CONTRACTS	37

Introduction

1. The UNIDROIT Work Programme for the 2014-2016 triennium covers several topics that the Governing Council, at its 92nd session (Rome, 8 – 10 May 2013), following an examination of proposals submitted by the Secretariat, member States, international organisations, industry and UNIDROIT correspondents (see UNIDROIT 2013 – C.D. (92) 13 Add., Add.2, and Add. 3), recommended for inclusion in the Work Programme by the General Assembly at its 72nd session (Rome, 5 December 2013), with the adjustment in priorities subsequently approved by the General Assembly at its 73rd session (Rome, 11 December 2014) (see documents UNIDROIT 2013 - A.G. (72) 9, paras. 22-30; UNIDROIT 2014 – A.G. (73) 10, paras. 7-30).

23. As a result of these recommendations and decisions, the Work Programme for the 2014-2016 triennium currently includes the following activities (see UNIDROIT 2014 – A.G. (73) 9, Appendix III):¹

A. Legislative activities

1. International Commercial Contracts:
 - (a) Issues relating to long-term contracts: **
 - (b) Issues relating to multilateral contracts: *
2. Secured transactions
 - (a) Implementation of Rail and Space Protocols: ***
 - (b) Preparation of other Protocols to the Cape Town Convention
 - (1) Agricultural, mining and construction equipment: **
 - (2) Ships and maritime transport equipment: *
 - (3) Off-shore power generation and similar equipment: *
3. Transactions on Transnational and Connected Capital Markets

Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets: **
4. Liability for Satellite-based Services: *
5. Private law and development
 - (a) Contract Farming: ***
 - (b) Possible work in private law and agricultural development: *
6. Legal aspects of social business: *
7. Transnational civil procedure - formulation of regional rules: **

B. Implementation and promotion of UNIDROIT instruments

1. Depositary functions: ***
2. Promotion of UNIDROIT instruments: ***

C. Non-legislative activities

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

¹ The level of priority approved by the General Assembly is indicated as follows: high * * * – medium * * – low *.

24. The assignment of the relative level of priority of each activity under the Work Programme is based on the criteria developed for that purpose by the Governing Council at its 89th session (Rome, 10-12 May 2010):

- (a) *Priority for allocation of meeting costs:*
 - (i) "high priority" – projects that should take precedence over others (never more than two)
 - (ii) "medium priority" – projects eligible for being advanced in the event that the costs of high priority projects turn out to be lower than anticipated (e.g., because extra-budgetary funding having been obtained), thus freeing resources under the regular budget; and
 - (iii) "low priority" – projects that should only be advanced after completion of other projects or on the basis of full extra-budgetary funding.
- (b) *Priority for allocation of human resources:*
 - (i) "high priority" – at least 70% of the time of the officers responsible;
 - (ii) "medium priority" – not more than 50% of the time of the officers responsible; and
 - (iii) "low priority" – not more than 25% of the time of the officers responsible.
- (c) *Indispensable functions.* Indispensable functions are those that are either imposed by the Statute of UNIDROIT (e.g., library, governance) or are otherwise necessary for its operation (e.g., management and administration). These functions are "high priority" by their very nature, which is why they are supported by a pool of human and financial resources especially designated for that purpose.

25. An overview of the action taken in 2015 to implement the legislative activities that appear on the Work Programme of the Institute is contained in the Annual Report 2015.² Information, in monetary terms, on the allocation of resources to the various projects and activities of the Institute in the financial year 2015 is contained in the Secretary-General's summary of the Organisation's activity in 2015 (UNIDROIT 2015 – A.G. (74)2), presented to the 74th session of the UNIDROIT General Assembly (Rome, 10 December 2015).

26. **Section A** of this document contains proposals for the completion of ongoing projects approved under the 2014-2016 Work Programme. **Section B** provides information on low priority projects approved under the 2014-2016 Work Programme, which the Governing Council may wish to consider when deciding whether to move forward with any of those projects, keep the low priority level or abandon any of them. **Section C** sets out proposals for future work received by the Secretariat. Finally, **Sections D and E** set out the proposed priorities of the Secretariat in respect of the implementation and promotion of UNIDROIT instruments and the Institute's non-legislative activities during the 2017-2019 triennium.

²

Cf. UNIDROIT 2016 – C.D. (95) 2.

A. Ongoing legislative activities carried over from the 2014-2016 Work Programme**1. Secured Transactions****(a) Implementation of the Rail and Space Protocols to the Cape Town Convention**

27. During the 2017-2019 triennium, the Secretariat will continue its efforts to promote and implement both the 2007 *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (hereinafter, "the Rail Protocol"), and the 2012 *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets* (hereinafter, "the Space Protocol").

28. In 2014, the Preparatory Commission for the Establishment of an International Registry under the Rail Protocol, which had been set up pursuant to Resolution 1 of the Final Act of the Diplomatic Conference (Luxembourg, 23 February 2007) (UNIDROIT-OTIF 2007 – DC10 – DCME- RP-Doc.44), approved the Registry Contract and Master Service Agreement, designated the Registrar and concluded the Contract for the Establishment and Operation of the International Registry with the designated Registrar. At the end of 2014, the European Union approved the Rail Protocol as a Regional Economic Integration Organisation, thereby enabling member States to proceed with ratification or accession. The Preparatory Commission also set up an informal Ratification Task Force (RTF), composed, for the time being, of the Co-Chairs of the Preparatory Commission, the Government of Luxembourg, representatives of the Rail Working Group (RWG), Regulis SA (as designated Registrar) and SITA, as well as the Intergovernmental Organisation for International Carriage by Rail (OTIF) and UNIDROIT. The RTF planned a detailed ratification strategy and an intense agenda with the aim of reaching the number of adhesions necessary within a reasonable timeframe, to allow the entry into force of the Protocol and the operability of the international Registry.

29. During the 2017-2019 triennium, the Secretariat will continue its efforts to achieve the entry into force of the Rail Protocol and its implementation around the world. To this end, it will continue to actively take part in the initiatives of both the Preparatory Commission and the RTF, including participation in, and organisation of, seminars with representatives of the public and private sectors. Preparatory work for the setting up of the definitive Supervisory Authority for the operation of the International Registry is also envisaged.

30. In relation to the Space Protocol, the 2014-2016 triennium also saw a very fruitful period of activity of the Preparatory Commission for the establishment of an International Registry under the Space Protocol, which had been set up pursuant to Resolution 1 of the Final Act of the Diplomatic Conference (Berlin, 9 March 2012) (UNIDROIT 2012 – DC12 – DCME – SP – Doc. 45). The Commission finalised the baseline Registry Regulations at its fourth session (Rome, 10-11 December 2015) (UNIDROIT 2015 - Prep. Comm. Space/4/Doc. 7 rev.), and made progress towards the finalisation of a request for proposals to be submitted to prospective candidates to the role of Registrar. The issue of the setting up of a definitive Supervisory Authority was also discussed with the International Telecommunication Union (ITU).

31. During the 2017-2019 triennium, the Secretariat will continue its efforts to promote the Space Protocol through the activity of the Preparatory Commission in setting up the definitive Supervisory Authority, and in designating the Registrar, and through participation in seminars concerning the Space Protocol to enhance awareness of the instrument and its potential benefits.

(b) Preparation of a Protocol to the Cape Town Convention on Matters Specific to Agricultural, mining and construction equipment

11. At its 92nd meeting (Rome, 8-10 May 2013), the Governing Council agreed to include the preparation of a Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (the "MAC Protocol") in the Work Programme for the 2014 – 2016 triennium with medium/high priority (UNIDROIT 2013 – C.D. (92) 13).

12. As part of the preliminary work aimed at setting the scope of a possible fourth protocol, two Issues Dialogues were organised by the United States State Department and the International Law Institute. The meetings were held in November 2013 and January 2014 in Washington. At its 93rd session (Rome, 7-10 May 2014), the Governing Council agreed to convene a Study Group entrusted with preparing a first draft of the MAC Protocol (UNIDROIT 2013 – C.D. (92) 14).

13. To support the work of the Study Group, and consistently with the established practice for the other Protocols to the Cape Town Convention, the Secretary-General invited leading private sector stakeholders in February 2015 to form a MAC Protocol Working Group. The MAC Protocol Working Group is responsible for encouraging private sector participation in developing the Protocol, as well as representing private sector interests during the drafting process. The MAC Protocol Working Group is an independent body outside the purview of UNIDROIT. The Working Group has met regularly throughout 2015 and 2016 and its representatives participated in the Study Group meetings.

14. The first meeting of the Study Group was held at the seat of UNIDROIT in Rome from 15 – 17 December 2014. The meeting was attended by various international experts in secured transactions law comprising the Study Group, as well as observers from the United Nations Commission on International Trade Law (UNCITRAL) and the National Law Center for Inter-American Free Trade (UNIDROIT 2015 – Study 72K – SG1 – Doc. 5). The Study Group discussed various legal issues surrounding the creation of the Protocol, the delineation of the Protocol's scope and a preliminary first draft of the Protocol. The second and third meetings of the MAC Protocol Study Group were held in Rome from 8 - 9 April and 19 – 21 October 2015 respectively (UNIDROIT 2015 – Study 72K – SG2 – Doc. 6; UNIDROIT 2015 – Study 72K – SG3 – Doc. 5). In addition to the panel of international experts, the meetings were attended by observers from UNCITRAL, the International Finance Corporation (IFC) and the World Customs Organisation (WCO). The Study Group continued to make progress in resolving the legal issues that had been raised at the previous meetings, especially in relation to the treatment of fixtures and the use of the WCO Harmonized Commodity Description and Coding System. Several ad hoc teleconferences were also held between Study Group meetings to further discuss significant legal issues.

15. The fourth and final meeting of the MAC Protocol Study Group will be held from 7 - 9 March 2016 at the seat of UNIDROIT in Rome. The report of that meeting will be available to the Governing Council at its 95th session. At the time of this writing, the Secretariat expects that the Study Group will be able to successfully finalise a preliminary draft MAC Protocol for consideration by the Governing Council, and that such preliminary draft will be sufficiently advanced to warrant further work on the project.

16. Provided that the Study Group makes the progress anticipated by the Secretariat, at its 95th session the Governing Council will be invited to consider whether a committee of intergovernmental experts should be convened to further consider the MAC Protocol. Should the Governing Council favour the convening of a committee of governmental experts, the Secretariat would propose that the remainder of 2016 be used for consultations with industry and public sector representatives to broaden the basis of support to and participation in the process, and that the first meeting of a committee of governmental experts could be held in the first half of 2017, with possibly two

subsequent meetings in 2017 and 2018. If support for the MAC Protocol continues to grow during the intergovernmental meetings, a Diplomatic Conference could be convened in 2018 or 2019 to consider and adopt the MAC Protocol.

