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(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the draft Work Programme for the 2020-2022 triennium</i>
<i>Action to be taken</i>	<i>To take note of the proposed activities to carry out the current Work Programme and to make recommendations for the future Work Programme, including the relative priority to be assigned to each activity</i>
<i>Related documents</i>	<i>Strategic Plan (UNIDROIT 2012 – A.G. (71) INF 2); Work Programme for the 2017-2019 triennium (UNIDROIT 2016 - A.G. (75) 3 corr. and UNIDROIT 2016 – A.G. (75) 8)); UNIDROIT 2016 –C.D (95) 13 rev and Addenda 1-6</i>

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Introduction

1. UNIDROIT's current Work Programme for the 2017-2019 triennium will expire at the end of the year. At its 98th session (Rome, 8-10 May 2019), the Governing Council will be called upon to make recommendations regarding the new Work Programme for the 2020-2022 triennium, in particular the activities and their respective priorities, for the General Assembly's consideration and approval at its 78th session (Rome, December 2019).¹ This document includes a detailed account of the activities on the 2017-2019 Work Programme that the Secretariat considers should be carried over to the new Programme as well as a description and consideration of the proposals received regarding new activities. The Secretariat remains available to elaborate on any of the activities envisaged in the different sections of this document.

2. The 2017-2019 Work Programme is comprised of topics that the Governing Council – following an examination of proposals submitted by the Secretariat, Member States, international Organisations, industry and UNIDROIT correspondents (see UNIDROIT 2016 – C.D (95) 13 rev. and Add.1-6) at its 95th session (Rome, 18–20 May 2016) – recommended for inclusion in the Work Programme, which was approved by the General Assembly at its 75th session (Rome, 1 December 2016) (see UNIDROIT 2016 - A.G. (75) 8, paras. 24-44; UNIDROIT 2016 - A.G. (75) 3 corr.).

3. As a result of these recommendations and decisions, the 2017-2019 Work Programme currently includes the following activities:²

A. Legislative activities

1. Secured Transactions:
 - (a) Implementation of Rail and Space Protocols to the Cape Town Convention***
 - (b) Preparation of other Protocols to the Cape Town Convention
 - (i) Protocol on matters specific to Agricultural, mining and construction equipment ***
 - (ii) Protocol on matters specific to Ships and maritime transport equipment*
 - (iii) Protocol on matters specific to Renewable energy equipment*
2. Transactions on Transnational and Connected Capital Markets
Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets: ***
3. Private law and development – Preparation of an international guidance document on agricultural land investment contracts***
4. Transnational civil procedure:
 - (a) Formulation of regional rules***
 - (b) Principles of effective enforcement*
5. International Commercial Contracts – Formulation of principles of reinsurance contracts*

¹ UNIDROIT Statute, art. 5(3) ("Every three years, [the General Assembly] shall approve the work programme of the Institute on the basis of a proposal by the Governing Council and, in appropriate cases pursuant to paragraph 4 of Article 16, revise by a majority of two thirds of the Members present and voting the resolutions adopted in accordance with paragraph 3 of the said Article 16.").

² The level of priority approved by the General Assembly is indicated as follows: high *** – medium ** – low *.

6. 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***
7. International protection of cultural property – Private art collections*

B. Implementation and promotion of UNIDROIT instruments

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

C. Non-legislative activities

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

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

(a) *Priority for allocation of meeting costs:*

- (i) *"high priority" – projects that should take precedence over others*
- (ii) *"medium priority" – projects eligible for being advanced in the event that the costs of high priority projects turn out to be lower than anticipated (e.g., because extra-budgetary funding is obtained), thus freeing resources under the regular budget; and*
- (iii) *"low priority" – projects that should only be advanced after completion of other projects or on the basis of full extra-budgetary funding.*

(b) *Priority for allocation of human resources:*

- (i) *"high priority" – at least 70% of the time of the officers responsible;*
- (ii) *"medium priority" – not more than 50% of the time of the officers responsible; and*
- (iii) *"low priority" – not more than 25% of the time of the officers responsible.*

(c) *Indispensable functions.* Indispensable functions are those that are either imposed by the Statute of UNIDROIT (e.g., library, governance) or are otherwise necessary for its operation (e.g., management and administration). These functions are "high priority" by their very nature, which is why they are supported by a pool of human and financial resources especially designated for that purpose.

