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## **REPORT**

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**[Note of the Secretariat:** The Report uses abbreviations and acronyms for UNIDROIT and other organisations' instruments, international organisations or other institutions. The list of such abbreviations and acronyms is to be found in APPENDIX III to this document.]

1. The *President of the Institute, Mr Alberto Mazzoni*, welcomed members of the Governing Council to the Council's 96<sup>th</sup> session. He noted that in the previous year, 2016, the Institute had celebrated its 90<sup>th</sup> anniversary, with a number of events to commemorate the occasion. He noted that the success of UNIDROIT in its 90<sup>th</sup> year was a good omen for the future. He stated that the Council would consider the progress that the Institute had made in the implementation of its triennial Work Programme for 2017 – 2019.

2. In particular, the President noted that the draft Legislative Guide on Intermediated Securities had been submitted to the Governing Council for consideration and approval. Progress had also been made on the preparation of the MAC Protocol at the first session of the Committee of Governmental Experts between 20–24 March 2017. He noted with satisfaction that the 2016 edition of the UNIDROIT Principles had also been published. The Institute continued its collaborative work with the Rome-based organisations of the UN system for food and agriculture on private law issues related to agriculture and development. The Institute also continued to promote its existing instruments, with a particular emphasis on the 1995 UNIDROIT Convention. He noted that the achievements of the Secretariat over the previous twelve months were particularly impressive, given the limited resources it had to operate.

3. The President expressed his support for the cooperation agreement between UNIDROIT and Queen Mary University, which would allow for young scholars to support the Institute's research activities. He noted the importance of attracting scholars to participate in the activities of the Institute, which would enhance global awareness and appreciation of UNIDROIT's work. Progress had also been made on the library digitisation project, which was not only an important project for the Secretariat, but would also be a useful asset in future promotional activities.

4. The President thanked the Council members for their service to the Institute and expressed his hope that the Council would have positive and fruitful deliberations. He then declared the session open.

**Item 1: Adoption of the annotated draft agenda** (C.D. (96) 1 rev. 3)

5. *The Governing Council adopted the agenda as proposed in document C.D. (96) 1 rev. 3.*

**Item 2: Appointment of the First and Second Vice-Presidents of the Governing Council**  
(C.D. (96) 1 rev. 3)

6. *The Governing Council appointed Mr Arthur Hartkamp as First Vice-President of the Governing Council and renewed the appointment of Mr Lyou Byung-Hwa as Second Vice-President, both of whom were to serve in these positions until the 97<sup>th</sup> session of the Council.*

**Item 3: Reports**

**(a) Annual Report 2016** (C.D. (94) 2)

7. The *Secretary-General, Mr José Angelo Estrella Faria*, presented the Annual Report for 2016. He noted that 2016 had been an extraordinary year for the Institute, as only few international organisations were as long-lived as UNIDROIT. He noted that the series of events

conceived to celebrate the 90<sup>th</sup> anniversary of the Institute were designed to reflect both the achievements of the Institute and its academic and intellectual underpinnings. The Secretary-General recalled the various celebratory events held in 2016 and noted that they were described in detail in the Annual Report. He noted that, from an institutional perspective, the series of events had added greatly to the visibility of the Institute within Rome, but also among the member States who participated in such events.

8. From a substantive perspective, he noted that the Secretariat had made strong progress on a number of projects in 2016. In particular, the Secretary-General referenced two meetings held in relation to the transnational civil procedure project, which had attracted significant interest in Europe. He mentioned that the Ratification Task Force for the Luxembourg Rail Protocol and the Space Preparatory Commission had met in 2016, and the latter had made progress in finalising the draft Regulations for the Space Protocol. He noted that the Study Group tasked with preparing a draft preliminary MAC Protocol had successfully concluded its work in March 2016, and the preliminary draft had been subsequently approved by the Governing Council at its 95<sup>th</sup> session (Rome, 18-20 May 2016). 2016 had also been an important year for the preparation of the Legislative Guide on Intermediated Securities, which progressed through an informal group of experts coordinated by the Secretariat. The final draft had been approved by a meeting of the Committee on Emerging Markets in March 2017 and had been submitted to the Governing Council for its approval at this session. He noted that in early May 2017 a first meeting was held in relation to the preparation of an international guidance document on agricultural land investment contracts.

9. The Secretary-General noted that 2016 was also a busy year in relation to the Institute's non-legislative work. Regarding the Depositary, there had been a number of additional ratifications of the Cape Town Convention and Aircraft Protocol and signatures for the Luxembourg Rail Protocol. He noted that the Secretariat had also developed a mechanism for compensation for the Depositary in relation to the costs of operating the Depositary for the Cape Town Convention in partnership with Aviareto. That the Secretariat had also been busy in its promotional work, with a particular emphasis on the 1995 UNIDROIT Convention, which had received heightened attention following UN Security Council Resolution 2199 that called upon the international community to cooperate in the prevention of the illicit trafficking of antiquities and archaeological objects from Syria to prevent the financing of terrorism. He noted that the Secretariat continued to cooperate with FAO and IFAD in the promotion and implementation of the Legal Guide on Contract Farming.

10. He noted that, in 2016, the Secretariat and the Finance Committee had made progress towards resolving issues related to the compensation and social security schemes for UNIDROIT staff, with a view to achieving long-term sustainability for the Institute. He stated that such issues would be discussed later during the meeting under Item 14 of the agenda.

11. Finally, he noted that 2016 had been a busy year for the Institute's publication program, which had produced both the quarterly editions of the Uniform Law Review, the 2016 edition of the UNIDROIT Principles and an extraordinary edition of the Uniform Law Review comprised of a compilation of essays in honour of Professor M. Joachim Bonell. A further publication would be released later in 2017, which would be a promotional book celebrating the 90 year history of UNIDROIT. The Secretary-General also stated that, in 2016, the Institute's internship and scholarship programme had continued to welcome students and academics from across the world and that the library had made progress towards the digitisation of its collection.

12. The Secretary-General concluded that UNIDROIT remained particularly energetic for a 90 year old institution, and personally thanked his colleagues at the Secretariat for their dedication and hard work.

13. *Mr Hartkamp* congratulated the Institute on its various activities during its 90<sup>th</sup> year of existence. He noted that he would provide substantive comments on the various projects later in the meeting during the appropriate agenda items.

14. *Ms Bariatti* congratulated the Secretariat for the immense work undertaken in 2016. She noted that the health of the Institute was perfect despite its venerable age.

15. *Mr Moreno Rodríguez* noted that it had been 40 years since Mr René David made his famous remark that the legal framework of international commerce was a real shame to jurists. Mr Moreno Rodríguez noted that, if he were living today, the famous professor who had been closely linked with UNIDROIT's work, would be proud of the work that had been done over the past four decades. Mr Moreno Rodríguez then congratulated the Secretary-General and the Secretariat for the excellent work undertaken in 2016.

16. *Mr Neels* congratulated the Institute for the Annual Report and highlighted the work that UNIDROIT had undertaken in Africa in 2016. He noted the various missions that the Secretary-General had personally undertaken to Africa in 2016 and expressed appreciation that the scholarship and internship programme had supported African students and lawyers to perform research at the Institute in Rome.

17. *Mr Sánchez Cordero* congratulated the President and Secretary-General for the impressive report, and noted that he believed the Institute had a very bright future.

18. The Council took note of the Secretary-General's report on the activity of the Institute in 2016. The Council thanked the Secretariat for the numerous activities undertaken during the Institute's 90<sup>th</sup> year.

#### **(b) Report on the UNIDROIT Foundation**

19. The *Vice-President of the UNIDROIT Foundation, Mr Don Wallace*, provided an oral report on the operations of the UNIDROIT Foundation. Mr Wallace noted that the UNIDROIT Foundation Board of Governors had met on 2 May 2017 and approved the Accounts for 2016 and the Budget for 2017. He provided updates on the Foundation's two primary projects: the Electronic Registry Best Practices project and the Economic Assessment of International Commercial Law Reform project. He explained that the Board of Governors intended to have additional meetings via videoconference, with the next meeting scheduled for 29 May 2017 to discuss the Strategic Plan. Finally, he thanked Mr Brydie-Watson for his work in supporting the operation of the Foundation.

20. The *Secretary-General* thanked Mr Wallace for his report and noted that the funds provided by the Foundation had been vital in supporting the Institute's internship and scholarship programme.

21. The Council took note of the report by the Vice-President of the UNIDROIT Foundation, and thanked the Foundation for its continued support of the Institute.

#### **Item 4: International Interests in Mobile Equipment**

##### **(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (96) 3)**

22. The *Deputy Secretary-General, Ms Anna Veneziano*, introduced the topic. She noted that the previous twelve months had been a momentous period for the Luxembourg Rail Protocol due to

the activities of the Ratification Task Force, the Rail Working Group and the Registrar. She noted that the Ratification Task Force had organised a number of events which motivated additional countries to sign the Luxembourg Rail Protocol. She explained that the Secretariat had been promoting the Protocol during missions in Africa and Asia, and that the Depositary had been working with States that had ratified the Cape Town Convention but had not made the necessary mandatory declarations for the Convention to function effectively. The Secretariat had also hosted two promotional meetings for the Protocol in 2016.

23. The Deputy-Secretary General then explained that those promotional activities had led to the Protocol being signed by the United Kingdom and Mozambique in 2016 and by France in 2017. Gabon had also made the necessary mandatory declaration under the Cape Town Convention to become a full and effective party to the Luxembourg Rail Protocol. She urged the Governing Council members to promote the Luxembourg Rail Protocol in their jurisdictions so that it could enter into force in the near future.

24. In relation to the Space Protocol, she noted that the Preparatory Commission had undertaken significant work in the finalisation of the Regulations for the Space Protocol. She noted that the space industry had been experiencing a significant change as new medium-size private enterprises had begun operations. She explained that those changes were likely to increase the need for private financing, which might in turn increase the desirability of the Space Protocol in the future.

25. The Deputy-Secretary General concluded by noting that the Cape Town Convention Academic Project had continued to grow in participation and importance and that the upcoming 6<sup>th</sup> Conference for the Academic Project in September 2017 would focus upon the MAC Protocol.

26. *Mr Olaf Reif, representing Mr Hans-Georg Bollweg*, thanked the Secretariat for its work in promotion of the Luxembourg Rail Protocol and Space Protocol. He expressed his hope that continued promotional efforts would lead to further signatures and ratifications. He noted that the International Telecommunication Union (ITU) would be an excellent candidate for the role of Supervisory Authority for the Space Protocol. However he urged the Secretariat to investigate other options in the event that the ITU was unable to perform the role. He also noted that Aviareto should be seen as a strong candidate for Registrar for the Space Protocol.

27. *Ms Pauknerová* expressed her congratulations for the progress towards entry into force of the Luxembourg Rail Protocol. She noted that the Czech Republic was not yet a contracting State of the Cape Town Convention, but hoped that the Czech Republic would be in a position in the future to ratify the Convention and its Protocols.

28. *Mr Leinonen* thanked the Secretariat for its work in promoting the two projects. He noted that Finland had been active in the Preparatory Commission for the Luxembourg Rail Protocol but was not yet in a position to sign the Protocol. He noted that Finland was unlikely to sign the Protocol in 2017, but there was some hope that it could be signed in 2018. He concluded that the Protocol was under active consideration in other Nordic countries.

29. *The Council took note of the developments in relation to the implementation of the Luxembourg Rail Protocol and the Space Protocol. The Council encouraged the Ratification Task Force to continue to pursue early entry into force of the Luxembourg Rail Protocol.*

**(b) Fourth Protocol of the Cape Town Convention on matters specific to agricultural, construction and mining equipment (C.D. (96) 4)**

30. *Mr William Brydie-Watson* introduced the topic. He noted that, in order to elaborate on the short document provided to the Governing Council, he would give a more substantive oral briefing on (a) Secretariat activities in advance of the first session of the Committee of Governmental Experts (CGE1); (b) an overview of the proceedings and outcomes from CGE1 and the anticipated next steps for the project.

31. *Mr Brydie-Watson* explained that the preparatory work for the Secretariat had consisted of promotional activities to encourage participation at CGE1, and preparation of documents for consideration at the session. To promote participation in the meeting by Governments, the Secretariat had undertaken an organised campaign which had involved bilateral meetings with Embassies, participation at relevant international fora organised by FAO, APEC and UNCITRAL, and collaboration with partner organisations such as the World Bank, IFC and NatLaw. The promotional activities had been truly global, with events across Asia, Europe, Africa and the Americas. The Secretariat had also organised a special half-day symposium for UNIDROIT member States at which a panel of international experts briefed governmental representatives on key aspects of the project. The MAC Protocol Working Group led by *Mr Phil Durham* had also been very active in increasing private industry engagement in the project.

32. *Mr Brydie-Watson* stated that the promotional strategy had been very successful, as 126 representatives from 48 countries had attended CGE1, which made it the largest Governmental Experts meeting in the history of the Cape Town Convention and one of the largest ever organised by the Institute. The meeting had been chaired by *Mr Dominique D’Allaire* from Canada, and the Deputy Chairs were *Mr Liu Keyi* from China and *Ms Manjiri Nganga* from Kenya. Deliberations had proceeded well and only a limited number of changes had been made to the preliminary draft Protocol prepared by the Study Group. He explained that three issues had been debated robustly: (a) the use of the Harmonized System to delineate the scope of the Protocol; (b) Article VII which governed interests in immovable property; and (c) Article XXXII which provided how the Protocol could be amended. There had been general consensus on how those issues should be resolved, and on the final day of proceedings the Committee had adopted the changes to the draft text prepared by the Drafting Committee.