17. *On the basis of the work completed by the Study Group, the Governing Council is invited to consider maintaining the MAC Protocol on the Triennial Work Programme 2017-2019 but raising its priority level to "high".*

2. Capital Markets Law: Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets

18. At its 88th session (Rome, 20-23 April 2009), the Governing Council recommended that work on principles and rules capable of enhancing trading in securities in emerging markets be added to the Work Programme (C.D. (88) 17, para. 49). At its 89th session (Rome, 10-12 May 2010), the Governing Council took note of the steps planned by the Secretariat to prepare a legislative guide on this topic, but assigned medium/low priority to the work until completion of the Principles on Close-Out Netting (UNIDROIT 2010 - C.D. (89) 17, para. 65). Upon adoption of those Principles, the Governing Council, at its 92nd session (Rome, 8-10 May 2013), recommended elevating the priority given to the work from medium/low to medium priority (UNIDROIT 2013 - C.D. (92) 17, para. 111).

19. Following delays due to a staffing shortage at the Secretariat, work in this area has fully recommenced. Currently, a small, informal group of experts chaired by Mr Hideki Kanda (member of the UNIDROIT Governing Council) is assisting the Secretariat with the preparation of a draft of the provisionally-titled Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets (hereafter "the Legislative Guide"). The draft is being prepared in accordance with the guidance provided by the Committee on Emerging Markets Issues, Follow-Up and Implementation (hereafter "the CEM"), in particular at its third session (Istanbul, 11-13 November 2013) (UNIDROIT 2014 – Study LXXVIIB/CEM/3/Doc. 3, paras. 34-69).

20. Following a series of videoconferences to advance the draft, the informal group is to meet in person for a second time on 16-17 May 2016 at the seat of UNIDROIT, to review the draft in detail, to further the collection of options and examples – such as excerpts of statutes and regulations – to be included in the Legislative Guide, and to evaluate its readiness for review both within the CEM and by other organisations and interested stakeholders. After that meeting, the Secretariat expects to be able to submit the draft to the broader informal working group established during the CEM's second session (Rio de Janeiro, 27-28 March 2012) (UNIDROIT 2012 – Study LXXVIIB/CEM/2/Doc. 3, paras. 47-49) for informal review and consultations. The Secretariat further expects to be able to submit the draft to the CEM for its review during the latter half of 2016, provided there is interest in holding another CEM session, preferably in an emerging market country. Following such review and consultations, it is envisaged that the prospective Legislative Guide may be ready for consideration and adoption by the Governing Council at its 96th session to be held in May 2017.

3. Transnational civil procedure: formulation of regional rules

21. In 2014, UNIDROIT and the European Law Institute (ELI) agreed on a joint project for the development of regional rules of European civil procedure based on the ALI – UNIDROIT Principles of Transnational Civil Procedure (prepared by a joint American Law Institute/UNIDROIT Working Group, and adopted by both organisations in 2004).

22. The project, authorised by the UNIDROIT General Assembly at its 72nd session (Rome, 5 December 2013), was developed within the framework of the institutional cooperation between UNIDROIT and ELI. At its 73rd session (Rome, 11 December 2014) the UNIDROIT General Assembly,

upon proposal of the Governing Council at its 94th session (Rome, 6-8 May 2015), decided to increase the priority of the project from low to medium.

23. UNIDROIT and ELI established a joint Steering Committee in 2014, and agreed on a precise timeframe for the completion of the work, which was entrusted to a total of seven Working Groups. Each of them is led by two Co-Reporters and is composed of experts (academics, judges and practicing lawyers) ensuring geographic, linguistic and legal diversity. Within the timeframe of implementation of the 2014-2016 Work Programme, considerable progress was made by the first three Working Groups that were set up in May 2014 at the first meeting of the Steering Committee on "access to information and evidence"; "provisional and protective measures" and "service of documents and due notice of proceedings". Two additional Working Groups were established in November 2014 during the plenary meeting of the Steering Committee and the Working Group members on the topics of "*lis pendens* and *res judicata*" and "obligations of the parties and lawyers". They presented their preliminary results at the meeting of the Steering Committee and Working Group Co- Reporters held in April 2015 and at a conference organised in cooperation with the European Law Academy ERA in November 2015. Finally, two other groups (respectively on "costs and funding" and "judgments") were set up in November 2015, so as to provide coverage of most of the issues addressed in the ALI- UNIDROIT Principles and for which European rules were considered to be both useful and feasible. All groups will present either final or preliminary draft documents at the Steering Committee and Co- Reporters meeting and at the plenary meeting already planned for 2016. The Steering Committee meeting (Rome, 21-22 April 2016) will also set up a "structure group" composed by representatives of the existing groups and entrusted with the task of better coordinating the outputs of each Working Group.

24. The project has benefitted from the active cooperation of the American Law Institute (ALI) and of input from a number of institutional observers who participated in the annual plenary meetings of the Steering Committee and Working Groups' Members: Intergovernmental Organisations (Hague Conference on Private International Law (HCCH)), European Institutions (the European Commission, the European Parliament (JURI Committee), the Court of Justice of the European Union), Professional Associations (the Association for International Arbitration (AIA), the Council of Bars and Law Societies of Europe (CCBE), the Council of the Notariats of the European Union (CNUE), the European Network of the Councils of the Judiciary (ENCJ), the International Bar Association (IBA), the Union Internationale des Avocats (UIA), the Union internationale des huissiers de justice (International Union of Judicial Officers) (UIHJ)), and Research Institutions (the International Association of Procedural Law and the Max-Planck Institute of Luxembourg for International, European and Regulatory Procedural Law). The project was also presented at a hearing of the European Parliament on 16 April 2015, and discussed within the ELI annual General Assemblies, in particular in September 2015 by a specific Member Consultative Committee (MCC).

25. During the 2017-2019 Work Programme triennium, the Secretariat will continue cooperating with ELI on the project. It will participate in the Steering Committee with a view to supporting the Working Groups achieve a complete set of draft rules and comments. It will also take part in the editing committee, which will be set up to review the whole text and in future consultative and promoting activities. Furthermore, the Secretariat will be open to considering cooperation with other regional organisations interested in developing regional rules based on the ALI-UNIDROIT Principles. The Secretariat anticipates the work on the drafting of the Model Rules to be substantively completed within the year 2017, with a view to their consideration and adoption by the Governing Council at its 96th session, in 2018.

B. Low-priority legislative activities under the 2014-2016 Work Programme**1. International Commercial Contracts: issues relative to multilateral contracts**

26. At its 92nd session (Rome, 8 - 10 May 2013), the Governing Council considered a proposal for future work on selected issues related to multilateral contracts. It was then noted that international uniform law instruments had traditionally focused on exchange contracts such as sales contracts, transport contracts, banking and other financial services contracts, etc. The UNIDROIT Principles of International Commercial Contracts, too, are basically modelled on the exchange contract prototype. However, little, if any, attention had so far been paid, at least at a universal level, to associative contracts notwithstanding the peculiar problems they pose especially in the case of multilateral contracts (see UNIDROIT 2013 - C.D. (92) 13, paras. 8-10).

27. The Governing Council, at that session, agreed to recommend the project for inclusion in the UNIDROIT Work Programme 2014-2016, albeit with a low level of priority (see UNIDROIT 2013 - C.D. (92) 17, para. 111). Given the higher priority assigned to other projects and the limited resources available to the Secretariat, no progress has been made on this topic in since the General Assembly approved the current Work Programme at its 72nd session (Rome, 5 December 2013).

28. *The Governing Council may wish to consider whether this topic should be retained in the UNIDROIT Work Programme for the triennium 2017-2019 and, if so, which level or priority it should recommend to the General Assembly.*

2. Secured transactions: Preparation of Protocols to the Cape Town Convention**(a) Ships and maritime transport equipment**

29. In the early stages of the project that was later to become the Cape Town Convention, it had been envisaged that security over ships and maritime transport equipment might be covered (see Article 2(1)(c) of the first set of draft articles of a future UNIDROIT Convention on Interests in Mobile Equipment, March 1996, Study LXXII – Doc. 24). These expectations, however, subsequently failed to materialise, as strong reservations emerged in the early stages regarding the possibility of extending the system of the future Convention on Interests in Mobile Equipment to ships.

30. A Secretariat memorandum of August 1996 (UNIDROIT 1996 - Study LXXII – Doc. 29) summarised the two main reasons brought forward against the inclusion of security over ships. First, the preparation of international rules governing ships and shipping was described as an issue that was traditionally the preserve of specific international organisations with full participation of shipping circles. Second, it was feared that there might be conflicts with the then newly drafted International Convention on Maritime Liens and Mortgages adopted by the United Nations.³ The memorandum further noted, however, that the merits of the inclusion or exclusion of ships under UNIDROIT's envisioned system could best be assessed only once the rules of the Convention were finalised.

31. Following the Cape Town Convention's success, a preliminary study (UNIDROIT 2013 - C.D. (92) 5(c)/(d)) was prepared and submitted to the Governing Council for its 92nd session (Rome, 8-10 May 2013) regarding whether it would be feasible to extend the Cape Town Convention system to ships and maritime transport equipment. The study identified the main issues concerning

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

proprietary security over ships and existing international instruments in this area and concluded that additional harmonisation efforts were called for (UNIDROIT 2013 -C.D. (92) 5(c)/(d), para. 70). The study also concluded that a potential Protocol, with a narrow scope and adaptation to the peculiarities of maritime law, could avoid the pitfalls that had befallen prior international instruments, particularly regarding maritime liens (UNIDROIT 2013 - C.D. (92) 5(c)/(d), paras. 71, 102). It recommended further study to identify the areas of the law of proprietary security over ships where there was sufficient demand for an extension of the Cape Town system (UNIDROIT 2013 - C.D. (92) 5(c)/(d), para. 103).

32. Within the Governing Council, there appeared to be a majority in favour of work on the subject, but concerns were expressed regarding whether there was sufficient industry support. It was agreed that such support must first be ascertained before moving forward, and the Governing Council requested the Secretariat to study whether satisfactory conditions existed for such an extension (UNIDROIT 2013 - C.D. (92) 17, paras. 52-57). Subsequently, at its 72nd session (Rome, 5 December 2013), upon a request for a reduction in this work's priority status and ensuing discussion, the General Assembly lowered its priority from medium to low (UNIDROIT 2013 - A.G. (72) 9, paras. 27-29).

33. Since then, consistent with the low priority assigned to this work, the Secretariat has monitored developments in this area. Among such developments, the Secretariat, upon an invitation from the African Shipowners Association, was represented at an African Maritime Conference in Lagos, Nigeria (28-30 September 2015), at which interest was expressed in a possible Maritime Protocol. The African Shipowners Association indicated its intent to consult further its members and to provide input on whether market practice has found or could find alternative solutions in the absence of internationally harmonised rules and whether the extension of the Cape Town Convention system to ships could be a suitable response to the legal challenges in this respect. To the extent that such input is provided or other developments warrant, the Secretariat will apprise the Governing Council and, if feasible, update the preliminary study accordingly.