5. As a complement to this document, an overview of the action taken in 2018 to implement the legislative activities that appear on the current Work Programme is contained in the Annual Report 2018.³ Information, in monetary terms, on the allocation of resources to the UNIDROIT's various projects and activities in the 2018 financial year is contained in the Secretary-General's statement regarding the Organisation's activity in 2018 (UNIDROIT 2018 – A.G. (77) 3), presented at the General Assembly's 77th session (Rome, 6 December 2018).

³ Cf. UNIDROIT 2018 – C.D. (98) 2.

6. **Section A** of this document contains proposals for the completion of ongoing projects approved under the 2017-2019 Work Programme. **Section B** provides information on low priority projects approved under the 2017-2019 Work Programme. **Section C** sets out proposals for future work received by the Secretariat, which are organised in hierarchical order to indicate the Secretariat's suggested levels of priority for consideration by the Governing Council. Finally, **Sections D** and **E** set out the proposed priorities of the Secretariat with respect to the implementation and promotion of UNIDROIT instruments and the Institute's non-legislative activities during the 2020-2022 triennium.

A. Ongoing legislative activities carried over from the 2017-2019 Work Programme

1. Secured Transactions

(a) Implementation of the Rail and Space Protocols to the Cape Town Convention

7. During the 2020-2022 triennium, the Secretariat intends to continue its activity to promote and implement both the 2007 *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* ("Rail Protocol"), and the 2012 *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets* ("Space Protocol"), pursuant to its institutional mandate.

8. In relation to the Rail Protocol, the past three years were very fruitful in terms of new signatures and ratifications as well as institutional and promotional activities towards entry into force of the Protocol and implementation of its International Registry. After the signatures by Mozambique and the United Kingdom in 2016, the Protocol was signed in 2017 by France and Sweden. In 2018, the Rail Protocol was ratified by two States, Gabon and Sweden, bringing the number of contracting States up to three (in addition to the 2014 approval of the European Union as a Regional Economic Integration Organisation), and thus nearing the threshold of four ratifications needed to allow the instrument's entry into force. From an institutional perspective, the Intergovernmental Organisation for International Carriage by Rail (OTIF), in its role as co-sponsoring institution and as Secretariat of the future Supervisory Authority, approved the draft Statute and Rules of Procedure of the Supervisory Authority at its 13th General Assembly on 25 September 2018. At its 8th Session (Rome, 6-7 December 2018), the Preparatory Commission for the Establishment of an International Registry under the Rail Protocol (established pursuant to Resolution 1 of the Final Act of the Diplomatic Conference in Luxembourg (UNIDROIT-OTIF 2007 – DC10 – DCME- RP- Doc.44)) considered the documents relating to the Supervisory Authority and addressed other key issues pertaining to the Protocol's implementation. The Preparatory Commission Session was attended by over 30 delegations of States as well as by representatives of the Rail Working Group and the International Registries. As far as promotional activities are concerned, the Ratification Task Force (RTF) – established by the Preparatory Commission and composed of its Co-Chairs, Luxembourg, the Rail Working Group, the designated Registrar, OTIF and UNIDROIT – continued its coordination work (mostly via teleconferences). The RTF, as well as the Rail Working Group and the UNIDROIT Secretariat have organised and participated in a number of workshops, seminars, governmental meetings and other events in various countries, including China, Hungary, India, Indonesia, Spain, Sweden, Ukraine, and the United Kingdom, as well at UNIDROIT's seat. More detailed information will be provided in 2018 Annual Report (see UNIDROIT 2019 – C.D. (98) 2) and in the dedicated Governing Council document (UNIDROIT 2019 – C.D. (98) 3).