33. Finally, *Mr Brydie-Watson* set out the Secretariat’s future activities in relation to the MAC Protocol project. He noted that the second session of the Committee of Governmental Experts had been scheduled for 2–6 October 2017, and that invitations for the meeting had been distributed to all United Nations member States and relevant organisations. Further documents would be distributed during the summer once they had been updated to reflect the progress made at CGE1. An Intersessional Working Group on Registration Criteria had also been established by the Committee to give further consideration to how MAC assets should be registered in the International Registry. The Intersessional Working Group was chaired by Germany and would conduct its proceedings via email and teleconference with a view to report back to the Committee at its second session. He explained that the Secretariat would be involved in a number of other activities in advance of the second session, which included the completion of a more developed economic analysis on the expected benefits of the draft MAC Protocol, further promotional work and discussion at the Cape Town Academic Project Conference in Oxford in September 2017. He concluded that it was hoped that the significant momentum for the project would continue and that a Diplomatic Conference to adopt the MAC Protocol could be held in the second half of 2018.

34. *Mr Gabriel* thanked the Secretariat for its work on the MAC Protocol. He noted that the project had great potential, and its future benefits for developing countries might exceed those provided by the other Protocols to the Cape Town Convention.

35. *The representative of UNCITRAL* noted that it was important to coordinate the MAC Protocol with UNCITRAL's work in the field of secured transactions, most notably the UNCITRAL Model Law on Secured Transactions. He expressed concern that the scope of the preliminary draft Protocol might cover equipment that was low value and not individually identifiable. He concluded that UNCITRAL had suggested that the Article 51 criteria of the Cape Town Convention (i.e. high value, mobile and uniquely identifiable assets) should be set out in the scope provision of the Protocol rather than the Preamble.

36. *The Secretary-General* thanked the representative of UNCITRAL for his remarks, and noted that those concerns had been conveyed by UNCITRAL during CGE1. He noted that the issue had been the subject of significant scrutiny and attention. He explained that extensive global consultation with industry had been conducted over the preceding two years, which had indicated that the Harmonised System codes listed in the Annexes to the preliminary draft Protocol covered types of MAC equipment valued at over USD 100,000, and in some cases worth several million dollars. He explained that, in limited circumstances, the codes might also cover some low value equipment, but this was the exception rather than the norm.

37. In relation to CGE1, the Secretary-General explained that many contentious issues that had arisen during the negotiation of previous Protocols to the Cape Town Convention were not relevant to the MAC Protocol project. In particular, he noted that the public service exception which had been a particularly divisive issue during the negotiation of the Luxembourg Rail Protocol had not arisen, because in all jurisdictions surveyed the agricultural, construction and mining sectors were not treated as public services. He explained that the most vigorously discussed issue had been that of amendments, because many delegations had felt that the original text of Article XXXII had not given contracting States sufficient control in deciding how the scope of the Protocol would be affected by changes to the Harmonised System or future technological developments. He explained that the new text of Article XXXII agreed to by delegations maintained a separation between the formal treaty amendment mechanism required to modify the provisions of the Protocol and a procedural mechanism to modify the provisions of the Annexes, however the new text also gave States further power to exempt themselves from changes to the Annexes with which they might not agree.

38. *Mr Reif* noted that a large German delegation had participated in CGE1, and believed that the preliminary draft Protocol was of a very high quality as a result of the work done by the Secretariat, Study Group and Working Group. He expressed his confidence that the project could be successfully concluded in 2018.

39. *The Council took note of the progress made at the first session of the Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment. The Council noted that the second session of the Committee of Governmental Experts had been scheduled for 2–6 October 2017 and expressed its hope that the Committee would be able to conclude the draft text at the upcoming session.*

**Item 5: Transactions on Transnational and Connected Capital Markets - Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets**  
(C.D. (96) 5)

40. *Mr Neale Bergman* introduced the topic. He stated that it was his honour to take the floor to submit for the Council's consideration and adoption the draft Legislative Guide on Intermediated Securities (draft Legislative Guide), which was attached to document C.D. (96) 5 as an Annex. He



recognised, at the outset, the efforts of those who had made such a submission possible. He expressed gratitude to the members of the informal experts group, which had prepared and reviewed the draft Legislative Guide and were ably led by Mr Hideki Kanda, a member of the Council. He also expressed gratitude to Ms Shi Jingxia, a member of the Council, and to officials at the China Securities Regulatory Commission and the China Securities Depository and Clearing Corporation Ltd, who had kindly organised the fourth meeting of the Committee on Emerging Markets (Beijing, 29-30 March 2017), which had been established at the Diplomatic Conference that adopted the Geneva Securities Convention to assist with the Convention's promotion and implementation. He then thanked Ms Frédérique Mestre of the UNIDROIT Secretariat, who had prepared the French translation of the draft Legislative Guide.

41. Regarding the process by which the draft Legislative Guide was prepared and reviewed, Mr Bergman emphasised that the draft had benefitted from multiple layers of review. Following the Council's 95<sup>th</sup> session (Rome, 18-20 May 2016), for which an earlier draft had been submitted as an update, the Secretariat and the informal experts group had continued to revise it remotely, ultimately resulting in what was called the 4 October draft. That draft had been circulated to Committee members, to all States that signed any of UNIDROIT's Conventions, and to other interested organisations and stakeholders for review, comments, and collection of possible model examples of legislative or regulatory texts or related descriptions for use in the draft Legislative Guide. Then, at the informal experts group's third meeting (Rome, 12-13 December 2016), the group had reviewed in detail the comments and possible model examples received by that time and had considered them in recommending modifications to the draft Legislative Guide. The group had also recommended that the possible examples be moved from the draft Legislative Guide into a separate document that could then serve as the basis for a webpage on UNIDROIT's website, on which the examples could be keyed to the relevant paragraphs of the Guide and be kept up to date. After the meeting, a follow-up videoconference had been held on 16 January 2017 to review the revised draft Legislative Guide, which was in turn revised again, resulting in what was called the 27 January draft. That draft had then been circulated again for comments and had been submitted to the Committee on Emerging Markets for review, together with the comments that had been received.

42. Mr Bergman then described the Committee on Emerging Markets' fourth meeting (Beijing, 29-30 March 2017), which had commenced with a Colloquium on Financial Markets Law on the theme of "Enhancing and Ensuring Legal Certainty in Both Current and Future Holding Systems". There had been fruitful discussions on various issues related to UNIDROIT's financial markets instruments, recent developments and relevant legal concerns arising from securities holding systems. In light of new technological advances and the letter received from the Czech Ministry of Industry and Trade, which was attached as Annex II to document C.D. (96) 5 and had proposed that UNIDROIT could preliminarily study the possibility of harmonisation with respect to such advances, there had also been interesting discussions on how to address the rapid development of financial technology, in particular distributed ledger technologies, in order to enhance the legal certainty of securities holding systems. Following the Colloquium and building upon it, the Members and Observers of the Committee on Emerging Markets, as well as other States and Organisations, then dealt with the items on the Committee's agenda, in particular the review of the draft Legislative Guide. They had agreed upon certain amendments and additions, in particular clarifications, and ultimately recommended that the draft Legislative Guide, as revised, be submitted to the UNIDROIT Governing Council for review and adoption at its 96<sup>th</sup> session (Rome, 10-12 May 2017). Mr Bergman then noted that, following the Committee on Emerging Markets' meeting, the Secretariat had taken those amendments and additions, some of which had to be drafted, and prepared the revised version, which had again been circulated to the informal experts group for confirmation that no issues arose from the implementation of those revisions.

43. Regarding an overview of the draft Legislative Guide, Mr Bergman noted that it sought to enhance legal certainty and economic efficiency with respect to the holding and transfer of intermediated securities, in both domestic and cross-border situations, in either of two ways. First, in complementing the Geneva Securities Convention, it was hoped that the Legislative Guide would promote its adoption and implementation. Second, in summarising the Geneva Securities Convention's key principles and rules, it was hoped that, even where the Convention was not adopted, such principles and rules could be chosen and implemented in those systems. With respect to structure and content, he briefly described the Legislative Guide's nine main Parts and noted that it also included – in order to make the instruments and guidance that UNIDROIT had developed in this area easier to use – Annexes containing numerous cross-references to the Official Commentary on the Geneva Securities Convention, the Explanatory Memorandum on the System of Declarations under the Geneva Securities Convention (UNIDROIT 2012 – DC11/DEP/ Doc. 1 rev.), and the Netting Principles. He also noted that model examples of legislative or regulatory texts or related descriptions, as well as bibliographic references, were continuing to be collected and were to be included on UNIDROIT's future webpage for the Legislative Guide and that this content would be circulated for input from the informal experts group and for comments from the Committee on Emerging Markets prior to being posted to the webpage.

44. In concluding his remarks, Mr Bergman stated that, if adopted, the Secretariat would undertake final editing of the Legislative Guide to ensure, among other things, it was properly formatted, both for a hard copy format – in particular a leaflet like the Netting Principles which could be easily distributed – and for making it available online.

45. *Mr Reif* expressed congratulations for the excellent work that had been delivered and stated that Germany supported the adoption of the Legislative Guide.

46. *Ms Pauknerová* supported the adoption of the Legislative Guide and noted, as a professor of private international law, her appreciation for the modern approach to the formulation of conflict of laws rules. She stated that such rules, which were based on the relevant intermediary, were more appropriate than traditional rules, which were based on the *lex rei situs* principle.

47. *Ms Broka* supported the adoption of the Legislative Guide and congratulated all those involved in its development. She stated that the Legislative Guide was a very modern instrument containing helpful diagrams to present the technical subject matter and laying out the steps in intermediated securities transactions and the various approaches in different legal systems in a practical way.

48. *Mr Tricot* praised the methodology by which the Legislative Guide had been developed and expressed his support for it. He recalled the subprime lending crisis originating in the United States of America and the worldwide banking crisis roughly a decade ago, which was linked with securities trading and corrupt trading practises. He then stated that, at this point, UNIDROIT had completed an exceptional work on securities law, which included various options, such as transparent versus non-transparent systems. For the intended users, the Legislative Guide thus laid out different choices, which could support the review and development of legally sound intermediated securities systems.

49. *Ms Bariatti* expressed support for the Legislative Guide and noted that it rightly set out a modern approach to conflict of laws rules. She then suggested that, with respect to the chapter on conflict of laws rules, it could be clarified that the Hague Securities Convention had entered into force on 1 April 2017 and that both the Hague Securities Convention and the relevant EU legislation followed the tier-by-tier approach, based on the relevant intermediary.

50. *Mr Wilkins* praised the Legislative Guide, in particular the way in which it explained the Geneva Securities Convention and the way it should operate. He found it to be a very educational instrument and recommended its use. He then noted that the rise blockchain technologies was disintermediating securities markets. He concluded by stating that, although the instrument might become less relevant over the next decade or so due to such technologies, it was nevertheless very well done and helpful.

51. *Mr Gabriel* recalled that the Legislative Guide was the last step in the three-step work on the capital markets project, which overall had taken a long time and had now been concluded. He stated that he was very pleased with the Legislative Guide and stated that it should be adopted. He emphasised that the Secretariat had garnered the expertise of top experts in this field from around the world, who had worked on and reviewed each of the Legislative Guide's parts, resulting in a very impressive product.

52. *Mr Sono* read the following statement on behalf of Mr Kanda, who was the chair of the informal experts group that developed the draft Legislative Guide and was unable to attend the Council's session: *"I deeply apologise for my absence in the Governing Council session this year. The draft Legislative Guide on Intermediated Securities is the result of great teamwork. In the informal experts group, real experts in the area around the world spent much time and worked very hard with the invaluable assistance of Neale Bergman. I also greatly appreciated various inputs from the members and observers of the Committee on Emerging Markets, in particular at the fourth meeting that took place in Beijing last March. In light of the importance of intermediated securities in modern capital markets and rapidly changing environments in the financial sector on the globe, I believe the Guide will serve as a useful basis for the implementation of the Geneva Securities Convention as well as the designing and development of a modern legal system regarding intermediated securities in any given jurisdiction."*

53. The *President* noted the Council's support for the adoption of the Legislative Guide on Intermediated Securities, to which the drafting suggestion from Ms Bariatti could be incorporated, and proceeded to invite the Council to consider the proposal for future work received from the Czech Ministry of Industry and Trade and attached as Appendix II to C.D. (96) 5.

54. *Ms Pauknerová* described the proposal that UNIDROIT could preliminarily study the possibility of harmonisation with respect to distributed ledger and blockchain technologies. She noted that the Ambassador of the Czech Republic to the People's Republic of China, Mr Bedřich Kopecký had made a presentation on the importance of such technologies and possible future work in this area at the Colloquium on Financial Markets Law during the Committee on Emerging Markets' fourth meeting (Beijing, 29-30 May 2017), and that such technologies could be very relevant to UNIDROIT's current work on financial markets and agriculture, as well as other work, such as with respect to the inheritance of digital properties. She explained how blockchain technology, which had grown out of the digital currency Bitcoin, worked by serving as a shared electronic processing and recordkeeping database that allowed all parties to check information in the database without the need for third parties. She further explained that the technology could be applicable in various fields, including real estate, money transfers, identity verification, transaction certification, and commercial insurance and stated that Sweden, for example was conducting tests to put the country's land registry on a blockchain database. She also discussed some key legal issues with the new technology, including jurisdiction and applicable law because servers could be decentralised around the world and legal status and liabilities of digital entities. She then recalled the proposal on electronic commerce submitted by the Ministry of Justice of Hungary in November 2015 (UNIDROIT 2016 – C.D. (95) 13 rev., para. 69) and noted the strength of the Czech Republic's information technology industry, including its research capacity and investment in this field, which could contribute expertise to the possible future work. She concluded by explaining that the proposal was meant to promote the idea of work in this area and to canvass the interest of the Secretariat and

the members of the Council regarding whether such preliminary study or aspects of it should be added to UNIDROIT's Work Programme.