(b) Off-shore power generation and similar equipment

34. On 10 September 2011, the Secretariat received a proposal by the German Federal Ministry of Justice to consider the preparation of an additional protocol to the Cape Town Convention on matters specific to off-shore power generation and similar equipment. It was explained that in Germany, the industry had expressed an interest in the possibility of arranging for registered security rights in particular for wind-energy equipment. The growth of the market for renewable energies was said to create a significant need for investment, which could be facilitated through the availability of effective proprietary security rights. The German Federal Ministry of Justice expressed its interest in the preparation of an international instrument with harmonised rules on proprietary security for such equipment (UNIDROIT 2013 - C.D. (92) 5 (c)/(d)).

35. At its 92nd session (Rome, 8-10 May 2013), the Governing Council was presented with initial research conducted by the Secretariat which indicated that the Cape Town Convention system would be a suitable mechanism for regulating secured interests in off-shore power generation and similar equipment. The Governing Council subsequently agreed to include this project in the Work Programme for the triennium 2014 – 2016 as a low priority, and instructed the Secretariat to prepare a further study to determine whether an additional protocol on off-shore power generation and similar equipment would be feasible.

36. Consistent with its assigned low priority and the limited resources of the Secretariat, further work on this project has been limited. Initial research on the off-shore power generation industry indicated that a protocol exclusively regulating interests in off-shore power generation equipment

would be unlikely to have the economic viability to attract widespread ratification. However, given the significant increases in the cross-border mobility of international renewable energy generation equipment and stronger international action on climate change, the Secretariat conducted research on whether a broader protocol covering interests in renewable energy equipment (which also covered off-shore power generation equipment) might be a viable alternative project.

37. Initial research has indicated that a broader protocol regulating interests in renewal energy equipment would likely have better economic viability than a protocol limited to interests in off-shore power generation equipment. The Secretariat intends to prepare a feasibility study on the issue, which could tentatively address the main legal concerns currently faced by the industry, the economic data, the question whether existing legal solutions can be regarded as adequate, and the suitability of the Cape Town Convention system for application to renewable energy equipment.

38. *The Governing Council is invited to consider whether a feasibility study on another protocol to the Cape Town Convention on renewable energy equipment should be included on the Work Programme for the 2017 – 2019 triennium as a low priority.*

3. Capital Markets Law: additional topics

39. Regarding other possible future work by UNIDROIT in the area of capital markets, it was suggested within the Committee on Emerging Markets Issues, Follow-Up and Implementation (hereafter “the CEM”) that UNIDROIT might bring its competence in the field of private law harmonisation to the subject of trust and examine how this device could be used to improve the security of financial transactions (UNIDROIT 2013 – Study LXXVIIIB/CEM/2/Doc. 3, para. 71). It was also suggested within the CEM that the company law aspects mentioned in the UNIDROIT Convention on Substantive Rules for Intermediated Securities (the “Geneva Securities Convention”) be examined more closely, such as, for example, voting rights or securitisation (UNIDROIT 2013 – Study LXXVIIIB/CEM/2/Doc. 3, paras. 73).

40. Another topic of possible future work is in the area of capital markets law, anti-corruption, and anti-money laundering. Such work could consider inter alia the extent to which securities holding patterns may facilitate or hinder the implementation of transparency and disclosure obligations arising out of anti-corruption or anti-money laundering regimes. This topic could possibly be dealt with in the prospective Legislative Guide, but it may warrant additional consideration.

41. Should the Governing Council consider recommending one or more of these topics for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to conduct a preliminary study and consult with relevant international organisations and stakeholders regarding potential collaboration.

4. Liability for Satellite-based Services

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

43. The most recent report from the European Commission submits that the impact assessment has been completed, and is currently undergoing the internal adoption process (Impact Assessment Board and thereafter College of Commissioners). The publication of the report was postponed several times and is still outstanding.

44. *The Governing Council may wish to consider whether this topic should be retained in the UNIDROIT Work Programme for the triennium 2017-2019 and, if so, which level or priority it should recommend to the General Assembly.*

5. Private law and development

(a) Possible future work on private law and agricultural development

45. This line of work was introduced in the aftermath of a Colloquium held in Rome on 8-10 November 2011 on "Promoting Investment in Agricultural Production: Private Law Aspects". At its 91st session (Rome, 7-9 May 2012), in determining the course of action regarding future subjects that may be developed in the area of private law and agricultural development, the Governing Council considered that the preparation of an international guidance document to contract farming arrangements should receive priority. This objective was attained in 2015 with the adoption and publication of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (see below para 94 - 95).

46. The Governing Council further considered that other topics deserved preliminary work or attention by the Secretariat, resources permitting: (i) the possible preparation of an international guidance document on land investment contracts; and (ii) possible future work in following other areas: reform and modernisation of land tenure regimes; legal structure of agricultural enterprises; international guidance document to agricultural financing.

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

47. The Governing Council, at its 91st session (Rome, 7-9 May 2012), authorised the Secretariat to pursue consultations and preliminary work with a view to the possible preparation, in the future, of an international guidance document on land investment contracts, taking into account, in particular, the UNIDROIT Principles of International Commercial Contracts (UNIDROIT 2012 – C.D. (91)15, para.98). Subsequently, in a memorandum for the Governing Council regarding the Work Programme for the 2014-2016 triennium, the Secretariat noted that several international initiatives then underway touched upon this area from various angles and varying degrees of depth, most notably the preparation, within the FAO Committee on World Food Safety, of the Principles for Responsible Investment in Agriculture and Foods Systems (hereafter "RAI Principles"). The Secretariat suggested that the work on land investment contracts should await adoption of the RAI Principles and build upon the experience acquired in developing the Legal Guide on Contract Farming (UNIDROIT 2014 - C.D. (93) 12, para. 46).

48. Following the adoption of the Legal Guide on Contract Farming at its 94th session (Rome, 6-8 May 2015), the Governing Council discussed potential future work in the area of private law and agricultural development together with representatives of FAO and IFAD, who indicated a willingness to continue collaborating on future work in this regard. The Governing 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 (UNIDROIT 2015 – C.D. (94) 13, paras. 65-68).

49. The Secretariat continues to conduct the requested stocktaking exercise and feasibility study, which is to be submitted to the Governing Council. As of this writing, the exercise and study thus far indicate that, although other existing international instruments and policy papers contain

important policy guidance on investments in land, UNIDROIT could use its private law expertise to build upon such instruments and papers and prepare, in collaboration with the Rome-based food and agriculture organisations of the United Nations system and other institutions, valuable legal guidance for farmers, investors, governments, and other stakeholders. As land investment contracts are complex and deal with various areas of law, the added benefit and impact of detailed yet concise legal guidance on this subject matter could be significant. The feasibility study will discuss this in greater detail, as well as identify legal issues that could be considered for coverage in the possible guidance document.

50. By communication dated 30 November 2015, the United States Department of State transmitted to the Secretariat a document containing a proposal supporting work on land investment contracts and related legal issues. The justification for that proposal is contained in Annex 3 to this document.

51. *The Governing Council may wish to consider whether this topic should be retained in the UNIDROIT Work Programme for the 2017-2019 triennium and, if so, which level or priority it should recommend to the General Assembly.*

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

52. At its 91st session (Rome, 7-9 May 2012), the Governing Council authorised the Secretariat to monitor – resources permitting – developments at international and national levels in respect of reform and modernisation of land tenure regimes (UNIDROIT 2012 – C.D. (91)15, para. 99). The Secretariat was also to take note of possible future projects in respect of the legal structure of agricultural enterprises and of an international guidance document to agricultural financing, with a decision to be taken at a later date, in light of the work which would by then have been carried out by UNIDROIT in the field of agriculture. The Governing Council further mandated the Secretariat to promote – resources permitting – UNIDROIT instruments in the area of finance that are of particular relevance to agricultural financing, particularly the UNIDROIT Conventions on International Financial Leasing and on International Factoring, as well as the UNIDROIT Model Law on Leasing. In view of the priority given to the work on the preparation of the Legal Guide on Contract Farming, the Secretariat has not yet been able to carry out any significant work on these various topics.

53. For the 2017-2019 triennium, the Secretariat suggests that any possible work related to land tenure regimes be considered at a later stage in light of the progress made with the project on land investment contracts (see paras.47 - 50 above). As regards the legal structure of agricultural enterprises, the Secretariat notes the close relationship with the proposal presented by Ministry of Justice of Hungary to: "[...] analyse the contractual practice of co-operatives in order to clarify whether their appropriate functioning could be facilitated by an eventual international unification. In this respect, especially the supply co-operatives and sales co-operatives would have relevance." (see Annex 2 hereto). Finally, as regards the possible preparation of an international guidance document to agricultural financing and the promotion in this context of the UNIDROIT international leasing and factoring Conventions, the Secretariat suggests that, if resources were available to engage in preliminary work on any of these areas, the Governing Council should decide their relative priority.

(b) Legal aspects of social business

54. The General Assembly included this topic in the UNIDROIT Work Programme at its 67th session (Rome, 1 December 2010) following a suggestion by the International Development Law Organisation (IDLO), on the understanding that the latter would undertake to raise the necessary

funding through an appeal to external donors. A preliminary study presenting possible guidelines for a legal framework for social enterprises (or for a certain type of social enterprise) was submitted by the Secretariat to the Governing Council at its 2010 session (UNIDROIT 2010 C.D. (89) 7 Add. 5). Since then, however, the general topic of microfinance has become of lesser priority for IDLO, and in view of the need to complete other projects that had higher priority under its Work Programme, UNIDROIT itself has not pursued this topic any further. In view of the relevance of the topic however, it was maintained - with low priority – in the Work Programme 2014-2016.

55. In mid-2015, the UNIDROIT Secretariat was approached by the Secretariat of the Global Forum for Law Justice and Development (GFLJD)⁴ to take part in a global initiative to design and pilot a new “Human-Centred Business Model” based on a menu of economic, social, environmental, right-based and ethical principles. The project envisions a series of activities and outputs with the collaborative participation of a large number of institutions and experts around the world, in the legal, economic and business areas.

56. The Governing Council is invited to authorise the Secretariat to continue following the GFLJD initiative in the context of the inter-organisation cooperation, and request the Secretariat to keep the Council informed of the progress of that initiative and whether it could warrant restoring this topic as an active legislative activity under the Work Programme for the triennium 2017-2019.

C. Proposed new legislative activities for the 2017-2019 Work Programme

57. In its Note Verbale dated 15 June 2015, the Secretariat invited the Governments of member States who wished to submit proposals for inclusion in the Work Programme to convey to the Secretariat, if possible no later than 30 November 2015, any proposals on the draft Work Programme for the 2017-2019 triennium. A letter to the same purpose was addressed by the Secretariat to various international intergovernmental organisations with which UNIDROIT has established ties of cooperation on 25 June 2015. In response to those requests, the Secretariat has received proposals for topics for inclusion in the Work Programme from the Governments of Colombia, Hungary, Mexico and the United States, as well as from the UNCITRAL Secretariat.

1. International Commercial Contracts

58. A number of proposals have been received in the area of international commercial contracts, which is one of the main areas of work of UNIDROIT.

