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**Item No. 6(b) on the agenda: Transnational civil procedure –
Principles on Effective Enforcement**

(prepared by the Secretariat)

<i>Summary</i>	<i>Status of the project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the document</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>Low</i>
<i>Related document</i>	<i>UNIDROIT 2019 – C.D. (98) 2; C.D. (98) 14</i>

I. HISTORY OF THE PROJECT AND STATUS

1. The ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute / UNIDROIT Study Group and adopted in 2004 by the Governing Council of UNIDROIT, aim at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones.
2. Although the ALI/UNIDROIT Principles are comprehensive, they are mainly designed to give guidance for first instance procedures and only minimally do they address issues of enforcement. In particular, Principle 29 emphasises the need for speedy and effective enforcement, but the comment makes it clear that the topic as such was beyond the scope of the 2004 ALI/UNIDROIT Principles. The same can be said of the work on transnational civil procedure approved so far by other intergovernmental organisations such as UNCITRAL, the UN and The Hague Conference. While single instruments may contain specific rules dealing with enforcement, there is a lack of a more general guidance document in this area.
3. A preliminary feasibility study in this area was conducted by Rolf Stürner, Emeritus Professor at the University of Freiburg (Germany) and former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure. It was submitted to the Governing Council at its 95th session. The Study provided an analysis of some of the obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and highlighted the advantages of filling in the gaps of the ALI/UNIDROIT Principles of Transnational Civil Procedure in this regard. It underlined

that the right to effective enforcement represents an integral part of a fair and effective procedure. Moreover, it pointed to the economic significance of effective enforcement mechanisms, both in decision-making and in contractual execution. International financial institutions as well as national governments increasingly consider them as a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. A general guidance document at the international level would address the most relevant issues and provide a detailed set of principles embodying best practices. Transnational principles of enforcement could be helpful guidelines for legislators wishing to improve their domestic law, while at the same time contributing to the emergence of common minimum standards for domestic procedures as a necessary basis for improvement of international cooperation in this area.

4. The Governing Council decided to recommend this topic for inclusion in the UNIDROIT Work programme for the triennium 2017-2019 by the General Assembly, proposing to assign it with a low level of priority. The General Assembly endorsed this recommendation at its 75th session, on 1 December 2016.

5. The Secretariat has undertaken limited research work on this topic until now, in view of its low priority status and the priority given to the completion of the ELI-UNIDROIT project on regional rules of civil procedure. In particular, it produced basic internal documents focusing on existing international instruments addressing, one way or the other, issues of enforcement (including a study on the recently issued Global Code of Enforcement of the International association of judicial officers / Union Internationale des Huissiers de Justice (UIHJ)).

6. In December 2018, the Secretariat received a proposal for the 2020-2022 Work Programme by the World Bank regarding a joint project on the "Development of a Working Paper to Outline Best Practices on Debt Enforcement". This proposal will be considered in the context of the 2020-2022 Work Programme.

II. ACTION TO BE TAKEN

7. *The UNIDROIT Secretariat would invite the Governing Council to take note of the developments regarding this project and to consider its continuation and substantially enhanced priority status in the framework of the proposals for the 2020-2022 Work Programme.*