55. The *representative of UNCITRAL* noted that, although UNIDROIT had received proposals regarding harmonisation work on distributed ledger technologies and cloud computing, UNCITRAL would urge States to submit such proposals to UNCITRAL – in particular Working Group IV which was already working in the area of electronic commerce – in order to avoid any overlap in work.

56. *Mr Gabriel* noted that he had read the Czech proposal with great interest, but that he was concerned that the technologies might not yet be fully developed. Having participated in UNCITRAL's Working Group IV, he stated that it was important to avoid technology-specific approaches in legislative instruments, because the technology could have moved in a different direction by the time the instrument was completed. He further stated that such a problem could arise with respect to distributed ledger technologies and that, instead of a preliminary study, UNIDROIT should simply follow developments regarding such technologies.

57. *Mr Wilkins*, in agreeing with Mr Gabriel's intervention, noted that he had dealt with digital currencies as the President of the Financial Action Task Force<sup>1</sup> and that the general disposition in that forum had been to try and allow existing law an opportunity to evolve with respect to new technologies before proposing new legislative solutions. He then emphasised that, although there might be specific work to be done in the future, the new technologies could significantly simplify various transactions, and the Council should be careful about rushing into a field that was moving very rapidly.

58. The *President*, seeing no further requests for the floor, noted the Council's appreciation for the Czech proposal. He stated that UNIDROIT should continue to follow developments with respect to the new technologies, but that he did not see sufficient support for a recommendation that the proposed preliminary study be added to the Work Programme.

59. The Council considered and adopted the UNIDROIT Legislative Guide on Intermediated Securities. The Council expressed its gratitude to the Secretariat for its work on the instrument and authorised the Secretariat to promote its dissemination and implementation.

## **Item 6: Private Law and Agricultural Development**

### **(a) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (96) 6(a))**

60. *Ms Frederique Mestre* recalled that the Council, at its 94<sup>th</sup> session (Rome, 6-8 May 2015), had adopted the Legal Guide on Contract Farming, which had soon after been published in English and French. She further recalled that the Legal Guide was a soft law instrument developed together with FAO and IFAD and that now the three organisations were joining efforts to promote the instrument so that intended users could be aware of it and informed about its contents and practical applications. Although drafted in an accessible way given its broad intended audience, including agricultural producers and those in charge of agricultural development programmes in

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<sup>1</sup> The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

various countries, the instrument still contained rather sophisticated legal language and contents, which required promotion and dissemination.

61. Ms Mestre described how promotional efforts were underway to ensure the instrument's use on the ground, primarily in two ways. First, she discussed how IFAD and FAO were using the Legal Guide on Contract Farming in their development programmes and was operationalising it in the various countries in which they were working. In this regard, they had launched a two-year plan for operationalising the Guide, financed by IFAD and executed by FAO, that included the preparation of: (a) the Spanish version of the Legal Guide, which was already available online; (b) dissemination documents, which emphasised key points and presented the guide in an accessible way; (c) contract templates, which were based on the Legal Guide's recommendations and were being developed in conjunction with the International Institute for Sustainable Development (IISD); (d) capacity building workshops, held between September 2016 and the third quarter of 2017 in various countries, with the intention of building capacity among intended users and assisting those who would be operationalising the Legal Guide in those regions; (e) an updated "Contract Farming Resource Centre" on FAO's website, which was a vast database of documentation, including agricultural production contracts; and (f) a legislative study analysing regulatory frameworks for contract farming.

62. Second, Ms Mestre described how UNIDROIT had established the Community of Practice on Legal Aspects of Contract Farming (COP/LACF), together with IFAD and FAO, to implement the Legal Guide on Contract Farming. The COP/LACF was built upon all of the documentation that had been used in the development of the Legal Guide, including preparatory documents and agricultural contracts, and such documentation could serve as a base for informing intended users and the public. The COP/LACF was thus an environment in which the legal aspects could be shared and used to promote the strengthening of legal frameworks applicable to agricultural land investment contracts. Ms Mestre then emphasised some activities in the context of the COP/LACF, including the translation of the Legal Guide on Contract Farming into Portuguese and related research initiatives in Brazil, the ongoing translation of the Legal Guide into Chinese and an academic research project in Chile on strengthening the relevant legal framework there and in Latin America generally, as well as related activities in Argentina and Bolivia.

63. Regarding the financing of the COP/LACF, Ms Mestre noted that it was supported by a financial contribution from the global IFAD/FAO implementation efforts. That funding had allowed the Secretariat to contract with a consultant to, among other things, build the COP/LACF internet platform, and the remainder of such funding would support UNIDROIT's participation in the COP/LACF. As the funding would expire at the end of September 2017, Ms Mestre stated that UNIDROIT would seek to develop a mutually agreeable solution with IFAD and FAO for supporting the COP/LACF after that date, including possibly integrating it into FAO's "Contract Farming Resource Centre" or treating it as part of the current promotion activities of the Secretariat in support of its adopted instruments.

64. In addition to the COP/LACF, Ms Mestre pointed out two possible areas of work in which UNIDROIT could be involved. First, she recalled that FAO had asked the Secretariat to assist with the legislative study analysing regulatory frameworks for contract farming that she had mentioned earlier. She noted that there were ongoing discussions between UNIDROIT and FAO in order to better determine the expected content of the study, as well as UNIDROIT's involvement and possible endorsement of the study. Second, she referred to the interest expressed by the World Bank, in the context of the preparation of the UNIDROIT Work Programme for the 2017-2019 triennium, regarding possible collaboration on supply chain financing and secured agricultural financing practices. She stated that the Secretariat could exchange informally with the World Bank and interested organisations regarding this possible work.

65. *Mr Hartkamp* expressed appreciation for the excellent work carried out. He stated his hope that financing could be found so that UNIDROIT could assist with the study on the analysis and elaboration of legal frameworks. Recognising that the Legal Guide on Contract Farming had been published only two years ago, he inquired whether there were already some indications of interest by governments and of the Legal Guide's practical effects.

66. *Ms Mestre* stated that UNIDROIT had organised a conference on the Legal Guide on Contract Farming at UNIDROIT's headquarters in April 2016, to which representatives of member States and non-member States had been invited to discuss the Legal Guide and the creation of a favourable legal environment for contract farming. She further stated that, at that conference, had been were expressions of interest from governments, pointing out particular interest from two countries: Indonesia, with which there had been ongoing discussions about the Legal Guide and best practices there; and the Philippines, which had drafted revised legislation regarding agro-industries that had made specific reference to the Legal Guide for best practices, though such legislation ultimately had not been passed due to the change in government there. In addition, she noted that other governments had been following the Legal Guide thanks to implementation efforts, including through the COP/LACF. In this regard, she referred to Brazil, which had adopted legislation relating to contract farming prior to the adoption of the Legal Guide, but for which the Legal Guide could also serve as a reference for best practices. Lastly, she referenced the interest of a major company in the chocolate industry, which had started to make use of the Legal Guide in its operations.

67. The *Secretary-General* noted that, during a recent visit to Chile, lawyers working in the agricultural export sector had expressed interest to him in the Legal Guide, including on analysing how it compared to commercial practices in Chile and discussing how it could be used to address aspects of the applicable legislation which were considered to be deficient. He also added, with respect to Brazil, that the Legal Guide could be utilised to assess whether the relevant legislation in that country had achieved the right balance. Lastly, he referred to the major company in the chocolate industry as well, stating that the importance of this type of interest from corporate in-house counsels should not be underestimated.

68. The *representative of FAO* thanked the Secretariat for its support in the various activities within the FAO and IFAD projects for the implementation of the Legal Guide, in particular the legislative study on regulatory frameworks. She noted that FAO had received specific requests from two governments, in particular Malawi and Albania, regarding the revision of their regulatory frameworks for contract farming, with a view to incorporating lessons learned from the Legal Guide. She also noted that she had been following very closely the different training activities, including meetings in El Salvador, Guatemala and Vietnam, and stated that there had been overwhelming requests for similar assistance from various countries. She then stated that FAO's Legal Office would be participating in training activities in Laos and Rwanda, at which it was hoped that linkages could be developed with legal scholars and regulators in those countries. She concluded by stating that FAO believed the legislative study would be very useful for governments and regulators and that FAO very much looked forward to collaborating with UNIDROIT on this work.

69. *Mr Király* expressed support for the various implementation activities and stated that he believed the upcoming translations of the Legal Guide would have a very positive impact.

70. *Ms Pauknerová* noted that the Czech Ministry of Agriculture was interested in the further development and implementation of the Legal Guide, in particular with respect to translations and seminars for intended users. She stated that the Legal Guide was being translated into Czech and that the Ministry of Agriculture intended to organise a seminar in the Czech Republic, at which the Legal Guide could be presented and other UNIDROIT instruments could be promoted as well. She then reported that further activities were a priority for the Ministry and that a working session could also be organised in the Czech Republic.

71. *Mr Gabriel* stated that he was delighted – given the short span of time since adoption of the Legal Guide – at the number of translations that had occurred and were occurring and of countries that were already starting to use the Legal Guide as a basis for legislation and further work. He also stated that he was very pleased at how quickly the Legal Guide had become an important tool for use around the world.

72. The *representative of Sweden* expressed support for the work and for ongoing collaboration with FAO and IFAD. He then inquired how gender equality was being taken into account in the dissemination of the Legal Guide. He recognised that women carried a major burden in rural communities and that they might not have access to the same rights and resources as men and was interested in knowing how the economic empowerment of women was being addressed in this context.

73. The *representative of IFAD* stated that, although IFAD was not playing as active a role in the activities as FAO and UNIDROIT, the results of the work had been incorporated into many of the projects that IFAD was designing and implementing. In this regard, he noted that all of IFAD's projects mainstreamed gender equality as one of the key elements of project design and that, in all of those projects addressing contract farming, gender equality had been taken into account and was having a very positive impact on the design of the projects.

74. *Ms Mestre* stated that gender equality concerns had been taken into account throughout the preparation of the Legal Guide. That being said, she recognised that implementation efforts were very important in addressing the gender imbalance and stated that the implementing agencies and authorities themselves were very well placed to emphasise gender equality in the spirit of Legal Guide and best practices in contract farming.

75. *The Council took note of the follow-up and promotional activities for the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming. The Council encouraged the Secretariat to continue to work with partner organisations to further disseminate the instrument.*

**(b) Preparation of an international guidance document on agricultural land investment contracts (C.D. (96) 6(b))**

76. *Mr Bergman* introduced the topic, and began by recalling that the work on agricultural land investment contracts was the next step – following the adoption of the Legal Guide on Contract Farming – in UNIDROIT's work in the area of private law and agricultural development. He then stated that he would make his presentation in two parts, pointing out first some key points from document C.D. (96) 6(b) and providing second an update on the first meeting of the Working Group on agricultural land investment contracts, which had taken place the week before the Council's session and thus was not covered in detail in that document.

77. Regarding some key points from the document, Mr Bergman briefly described an informal meeting on the work, which had taken place at FAO on 20 October 2016 during the Committee on World Food Security's 43<sup>rd</sup> plenary session (Rome, 17-21 October 2016). That meeting had raised awareness about UNIDROIT's work in this area and solicited input on the scope, content, form and target audience of the future instrument. Overall, general support had been expressed for work in this area, as it had been seen as an opportunity to deliver legal guidance consistent with those instruments to new audiences, in particular to legal counsels to parties to agricultural land investment contracts and related stakeholders.

78. Mr Bergman then described how – following the General Assembly's approval at its 75<sup>th</sup> session (Rome, 1 December 2016) of the new Work Programme, which included this work as a high

priority item – the Secretariat had proceeded with constituting the core Working Group and making preparations for the Group’s first meeting. With respect to the Working Group, he noted that it had been kindly chaired by Mr José Antonio Moreno Rodríguez, a member of the Council, and currently included: Mr Lorenzo Cotula, Principal Researcher in Law and Sustainable Development at the International Institute for Environment and Development (IIED); Mr Daryono, Professor at Universitas Terbuka, Jakarta; Ms Bénédicte Fauvarque-Cosson, Professor at Université Paris 2; Ms Jean Ho, Assistant Professor at the National University of Singapore; and Mr Pierre-Etienne Kenfack, Professor at Université Yaoundé 2. With respect to the first meeting of the Working Group (Rome, 3-5 May 2017), he noted that the Secretariat had prepared two main documents for it, an annotated draft agenda and a memorandum containing a preliminary discussion of issues for the Working Group’s consideration, both of which were attached to document C.D. (96) 6(b).

79. Regarding the update on the Working Group’s meeting, Mr Bergman reported that meeting had benefitted not only from the participation of the experts mentioned, including Mr Daryono who was able to participate remotely for a brief part. It had also benefitted from the participation of representatives of FAO; IFAD; the International Land Coalition, a global alliance of civil society and farmers’ organisations, UN agencies, NGOs and research institutes; the World Farmers Organisation, made up of national producer and farm cooperative organisations; and FAO’s private sector mechanism, providing views on behalf of the wider private sector.