(a) Insurance contracts

59. The Secretariat received three proposals for work on insurance contracts. The first two proposals mentioned below were received from the Government of Colombia, whereas the third proposal was made by a group of scholars and practicing lawyers.

(i) Formulation of general principles of insurance contracts

60. On 3 December 2015, the Embassy of Colombia in Italy transmitted to the Secretariat a document containing, *inter alia*, the following proposal for work in the area of insurance contracts:

⁴ The Global Forum on Law, Justice and Development was initiated by the World Bank and a few development partners in 2010. The Global Forum is a network of organizations dedicated to creating legal knowledge that promotes achievement of post-2015 sustainable development goals. Its activities bring together experts, scholars and practitioners to address the most pressing legal issues in development and aims at facilitating the identification, discussion, production and/or sharing of innovative and customized legal and institutional tools to address global, regional or national development challenges. (Further information available on: <http://www.globalforumljd.org/>)

"[t]he globalized nature of the insurance industry deems it necessary that a set of general principles for insurance contracts be drafted, that will act as a normative example for member States which choose to participate." (see Annex 4 hereto).

61. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Colombia with a view to clarifying the scope of the proposal and conducting a preliminary study.*

(ii) *Formulation of general principles of inclusive insurance*

62. On 3 December 2015, the Embassy of Colombia in Italy transmitted to the Secretariat a document containing, *inter alia*, the following proposal for work in the area of insurance contracts: "[t]here is a movement within the insurance industry to develop products for lower-income market such as micro-insurance, which is of great utility in increasing the resilience of highly vulnerable groups. Taking this into account, it would be interesting for UNIDROIT to develop principles and guides for the normative design that incentivise the design of simple and standardized products, that aim to the financial inclusion of populations with lower income levels" (see Annex 4 hereto).

63. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Colombia with a view to clarifying the scope of the proposal and conducting a preliminary study.*

(iii) *Formulation of principles of reinsurance contracts*

64. In July 2015 the Secretariat was approached by a group of scholars and practicing lawyers led by Professor Anton K. Schnyder and Professor Helmut Heiss (University of Zurich, as "Lead Agency"), Professor Martin Schauer (University of Vienna) and Professor Manfred Wandt (University of Frankfurt), who are examining the feasibility of formulating "Principles of Reinsurance Contract Law" (PRICL). This initiative has been inspired by the project group "Restatement of European Insurance Contract Law", which led to the publication of the Principles of European Insurance Contract Law (PEICL)⁵. The purpose of the project is to formulate a "restatement" of existing global reinsurance law, which is largely embedded in international custom and usage, but is seldom the object of legislation.

65. The project leaders have expressed the view that the proposed principles presuppose the existence of adequate rules of general contract law. Rather than attempting to re-create such rules, the proposed new principles should be drafted as a "special part" of the UNIDROIT Principles of International Commercial Contracts.

66. The project has received financial support from the Swiss National Science Foundation, the German Research Foundation and the Austrian Research Promotion Fund. In addition to the project managers, the research team includes well-known representatives from Belgium, Brazil, China, Germany, France, Great Britain, Italy, Japan, Singapore, South Africa and the United States. In addition, two advisory groups made up of representatives of the global insurance and reinsurance markets advise the research team. The participants at the first workshop of the Project Group (Zürich, 27-30 January 2016) agreed that specific principles and comments should be drafted on the following topics: choice-of-law, non-disclosure, errors and omissions, conditions precedent, event / accumulation/aggregation, late notice, back-to-back cover, "follow the fortunes" and

⁵ Principles of European Insurance Contract Law, Edited by Project Group "Restatement of European Insurance Contract Law", established by Fritz Reichert-Facilides †, Chairman: Helmut Heiss, Sellier European Law Publishers (October 2009).

"follow the settlement" principles, cooperation, time bar rule, termination and recapture, extra contractual obligations of the reinsured (see Annex 6 hereto). The participants also agreed on a timeline with a view to substantially completing drafting of PRICL by the year 2018. The final form and means of publication of the PRICL are still under consideration. With a view to ensuring consistency between the PRICL and the UNIDROIT Principles, UNIDROIT has been invited to participate at future workshops as well.

67. In the view of the Secretariat, the project is likely to make an important contribution to the restatement of an area of commercial law that is largely uncodified, and that this will be beneficial to an industry that is international by nature. The subject matter is therefore closely related to the UNIDROIT Principles, and the absence of consumer protection considerations makes the project capable of proceeding without touching upon sensitive disagreements of policy among legal systems. The Governing Council may wish to note that the possibility of harmonising the law on reinsurance contracts was positively examined by UNIDROIT between 1932 and 1936, but it did not proceed because of the disruption in the Institute's work caused by the war.

68. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to continue participating in the PRICL Working Group and consult further with the participants on the nature of the UNIDROIT contribution and institutional support to that initiative.*

(b) Formulation of model laws on business informatics

69. By Note Verbale dated 27 November 2015, the Ministry of Justice of Hungary transmitted to the Secretariat a document containing, inter alia, the following proposal for work in the area of electronic commerce: "...the development of model laws in the domain of business informatics, in relation to platform services (facebook, twitter), software services, hardware services, database handling, and cloud computing. In the context of these services, it would be of particular importance to examine the current contractual practice of service providers. The identification of the legal substance of this kind of services and the practice related to them could enlighten whether there is special need to regulate these issues, principally in cases where more often might arise unilateral advantage. The main aim to be achieved would be to provide the parties involved in such transactions with equitable model rules, that could create an equilibrate ground for their business relations, paying due attention to parties' reciprocal interests."

70. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Hungary with a view to clarifying the scope of the proposal and conducting a preliminary study.*

(c) 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

71. On 14 December 2015, the Secretariat received a communication from the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) (see Annex 5 hereto) inviting UNIDROIT and the Hague Conference on Private International Law to cooperate on a project for the "creation of a roadmap to the existing texts in the area of international sales law (sales contracts) prepared by each organisation, primarily the CISG, the UNIDROIT Principles, and the Hague Principles, and providing an assessment of interactions between the texts, their actual and potential use, application, and impact, all with the goal to facilitate promotion of their appropriate use, uniform interpretation, and adoption." Such a project should "extend also, as relevant, to the other texts in the field prepared by the three organisations (including, for example, the Limitation

Convention, the Electronic Communications Convention, the 1983 Uniform Rules, ULIS/ULFC 1964, and the 1955/1986 Hague Conventions), and make reference, as needed, to outside instruments (e.g. those of regional economic integration organisations such as the EU, OHADA, as well as those of the ICC, ITC)."

72. As regards the methodology, it is suggested that the work should be entrusted to "a small joint panel of experts, chosen by the three organisations and including, to the extent possible, representatives from differing legal traditions and from countries with differing levels of economic development, and also including, as possible, representatives from other particularly relevant organisations (e.g., regional economic integration organisations, ICC, ITC)". The envisaged outcome would be a joint publication or online tool reflecting contribution of all organisations and keeping in mind the successfully completed "UNCITRAL, Hague Conference, and UNIDROIT Texts on Security Interests"⁶ having "legislators, judges and arbitrators, and/or lawyers and commercial operators" as target audience.

73. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the UNCITRAL Secretariat with a view to clarifying the scope of the proposal.*

2. Transnational Civil Procedure: principles of effective enforcement

74. The ALI – UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute/ UNIDROIT Study Group and adopted in 2004 by the Governing Council of UNIDROIT at its 83rd session (Rome, 19-21 April 2004), aim at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones. At its 72nd session (Rome, 5 December 2013) the UNIDROIT General Assembly authorised UNIDROIT to resume work on transnational civil procedure and agree on a joint project with the European Law Institute (ELI) for the development of regional rules of European civil procedure based on the ALI – UNIDROIT Principles (see above, para. A 3).

75. The Secretariat believes there is a case for considering additional work on the development of Principles of Transnational Civil Procedure relating to enforcement mechanisms.

76. Although the ALI-UNIDROIT Principles are comprehensive, they are mainly designed to give guidance for first instance procedures and only minimally do they address issues of enforcement. In particular, Principle 29 emphasises the need for speedy and effective enforcement, but the comment makes it clear that the topic as such was beyond the scope of the 2004 ALI- UNIDROIT Principles. The same can be said for the work on transnational civil procedure approved so far by other intergovernmental organisations such as UNCITRAL, the UN and The Hague Conference, with the exception of recognition and enforcement of arbitral awards.

77. The right to effective enforcement of judgements (and arbitral awards) represents an integral part of the fundamental right to a fair and effective procedure. Moreover, the economic significance of effective enforcement mechanisms embraces decision-making and execution and was considered by the World Bank as well as in an increasing number of national governments a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. During the last decades, many States introduced important reforms of their enforcement law (e.g. Japan, China, France, England, Spain, Germany) and in some States reforms are still in process. While in the European Union the law of enforcement is, in principle, within the competence

⁶ UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions (New York, 2012).

of the individual States, the EU enacted legislation facilitating cross border debt recovery and initiated reports on the present status of the enforcement laws of the member States of the European Union. All these activities document an increasing concern about inefficient enforcement mechanisms at national and transnational level. The Secretariat believes that Transnational Principles of Enforcement could provide a helpful guideline for legislators wishing to improve their national law, while at the same time contributing to the emergence of common minimum standards for national procedures as the necessary basis of the improvement of international cooperation in this area.

78. The proposal by the Secretariat will be supported by a preliminary feasibility study conducted by Rolf Stürner, Emeritus Professor at the University of Freiburg (Germany) and former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure. The Study will provide a more detailed analysis of the legal obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and of the advantages of filling in the gaps of the ALI/ UNIDROIT Principles of Transnational Civil Procedure in this regard.

79. Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with potentially interested organisations and in particular with the American Law Institute, The Hague Conference and UNCITRAL with a view to clarifying scope, methodology and other aspects of the proposal.

3. Capital Markets Law: mechanisms for the integration of regional securities exchanges

80. On 3 December 2015, the Embassy of Colombia in Italy transmitted to the Secretariat a document containing, *inter alia*, the following proposal for work in the area of securities exchanges. After noting that "Colombia is currently undertaking a process of regional integration with the Pacific Alliance mechanism, which include securities markets," the proposal indicates that "it would be of great utility if a set of standardized concepts and procedures were drafted regarding the development and implementation of regional securities exchanges, that would eventually allow for integration with other similar mechanisms" (see Annex 4 hereto).

81. *Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Colombia with a view to clarifying the scope of the proposal and conducting a preliminary study.*

4. Cultural Property: private art collections

82. By Note Verbale dated 16 October 2015, the Permanent Mission of Mexico to the International Organisations with Seat in Rome transmitted to the Secretariat a document containing a proposal for work on legal issues related to Private art collections (see Annex 1 hereto). The justification for that proposal is contained in Addendum 1 to this document (see UNIDROIT 2016 – C.D. (95) 13 Add.).

83. Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Mexico with a view to clarifying the scope of the proposal and conducting a preliminary study.

