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Item No. 10 on the agenda: Promotion of UNIDROIT instruments

(prepared by the Secrétariat)

<i>Summary</i>	<i>Report on promotional activities for some instruments adopted under UNIDROIT auspices</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the activities reported</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>High</i>
<i>Related document</i>	<i>Annual Report 2018 (C.D. (98) 2)</i>

1. The revised strategic plan for the Organisation, approved by the Governing Council at its 91st session in 2012 (see UNIDROIT 2012 – C.D. (91) 12), emphasised the importance of a strategy to promote the instruments adopted by UNIDROIT, with a particular focus on two Strategic Objectives.¹

2. At its 95th session (Rome, 18-20 May 2016), the Governing Council recalled the importance of promoting the instruments of the Organisation and hence to maintain the high priority of promotion activities in the UNIDROIT Work Programme for the 2017-2019 triennium. The General Assembly approved this recommendation at its 75th session (Rome, 1 December 2016). In accordance with the said decisions, the promotion of all UNIDROIT instruments should be regarded as indispensable and, as such, was meant to enjoy the highest priority in the years 2017-2019 in terms of both the human and the financial resources devoted to that activity. This is also applicable to the Conventions of which UNIDROIT has been designated as Depositary. While the Secretariat should ideally cover all the instruments prepared and adopted by the Institute, it is compelled, due to lack of resources, to establish priorities in its promotional activities, sometimes based on a positive momentum, and resort to partnerships with other interested Organisations as much as possible.

¹ *Strategic Objective No. 5* - UNIDROIT should clearly link its non-legislative activities to the Organization's mandate and the instruments it prepares. UNIDROIT should give priority to non-legislative activities that support the research projects needed to carry out the Organization's legislative Work Programme, add value to the dissemination of information on UNIDROIT's work and on the promotion of UNIDROIT instruments and offer a satisfactory level of returns, in terms of visibility and recognition.

Strategic Objective No. 6 - Greater investment should be made in the promotion of UNIDROIT instruments. UNIDROIT should aim at doubling the resources available for the promotion of its instruments, through efficiency gains, reallocation, voluntary contributions or otherwise, within the coming years.

3. As the UNIDROIT Secretariat is increasingly asked to make presentations and disseminate its work, whether it is on the harmonization of the law in general or on particular topics, UNIDROIT seeks to respond positively as much as possible within its resources (see point III. Below).

I. UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

4. The UNIDROIT Principles 2016 were presented at events organised for the benefit of relevant academic and commercial circles. For a complete list for 2018 see the Annual Report in UNIDROIT 2018 – C.D. (98) 2.

5. UNIDROIT established a closer cooperation with the International Bar Association (IBA) in 2018. As a joint initiative of Mr Don Wallace Jr, Chairman of the International Law Institute (Washington D.C.) and Christopher R. Seppälä, Legal counsellor to the FIDIC Contracts Committee, the IBA created a special working group made up of a number of international lawyers, coordinated by Willem Calkoen (NautaDutilh, Amsterdam), in order to help UNIDROIT raise awareness on and promote the use of the UNIDROIT Principles of International Commercial Contracts in dispute resolution worldwide. A cross licensing agreement was signed between the two organisations for the publication of the results of this research.

6. On 28-29 May 2018, a delegation of the IBA Working Group met with the President of UNIDROIT, the Secretary-General *a.i.*, some members of the Secretariat and Professor Michael Joachim Bonell at the seat of the Institute. They proceeded with a first review of the “Summary of case studies” that had been prepared by some 40 members of the Working Group.

7. On 9 October 2018, the IBA Working Group on the UNIDROIT Principles of International Commercial Contracts discussed practical cases on the application of the UNIDROIT Principles at the Annual IBA Conference in Rome. Deputy Secretary-General Professor Anna Veneziano participated in the session together with Professor Michael Joachim Bonell. On the same day, Governing Council member Mr José Antonio Moreno Rodriguez spoke of the importance of the UNIDROIT in a panel entitled “Should there be general principles for the application of soft law?”, presented by the Arbitration Committee and the IBA Arbitration Guidelines and Rules Subcommittee.