80. Mr Bergman then summarised the Working Group’s discussions regarding four general considerations with respect to the work. First, regarding scope, the Working Group had recommended that the future instrument should be in the form of a legal guide and focus on leases and concession agreements but, could – subject to future drafting – also address other types of contracts and also include or move on to, as future steps in the work, other possible forms, such as model provisions. Second, regarding existing initiatives, the Working Group had discussed how such initiatives could guide the work, with particular emphasis on the VGGT, the CFS-RAI Principles, the UNIDROIT Principles and the Legal Guide on Contract Farming. Third, it had been emphasised that the work was to build upon the co-operation enjoyed during the preparation of the Legal Guide on Contract Farming and be in complete harmony with FAO’s policies, as UNIDROIT was only in the position to provide its private law expertise to build upon FAO’s instruments. For co-operation with NGOs, civil society and the private sector, the Working Group had considered how best to consult with civil society and private sector representatives, as such consultations had been seen as important to ensuring that the future instrument would take into account the views of various stakeholders and provide useful guidance. Fourth, regarding target audience, the Working Group had acknowledged that the future instrument was to contribute to the implementation of the VGGT and CFS-RAI Principles by providing private law guidance on agricultural land investment contracts and incorporating necessary safeguards into them and, in this way, could be targeted to legal counsels, in particular those representing investors, while at the same being drafted in a way that would make it useful for a broader audience.

81. With respect to the development of the initial outline of the instrument, Mr Bergman described how the Secretariat had prepared for discussion purposes the preliminary draft outline contained in Annex 1 of the first Appendix to document C.D. (96) 6(b). The Working Group had reviewed that outline in detail, and the Secretariat was to update it according to the expert input provided. In general, the initial outline resulting from the Working Group’s meeting – which would be subject to ongoing review – was to include a preface describing the future instrument’s purpose, an introduction to agricultural land investment contracts, and chapters covering: (a) the relevant legal framework; (b) negotiation and formation, including the important issue of identifying legitimate tenure rights holders; (c) the obligations of the parties, including development, financial, social and environmental obligations on investors; (d) non-performance; (e) transfer, renewal and termination; and (f) dispute resolution.



82. Lastly, with respect to the organisation of future work, Mr Bergman noted that the Working Group had recommended that a second meeting be held on 13-15 September 2017. Regarding broader stakeholder engagement, it was understood that, following the initial meeting, the core Working Group could be supplemented with additional experts and stakeholders, who would be invited to join the second meeting. In addition, it was contemplated that a side event or informal meeting could be organised in coordination with FAO – during the Committee on World Food Security's next plenary session on 9-13 October 2017 or events linked to the 5<sup>th</sup> anniversary of the VGGT around that time – in order to build upon the prior year's informal meeting and to gain input from a broader consultation group.

83. *Mr Moreno Rodríguez* stated that it had been a pleasure to chair the Working Group on agricultural land investment contracts and noted that the Secretariat had prepared a well-organised agenda and substantive memorandum covering the issues at stake, as well as a preliminary draft outline, which was very helpful for the Working Group's discussions. He thanked the Secretary-General and Mr Bergman for the documents and for their participation in the meeting. He then stated that the Working Group was comprised of competent experts and very able representatives of relevant stakeholders. He recognised the important balance needed in the work between, on the one hand, safety, food security, health, human rights and the environment and, on the other hand, the need not to impose undue burdens on businesses and to produce a practical instrument. He emphasised how the future instrument could draw upon existing instruments and documents, including the UPICC, and noted that it was an ambitious project, considering the matters at stake and their complexity.

84. *Mr Tricot* expressed support for the work, including its direction and the plan for future work. He stated that the work, together with the other projects discussed thus far during the session, were in his view particularly fruitful, useful and even indispensable.

85. The *Secretary-General* thanked FAO and IFAD for their participation in the Working Group's first meeting, as it was essential to the work in this area. The work was particularly delicate not only from a policy perspective, but also from the perspective of defining precisely the niche which could be filled by UNIDROIT and the private law expertise that it could provide. He recognised that it was not UNIDROIT's role to define policy in this area, as that was the responsibility of other organisations such as FAO, rather that it was concerned with formulating recommendations and guidance that could be taken into consideration by interested countries and intended users. Following the Working Group's first meeting, UNIDROIT had seen the niche that it could fill and the utility of the future instrument, in particular with respect to targeting in-house legal counsels as intended users. For such counsels, the future instrument could offer guidance not on how to obtain the most advantageous contracts for their clients, but rather on how to negotiate and draft contracts containing all of the necessary safeguards to comply with international human rights, food security and land tenure instruments. In concluding, he stated that, as there were many initiatives by various organisations in this area, the future instrument should not simply repeat what had already been done but concentrate on contributing contract law and private law guidance to ensure that future agricultural land investment contracts would conform with international standards.

86. The *President* emphasised his support for the Secretary-General's remarks and stated that he viewed this work as particularly important. He further stated that UNIDROIT could make a very useful contribution in this area.

87. The Council took note of activities of the Secretariat to prepare an international guidance document on agricultural land investment contracts and expressed its appreciation for the work conducted by the Secretariat on the project.

**Item 7: Transnational civil procedure - formulation of regional rules** (C.D. (96) 7 and 7 Add.)

88. *The Deputy Secretary-General* introduced the project, which was a joint undertaking between UNIDROIT and ELI. She noted that the project was based upon a similar project which had produced rules of civil procedure suitable for the North American context, that UNIDROIT had prepared in collaboration with the ALI.

89. She explained that the project was overseen by a Steering Committee composed of representatives from UNIDROIT and ELI, which regularly received reports from two Co-Reporters from each of the nine Working Groups preparing draft rules on different areas of civil procedure. She noted that an additional overarching “Structure Working Group” had been created to ensure linguistic and substantive consistency between the draft rules produced by each Working Group. She explained that document C.D. (96) 7 contained in Annex I a draft outline of how the final rules would be structured. She further explained that Annex II in that document contained the consolidated draft rules and comments produced by the first three Working Groups on three topics: (a) access to information and evidence; (b) provisional and protective measures; and (c) service of documents and due notice of proceedings.

90. She noted that most Working Groups had almost completed their work on the provisional draft rules. She noted that the Working Groups had benefited from the participation of other intergovernmental organisations such as the HCCH, European institutions, academic institutions and research institutions.

91. In relation to future activities, the Deputy Secretary-General noted that the consolidated draft rules from the first three Working Groups would be presented to the ELI General Assembly in September 2017. It was expected that all Working Groups would submit their final draft rules for consideration by the UNIDROIT Governing Council in 2018, and that a final instrument, if approved by the Governing Council, could be published in 2019. She stated that a soft law instrument was the end-goal of the project and that there was no intention to create a hard-law treaty instrument.

92. *Mr Erdem* thanked the Secretariat for its work and noted his support for the project. He noted that, in Annex II, draft rule 6 excluded illegally obtained evidence unless it was the only way to establish the facts in exceptional cases. He noted that he understood the policy aim of the clause and agreed that in most countries the judge would use this rule fairly. However he suggested that in some countries the rule might involve some legal risk and judges might not always use it legally and fairly. He suggested that the regional rules should not open the door for the use of illegally obtained evidence.

93. *The President of ELI, Ms Diana Wallis*, thanked the Governing Council for allowing her to attend as an observer and UNIDROIT for its work on the project. In expanding on the Deputy Secretary-General’s comments, she noted that the documents reproduced in Annex II were first drafts and should not be taken as final products. She noted that a set of European rules would be particularly useful given the level of integration of civil procedure that had occurred at the regional level through EU legislation. However, she noted that there was no reason that the regional element would preclude the rules from having wider usage outside Europe. She noted that the project had generated significant enthusiasm not only among those parties involved in the project, but also in the broader legal community and the European Parliament and Commission. In relation to the use of illegal evidence, she noted that the issue was still under consideration, and that Mr Erdem’s comment would be taken back for discussion with the Rapporteurs. She welcomed further comments on the matter. She noted that the Structure Working Group was working efficiently

towards coordinating and harmonising the drafts rules to avoid overlap and fill gaps in order to produce one coherent whole document. She noted that the rules had a distinctively modern flavour, as they took into account recent technological developments that had affected international service and evidence taking procedures, and that the draft rules had developed a successful approach to straddling the differences between civil and common law legal systems.

94. *Mr Király* noted his support for the project, and stated that he had been honoured to contribute to the work through attendance at ELI meetings and at an event in Hungary. He noted that the project was as onerous and comprehensive as the development of the UNIDROIT Principles. He thanked the Deputy Secretary-General for having outlined the timeline for completion, and underlined that the regional rules would have a significant impact on the development of procedural rules within the EU and beyond.

95. *Ms Shi* congratulated the Secretariat and ELI on the project's progress. She concurred with Mr Erdem in relation to the risks posed by allowing the admission of illegally obtained evidence. She then posed three questions. First, she queried if there had been any consideration as to whether future sets of regional rules would be developed for other parts of the world. She noted that there would likely be great interest in the development of regional rules for the Asia-Pacific region, as there were ever-increasing amounts of cross-border relationships between private parties in different countries in Asia. Second, she asked whether the regional rules took into account technological developments in the instant electronic communication sphere. She noted that in some instances Chinese courts had allowed for taking of evidence via instant communication technology, such as WeChat. She mentioned a particular case which involved a party in Australia and a party in China in which an arbitration award had been set aside due to evidence provided by the Chinese party obtained via WeChat, a popular Chinese instant-messaging application. Finally, Ms Shi asked whether the regional rules would apply in the context of insolvency cases.

96. The *Secretary-General* noted that, while the two regional projects undertaken by the Institute had been very successful thus far, it was always challenging to add regional projects to the work programme of a global organisation. He noted that future additional regional projects building on the North American and European projects would depend on whether appropriate partner regional organisations could be identified to undertake future joint projects. He concluded that the Institute would not consider future regional projects until the current project with ELI had been concluded.

97. *Ms Broka* congratulated the Institute and ELI for having undertaken such an ambitious project. She noted that Latvia was interested in improving its domestic civil procedure, and that the future rules would be greatly useful in that regard. She also noted that the rules might eventually be considered by the European Commission to evaluate which other aspects of civil procedure could be harmonised throughout the EU.

98. The *representative of Canada* noted that, even through the project was regionally oriented, it was of great interest to Canada. She explained that Canada had 14 domestic jurisdictions that did not have harmonised civil procedure and that the European regional rules could be useful to evaluate harmonisation possibilities in Canada. In relation to service, she noted that rule 19 did not address all actions that needed to be taken under the Hague Service Convention. She explained that Canada had finalised harmonised rules on what was required by the Hague Service Convention two years ago, and offered to share them with the Institute and ELI.

99. The *Deputy Secretary-General* thanked Governing Council members for their comments. She noted that insolvency proceedings were considered to be special proceedings and thus were not covered under the scope of the project. She thanked the representative of Canada for her

comment, and noted that she would appreciate receiving the relevant harmonised Canadian service rules.

100. The *representative of the Hague Conference* noted that they were delighted to be part of the project as observers, particularly in the fields of evidence and service of documents. He noted that the Hague Conference remained committed to the project and would remain engaged until its completion.

101. *The Council took note of the progress made in the formulation of regional rules of transnational civil procedure. The Council expressed its support for the project, and noted that the final instrument would be of great value in Europe and beyond. The Council also took note of the draft set of Rules contained in document C.D. (96) 7 Add.*

### **Item 8: International Commercial Contracts: Formulation of principles of reinsurance contracts**

102. The *Secretary-General* noted that in formulating proposals for the triennial work programme, the Governing Council had recommended a new collaborative project on reinsurance contracts with a low level of priority. He explained that the origin of project had been a proposal submitted by a group of scholars from the University of Zurich. He noted that the project was co-sponsored by the University of Vienna, the University of Frankfurt and the Research Council of the Swiss National Science Foundation. The aim of the project was to prepare a set of principles specific to reinsurance contracts for which the UNIDROIT Principles would serve as general background. The Secretary-General explained that three workshops for the project had already been conducted, and a fourth workshop had been scheduled for Zurich in June 2017. He noted that he was personally responsible for representing UNIDROIT in the project. He noted that it was important for the future reinsurance contract principles to be consistent with the UNIDROIT Principles but not unnecessarily replicate their content. He noted that the experts and practitioners developing the principles were a diverse and experienced group, which was contributing substantially to the success of the project. He noted that, from a UNIDROIT perspective, the project had also been a good opportunity to improve further the standing of the UNIDROIT Principles among international insurance and reinsurance practitioners. The Secretary-General then invited Mr Helmut Heiss from the University of Zurich to elaborate further on the project.

103. *Mr Helmut Heiss* thanked the Secretary-General and noted that the group was extremely grateful to have cooperated with UNIDROIT on the project, given the Institute's expertise in the field of international commercial law and its experience in drafting international instruments. He noted that it was the shared view of the group of experts that it was not possible to provide for uniform reinsurance law principles without working from a general international contract law instrument, as provided for by the UNIDROIT principles. He noted that the concept of uniform reinsurance law principles had been initially raised in the 1930s, but had never gained traction due to the political situation at the time. He explained that the principles of reinsurance contract law could not be derived from statutes or textbooks, but were better reflected in case law and arbitration decisions, and in reinsurance contracts themselves. Thus, he explained that input from practitioners was crucial to the success of the project. He explained that the Drafting Committee for the project consisted of international experts in contract and insurance law and partnered with advisory groups of Reinsurers<sup>2</sup> and Direct Insurers,<sup>3</sup> which were made up of insurance law specialists, company

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<sup>2</sup> <https://www.rwi.uzh.ch/de/oe/PRICL/whoweare/agr.html>

<sup>3</sup> <https://www.rwi.uzh.ch/de/oe/PRICL/whoweare/aqi.html>

representatives and legal practitioners. He noted that the Secretary-General was participating in the group as a Special Advisor.