5. Private Law and Development: contractual practices of co-operatives

84. By Note Verbale dated 27 November 2015, the Ministry of Justice of Hungary transmitted to the Secretariat a document containing, inter alia, the following proposal for work in the area of agricultural contracts: "in respect of the present codification work on agricultural contracts, it would be useful to analyse the contractual practice of co-operatives in order to clarify whether their appropriate functioning could be facilitated by an eventual international unification. In this respect, especially the supply co-operative and sales co-operatives would have relevance." (see above para. 53 and Annex hereto)

85. The Secretariat notes the close relationship between this proposal and the possible future work on private law and agricultural development already envisaged under the current Work Programme (see above, paras. 45-46). Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Hungary with a view to clarifying the scope of the proposal and conducting a preliminary study.

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

86. On 3 December 2015, the Embassy of Colombia in Italy transmitted to the Secretariat a document containing, inter alia, a proposal to "[c]reate and promote guides and principles of best practices in the control and evaluation of the coverage and enforcement of technical regulations." Such an initiative would help "reduce the number of technical barriers to trade as well as the lead-time that it takes to implement/enforce these [technical regulations]". The Government of Colombia also proposes to "develop a guidebook of harmonized, simplified and standardized set of technical regulations in trade that promotes a synthesized universal set of terms." (see Annex 4 hereto).

87. Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, the Secretariat would be pleased to consult further with the Government of Colombia with a view to clarifying the scope of the proposal and conducting a preliminary study.

D. Implementation and promotion of UNIDROIT instruments**1. Depositary functions**

88. UNIDROIT is the Depositary of the Cape Town Convention and its Protocols and of the Geneva Securities Convention. Depositary functions include providing assistance to States that contemplate becoming party to the Conventions and Protocols (on the procedure to follow and by drafting documents such as model instruments of ratification, declarations memorandum, etc.), informing all Contracting States of each new signature or deposit of an instrument of ratification, acceptance, approval or accession, of each declaration made in accordance with the Convention and Protocols, of the withdrawal or amendment of any such declaration and of the notification of any denunciation; it also involves providing the Supervisory Authority and the Registrar with a copy of each instrument, of each declaration or withdrawal or amendment of a declaration, and of each notification of denunciation. UNIDROIT also maintains a specific Depositary section on its website for each instrument.

89. As Depositary of the Cape Town Convention and its Protocols, UNIDROIT also prepares reports as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary takes into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

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

2. Promotion of UNIDROIT instruments

91. The promotion of all UNIDROIT instruments should be regarded as an indispensable function and, as such, as the object of high priority for the purpose of allocation of human and financial resources. While the activities of the Secretariat should ideally cover all instruments prepared and adopted by the Organisation, the Secretariat is compelled, for lack of resources, to prioritise its promotion activities and to rely heavily on partnerships with interested organisations. The following paragraphs suggest a few priority areas for the triennium 2017-2019.

(a) *UNIDROIT Principles of International Commercial Contracts*

92. In 2016 the fourth edition of the Principles of International Commercial Contracts, with minor amendments and additions to cover long-term contracts, will be submitted to the Governing Council for approval. Prior to this, a Consultation Meeting on the final draft of the Principles as adapted to long-term contracts will take place in Oslo, on 3 and 4 March 2016. The meeting is kindly organised by Ms Giuditta Cordero Moss, Professor at the University of Oslo and observer to the Working Group in representation of the Norwegian Oil & Energy Arbitration Association. Subject to the approval of the Governing Council, the Principles (as UNIDROIT Principles of International Commercial Contracts 2016) will be published towards the end of the year. It is expected that the English and French versions will be published at the same time. Indications of the novelties will be transmitted to the translators to permit new editions to be published in other languages.

93. It is anticipated that promotion through conferences and courses at universities will be organised in the course of the 2017-2019 triennium, similar to what was the case when the third edition was published.

(b) *UNIDROIT/FAO/IFAD Legal Guide on Contract farming*

94. Co-authored by UNIDROIT, the Food and Agriculture Organisation of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming was published in 2015 in English and French. As a comprehensive treatment of the major legal issues arising out of contract farming, the Guide is designed to raise awareness among all stakeholders regarding the legal aspects related to contract farming. It intends to serve as a “good practice” reference for parties engaged in contract farming operations. It will also serve as a reference for the development of public governance instruments to sustain agricultural development, and will provide an additional tool available to international organisations and bilateral cooperation agencies as well as nongovernmental organisations engaged in strategies and programs in support of contract farming in developing countries.

95. FAO and IFAD have launched a two-year plan to promote the use of the Guide in diverse contract farming contexts through the preparation of outreach materials, knowledge and implementation tools, to be used in local capacity building and development programmes. UNIDROIT, on its part, is collaborating in the project as a member of the Advisory Board, as well as the leading partner in the development of a Community of Practice on Legal Aspects of Contract Farming, within the framework of the Global Forum on Law, Justice and Development (GFLJD). The Community of Practice’s main objective is to promote sharing and dissemination of knowledge, as well as projects

pursued individually by partners and members, or on the basis of joint initiatives, focused on strengthening the legal environment for contract farming operations.

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

96. In recent years, the UNIDROIT Secretariat has been increasingly asked to offer its technical assistance in connection with the 1995 Convention and, more recently, in respect of the 2001 UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects, owing, among other things, to the upsurge in trafficking in cultural objects and the recent adoption by the UN Security Council of Resolution 2199 (February 2015) requiring member States to undertake preventive measures against trade of cultural property illegally removed from Iraq and Syria and allowing for their return to the Iraqi and Syrian people. Such obligations are now associated with the fight against terrorism. UNIDROIT is one of the competent international organisations called upon to facilitate the implementation of the provisions of paragraph 17 of such Resolution.

97. The Institute's excellent collaboration links with other organisations active in the field of cultural property have, in recent years, done much to compensate for the lack of funds. UNESCO regularly invites UNIDROIT to attend national and regional capacity building seminars on the fight against illicit traffic in cultural property and important meetings are already planned for the coming months. Among those meetings, UNESCO has already announced the following:

- a regional seminar in Guatemala (planned for the first semester 2016);
- a regional seminar in Indonesia (planned for the first semester 2016);
- a regional seminar in the Gulf countries (planned in 2016);
- several national workshops organised at the specific request of countries in order to improve their understanding of the 1970 UNESCO and 1995 UNIDROIT Conventions in view of accession.

98. At the institutional level, UNIDROIT agreed in 2012 to accede to the request of some States that meetings of the 1995 Convention follow-up committee be organised more frequently and that they be linked, if possible, with the follow-up mechanism established by UNESCO for its 1970 Convention. UNIDROIT has also strengthened its partnership with several other organisations in this field, often becoming member of ongoing expert groups, such as the European Union, Council of Europe, INTERPOL, United Nations Office on Drugs and Crime (UNODC) World Customs Organisation (WCO), International Council of Museums (ICOM) and has signed in 2015 a Memorandum of Understanding with the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM). Finally, UNIDROIT is working at strengthening ties with the Association of Southeast Asian Nations (ASEAN) in this field in view of the issue to be inserted in the agenda of meetings to enhance ratifications of the 1970 UNESCO and 1995 UNIDROIT Conventions in the region.

(d) *UNIDROIT instruments on capital markets*

99. The promotion of the Geneva Securities Convention closely linked to the work on the preparation of the prospective Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets (see paras.18-20 above) that is also to promote both the Convention's implementation and the development of internally sound and compatible sets of legal rules for intermediated securities, thereby enhancing legal certainty in this area. UNIDROIT is also willing to assist States wishing to incorporate some of the matters addressed in the Convention into their legislation, together with the experts that make up the Committee on Emerging Markets

Issues, Follow-Up and Implementation. It is envisaged that the prospective Legislative Guide could be a very useful reference tool in this regard.

100. As to the *2013 Principles on the Operation of Close-out Netting Provisions*, the aim of which is to provide detailed guidance to national legislators of implementing States seeking to revise or introduce national legislation relevant to the functioning of close-out netting, UNIDROIT is ready to assist implementing States.

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

101. The Convention providing a Uniform Law on the Form of an International Will was adopted in Washington on 26 October 1973 (hereinafter: "1973 Washington Convention") and currently has 12 States Parties (the Convention entered into force for Australia on 10 March 2015). The Secretariat believes that there may now be scope for attracting more political attention for the Convention given the dramatic growth of migration in recent years. The Secretariat would keep on approaching other international organisations having an interest in this area with a view to developing a joint promotion strategy as well as specialised academics and practitioners with a view to organising a conference.

E. Non-legislative activities

102. The various non-legislative activities of UNIDROIT enjoy varying degrees of priority. Consistently with objective No. 5 of the Strategic Plan developed by the Governing Council, UNIDROIT should "clearly link its non-legislative activities to the Organisation's mandate and the instruments it prepares," and give priority to those non-legislative activities "that support the research projects needed to carry out the Organisation's legislative Work Programme, add value to the dissemination of information on UNIDROIT work and on the promotion of UNIDROIT instruments and offer a satisfactory level of returns, in terms of visibility and recognition."

103. With these objectives in mind, the following paragraphs indicate the priorities and policy guidelines proposed by the Secretariat for the Institute's non-legislative activities in the triennium 2017-2019.

1. UNIDROIT Library and Depository Libraries

(a) Cooperation

104. The Institute's cooperation strategy with other Roman and non-Roman libraries should be further pursued and intensified. A first inter-library meeting took place at UNIDROIT in April 2011, organised together with the David Lubin Memorial Library of the Food and Agriculture Organization of the United Nations (FAO). The idea is to inaugurate a series of regular library meetings in order to strengthen inter-library co-operation and networking and to improve library services at a time when almost all institutions are economising on all fronts. The next meeting is scheduled for summer 2016. The following libraries will attend: FAO, OEKM, Biblioteca Hertziana, Biblioteca Vaticana, Académie Française, Beniculturali, Università La Sapienza, ILO, ICCROM, ISS, Banca d'Italia, British School of Rome, Pontificia Università S. Tommaso D'Aquino, Biblioteca della Corte Costituzionale. The proposal to establish such a Roman library network and to meet regularly has met with great interest by all participants.

(b) Resource sharing

105. In times of a general budget shortage of libraries, cooperation and resource sharing is of utmost importance. Since 2012, very fruitful collaboration programmes have been established with numerous Italian and foreign libraries, with a view to sharing resources, in particular legal periodicals, and thereby freeing resources, in particular for the acquisition of monographs. In order to improve the services offered by the Library – particularly access to books and periodicals – without actually purchasing the requisite material, UNIDROIT endeavors in the future to activate as many partnerships with other libraries to offer library guests excellent material for their research.