8. Furthermore, the following promotion activities have taken place during or have been planned in the coming months for 2019:

- On 18-19 March 2019, Mr Neale Bergman (Legal Officer, UNIDROIT) delivered a lecture on “International Sources of Contract Law: The UNIDROIT Principles of International Commercial Contracts” to 21 students, hailing from 15 countries, in the ITC-ILO’s LLM Programme in International Trade Law. The lecture covered: (1) UNIDROIT and its working methods; (2) the UNIDROIT Principles, including their content and application; and (3) the influence of the Principles on related areas of work, such as the UNIDROIT -FAO-IFAD Legal Guide on Contract Farming and the future Legal Guide on Agricultural Land Investment Contracts. The lecture not only raised awareness about UNIDROIT and the UNIDROIT Principles, but is also expected to serve as a basis for further collaboration and partnership with the ITC-ILO’s LLM Programme in the promotion of UNIDROIT’s instruments and its ongoing work.

- On 3 May 2019, the UNIDROIT Secretary-General and Deputy Secretary-General have both been invited to speak at the 7th edition of the LUISS Masters on Business and Company Law. The Secretary-General will present an introduction on International Trade and to International Commercial Contracts, whereas the Deputy Secretary-General will look at the UNIDROIT Principles of International Commercial Contracts.

9. Members of the UNIDROIT Governing Council have also participated in meetings or drafted articles/commentaries to promote the 2016 UNIDROIT Principles, such as:

- Professor Radu Bogdan Bobei published the Romanian translation of the 2016 UNIDROIT Principles (articles and commentary) in May 2018 (CH Beck Publishing House, Bucharest, 2018). Professor Bobei also published a Handbook on International Law – specifically for commercial law –

in which the UNIDROIT Principles 2016 are presented as a general theory of international commercial contracts, which will be published in 2019 (Handbook on international law, CH Beck Publishing House, Bucarest, 2019);

- Professor Nuria Bouza Vidal published two commentaries on UNIDROIT instruments: "Principios de UNIDROIT (2016) sobre los contratos comerciales internacionales", Revista Jurídica de Catalunya, núm.1-2018, pp. 172-175, and "Guía legislativa de UNIDROIT sobre valores intermediados", Revista Jurídica de Catalunya, núm. 1-2019 (in press);

- Professor Moreno Rodriguez promoted the UNIDROIT Principles and their applicability concerning arbitration clauses in model clauses or general conditions in the Latin American arbitration Conference, which was held in Cusco (Peru) at the end of May 2018. He mentioned that the 2016 edition of the UNIDROIT Principles will be published in Paraguay during the first semester of 2019. Furthermore, Professor Moreno Rodriguez will organise a Moot Competition in September 2019 in Asuncion organised under the auspices of the University of Buenos Aires and the Rosario University of Bogota, which will refer to the UNIDROIT Principles as applicable law. Finally, the Inter-American Juridical Committee of the Organisation of American States approved the *Guide to the Applicable Law regarding International Contracts*, which strongly encourages the use of the UNIDROIT Principles, in February 2019;

- Professor Monika Pauknerová published the following contributions concerning the UNIDROIT Principles: (1) PAUKNEROVÁ, Monika – PFEIFFER, Magdalena, UNIDROIT Principles as Reference for Uniform Interpretation of National Laws, Czech Republic, Czech National Report, International Congress of Comparative Law, Fukuoka, 2018 and (2) PAUKNEROVÁ, Monika; PFEIFFER, Magdalena. Use of UNIDROIT Principles of international commercial contracts to interpret or supplement Czech contract law, *The Lawyer Quarterly*. No. 4, Prague 2018. 452-468. Furthermore, the same authors have submitted the chapter regarding the Czech Republic for a publication on the Principles due to be published in 2019 by Springer Verlag.

II. CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

A. RATIFICATION STATUS

10. UNIDROIT was designated Depositary of the Cape Town Convention in accordance with Article 62(1) of the Convention and of the Aircraft Protocol under Article XXXVII(1). As at 20 March 2019, the Convention counted 79 Contracting States and one Contracting Regional Economic Organisation, and the Aircraft Protocol 76 Contracting States and one Contracting Regional Economic Organisation.

11. Since the last Governing Council session, Ghana, Namibia and Paraguay have deposited their instruments of accession to the Convention and the Aircraft Protocol. Costa Rica and Moldova have also deposited their instruments of accession to the Aircraft Protocol.

B. CONFERENCES AND SEMINARS

12. Many lectures, conferences and seminars have been held on the Cape Town Convention and its Aircraft Protocol since the last session of the Council in 2018. For those that were held in 2018, please refer to the Annual Report 2018 (C.D. (98) 2).

13. The promotion of the Cape Town Convention and its Aircraft Protocol will continue to benefit from the highest level of priority in 2019, and the Institute will be able to count on the support of the Cape Town Academic Project, which holds annual conferences in Oxford in September.

III. OTHER UNIDROIT INSTRUMENTS AND GENERAL PRESENTATIONS

14. The UNIDROIT Secretariat continues to receive requests to deliver presentations, both to groups of students during their study trips to Rome or in universities and research centres around the world, on the work of the Organisation in general, the harmonization of law or on particular subjects, such as, for example:

- On 20 February 2019, UNIDROIT Deputy Secretary-General Professor Anna Veneziano presented the Legal Guide on Contract Farming, its main features and key aspects of its implementation at the Food for Law Conference hosted by McGill University in Montreal and its Centre for Intellectual Property Policy (CIPP). This presentation was part of a panel moderated by Pierre-Emmanuel Moysse, Director of the CIPP and Associate Professor, McGill University, which discussed the practice of contract farming and its implications for rural development. The other panelists were Martin Cloutier (Professor, Département de management et technologie, l'ESG UQAM), Matteo Ferrari (Assistant Professor of Private Law, University of Trento) and Paola Iamiceli (Professor of Private Law at University of Trento);

- On 29 March 2019, a group of 75 students from Strathmore Law School, Nairobi, Kenya, visited UNIDROIT, accompanied by the Dean of the Law School, Professor Luis Fransceschi. Following a general presentation by the Secretary General, Professor Ignacio Tirado, on UNIDROIT's contribution to International Commercial Law reform and to Sustainable Development Goals, the Deputy Secretary General and other officers (Ms Frédérique Mestre and Mr William Brydie Watson) delivered brief presentations on various current projects of the Institute. The Q&A sessions reflected the students' keen interest toward UNIDROIT's areas of work, and their high level of legal understanding and analysis. Representatives of the Embassy of Kenya attended the whole session and underscored that in order to address old and new challenges faced by Kenya and the African region, integrated and well thought out approaches as well as international cooperation with international fora such as UNIDROIT were more necessary now than ever.

15. Members of the UNIDROIT Governing Council have also participated in meetings or drafted articles/commentaries to promote UNIDROIT instruments and activities, such as, for example:

- Professor Jan L. Neels actively participated in a conference at the University of Johannesburg, organised by UNIDROIT, the Department of International Relations and Cooperation of South Africa, and the Research Centre for Private International Law of the University of Johannesburg on the Future MAC Protocol to the Cape Town Convention, entitled "The MAC Protocol to the Cape Town Convention: the future of the mining, agriculture and construction industry". For more details please see the Annual Report 2018 (C.D. (98) 2).

- Professor Henry Gabriel participated in the UNCITRAL Colloquium on contractual networks and other forms of inter-firm cooperation on 25-26 March 2019 at UN Headquarters, presenting the Legal Guide on Contract Farming in a panel on Examples of multiparty contracts creating networks.

IV. ACTION TO BE TAKEN

16. *The Governing Council is invited to take note of the activities held by the Secretariat to promote UNIDROIT instruments.*