104. As to the text itself, Mr Heiss explained that the future Reinsurance Principles could be considered as a special part of the UNIDROIT Principles. This would mean that, where parties to a reinsurance contract opted for the application of the Reinsurance Principles, they would also opt for Principle 1.1.2 of the UNIDROIT Principles. He noted that the Reinsurance Contract Principles would follow the structure and layout of the UNIDROIT Principles. He explained that the group had already drafted the chapters covering contractual duties and pre-contractual duties. He noted that the chapter on remedies had not yet been drafted. He agreed with the Secretary-General that, while the UNIDROIT Principles were not wholly unknown in the reinsurance contract sphere, the creation of the Reinsurance Principles would increase awareness and use of the UNIDROIT principles in the insurance and reinsurance industries. He noted that the Reinsurance Principles would be published in 2019, and that future work would depend on further funding being secured.

105. *Mr Bobei* queried what the exact relationship would be between the UNIDROIT Principles and the future Reinsurance Contract Principles. The *Secretary-General* explained that the Reinsurance Principles could become a special part of the UNIDROIT Principles, which could be followed by other specialised sections in the future. He noted that the instruments should be compatible and supplement each other. He noted that it was appropriate that reinsurance contracts rather than insurance contracts form a special part of the UNIDROIT Principles, because reinsurance contracts were inherently commercial contracts between commercial entities often with an international element, whereas insurance contracts involved domestic public law issues such as consumer protection, which made them less appropriate for consideration by UNIDROIT.

106. *Mr Gabriel* expressed his view that it was an excellent project. He noted that the future of the UNIDROIT Principles would be in their application to specialised areas of international commercial activity, such as reinsurance contracts, rather than further iterations of the general principles. He also noted that the project had a very robust operating model which only had minor budgetary impacts for the Institute, as it was not required to fund the participation of the experts in the project.

107. *Mr Tricot* noted his support for the project, as it was developing a useful instrument while simultaneously promoting the UNIDROIT Principles. He queried whether the Council would be required to approve the final Principles and whether there was a subsequent implementation strategy for the project. *Mr Heiss* responded that further steps would be decided once it was determined whether there was further funding available for the project. He noted that it was too ambitious for the project to attempt the entire codification of reinsurance law in three years, which was why the project had focused on principles of reinsurance contracts. He noted that the Reinsurance Principles should be completed by the end of 2018, which would allow the Council to consider them in 2019.

108. *Ms Jametti* congratulated Mr Heiss and the Secretary-General for their excellent work on the project. She noted that, while she had previously had a sceptical view of the value of UNIDROIT's development of soft law instruments, this particular project demonstrated great promise which had begun to change her attitude *vis-à-vis* soft law.

109. *The Council took note of the progress made on the formulation of principles of reinsurance contracts. The Council reiterated the importance of UNIDROIT remaining active in the field of international commercial contracts and renewed the Secretariat's mandate to participate as a Special Advisor to the project.*

**Item 9: International Sales Law: 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 (C.D. (96) 8)**

110. The *Secretary-General* introduced the project. He noted that the concept had originally been proposed by the UNCITRAL Secretariat to explain the relationship and interplay between the instruments produced by HCCH, UNIDROIT and UNCITRAL in the field of international commercial contracts. He explained that the project built upon the previous coordination document that addressed the interplay between the different secured transactions law instruments produced by the three organisations.

111. The *Secretary-General* explained that the core of the document would be the CISG as it was the most important and highly-ratified instrument in the field. He noted that the document would additionally cover conflict of laws issues that would arise where the CISG deferred to the applicable law, and discuss the context and interaction between the CISG, the UNIDROIT Principles and the Hague Principles on Choice of Law. He noted that the format of the document would necessarily differ from that of the coordination document for the UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests.<sup>4</sup> He explained that, while the secured transactions coordination document contained comparative tables on the different texts, the international commercial contracts document would require more textual description, given the complex interplay between the different instruments in the field. He explained that it was not envisaged that the document would need to be developed through a formal intergovernmental mechanism, but could be completed through cooperation between the three Secretariats and a small group of international experts.

112. He noted that the project had been discussed during the annual tripartite meeting between the three organisations on 20 April 2017 in The Hague. He explained that the experts participating in the project had been selected and had received the draft table of contents and assigned topics. He noted that the project would be advanced through remote working mechanisms such as email and teleconferences in order to keep the budget as low as possible.

113. The *representative of UNCITRAL* thanked the *Secretary-General* for his presentation, and noted that UNCITRAL considered the project to be an excellent collaborative area of work for the three organisations.

114. The *representative of the HCCH* thanked the *Secretary-General* for his presentation, and noted that the HCCH would next report back to its Council on General Affairs and Policy on the project in March 2018.

115. *Mr Király* thanked the *Secretary-General* for his report. He noted that, while the project was not a high priority project, it would nonetheless be useful. He suggested that the section on applicable law should also consider relevant regional rules in Europe and South America. Finally, he suggested that the project could be an interesting subject for a conference following the Council's 97<sup>th</sup> session in 2018.

116. *Mr Komarov* also expressed his support for the project and noted that it would have significant practical value by enhancing the usability of the existing instruments in the field. He expected that the document would have value as an educational tool for students, lawyers and business engaged in international commerce. He suggested that the future document could make

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<sup>4</sup> <http://www.unidroit.org/english/publications/joint/securityinterests-e.pdf>

reference to the UNILEX system as it was a very useful database of international case law on the UNIDROIT Principles and the CISG.

117. *Mr Moreno Rodríguez* thanked the Secretary-General for his report. He noted that he was working as a Reporter for the Inter-American Committee of the OAS on a guide for international commercial contracts, which would promote the use of the CISG, the UNIDROIT Principles and the Hague Principles on Choice of Law. He noted that he would look forward towards a coordination of the project with UNIDROIT, UNCITRAL and the Hague Conference.

118. *Ms Pauknerová* noted her support for the project. She suggested that the structure of the future document should reflect the precedence that private international law instruments had over domestic law, in terms of their binding application.

119. *Mr Neels* suggested that the coordination document should adopt a broad comparative approach that looked beyond the European model. In relation to Africa, he suggested that the approaches to international commercial contracts in Egypt, Kenya, Nigeria and South Africa should be considered, as they were major economies in the region.

120. *Mr Erdem* voiced his support for the project and noted that the Rome I Regulation had been very influential in the development of Turkish legislation.

121. *Mr Popiołek* queried whether the Governing Council would have the opportunity to consider the document once it had been further developed. The *Secretary-General* responded that it had not been envisaged that the future document would be subject to an intergovernmental process in any of the three partner organisations, as such an endeavour would be difficult to coordinate. He explained that if the three governing bodies became seized of the project, then the approval process would become very complex. He noted that, while the exact process for approval of the document had not been finalised, the previous coordination document on secured transactions law had not required approval by the three organisations' governing bodies.

122. *Ms Bariatti* stated that, as the project simply provided additional explanation of existing texts and rules, in her view it should not require formal approval by the Council.

123. *The Council took note of the progress made on the preparation of a guidance document on international sales law. The Council encouraged the Secretariat to continue its collaboration with the Hague Conference and UNCITRAL on the project.*

## **Item 10: International protection of cultural property (C.D. (96) 9)**

### **(a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**

124. *Ms Marina Schneider* informed the Governing Council of the increasing number of Contracting States that had become parties to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the "1995 Convention") since its last session. Tunisia and Bosnia and Herzegovina had acceded to the Convention in early 2017. A number of other States were completing internal procedures and would hopefully soon deposit their instruments (such as Ghana, Burkina Faso, Morocco and Laos).

125. At the institutional level, Ms Schneider reported the participation of UNIDROIT at the first ever organised Group of Seven<sup>5</sup> (G7) of Culture organised by Italy (March 2017), both at the technical and ministerial sessions. The event gave broad visibility to the current and past work carried out by UNIDROIT and its partners. Another important meeting was the Special event held at the UN Headquarters in New York and organized by the Permanent Missions to the UN of Cyprus and Italy together with UNIDROIT, on "*Promoting and Strengthening the International Legal Framework for The Protection of Cultural Heritage – The 1995 Convention*". The establishment of an informal Ratification Task Force, open to all States wishing to participate and coordinated by UNIDROIT, was announced. The Ratification Task Force aimed at the promotion of the wider ratification of the 1995 UNIDROIT Convention, would be assisted by the future 1995 UNIDROIT Convention Academic Project and convened on an annual basis in New York. It would provide a platform for the exchange of views on the 1995 UNIDROIT Convention, the organisation of promotional activities, training and education to assist in the accession to, and implementation of the 1995 UNIDROIT Convention.

126. Among the activities carried out in 2016, Ms Schneider referred to the Annual Report, and she emphasised the importance of the well-established partnerships (UNESCO, UNODC, INTERPOL and WCO) and new cooperation initiatives in this field, especially on the implementation of the United Nations Security Council Resolution 2199 on Syria and Iraq, and the new Resolution 2347 adopted in March 2017, the first specific to the protection of cultural heritage. UNIDROIT also pursued its training activities (seminars, conferences, workshops) mainly with UNESCO, and the next focus would be on Eastern Africa, Maghreb, and South East Asia, as well as the Gulf countries (with ICCROM). As to other partnerships to increase the visibility of the 1995 Convention, UNIDROIT took an active part in the discussions at the Council of Europe on a new Convention on Offences relating to Cultural Property to be adopted later in May 2017. UNIDROIT was also intending to work more closely with the Inter-American Juridical Committee of the Organisation of American States on developing a range of tools for implementing conventional and soft-law instruments, including the design of strategies for the recovery and restitution of cultural assets.

127. The UNIDROIT Foundation had decided to support the activity of the Organisation in the field of cultural property, in particular concerning the relations with the art market, and the first step was to finance the creation of a specific website for the 1995 Convention Academic Project which would be maintained by UNIDROIT. In terms of visibility, UNIDROIT was also now present on social media with its activities on cultural property.

128. Finally, Ms Schneider thanked several members of the Governing Council for promoting the work of UNIDROIT on cultural property, in particular Mr Vrellis, Mr Moreno Rodríguez, Mr Sánchez Cordero, and Ms Broka who had accompanied the Latvian Minister of Culture in her visit to UNIDROIT (Rome, 21 October 2016) to discuss changes to the national legislation required to accede to the 1995 Convention.

129. *Mr Sánchez Cordero* recalled the great international visibility given to the Organisation by the work of UNIDROIT on the international protection of cultural property. He emphasised the importance of the United Nations Security Council resolutions and the involvement of the Institute in their implementation. The 1995 Convention and the UNESCO-UNIDROIT Model Provisions on State Ownership on Undiscovered Cultural Objects had changed the legal framework in this field and he indicated their influence in countries such as Germany and the United States of America in their recent laws, and in the other international efforts to protect cultural heritage and to prevent illicit trafficking. Mr Sánchez Cordero also congratulated the Secretariat for the establishment of the

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<sup>5</sup> The Group of Seven, or G7, is a group consisting of Canada, France, Germany, Italy, Japan, the United Kingdom and the United States. The European Union is also represented with the G7.



Ratification Task Force and the Academic Project which was an ambitious endeavour based on new technology. He recalled the importance of the study and dissemination of the UNIDROIT instruments in this area.

130. *Ms Pauknerová* informed the Governing Council that the Czech Republic was currently preparing the internal procedure of accession to the 1995 UNIDROIT Convention which was important for her country and she indicated that some provisions of the Convention had already been implemented in domestic Czech legislation.

131. *Ms Sabo* and several other members of the Governing Council congratulated the Secretariat for efforts made and the astonishing results obtained. From Canada's perspective, the establishment of the Ratification Task Force was an excellent idea and Canada would certainly follow the issue with great interest. Ms Sabo also applauded the creation of the Academic Project on the 1995 Convention and suggested that the Secretariat should think about inviting member States to identify universities with relevant courses and invite some of them to contribute and establish such courses. Finally, she recalled that the network of UNIDROIT correspondents could be very useful in this regard.

132. *Professor Moreno Rodríguez* recalled Resolution 233 of the Inter-American Juridical Committee of the Organization of American States which approved the report on the protection of cultural property and the global dimension of the issue. The Committee had encouraged American States to ratify the relevant instruments, such as the 1995 UNIDROIT Convention. He welcomed the strengthening of the cooperation between UNIDROIT and OAS in this regard. The *Secretary-General* reassured Mr Moreno Rodríguez that UNIDROIT stood ready to further cooperate with OAS in the future, if invited to do so.

133. *The Council took note of the follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. The Council expressed its appreciation for the continued work of the Secretariat in the cultural property field.*

#### **(b) Private art collections**

134. *Ms Schneider* recalled that the Governing Council had decided to recommend that the topic of private art collections be included in the UNIDROIT Work Programme for the 2017-2019 triennium and the General Assembly had endorsed such recommendation at its 75<sup>th</sup> session (Rome, 1 December 2016) assigning it a low level of priority. UNIDROIT was actively considering the project to identify those private law aspects that fell within its mandate. The Institute had hosted a conference on *Private Collections: Historical and Legal Perspectives* (Rome, 16-17 March 2017) and had invited Professor Elna Moustaira, professor of comparative law at the School of Law of the National and Kapodistrian University of Athens, to make a presentation. The Conference had been co-organised with ISCHAL, the Institut des sciences sociales et politiques (CNRS-ENS Cachan-Université Paris-Nanterre) and BonelliErede law firm. UNIDROIT had then asked Professor Moustaira to prepare, on the basis of her presentation at the Conference, a document indicating private law aspects on which UNIDROIT's particular expertise would be of additional benefit in this field.