(c) Catalogue enrichment, databases, digitization**(i) Catalogue enrichment**

106. In addition to intensifying co-operation with other libraries, in the 2017-2019 triennium, particular attention will be given to enriching the electronic catalogue, in expanding the availability of electronic databases, and in the digitisation of parts of the library's collection. In the age of e-books, Internet bookstores and similar services, the demands on library catalogs have fundamentally changed. Users have come to expect in addition to the bibliographic information and further additional information as orientation and guidance in the selection of literature. With the so-called catalogue enrichment, libraries can offer their users crucial added value: direct and free access to additional information about titles found, paired with additional research started by the full text search in the table of contents.

(ii) Databases

107. As to databases, UNIDROIT currently subscribes to various electronic resources that cover several civil law, common law and mixed jurisdictions: HeinOnline, West Law International, Sistema Pluris On-Line and Beck Online. In addition, in recognition of their importance for the Institute's scientific work, the Library is subscribed to Lexis Nexis France, which covers in particular French law, and which offers legislative materials from non-English-speaking countries. The provision of additional databases, especially in areas of Spanish law, would make a significant contribution to improving research conditions for the Secretariat staff, scholars and independent visiting researchers.

(iii) Digitisation

108. Research libraries are increasingly called upon to collect, manage, and preserve digital assets. Users have come to expect ubiquitous access and delivery and are looking to exploit technology for research. A robust and flexible digital infrastructure has become critical to meeting user expectations and desires, as well as the demands of collecting digital assets. The digitisation project is part of its overall strategy. This has multiple objectives: Firstly, to protect and preserve the original text, image and sound documents of cultural memory. A further objective of digitisation is to radically improve the visibility, access to and usage possibilities of the Library's own resources for science and research, education and culture.

109. Therefore, in the 2017-2019 triennium, the library will examine various methods of digitisation of materials in detail, and the possibilities and costs of the various solutions for the UNIDROIT Library for the realisation of such a very challenging project.

(d) Acquisition Policy

110. The fourth priority action for the Library in the triennium 2017-2019 will be the development of a more sharply focused acquisition policy. In 2015, the Library's holdings increased by 1256 titles, of which 684 were purchased outright, 160 were obtained on an exchange basis, while 412 further titles were received as gifts for a total value of €24,720.00. The expansion of the Library's holdings has been hampered by steady increases in the price of publications and a chronic lack of resources.

2. Information resources and policy

111. In the course of 2012, the Secretariat initiated a policy of coordinating the Organisation's different sources of information, which hitherto had been managed by different members of staff, with a view to a more coherent and cost-effective management. The sources of information on UNIDROIT materials and work have a central role to play in the promotion of the Organisation. In particular, the electronic tools currently available to the Secretariat have a potential of penetration that far exceeds the impact of paper-based tools, even if they do complement each other. To some extent, they also compensate for the meagre resources allocated to the promotion of UNIDROIT instruments. In consideration of the importance of the sources of information in promoting the Organisation and its work, it is submitted that the collective project "Information Resources and Policy" should be given high priority.

(a) Uniform Law Review and other publications

112. In June 2012, an agreement was signed with the Oxford University Press (OUP), under which the OUP took over the publication of the *Uniform Law Review* starting with volume XVIII (2013). The initial agreement was for a period of five years, renewable. The Review is available in three formats: print only, online only, or print and online both. Contributions submitted to the Review for publication are subject to peer review, meaning that they are reviewed by experts in the field before they are accepted. The Publisher's Report of June, 2015, indicates that the circulation of the Uniform Law Review has increased since 2013. In particular, the partial circulation figure of 2015 (as at 21 May 2015) indicates an increase of 143.7% on the circulation figure of 2014. Importantly, the electronic format has an extensive distribution, recipients in many developing countries benefitting from free or discounted subscriptions.

113. Other UNIDROIT publications are linked to specific projects of the Organisation. Thus, 2013 saw the publication of the third edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, and the first edition of the *Official Commentary on the Convention and Space Protocol*, while 2014 saw the publication of the second edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Luxembourg Protocol thereto on Matters specific to Railway Rolling Stock*, all three authored by Professor Sir Roy Goode.

114. In 2015 the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming was published in both English and French and the Spanish version is due to appear in 2016.

115. In 2015, publications linked to the work of UNIDROIT, but published and distributed commercially, were: the Spanish version of the *UNIDROIT Principles of International Commercial Contracts 2010*, published by *La Ley* in Spain; in 2015 the Spanish version of the *UNIDROIT Principles was published by the Centro de Estudios de Derecho Economía y Política (CEDEP)* in Asunción, Paraguay; the Italian version of the Principles, published by Giuffrè in Italy; special editions of the English and French versions of the Principles, published in Canada by *Éditions Yvon Blais* (Thomson Reuters) using pdf versions of the editions published by UNIDROIT in Rome; the English-language version of the *Official Commentary on the UNIDROIT Convention on Substantive Rules for*

Intermediated Securities, published by the Oxford University Press the French version of which was published by Schulthess in Switzerland.

116. The Secretariat started publishing UNIDROIT instruments (previously only available for download and print in A4 format) in booklet form in 2013 to serve as hand-outs at conferences and meetings and which can be mailed wherever necessary at a very limited cost. At the time of writing, the following instruments have been published in booklet form:

- the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects with the 2011 UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects (English and French);
- the 2001 Cape Town Convention on International Interests in Mobile Equipment (English and French);
- the 2001 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (English, the French version is due to be published in 2016);
- the 2007 Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (English and French);
- the 2012 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets;
- the 2013 Principles on the Operation of Close-Out Netting Provisions (English and French);
- the 2013 Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts (English);
- the 2002 Model Franchise Disclosure Law (English and French); and
- the 2008 Model Law on Leasing (bilingual English and French).

117. The year 2016 will see the publication of a volume of Essays in the honour of a long-standing collaborator of the Institute, Professor Michael Joachim Bonell, coordinator of the Working Group for the Preparation of Principles of International Commercial Contracts, celebrating his 70th birthday. Over 150 academics and other experts have contributed to the publication.⁷ Most articles deal with uniform or comparative law subjects, often UNIDROIT instruments and in particular the Principles of International Commercial Contracts.

(b) Website

118. In 2012 the Secretariat started work on the creation of a new, more user-friendly website, using up-to-date technology developed since the creation of the original website in the 1990s. The new website became operative on 10 January 2014. The operation of the website is continually under review and modified or integrated as its utilisation makes the necessity to enhance certain features and to add others apparent. The Secretariat is convinced that the new website enhances the Organisation's visibility and constitutes a more effective tool to disseminate information on the Organisation.

3. Internships and scholarships

119. The Scholarship Programme is exclusively funded by extra-budgetary contributions and enables between 15 and 20 researchers every year to carry out individual research in the UNIDROIT library, for average periods of two months. It is addressed to post-graduate law students, academics, or government officials, especially from developing and emerging countries, with a preference given to projects focused on or related to the UNIDROIT current Work Programme. Joint schemes are implemented with national universities or research centres, in line with the objectives

⁷ The title of the publication will be *Eppur si muove: The age of Uniform Law – Festschrift for Michael Joachim Bonell, to celebrate his 70th birthday*, UNIDROIT (edit.).

of these various institutions. The Programme provides an opportunity for scholars to share information and experience among themselves and to exchange with Secretariat staff and experts. The Scholarship Programme also functions as a catalyst to induce researchers to attend the Library on an independent basis and generally contributes to promoting the work and objectives of the organisation. During the 2017-2019 triennium, the Secretariat intends to continue its efforts to encourage new donors to support the Programme, and to develop a social media platform to create an interactive network of former scholars.

120. Each year, the Secretariat welcomes a limited number of interns to participate in its work on one of the subjects on the Institute's current Work Programme, or on work associated with other UNIDROIT instruments, sometimes in the context of co-operation agreements with law schools. The Secretariat has also established remunerated fellowship positions for students with a strong academic profile to be filled, resources permitting, on a case-by-case basis. The Secretariat will seek to develop this formula under agreements with partner academic institutions or private donors, and will continue seeking the interest of member State institutions (such as national Ministries or courts of law) in seconding members of their staff for a period of work at UNIDROIT.

Conclusion

121. In view of the relatively large number of proposals for future legislative work received by the Secretariat, as compared to the available resources under chapter 1 of the UNIDROIT Budget in the year 2016, which the Secretariat uses as a reference for its budget estimates for the next triennium, and considering the need to complete ongoing projects under the current Work Programme, the Secretariat is not in a position to suggest priority levels prior to the Council's recommendations on which new projects should be included in the Work Programme for the Triennium 2017-2019.

122. The Secretariat would invite the Council to consider the information provided in this document, its Annexes and Addenda, as well as in the related documents, and to make recommendations to the General Assembly on the topics and activities to be included in the UNIDROIT Work programme for the triennium 2017-2019, including their relative level of priority.

ANNEX 1 - MEXICAN PROPOSAL (16 October 2015)

Note Verbale of the Permanent Representation of Mexico to International Rome based
Organisations
MEX -0297
Original Language: Spanish

The Permanent Representation of Mexico to the Rome-based international organisations presents its compliments to the International Institute for the Unification of Private Law (UNIDROIT), and has the honour to refer to the Work Programme, which will be submitted for revision by the Governing Council at its 95th session (May 2016) with a view to its consideration by the 75th session of the General Assembly, to be held in December that year.

In this respect, the Permanent Representation of Mexico to the Rome-based international organisations would like to inform that Dr Jorge Sanchez Cordero, member of the Governing Council, has requested this Representation to be the vehicle for convey his interest in including the topic "Private Art Collections" in the UNIDROIT Work Programme according to the attached document. The Permanent representation of Mexico to the Rome-based international organisations avails itself of this opportunity to renew to the International Institute for the Unification of Private Law the assurances of its high consideration.

ANNEX 2 - HUNGARIAN PROPOSAL (27 November 2015)

Letter of the Ministry of Justice of Hungary Department of Private International Law

The Ministry of Justice of Hungary presents its compliments to the International Institute for the Unification of Private Law and, with reference to its Note Verbale of June 15, 2015 in relation to the triennial work programme of the Institute, has the honour to inform it on the following.

First of all, we would like to extend our sincere appreciation for the dedication and excellent work carried out by your Institute in the field of international commercial law. In our global world, the intensification of the international commercial relations generates unavoidable changes in the legal culture, and the harmonisation, respectively unification of the different law-systems is an essential factor of the development of commercial law.

As for the future activity of the Institute, in our view any further work aiming the unification of international commercial law would be welcomed. However, in order to avoid duplication and fragmentation of the international commercial law, it is important to maintain a proper coordination mechanism with other organisations, with special regard to the work of the European Union and UNCITRAL.

Taking into consideration the expanding growth of the electronic commerce, we propose the development of model laws in the domain of business informatics, in relation to platform services (facebook, twitter), software services, hardware services, database handling, and cloud-computing. In the context of these services, it would be of particular importance to examine the current contractual practice of service providers. The identification of the legal substance of this kind of services and the practice related to them could enlighten whether there is special need to regulate these issues, principally in cases where more often might arise the abuse of dominant position through contractual stipulations ensuring unreasonable unilateral advantage. The main aim to be achieved would be to provide the parties involved in such transactions with equitable mode) rules, that could create an equilibrate ground for their business relations, paying due attention to parties' reciprocal interests.