135. Ms Schneider indicated that UNIDROIT gave great importance to this subject and would enquire further in to ensure that any work undertaken would be consistent with its mandate and with the provisions of the 1995 UNIDROIT Convention and other relevant instruments in its field. The Institute would be cautious, due to the strong opposition the collectors in particular had shown against the Convention at the time of its adoption and occasionally still today. She also suggested that UNIDROIT should, when launching the aforementioned 1995 Convention Academic Project, include the subject of private art collections to gather more material.

136. *Mr Sánchez Cordero* thanked the Secretariat for the hosting of the conference on private collections in March and for the invitation to Professor Moustaira to draft a report to be submitted to the Governing Council so as to provide a clear general overview on such a complicated issue. He underlined the link between museums and private art collections as more and more private art collections were being hosted in museums. What UNIDROIT had achieved in the cultural field had demonstrated that the world needed rules at the national and international level, and the same was true for private art collections. Mr Sánchez Cordero then indicated the great interest in the project shown by the President of the Spanish Cultural Heritage, Mr Pérez de Armiñan, former Assistant Director-General for Culture at UNESCO, and by the Inter-American Institute for Advanced Studies in Cultural History.

137. *Professor Vrellis* congratulated the Institute for this new subject which posed some legal issues related to the protection of cultural property. He agreed that UNIDROIT had to be cautious, but stressed that the subject should be studied further to see how to increase the protection of private collections. Professor Vrellis suggested to give a higher level of priority to the subject.

138. *Mr Sandoval Bernal* read the following statement: "For being the first time that I take the floor I would like to congratulate you, Mr President, the Secretary General and the professional staff of UNIDROIT for the excellent work, as well as to highlight the remarkable contribution of UNIDROIT to the international rule of law during these 90 years. With regards to the agenda item entitled *International Protection of cultural property* and, in particular, with regards to the sub-topic *Private collections of art*, I would like, first of all, to welcome the initiative to include in the agenda of UNIDROIT this remarkable matter, thanks to the proposal submitted by Mexico in 2016, and to congratulate the Secretariat of UNIDROIT on the convening of the *Conference on Private Collections: history and prospects*, which was held in March of this year. In turn, and with your permission, Mr President, I would like to refer in particular to the document entitled *Private Collections of Art* (Annex II of document C.D. (96) 9) a study prepared by Professor Elina Moustaira, which aims to identify aspects of private law that could be addressed by UNIDROIT. In this regard, and as recommended in the cited document, I consider, as of now, that there are both factual and legal elements that make uniformity in the rules that regulate private collections of art essential, be it through a convention, unified rules, or principles to guide national legislation. In that sense, and in the light of this study, I would like to highlight the most notable aspects that, in my opinion, could occupy the attention of the working group to be established to the effect: (1) The situation of private collections of art of special cultural significance cannot be exposed to the legal uncertainty or lack of protection derived from legislation which, as expressed in the study of Professor Moustaira, is neutral in these matters. Give priority to the individual property rights of private collectors is to leave to their will the fate of these collections and their components or parts. (2) Collections of pieces of art of special cultural significance, by their very nature, must be protected as a whole and, accordingly, a private collector must be legally responsible for the deterioration, damage or destruction of components or parts of a collection, without prejudice to any action that may be brought against third parties directly responsible for the damage or destruction. (3) With the purpose of protecting the unity and integrity of art collections containing pieces of special cultural significance, it is necessary to promote the establishment of national electronic registries of those collections and their components or parts. Accordingly, the establishment of an international electronic registry will contribute to these purposes. (4) For the sake of balance and also to provide a level of legal stability to the private collectors of art pieces of special cultural value, I agree with the assessment contained in professor Moustaira's document on the relevance of promoting the establishment of rules or principles on the procedure and terms of issue of export permits to be issued by the authorities of a State for the sale or loan of pieces or parts of these art collections, or for the display of such collections in foreign museums or galleries. (5) For all the reasons set out in the document sub examine, I consider necessary the adoption of rules or principles designed to reduce anonymity in the transactions of pieces of art, in order to bolster transparency and diminish

illicit trade in cultural property. (6) On the basis of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 UNIDROIT Convention), it is appropriate to establish, specifically for private collections, rules on the requirement of proper documentation relating to the origin of ancient pieces of art and/or of special cultural significance, in order to reduce their illicit trade. In accordance, I fully support the establishment of a working group that submits to UNIDROIT its proposals on possible alternatives aimed at promoting uniformity in the regulations concerning private collections of special cultural significance.”

139. *Ms Sabo* indicated that the topic of private art collection was important and that Canada supported the cautiousness expressed by the Secretariat in its document. The report submitted was interesting, but there was still much work to be done. Her country would look forward to seeing updates in the future.

140. *Mr Wilkins* emphasised the gap between the obligations of countries when becoming parties to an instrument and what happened on the ground. He recalled a case in Australia which had led him to look at the best practices at national galleries and the research revealed that practices both in Australia and in other countries were equally poor. He indicated that anything UNIDROIT could do to promote good practices and come up with rules to improve practice would be very positive.

141. *Ms Sandby-Thomas* congratulated the Secretariat for efficiency and clarity around the Work Programme, as well as for the clear priorities established, also in financial terms, which led to the excellent work done. She stated that private art collections should not be considered in isolation and was opposed at this stage to a change in the project’s priority which might undo the previous good work done on strategic priorities. She suggested that the matter should be discussed at a subsequent session when the Governing Council was required to assign priorities for the future Work Programme.

142. *Mr Tricot* commended the Secretariat for the work done and recalled that UNIDROIT was central in the fight against illicit trafficking of cultural objects and the related aspects of terrorism financing. The time had come to develop new initiatives and he agreed with the need for being cautious in this field.

143. *The Secretary-General* noted that, although he personally found the subject generally interesting, he had difficulty to find a private law topic in this area. His impression was that most topics related to either public international law or domestic regulations on heritage protection and protection of cultural objects. Even aspects that appeared to be purely private law, such as the right of the owner to destroy his/her own property, was already addressed in many countries by heritage protection law. There were certainly interfaces with private law, and UNIDROIT would over the next year further explore with other organisations whether there was a project that could jointly be undertaken as it was difficult for UNIDROIT to take the lead on a subject which was not primarily a private law topic. Concerning the fear expressed by Ms Sanby-Thomas, he reassured that there would be no increase in resources for the project at this time.

144. *The President* stated that the issues were so numerous and interesting that the priority for this subject should be kept at least at its current status. He noted the political support for it among the Governing Council and he could not, at least in theoretical terms, exclude the possibility of UNIDROIT undertaking a promising project in this field. He concluded that UNIDROIT should continue to consider the matter to reveal what could be achieved in this area.

145. *The Council took note of the activities of the Secretariat in relation to private art collections and encouraged the Secretariat to continue to investigate the feasibility of possible future work on the topic.*

**Item 11: Promotion of UNIDROIT instruments** (C.D. (96) 10)

146. The *Secretary-General* introduced the item. He noted that the Annual Report for 2016 listed the promotional activities undertaken by the Secretariat in the preceding year, whereas document C.D. (96) 10 listed the promotional activities undertaken by the Institute in the first four months of 2017. He noted that it had been a very busy first quarter of 2017.

147. He noted that the promotional activities illustrated in the documents which related to the Cape Town Convention were not exhaustive, as the Aviation Working Group had also been very active in promoting the Convention and Aircraft Protocol. He noted that he had been quite active personally in promoting the Institute's work, which was due to a number of commitments he had previously deferred becoming priorities in 2017. In particular, he noted the promotional activities undertaken in Beijing in March 2017, and placed on record his gratitude to Ms Shi for her important role in ensuring the success of the various events and meetings that were part of that mission.

148. He noted that in relation to budgetary measures, the Secretariat had consolidated costs related to missions, meetings and promotional work into one chapter in the budget, which had afforded the Institute better operating flexibility to allocate resources where they were most needed in implementing UNIDROIT's Work Programme.

149. *The Council noted the initiatives of the Secretariat to promote UNIDROIT instruments. The Council reiterated the importance of promoting existing UNIDROIT instruments.*

**Item 12: Library and research activities** (C.D. (96) 11)

150. *Ms Bettina Maxion* provided her report on the operation and activities of the UNIDROIT library. She noted that the UNIDROIT library continued its collaboration with other libraries in Rome and abroad.

151. She noted that the digitisation project had been further considered in 2016, as different options to digitise the UNIDROIT library had been evaluated. She noted that the most complicated technical challenge was how to separate privileged users from ordinary users through password protected access to the digitised collection. She noted that this was not only important for copyright reasons, but also to incentivise donors to contribute funding to the digitisation project, in return for privileged access. The library had been able to test an additional software module for the management of digital files, and it was expected that the software module would be the best mechanism for cataloguing the library's digital collection. Ms Maxion demonstrated the module for the Council members, by accessing various digital documents online. She further noted that the library would require a professional document scanner for digitising the collection, and would also need to engage with a professional digitisation company to begin the process.

152. Ms Maxion noted that in 2016 the library had welcomed 994 visitors from 26 different countries as well as 23 interns and independent scholars. She noted that contributions to finance the internship and legal scholarship programme had been received from the UNIDROIT Foundation, members of the Council and the Transnational Law and Business University in the Republic of Korea. She expressed her gratitude to all donors for their support of the important program.

153. The *Secretary-General* noted that, in relation to the funding of the digitisation project, there was no budget allocated to the digitisation project in the 2018 draft Budget because it had been anticipated that the project would be funded through voluntary contributions. He noted that member States were reluctant to provide additional funding for library-related activities, and as

such the Secretariat was having to investigate other potential sources of funding for the digitisation project. He noted that the President had been very successful in encouraging Italian law firms to contribute €45,000 for investment in the library, with a view to attracting further contributions. He noted that it was intended that law firms that had donated to the Institute would be given password protected access to the UNIDROIT library's digital collection. He further indicated his support for the internship programme, as it was a valuable vehicle for promoting UNIDROIT across the globe.

154. *Mr Lyou* indicated his support for the internship programme, and encouraged the Council to investigate methods for increasing the size of the programme. He noted that he had been involved in contacting the Korean Government to support the internship programme as that Government had done in the past. He also noted the support that the Transnational Law and Business University had provided to the internship program.

155. *Mr Erdem* expressed his support for the UNIDROIT library. He noted that he had colleagues who had carried out important research in the UNIDROIT library and that it was very reasonable for the Institute to allocate at least 10% of its budget to the maintenance and continuation of the library.

156. *Mr Király* thanked Ms Maxion for her report and indicated his support for the digitisation project.

157. *Mr Sono* congratulated the Secretariat for its library-related work. He expressed his support for the digitisation project. He noted that Japan had adopted the view that the Governments of member States should have online access to the digitised library.

158. *Mr Wilkins* noted that it would be useful if the Secretariat could provide a brief prospectus on the digitisation project to Council members that they could use to approach law firms in their jurisdictions to promote the project.

159. *Mr Tricot* indicated his support for the library and expressed his hope that the digitisation project would make good progress over the next twelve months.

160. The Council took note of developments in the Library, its policies and acquisitions, and expressed its appreciation for its promotion of research through the Scholarship and Internship Programme.

161. The Council authorised the Secretariat to undertake measures to begin the digitisation of the library's collection, within the limited budget available for the project.

**Item 13: UNIDROIT information resources and policy (C.D. (96) 12)**

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

162. *Ms Lena Peters* introduced the item, and stated that the document before the Council (C.D. (96) 12) divided information resources into paper and digital publications. As regarded the Uniform Law Review, which was published by Oxford University Press (OUP), the data received from OUP confirmed the trends of previous years that subscriptions to paper copies decreased year by year, while at the same time subscriptions to online copies increased. The greatest increase was to collection subscriptions (i.e. subscriptions through the OUP collections of journals). In addition, in

2016 the Uniform Law Review had 873 Developing Country subscriptions which were free of charge.

163. She noted that in 2016 two editions of the Review had been dedicated to the publication of contributions to international conferences of interest to UNIDROIT: (a) "Practicing International Law at the United Nations", one of the events celebrating the 90<sup>th</sup> anniversary of the Institute, which had been held on 15 April 2016 at Villa Aldobrandini; and (b) the symposium organised by the Institute of International Transport Law (IDIT) held on 19 and 20 May 2016 celebrating the 60<sup>th</sup> anniversary of the CMR. She further explained that in 2017, contributions to three more conferences would be published, one being the "Fourth International Colloquium on Secured Transactions" organised by UNCITRAL in Vienna on 15-17 March 2017.

164. Ms Peters stated that the English version of the UNIDROIT Principles had been published and distributed to Council members. The French version was to be published in the near future and would be sent to Council members as soon as it had become available.

165. She recalled that the Secretary-General in his Annual Report had referred to the electronic version of the Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment by Sir Roy Goode, now in its third edition, which had been produced at the request of Aviareto, Registrar to the Aircraft Protocol. The electronic version contained internal and external links to facilitate consultation, but access to it was restricted to registered users of the International Registry.

166. Ms Peters then noted that a major effort had been the publication of two volumes of Essays in honour of Professor Bonell, with the title "Eppur si muove: The age of Uniform Law – Essays in honour of Michael Joachim Bonell to celebrate his 70<sup>th</sup> birthday". It had been presented to Professor Bonell at a highly successful event held at the Institute on 29 September 2016, to which all the authors and persons listed in the *Tabula Gratulatoria* had been invited.