In respect of the present codification work on agricultural contracts, it would be useful to analyse the contractual practice of co-operatives in order to clarify whether their appropriate functioning could be facilitated by an eventual international unification. In this respect, especially the supply co-operative and sales co-operatives would have relevance.

The Ministry of Justice of Hungary avails itself of this opportunity to express to the International Institute for the Unification of Private Law the assurance of its highest consideration.

ANNEX 3 – UNITED STATES OF AMERICA PROPOSAL (30 November 2015)

Communication received via e-mail from US Department of State

The United States of America appreciates the opportunity to submit a proposal for the UNIDROIT work program for 2017-2019. Given the number of projects already underway, any additions to the work program should be limited. In terms of work already in progress, three current projects will likely require, and should receive, significant percentages of the Secretariat's time: (1) the joint project with the European Law Institute on transnational civil procedure, (2) the legislative guide on principles and rules capable of enhancing trading in securities in emerging markets, and (3) the fourth Protocol to the Cape Town Convention, covering mining, agricultural, and construction equipment. These three projects are each quite important, and their rapid completion would be facilitated by ensuring that the Secretariat's time is not divided among too many other projects.

Thus, at this stage, the United States would like to suggest the inclusion of only one additional topic in that work program: land investment contracts.

The adoption of the Legal Guide on Contract Farming was a significant accomplishment for UNIDROIT. Not only is the Guide a valuable reference tool for those engaged in the relevant commercial sectors, but its development served as a first step in what could be a long-term partnership with other Rome-based organizations working in these areas. Further work in this area would enable UNIDROIT to build on this cooperation and find additional ways to apply private law expertise to global efforts on food security and agricultural development.

Work on land investment contracts would provide a suitable follow-up project in this area. As global demand for products such as food, biofuels, and timber has increased, cross- border projects involving investment in land—often in developing countries—have generated many legal issues and significant risks for investors, local communities, and host governments. Land-based investments in developing markets are often made in contexts in which land governance frameworks are weak, land rights are undocumented, and a plurality of overlapping land uses and claims exist. These complexities lead to a unique set of legal considerations in the formation of land-based investment contracts, and also expose investors and communities to serious and potentially prohibitive risks. In the last few years, efforts in the UN Food and Agriculture Organization have resulted in two multilaterally-developed instruments—the Principles for Responsible Investment in Agriculture and Food Systems (RAI), and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)—that reflect a watershed convergence of international priorities in this area. However, to build upon the high- level policy principles reflected in these instruments, more detailed legal guidance would be useful for investors and governments.

Although further exploratory work by the Secretariat would be needed in order to determine the most useful form for UNIDROIT's work on this topic, the project could potentially include three interrelated elements:

(1) *A legal guide on land investment contracts.* Such a guide could be similar to, but likely not as extensive as, the Legal Guide on Contract Farming. This guide could provide basic background analyses of the legal issues relevant to land investment contracts: (a) an overview of relevant sources of rules (domestic law, customary norms, and international instruments) and their interaction with the contract; (b) pre-contractual issues (e.g., selection of the investor, feasibility studies, public availability of documents, and valuation of land); (c) formation of the contract (e.g., the form of the contract, the parties to the contract, and how to deal with those who lack title to land but have legitimate customary use rights); (d) guidance on issues that may be explicitly covered in the contract (e.g., term and extensions, scope of rights and activities, obligations of the landowner, rent/royalties, permits/taxes/audits and other regulatory issues, stabilization clauses, security, infrastructure and social services, dispute settlement, assignment/change in

control/subletting, governing law, and termination); and (e) remedies, excuses for non-performance, and renegotiation.

(2) *Model provisions for land investment contracts.* These model clauses could provide sample text demonstrating how parties can address some of the issues covered in the legal guide (particularly those listed in item (d) above) and incorporate aspects of the RAI and VGGT into contracts. The development of a model tri-partite land investment contract, including the investor, the government, and the local community as parties, would be a particularly valuable contribution.

(3) *Model legislative provisions in areas related to land investment contracts.* The element of the project on which UNIDROIT could perhaps add the most value would be by providing model provisions that states could use to reform their domestic laws in ways that would ameliorate some of the legal issues that arise in this area and ensure a level playing field in discussions between investors and local communities. Model provisions on several topics might be helpful: (a) recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land, to enable foreign investors to easily identify and compensate those who lack title but have existing use rights; (b) enabling the establishment of community trust funds or similar mechanisms to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole; and (c) valuation of communal land, to facilitate the calculation of compensation when land is held at the village level.

Work in these areas would be challenging, but could potentially be among the most valuable contributions that UNIDROIT could make in any field of law, in terms of the potential impact on development. Continued cooperation with other organizations—including not only the FAO and IFAD, but also the World Bank and others—would be critical to a successful project.

We look forward to reviewing the full list of proposed areas of work and to participating in the discussions of which areas should be included in the work program for the upcoming triennium.

ANNEX 4 – COLOMBIAN PROPOSAL (3 December 2015)

Communication received via e-mail from the Embassy of Colombia in Rome

After consulting with national entities in the financial, commercial, agricultural, transport and fiscal control areas, Colombia has the honour of transmitting its comments to the Triennial Program of Work:

Proposals

ENTITY	TOPIC	REASONING
Financial Superintendence	Mechanisms for the integration of regional securities exchanges	Colombia is currently undertaking a process of regional integration with the Pacific Alliance mechanism, which include securities markets. For which it would be of great utility if a set of standardized concepts and procedures were drafted regarding the development and implementation of regional securities exchanges, that would eventually allow for integration with other similar mechanisms.
	General Principles and Concepts of Insurance Contracts	The globalized nature of the insurance industry deems it necessary that a set of general principles for insurance contracts be drafted, that will act as a normative example for member states, which choose to participate.
	General Principles for Inclusive Insurance	There is a movement within the insurance industry to develop products for lower-income market such as micro-insurance, which is of great utility in increasing the resilience of highly vulnerable groups. Taking this into account, it would be interesting for UNIDROIT to develop principles and guides for the normative design that incentivize the design of simple and standardized products, that aim to the financial inclusion of populations with lower income levels
Superintendence for Industry and Commerce	Cooperation Project for the Elimination of Barriers in International Trade	Create and promote guides and principles of best practices in the control and evaluation of the coverage and enforcement of technical regulations. This in order to reduce the number of technical barriers to trade as well as the lead-time that it takes to implement/enforce these. Secondly, develop a guidebook of harmonized, simplified and standardized set of technical regulations in trade that promotes a synthesized universal set of terms.

ANNEX 5– UNCITRAL PROPOSAL (14 December 2015)

Communication received via e-mail from United Nations Commission on International Trade Law (UNCITRAL)

Joint proposal on co-operation in the area of international commercial contract law (with a focus on sales)

The Hague Conference on Private International Law (the "HCCH"), the International Institute for the Unification of Private Law ("UNIDROIT"), and the United Nations Commission on International Trade Law ("UNCITRAL") regularly co-ordinate their activities in order to ensure a concerted approach to common issues.

Recently, that co-ordination has led to jointly publishing an explanatory text in the field of security interests, which lists and summarises the work of the three Organisations in that area. In particular, that explanatory text illustrates how the various instruments produced by the three Organisations interact and provides a comparative understanding of the coverage and basic themes of each instrument.⁸

Similar co-operation is suggested in the area of international commercial contract law with a focus on sales in light of the renewed interest for further promoting the adoption, application and uniform interpretation of texts in that area.

Over the decades, the HCCH, UNIDROIT and UNCITRAL have prepared legislative and non-legislative instruments related to international commercial contract law. Often, those efforts have been conducted in close co-operation. One example of such co-operation may be found in the legislative history of the *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 1980)⁹ (the "CISG"). In particular, the influence on the CISG of pre-existing uniform law texts developed by other Organisations is well known.¹⁰

The CISG is one of the most successful uniform law texts in light of State participation, application by courts and arbitral tribunals and influence on sales law reform. That success highlighted the desirability of further supporting its implementation in line with its goals and guiding principles.¹¹

UNCITRAL has already developed tools providing support to CISG implementation. Those tools include cases reported in the Case Law on UNCITRAL Texts (CLOUDT) information system as well as the CISG Digest. However, experience demonstrates that a number of challenges to the use, application and interpretation of the CISG arise from insufficient awareness of the relation between the CISG and other uniform law texts, including those prepared by the HCCH and UNIDROIT. It is submitted that a joint effort aimed at providing guidance on how those texts relate would be beneficial for all texts concerned.

⁸ UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions, available from <www.uncitral.org/uncitral/uncitral_texts/security.html>.

⁹ United Nations, *Treaty Series*, vol. 1489, No 25567.

¹⁰ See, *inter alia*, as to UNIDROIT instruments: *Convention Relating to a Uniform Law on the International Sale of Goods* (The Hague, 1964), available from <www.unidroit.org/instruments/international-sales/international-sales-ulis-1964>; *Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods* (The Hague, 1964), available from <www.unidroit.org/instruments/international-sales/international-sales-ulfc-1964-en>; or the Hague Conference: *Convention of 15 June 1955 on the law applicable to international sales of goods*, available from <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=31>>.

¹¹ *Official Records of the General Assembly*, Seventieth Session, Supplement No 17 (A/70/17), para. 334.

Examples of texts closely related to the CISG include the Principles on Choice of Law in International Commercial Contracts (the "Hague Principles")¹² and the Unidroit Principles of International Commercial Contracts (the "UNIDROIT Principles"),¹³ both of which have been endorsed by UNCITRAL. Moreover, UNCITRAL has prepared treaties that are closely related to the CISG such as the *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York, 2005) (the "Electronic Communications Convention")¹⁴ and the *Convention on the Limitation Period in the International Sale of Goods*¹⁵ (the "Limitation Convention") as well as other instruments of legislative and non-legislative nature.

The substantive overlap and cross-fertilisation of those and other texts prepared by the HCCH, UNIDROIT and UNCITRAL¹⁶ has highlighted the desirability for greater clarification of the relationship among those instruments with a view to jointly promoting their adoption and use. It is important to recall that the primary texts in this field are of an optional nature. With this in mind, co-ordinated presentation and guidance as to the content and consequences of the available options would be of clear value in further developing the understanding and appropriate use of these texts.

Accordingly, the goal of the suggested document on international contracts law with a focus on sales would be to guide across a range of relevant issues, from choice of law to identification, among existing texts, of those most suitable for each type of transaction. That document would reference relevant uniform texts of a legislative, contractual or other nature. It could also examine how existing texts and standards relate to emerging issues such as the legal treatment of global supply chains.

If desirable and feasible, the document could address specifically issues relevant for various legal actors, including legislators, judges and arbitrators, legal counsels and commercial operators. It could also provide a solid teaching reference.

It should be stressed that the suggested document would not require new legislative work. It would analyse existing texts, co-ordinate them by highlighting mutual relationships and consolidate them, including by clarifying whether texts have had limited success or have been replaced by more recent ones.