167. A second initiative was the publication of a volume to mark the 90th anniversary of the foundation of the Institute, "UNIDROIT 90 Years / Les 90 ans d'UNIDROIT". She explained that an advance soft cover copy was available for consultation and the final printed version would be sent to Council members as soon as it became available. This publication contained a section on the Institute's history, short descriptions of a selection of instruments and activities and comments by experts involved in their preparation, short biographies of those experts, as well as of key persons in the Institute's history. Illustrations included documents of importance to UNIDROIT, such as the League of Nations document regarding its creation. The publication included also a history of the Villa Aldobrandini, the seat of the Institute since its inception. The volume was not intended for sale, but would be used for representation purposes.

168. The *Secretary-General* stated that the relationship with OUP for the Uniform Law Review was working well. He described the procedure followed for the acceptance of articles, and suggested that the increased interest in the Uniform Law Review was due also to the fact that the Review had adopted a peer review procedure. He noted that, while outsourcing the Review completely had been complicated, the results had been positive and the OUP were generous in the number of copies available to the Institute for distribution free of charge. He stated that, in general terms, he favoured a generous distribution of the publications of the Institute, both to publicise the work of UNIDROIT and to promote its activities.

169. *Mr Király* stressed the enormous challenges that the Secretariat had faced in 2016 in producing the publications described and stated that these challenges had been met extremely well.

170. *The Council took note of the various publications prepared by the Secretariat. The Council stressed the importance of the publications in promoting the work of the Institute.*

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

171. Turning to the UNIDROIT Website, *Ms Peters* stated that the document offered a survey of how the website had been consulted and by whom in 2016. Improvements were continuously made to the site, in order to optimise how materials and the links were presented. She noted that 151,376 users had consulted 652,577 pages of the site in 2016. She concluded that UNIDROIT had also established a social media presence on Facebook and LinkedIn which were managed by Mr Brydie-Watson.

172. *The Council took note of the activities of the Secretariat in the digital sphere, including the operation of the UNIDROIT website and the progress of the UNIDROIT social media accounts.*

**Item 14: Administrative matters**

**(a) Preparation of the draft budget for the 2018 financial year (C.D. (96) 13 (a))**

173. The *Secretary-General* introduced the draft Budget for the 2018 financial year, as set out in document C.D. (96) 13(a). He noted that it had been approved by the Finance Committee at its spring session (Rome, 6 April 2017), and that the Chair of the Finance Committee had graciously given his time to attend the Council meeting to share his view of the draft Budget. The *Secretary-General* explained that the 2018 draft Budget was consistent with the policy of zero nominal growth as requested by member States.

174. The *Secretary-General* then explained that there were two substantive matters that were being discussed by the Finance Committee: (a) a possible move to a new compensation scheme for UNIDROIT staff; and (b) the possible introduction of a new social security system for future UNIDROIT staff members. He further explained that a number of problematic practices over the preceding years in relation to staff compensation had created the situation in which the salaries for existing professional staff were completely dislocated from the OECD Co-ordinated Organisations' scales to which they were supposed to be linked, and existing general service staff – which were on a scale specific to UNIDROIT – had been automatically promoted to higher levels without any changes in responsibilities. He noted that the current situation not only created an unfair situation vis-à-vis longer-serving staff as compared to new staff pay rates, but could also be detrimental to the Institute's ability to attract new staff members in the future. Similarly, in relation to the social security system, he explained that half the staff contributed to the Italian pension and healthcare system, whereas half the staff remained outside it and contributed to different funds. He noted that the current situation created both inequality and confusion, and placed a significant administrative burden on UNIDROIT's Treasurer.

175. The *Secretary-General* also explained that independent consultants had reviewed the matter and provided reports to the Finance Committee. He noted that the Finance Committee was in the process of considering different options, including the possibility of moving the Institute to the UN salary scales localised for Rome, and requiring future staff to join a new pension scheme to be established for UNIDROIT by ISRP. He further explained that one of the important aspects of the review was that any proposal should be cost-neutral.

176. The *Chair of Finance Committee* thanked the *Secretary-General* for his report. He explained that the matters addressed by the *Secretary-General* had been placed on the Finance Committee's

agenda and would be fully discussed at its next session (Rome, 13 July 2017). He explained that several members of the Finance Committee had informally signalled that they would be satisfied with the Institute moving to the UN salary scales, but there had been no formal agreement yet. He noted that the social security reform was somewhat more complicated, as the Finance Committee wanted to attempt to resolve the issue for existing staff, as well as provide a uniform system for the future. He reaffirmed that the Finance Committee was working to ensure that any proposed change would not have additional cost implications for member States.

177. The *representative of Canada* expressed Canada's support for the initiative. She noted that reform to the Institute's salary scales and pension schemes were important to ensure that UNIDROIT could continue to retain and attract high quality staff, and to ease the administrative burden on the Institute. She concluded by stating that Canada was continuing to study the proposals in detail, and urged member States to make a decision to resolve the matter at the General Assembly's next session in December 2017.

178. *The Council considered the draft Budget for the 2018 financial year and authorised the Secretariat to communicate it to member States.*

#### **(b) Report of the Permanent Committee (C.D. (96) 13 (b))**

179. The *President* noted that the Permanent Committee had met on Wednesday 10 May, and that the outcomes from that meeting were reflected in the document provided to the Council. He noted that the Permanent Committee had discussed a number of important issues, which included the ongoing negotiations in the Finance Committee in relation to the Institute's salary scales and social security system.

180. The *President* further explained that it was the unanimous and enthusiastic view of the Permanent Committee that the appointment of Professor Anna Veneziano as Deputy Secretary-General should be renewed for an additional five years, based on her outstanding service to the Institute.

181. The Council approved the re-appointment of the Deputy Secretary-General for a second term beginning 1 October 2017. The Council congratulated the Deputy Secretary-General and thanked her for her significant contributions to the work of the Institute.

182. The *President* explained that the Permanent Committee had also discussed the procedure and timetable for selecting a successor to the Secretary-General as his second five-year term was to expire in September 2018. He noted that the selection process should be competitive and transparent. He explained that the process would begin with the Secretariat inviting nominations for the position, and that interviews should be conducted in November 2017. He further explained that it was the view of the Permanent Committee that the selection criteria should consider not only academic merit, but also managerial and administrative skills. He noted that, while UNIDROIT maintained a highly enviable reputation in the academic community, the Secretary-General had worked hard to rectify a number of managerial and administrative issues during his two terms, and that the future Secretary-General should be capable of continuing that legacy. He concluded by stating that he anticipated that the selection process would lead to the Permanent Committee reaching consensus on the nominee, which would allow the *President* to propose a suitable appointment by the Governing Council as consistent with the process set out under the UNIDROIT Statute.

183. *Mr Sánchez Cordero* expressed his gratitude to the Secretary-General for his excellent work in guiding the Institute during his two terms.



184. *The Council noted that the Secretary-General's appointment would expire on 30 September 2018. The Council authorised the Permanent Committee to begin the selection process for a successor to the Secretary-General, so as to be able to submit a nomination to the Council at its 97<sup>th</sup> session in 2018.*

185. *The Council took note of the report of the Permanent Committee.*

**Item 15: Date and venue of the 97<sup>th</sup> session of the Governing Council**

(C.D. (96) 1 rev. 3)

186. The Council agreed that the 97<sup>th</sup> session of the Governing Council should be held from 2–4 May 2018, at the seat of UNIDROIT in Rome.

**Item 16: Any other business**

**Private Law and Development – Cooperation with the Global Forum on Law Justice and Development (GFLJD) and possible future work in relation with the "Human-Centred Business Model" Project** (C.D. (96) 14)

187. *Ms Mestre* introduced the topic. She noted that the subject matter was not part of the Institute's formal Work Programme, but had arisen out of ongoing collaboration related to the Legal Guide on Contract Farming project. She explained that UNIDROIT was a member of the Steering Committee of the GFLJD, which was a World Bank initiative that provided an innovative framework for the exchange of ideas and information on legal development issues between developing countries, think-tanks, regional and international organisations, international financial institutions and civil society organisations.

188. *Ms Mestre* further explained that, while UNIDROIT had previously participated in the GFLJD during a meeting in Washington in 2015 as part of the Institute's promotion of the Legal Guide on Contract Farming, the GFLJD had recently initiated a project on the human-centred business model, which aimed to bridge the gap between for-profit and non-profit models of doing business. She explained that the project was being coordinated by the European Public Law Organisation and was in the process of seeking further collaborating organisations and sources of funding. She noted that UNIDROIT had previously agreed to a joint project in the field of social enterprises with the International Development Law Organisation (IDLO) in 2009, however aside from the preparation of a preliminary study, that project had not advanced.

189. *Ms Mestre* noted that UNIDROIT had hosted a meeting as part of a global promotional series of events on 17 February 2017 under the patronage of the Italian Agency for Development Cooperation. On 10 April 2017, the UNIDROIT Secretary-General had received a letter from Mr Marco Nicoli, Senior Project Manager of the GFLJD that invited UNIDROIT to take a co-leading role with the University of Florence for the second pillar of the project, which focused on legal frameworks and governance.

190. The *President* noted that he considered the project a valuable opportunity for the Institute, and welcomed views from other members of the Council.

191. *Ms Broka* thanked *Ms Mestre* for her report, and expressed her support for the project. She believed that the project was very topical and that the Institute should fully engage with it.

192. *The Council took note of the report by the Secretariat. The Council authorised the Secretariat to continue to work with the GFLJD with a view to participating in the development of the project, subject to funding being made available.*

193. *Mr Hartkamp, in his capacity as first Vice-President of the Governing Council, expressed his appreciation for the work and achievements of the Institute over the preceding twelve months. He thanked the Secretariat for hosting the International Colloquium on EU law and national private law and the President for chairing the Governing Council's 96<sup>th</sup> session and for the dinner he had hosted the previous evening. Finally, he thanked everyone that had contributed to the success of the Institute and noted his optimism for the future of UNIDROIT.*

**Item 17: International Colloquium on EU law and national private law (12 May 2017)**  
(C.D. (96) 1 rev. 3)

194. *The Council adjourned for the International Colloquium on EU law and national private law.*

**APPENDIX I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****(Rome, 10 - 12 May/mai 2017)****MEMBERS OF THE GOVERNING COUNCIL /****MEMBRES DU CONSEIL DE DIRECTION**

|                             |   |
|-----------------------------|---|
| Mr Alberto MAZZONI          | President of UNIDROIT / <i>Président d'UNIDROIT</i>   |
| Ms Stefania BARIATTI        | Professor of International Law<br>School of Law<br>Università degli Studi di Milano<br>Milan (Italy)  |
| Mr Radu Bogdan BOBEI        | Attorney; Professor<br>Faculty of Law<br>University of Bucharest<br>Bucharest (Romania)   |
| Ms Núria BOUZA VIDAL        | Professor of Private International Law<br>Pompeu Fabra University<br>School of Law<br>Law Department<br>Barcelona (Spain)   |
| Ms Baiba BROKA              | Adviser to the Minister of Environmental Protection and<br>Regional Development<br>Riga (Latvia)  |
| Mr B. Bahadır ERDEM         | Professor of Law<br>İstanbul Üniversitesi<br>Hukuk Fakültesi;<br>Lawyer<br>İstanbul (Turkey)  |
| Mr Henry D. GABRIEL         | Professor of Law<br>School of Law<br>Elon University<br>Greensboro, North Carolina (United States of America)   |
| Mr Arthur Severijn HARTKAMP | former Procureur-Général at the Supreme Court of<br>The Netherlands;<br>Professor of European Private Law<br>Radboud University, Nijmegen<br>Den Haag (The Netherlands) |

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| Ms Monique JAMETTI               | Federal Judge<br>Federal Office of Justice<br>Berne (Switzerland)  |
| Mr Miklós KIRÁLY                 | Professor of Law<br>Dean of the Faculty of Law<br>Eötvös Loránd University<br>Budapest (Hungary)   |
| Mr Alexander S. KOMAROV          | Professor<br>Head of International Private Law Chair<br>Russian Academy of Foreign Trade<br>Moscow (Russian Federation)                                      |
| Mr Antti T. LEINONEN             | Director of Legislation<br>Law Drafting Department (Civil Law)<br>Ministry of Justice<br>Helsinki (Finland)  |
| Mr Byung-Hwa LYOU                | President and Professor of Law<br>TLBU Graduate School of Law<br>Seoul (Republic of Korea)   |
| Mr José Antonio MORENO RODRÍGUEZ | Professor of Law;<br>Attorney<br>Asunción (Paraguay)   |
| Mr Jan Lambert NEELS             | Professor of Private International Law,<br>University of Johannesburg (South Africa)   |
| Ms Monika PAUKNEROVÁ             | Professor of Private International Law and International<br>Department of Commercial Law<br>Charles University, Faculty of Law<br>Prague 1 (Czech Republic)  |
| Mr Wojciech POPIOŁEK             | Associate Professor of Law; Lawyer<br>ADP Popiołek<br>Advocates and Advisers, Law Firm<br>Katowice (Poland)  |
| Mr Olaf REIF                     | First Secretary<br>Head of the Legal and Consular Office<br>Embassy of the Federal Republic of Germany in Italy<br><i>Representing Mr Hans-Georg Bollweg</i> |
| Mr Jorge SÁNCHEZ CORDERO         | Director of the Mexican Center of Uniform Law<br>Professor<br>Notary public<br>Mexico City (Mexico)  |

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|---------------------------|---|
| Ms Rachel SANDBY-THOMAS   | University of Warwick<br>Registrar - University Executive Team<br>Warwick (UK)  |
| Mr Álvaro SANDOVAL BERNAL | Ambassador de Colombia en Egipto<br>Embajada de Colombia en Egipto<br>El Cairo (Egypt)  |
| Ms SHI Jingxia            | Professor of Law<br>Dean, School of Law<br>China University of International Business & Economics<br>(UIBE)<br>Director of UIBE International Law Institute (ILI)<br>Beijing (People's Republic of China) |
| Mr Hiroo SONO             | Professor of Law<br>Hokkaido University, School of Law<br>Sapporo<br><i>Representing Mr Hideki Kanda</i>  |
| Monsieur Daniel TRICOT    | Président de l'Association française des docteurs en droit<br>(AFDD); Arbitre et médiateur en affaires<br>Soc. DTAM<br>Paris (France)   |
| Mr Spyridon VRELLIS       | Emeritus Professor of Law;<br>Director<br>Hellenic Institute of International and Foreign Law<br>Athens (Greece)  |
| Mr Roger Bruce WILKINS    | former Secretary to the Attorney-General's<br>Department<br>Barton, ACT, 2600 (Australia)   |

#### **OBSERVERS / OBSERVATEURS**

|   |   |
|---|---|
| EUROPEAN LAW INSTITUTE (ELI) / <i>INSTITUT<br/>DE DROIT EUROPEEN</i>  | Mrs Diana Wallis<br>President<br>Vienna (Austria)                     |
| FOOD AND AGRICULTURE ORGANIZATION OF<br>THE UNITED NATIONS (FAO) / <i>ORGANISATION<br/>DES NATIONS UNIES POUR L'ALIMENTATION<br/>ET L'AGRICULTURE (FAO)</i> | Ms Margret VIDAR<br>Legal Officer<br>FAO Legal Office<br>Rome (Italy) |
|   | Ms Carmen BULLON<br>Legal Officer<br>FAO Legal Office<br>Rome (Italy) |

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|   | Mr Teemu VIINIKAINEN<br>Legal Officer<br>FAO Legal Office<br>Rome (Italy)   |
| HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) / <i>CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE (HCCH)</i>                               | Mr Philippe LORTIE (Only 11 May)<br>First Secretary<br>The Hague (Netherlands)                                    |
| INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO) / <i>ORGANISATION INTERNATIONALE DE DROIT DU DEVELOPPEMENT (OIDD)</i>                               | Mr Thierry DE BOVIS (10 May)<br>Associate General Counsel<br>Rome (Italy)   |
|   | Mr Clifton JOHNSON (11-12 May)<br>General Counsel<br>Rome (Italy)   |
| INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) / <i>FONDS INTERNATIONAL DE DEVELOPPEMENT AGRICOLE (FIDA)</i>                                  | Mr Charles FORREST<br>Senior Legal Counsel<br>Rome (Italy)  |
| UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) / <i>COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI)</i> | Mr Timothy LEMAY<br>Officer-in-Charge<br>Vienna (Austria)   |
| Mr Helmut HEISS   | Professor, LL.M.<br>Chair of Private Law, Comparative Law and IPR<br>University of Zurich<br>Zurich (Switzerland) |
| Mr Don WALLACE, Jr  | Professor<br>International Law Institute<br>Washington (United States of America)                                 |

#### **UNIDROIT MEMBER STATES / ETATS MEMBRES D'UNIDROIT**

|                              |   |
|------------------------------|---|
| ARGENTINA / <i>ARGENTINE</i> | Mr Martin VIA<br>First Secretary<br>Embassy of Argentina in Italy |
| AUSTRIA / <i>AUTRICHE</i>    | Mr Mario MICELLI<br>Adviser<br>Embassy of Austria in Italy        |

|                        |  |
|------------------------|--|
| BRAZIL / <i>BRESIL</i> | Mrs Tamara OBERLEITER<br>Assistant<br>Embassy of Austria in Italy<br>Mr Vinicius CARDOSO BARBOSA SILVA<br>Third Secretary<br>Embassy of Brazil in Italy  |
| BULGARIA / BULGARIE    | Mrs Aleksandra NIKOLAEVA PAVLOVA<br>Senior Expert<br>International Legal Cooperation and European Affairs<br>Directorate<br>Ministry of Justice<br>Sofia (Bulgaria)                            |
| CANADA                 | Ms Kathryn SABO<br>General Counsel<br>Constitutional, Administrative & International Law Section<br>Public Law Sector<br>Department of Justice<br>Ottawa, Ontario (Canada)                     |
| CHILE / CHILI          | Mrs Nazhla ABAD<br>Second Secretary<br>Embassy of Chile in Italy   |
| INDONESIA / INDONESIA  | H.E. Ms Esti ANDAYANI<br>Ambassador (Designate)<br>Embassy of the Republic of Indonesia in Italy<br><br>Mr Royhan N. WAHAB<br>First Secretary<br>Embassy of the Republic of Indonesia in Italy |
| IRAQ                   | Mr Mohammed Nori THAKER<br>Second Secretary<br>Embassy of the Republic of Iraq in Italy  |
| IRAN                   | Mr Mohsen Daneshmand<br>First Counsellor<br>Embassy of the Islamic Republic of Iran  |
| MALTA / <i>MALTE</i>   | Mr Ivan VASSALLO<br>First Secretary<br>Embassy of Malta in Italy<br><br>Ms Gabriella MARCELJA<br>Attaché<br>Embassy of Malta in Italy  |

## MEXICO / MEXIQUE

H.E. Mrs Martha BÁRCENA  
Ambassador  
Permanent Mission of Mexico to the Rome-based UN  
Agencies

Mr Benito JIMÉNEZ SAUMA  
Second Secretary  
Permanent Mission of Mexico to the Rome-based UN  
Agencies

## PORTUGAL

Mrs Rita LOURENÇO  
Lawyer  
Embassy of Portugal in Italy

## SAN MARINO / SAINT-MARIN

Prof. Maurizio LUPOI  
Corte per il Trust e i Rapporti Fiduciari  
Republic of San Marino

## SWEDEN / SUEDE

Mr Fredrik ALFER  
Minister Counsellor and Deputy Permanent  
Representative to FAO  
Embassy of Sweden in Italy

**UNIDROIT**

Mr José Angelo ESTRELLA FARIA  
Mrs Anna VENEZIANO  
Ms Frédérique MESTRE  
Ms Lena PETERS  
Ms Marina SCHNEIDER  
Mr Neale BERGMAN  
Mr William BRYDIE-WATSON  
Ms Bettina MAXION

Secretary-General / *Secrétaire Général*  
Deputy Secretary-General / *Secrétaire Général adjoint*  
Senior Officer / *Fonctionnaire principale*  
Senior Officer / *Fonctionnaire principale*  
Senior Officer / *Fonctionnaire principale*  
Legal Officer / *Juriste*  
Legal Officer / *Juriste*  
Librarian / *Bibliothécaire*



**APPENDIX II****AGENDA**

1. Adoption of the annotated draft agenda (C.D. (96) 1 rev. 2)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (96) 1 rev. 2)
3. Reports
  - (a) Annual Report 2016 (C.D. (96) 2)
  - (b) Report of the UNIDROIT Foundation
4. International Interests in Mobile Equipment
  - (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (96) 3)
  - (b) Preliminary draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (C.D. (96) 4)
5. Transactions on Transnational and Connected Capital Markets: Consideration and adoption of the UNIDROIT Legislative Guide on Intermediated Securities (C.D. (96) 5)
6. Private Law and Agricultural Development
  - (a) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (96) 6(a))
  - (b) Preparation of an international guidance document on agricultural land investment contracts (C.D. (96) 6(b))
7. Transnational civil procedure - formulation of regional rules (C.D. (96) 7 and 7 Add.)
8. International Commercial Contracts: Formulation of principles of reinsurance contracts
9. International Sales Law: 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 (C.D. (96) 8)
10. International protection of cultural property (C.D. (96) 9)
  - (a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
  - (b) Private art collections
11. Promotion of UNIDROIT instruments (C.D. (96) 10)
12. Library and research activities (C.D. (96) 11)
13. UNIDROIT information resources and policy (C.D. (96) 12)
  - (a) Uniform Law Review/ Revue de droit uniforme and other publications
  - (b) The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation

14. Administrative matters
  - (a) Preparation of the draft budget for the 2018 financial year (C.D. (96) 13 (a))
  - (b) Report of the Permanent Committee (C.D. (96) 13 (b))
15. Date and venue of the 97<sup>th</sup> session of the Governing Council (C.D. (96) 1 rev. 2)
16. Any other business

Private Law and Development - Cooperation with the Legal Forum on Law Justice and Development (LFLJD) and possible future work in relation with the "Human-Centered Business Model" Project (C.D. (96) 14)
17. International Colloquium on EU law and national private law (12 May 2017)  
(C.D. (96) 1 rev. 2)

**APPENDIX III****LIST OF ABBREVIATIONS AND ACRONYMS****UNIDROIT INSTRUMENTS**

|   |   |
|---|---|
| 1995 UNIDROIT Convention                      | UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)   |
| Aircraft Protocol                             | Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (2001)  |
| Cape Town Convention or CTC                   | Convention on International Interests in Mobile Equipment (2001)  |
| ELI/UNIDROIT Rules                            | Joint project with the European Law Institute to formulate European transnational civil procedure regional rules (ongoing)  |
| Geneva Securities Convention                  | UNIDROIT Convention on Substantives Rules for Intermediated Securities (2009)   |
| Legal Guide on Contract Farming               | UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (2015)  |
| Legislative Guide on Intermediated Securities | Future UNIDROIT Legislative Guide on Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (ongoing)                                |
| Luxembourg Rail Protocol                      | Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (2007)                          |
| MAC Protocol                                  | Future Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment (ongoing) |
| Netting Principles                            | Principles on the Operation of Close-out Netting Provisions (2013)  |
| Space Protocol                                | Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (2009)  |

|                                  |  |
|----------------------------------|--|
| UNESCO/UNIDROIT Model Provisions | UNESCO/UNIDROIT Model Provisions on State Ownership on Undiscovered Cultural Objects               |
| UNIDROIT Principles or UPICC     | UNIDROIT Principles of International Commercial Contracts (editions issued 1994, 2004, 2010, 2016) |

### **OTHER INTERNATIONAL INSTRUMENTS**

|                                   |   |
|-----------------------------------|---|
| CFS-RAI Principles                | Principles for Responsible Investment in Agriculture and Food Systems (2014)  |
| CISG Convention                   | United Nations Convention on Contracts for the International Sale of Goods (1980)   |
| CMR                               | Convention on the Contract for the International Carriage of Goods by Road (1956)   |
| Hague Principles on Choice of Law | The Hague Principles on Choice of Law in International Commercial Contracts (2015)  |
| Hague Securities Convention       | Convention on the law applicable to certain rights in respect of securities held with an intermediary (2006)                                |
| Hague Service Convention          | Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters                 |
| Harmonized System or HS System    | Harmonized Commodity and Coding System  |
| Rome I Regulation                 | Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations  |
| VGGT                              | Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (2012) |

### **INTERNATIONAL ORGANISATIONS AND OTHER INSTITUTIONS**

|      |                                   |
|------|-----------------------------------|
| ALI  | American Law Institute            |
| APEC | Asia Pacific Economic Cooperation |
| ELI  | European Law Institute            |

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|----------|---|
| EU       | European Union  |
| FAO      | Food and Agriculture Organization of the United Nations                                     |
| HCCH     | Hague Conference on Private International Law   |
| ICCROM   | International Centre for the Study of the Preservation and Restoration of Cultural Property |
| IDIT     | The Institute of International Transport Law  |
| IDLO     | International Development Law Organization  |
| IFAD     | International Fund for Agricultural Development   |
| IFC      | International Finance Corporation   |
| IIED     | Institute for Environment and Development   |
| IISD     | International Institute for Sustainable Development   |
| Interpol | International Criminal Police Organization  |
| ISCHAL   | International Society for Research on Art and Cultural Heritage Law                         |
| ITU      | International Telecommunication Union   |
| NatLaw   | National Law Center for Inter-American Free Trade   |
| OAS      | Organization of American States   |
| OECD     | Organisation for Economic Co-operation and Development                                      |
| OUP      | Oxford University Press   |
| SNSF     | Swiss National Science Foundation   |
| UN       | United Nations  |
| UNCITRAL | United Nations Commission on International Trade Law  |
| UNESCO   | United Nations Educational, Scientific and Cultural Organization                            |
| UNIDROIT | International Institute for the Unification of Private Law                                  |

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| UNODC | United Nations Office on Drugs and Crime |
| WCO   | World Customs Organization               |

### GROUPS

|   |   |
|---|---|
| AWG   | Aviation Working Group  |
| CFS   | Committee on World Food Security  |
| Committee of Governmental Experts / CGE1                | The first session of the UNIDROIT Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment |
| Committee on Emerging Markets                           | Committee on Emerging Markets Issues, Follow-up and Implementation  |
| CoP/LACF  | Community of Practice on Legal Aspects of Contract Farming  |
| FATF  | Financial Action Task Force   |
| GFLJD   | Global Forum on Law, Justice and Development  |
| Intersessional Working Group on Registration Criteria   | Intersessional Working Group on Registration Criteria   |
| Rail Preparatory Commission                             | Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock pursuant to the Luxembourg Rail Protocol   |
| Ratification Task Force                                 | Ratification Task Force   |
| RWG   | Rail Working Group  |
| Space Preparatory Commission                            | Preparatory Commission for the establishment of the International Registry for Space Assets pursuant to the Space Protocol  |
| Structure Working Group                                 | Structure Working Group   |
| Working Group on agricultural land investment contracts | Working Group on agricultural land investment contracts   |