One important dimension of the suggested work would be to refer, as appropriate, to relevant texts developed by other intergovernmental organisations, including at the regional level, and by the private sector. Those references would be prepared in consultation with the relevant institutions, in line with the usual inclusive approach of the HCCH, UNIDROIT and UNCITRAL.

The outcome of the suggested project could provide an important contribution to establishing clarity in the field by taking stock of the many achievements made in the past. It could also offer a clearer picture of lessons learned and best practices for the pursuit of greater legal uniformity and broader contractual freedom.

Mindful of increasing constraints on existing resources and of concurring priorities in each organisation's intense work programme, it is suggested that a significant amount of the

¹² Available from < www.hcch.net/en/instruments/conventions/full-text/?cid=135 >.

¹³ In their most recent iteration: UNIDROIT Principles of International Commercial Contracts 2010, available from < www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010 >.

¹⁴ General Assembly resolution 60/21, annex.

¹⁵ *Convention on the Limitation Period in the International Sale of Goods* (New York, 1974), United Nations, *Treaty Series*, vol. 1511, No 26119; as amended by the Protocol of 11 April 1980 (Vienna), United Nations, *Treaty Series*, vol. 1511, No 26121.

¹⁶ Consider, for example, the UNCITRAL Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983), *Official Records of the General Assembly, Thirty-eighth Session, Supplement No 17* (A/38/17), annex I; UNCITRAL texts on electronic commerce, available from < www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html > or the Hague Conference *Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods* (which however is not in force (yet), and for which there is little prospect of wide ratification), available from < www.hcch.net/en/instruments/conventions/full-text/?cid=61 >.

preparatory work in drafting the guidance document be carried out in an agile yet fully inclusive manner. To this end, a small joint panel of experts could be set up to provide further details on suggested scope and methodology. One possible first step could consist of mapping the most relevant texts and arranging them according to their scope. At a second stage, the panel could provide a short description of the content and relevance of those texts and assess their interaction.

The composition of the expert panel should reflect representation from different legal traditions and levels of economic development as well as, where appropriate, from other organisations active in the field. The HCCH, UNIDROIT and UNCITRAL would oversee the work of that panel through their Secretariats and provide guidance and co-ordination as appropriate.

The final product of the expert panel's work would be determined by the HCCH, UNIDROIT and UNCITRAL in light of the findings of that panel and of its recommendations. Appropriate venues for finalising and adopting the project's outcome could also be considered at a later stage.

ANNEX 6 – PROPOSAL ON PRINCIPLES OF REINSURANCE CONTRACTS

(from a group of scholars and practicing lawyers
led by Professor Anton K. Schnyder and Professor Helmut Heiss
(University of Zurich, as "Lead Agency")

Introduction**I. *What the PRICL are***

1. As a set of non-binding rules, the PRICL may be qualified as "soft law". The nature and possible means of application of such soft law forms the basis of a fairly intensive debate in legal theory. For the purposes of the present project, it suffices to state that such soft law may be chosen as the law governing the contract for contracts under which disputes are submitted to arbitration and may be incorporated into the contract for proceedings before state courts (in detail see *infra*, Comment on Article 1.1.2).

2. The PRICL do not intend to reinvent reinsurance law. Rather, they are to be considered a private codification or "Restatement" of existing global reinsurance law, which is largely embedded in international custom and usage. Thus, the PRICL intend to restate the existing law rather than alter it. Should any intervention be necessary, it will be for the sake of uniformity, i.e. to find common formulas where there may be diverging international customs and/or usages. Consequently, it may be said that customs and usages of reinsurance will be put into writing in the PRICL.

II. *What the PRICL are not*

3. The PRICL will not be drafted as a model law and do not require any implementing legislation, whether at national, international or supranational level. Apart from the fact that such legislation is highly unlikely to be passed, it is not required nor would it be helpful. Legislation is not needed because the parties may choose the PRICL as the law governing a reinsurance contract, at least when such choice of the PRICL is combined with an arbitration clause (in detail see *infra*, Comments on Article 1.1.2). Legislation would also not be helpful: National legislation obviously does not provide an adequate answer to the problem of unpredictability of results arising from the differences and uncertainties in national reinsurance contract law regimes. International legislation in the form of international treaties can eradicate problems created by differences in national laws. However, international treaties tend to petrify the law because any alteration will require consent from and ratification by all of the contracting states. Thus, the more successful an international treaty is, i.e. the greater the number of contracting states, the more it petrifies the law and markedly prevents further evolution of the law. Finally, supranational law, to the extent that it exists - for example in the EU, will be restricted to certain regions and does not provide for a set of globally accessible rules. In view of the fact that reinsurance markets are global markets, questions of reinsurance contract law cannot be properly addressed at a regional level only. In contrast, "soft law" rules such as the PRICL, provide for a set of globally uniform rules without preventing in any way the future development of reinsurance contract law.

4. The PRICL are by no means imposed on the parties to the contract. They will apply only when parties choose them as the law governing their contract and will remain inapplicable if parties abstain from using the option. Even if parties opt into the PRICL regime, they are free to exclude certain principles from the scope of application as well as derogate from these or vary their effects (in detail see *infra*, Article 1.1.3).

5. Due to their entirely non-binding nature the PRICL neither interfere with the products offered nor with model clauses used in international reinsurance markets. On the contrary, the PRICL will ease the international offer of reinsurance products as well as the use of model clauses, because they provide a harmonised set of general rules underlying products and model clauses. Once the impact of the PRICL on the model clauses is analysed, predictability of results will be provided, irrespective of the national jurisdiction(s) to which a reinsurance contract is closely related.

III. *Why choose the "PRICL"?*

1. "[D]isputes over the terms of the contract cannot be resolved unless one identifies the particular body of law which is to apply to their interpretation. A 'follow the settlements' clause, for example, may have a very different meaning when it is interpreted in the light of the law of New York rather than that of England." This statement, provided by Barlow Lyde & Gilbert LLP, Reinsurance Practice and the Law (2009) no. 20.1, makes clear that a proper and deliberate choice of the law governing the contract is an essential element of a reinsurance contract. As long as such choice is made in favour of state law, it will always be foreign law for at least one of the parties to international reinsurance contracts. Thus, such party may not be in a position to oversee the impact of the law chosen on the interpretation of the terms of the contract, at least not in detail. Considering that - due to the international character of reinsurance transactions - many jurisdictions will be involved, a thorough analysis of each and every law applicable to individual reinsurance contracts will not be feasible.

2. Such impact of national law cannot be avoided entirely by incorporating model clauses, such as the London Market Reinsurance Clauses provided by the International Underwriting Association (www.iuaclauses.com), for several reasons. A prominent reason for this is that the model rules do not provide a comprehensive standard contract and cannot safeguard their uniform interpretation by different courts, whether state courts or courts of arbitration. Where parties use the model clauses but settle for a jurisdiction or arbitration clause in favour of a state court or a court of arbitration outside the UK, standards of interpretation will be different depending on the law applied by such court.

3. Even if parties undertake an analysis of the law being proposed for choice, they will encounter difficulties in ascertaining its contents where reinsurance is concerned. There is often a lack of sources of law which are easily accessible to the parties. In relation to US law, Barlow Lyde & Gilbert LLP, Reinsurance Practice and the Law (2009) at no. 50.1 state: "New York is probably the only state whose case law can be said to have addressed most of the major issues arising in the context of reinsurance disputes. In many other states, there is little more than a handful of reinsurance cases on the books." Moreover, the existing case law is considered to be "skewed" because it relates to facultative reinsurance rather than treaty reinsurance and predominantly covers cases involving long-tail losses (Barlow Lyde & Gilbert LLP, Reinsurance Practice and the Law (2009) no. 50.4). This analysis also applies to most civil law countries because codifications of reinsurance contract law are widely missing and case law in civil law countries is just as sparse as in many jurisdictions of the US.

4. Thus, it is important that, in addition to special model clauses, reinsurance practice is at the same time also offered model rules of general (reinsurance) contract law, which will provide a uniform framework within which model clauses may be agreed and which will govern their interpretation.

5. The PRICL intend to provide parties with an option (see Article 1.1.2) in favour of such a uniform set of rules including general rules of contract law. The latter are provided by the UNIDROIT Principles of International Commercial Contracts ("UNIDROIT Principles"), which will apply unless the PRICL provide special rules (see Article 1.1.6 para. 3). The PRICL and the UNIDROIT Principles together will provide a relatively comprehensive and uniform soft law on reinsurance. Both sets of

rules, the PRICL and the UNIDROIT Principles, will be accompanied by Comments which explain the principles and illustrate their application to typical cases. Thus, the outcome of legal debates on the meaning of reinsurance contract terms and the contents of the (soft) law governing the contracts will become more predictable.

IV. *Inherent limits to the effectiveness of a choice of the PRICL*

6. The PRICL will be effective to the extent that parties enjoy and use their party autonomy. At least for contracts containing an arbitration clause such autonomy appears to be unrestricted at first sight: Article 28(1) of the UNCITRAL Model Law on International Commercial Arbitration 1985/2006 allows parties to choose "rules of law" as the law governing the contract. Since the term "rules of law" also covers non-state law, the PRICL will qualify as a set of rules which may be chosen by the parties. However, even within the scope of arbitration which grants parties utmost freedom, there are limits to a parties' choice of law. Application of non-state law must not violate the relevant *ordre public*. More importantly, courts of arbitration apply or at least take into consideration so-called international or overriding mandatory rules. Those rules are defined by Article 9(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) as "provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation". To the extent that a court of arbitration applies or at least considers such mandatory rules, they will have some impact on the effectiveness of the PRICL in providing a uniform framework for reinsurance. In this respect, a choice in favour of the PRICL is limited in the same way as a choice of any national law.

7. Under English case law, certain clauses of reinsurance contracts are subjected to the law governing the underlying insurance contract irrespective of the fact that the parties had chosen English law to govern the reinsurance contract (see the discussion of relevant case law in Barlow Lyde & Gilbert LLP, Reinsurance Practice and the Law (2009) no. 20.50 ff.). It seems to be the assumption of English courts that parties to a reinsurance contract agreeing, e.g., on a warranty which is copied from the underlying insurance contract, intend the warranty in the reinsurance contract to be governed by the same rules as the warranty in the underlying insurance. Such interpretation of the contract will not be entirely excluded even if the parties have chosen the PRICL to govern the reinsurance contract. As a result, national law will come in again and play an important role in solving reinsurance disputes. However, apart from the fact that this situation is a special one, English case law may be applied only very restrictively to reinsurance contracts governed by the PRICL. The interest to bring warranties of reinsurance contracts in line with the warranties in the underlying insurance must be weighed against the interest of the parties to have the PRICL applied as a uniform set of rules. This will often prevent courts or courts of arbitration from following the position taken by English courts. Finally, parties may state clearly in their choice of law clause that they do not want the reinsurance contract to be governed in whole or in part by the law applicable to the underlying insurance.