9. During the 2020-2022 triennium, the Secretariat is planning to concentrate on achieving the goal of the Rail Protocol's entry into force. To this end, it intends to actively take part in the initiatives of the Preparatory Commission and the RTF, including participation in, and organisation of, seminars with representatives of the public and private sectors. It will also strengthen cooperation with other global and regional organisations in order to maximise efforts towards dissemination of information and early implementation. Preparatory work for the setting up of the definitive Supervisory Authority for the operation of the International Registry is also needed and envisaged.

10. In relation to the Space Protocol, the 2017-2019 triennium also saw an intense period of activity for UNIDROIT and the Preparatory Commission for the establishment of an International Registry under the Space Protocol, which had been set up pursuant to Resolution 1 of the Final Act of the Diplomatic Conference in Berlin (UNIDROIT 2012 – DC12 – DCME – SP – Doc. 45). At the Preparatory Commission's 5th session (Rome, 6 December 2017), the Commission's members agreed to constitute a Sub-Group to reassess industry participation for the promotion and development of the Space Protocol, and that Sub-Group met several times via teleconference throughout 2018.

UNIDROIT continued to be invited to, and to participate in, institutional, academic and industry events to present and discuss the functioning and the advantages of the Space Protocol, as detailed in the 2018 Annual Report (see UNIDROIT 2019 – C.D. (98) 2) and in the dedicated Governing Council document (see UNIDROIT 2019 – C.D. (98) 3). The issue of appointing a Supervisory Authority was also discussed within the International Telecommunication Union (ITU) pursuant to ITU's engagement in the work of the Preparatory Commission. The ITU, at its Plenipotentiary Conference held in Dubai from 29 October to 16 November 2018, resolved not to accept the role of Supervisory Authority under the Space Protocol at this stage, but left open the possibility for UNIDROIT to submit a further invitation to reconsider the issue at a future Plenipotentiary Conference, and instructed the ITU Secretary General to continue to participate in the work of the Preparatory Commission and its working groups and to report to the ITU Council accordingly.

11. During the 2020-2022 triennium, the Secretariat – while mindful of the need to prioritise the implementation of the Rail and the finalisation of the MAC Protocol – intends to promote the Space Protocol through the activity of the Preparatory Commission and the ad-hoc Sub-Group, as well as through participation in institutional events, seminars and conferences, in order to enhance awareness of the instrument and its potential benefits.

12. *The Governing Council is invited to recommend maintaining the implementation of the Rail and Space Protocols in the 2020-2022 Work Programme at its current high priority level.*

(b) Implementation of the Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment

13. At its 95th session (Rome, 18-20 May 2018), the Governing Council agreed to include the preparation of a Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment (the "MAC Protocol") in the 2017-2019 Work Programme as a high priority project (UNIDROIT 2016 – C.D. (95) 15).

14. At its 97th session (Rome, 2-4 May 2018), the Governing Council approved the convening of a Diplomatic Conference in 2019 to formally adopt the MAC Protocol. At the kind invitation of the Government of the Republic of South Africa, the Diplomatic Conference is to be held in Pretoria on 11-22 November 2019. It is expected that the MAC Protocol will be adopted at the Diplomatic Conference.

15. Article XXIV of the draft MAC Protocol provides that two elements are required for entry into force: (i) confirmation that the International Registry is fully operational and (ii) five ratifications by States. Achieving these two aims will be the focus of the MAC Protocol project between 2020 and 2022.

16. Consistent with past practice for Protocols to the Cape Town Convention, it is anticipated that a Preparatory Commission will be established by resolution of the Pretoria Diplomatic Conference to work towards the Protocol's entry into force. Membership in the Preparatory Commission is likely to be limited to States that have signed the MAC Protocol. The Preparatory Commission will act as a provisional Supervisory Authority, establishing its own rules of procedure, overseeing the appointment of a Registrar to operate the International Registry and developing the International Registry's regulations. The UNIDROIT Secretariat will have responsibility for administering the Preparatory Commission, including communicating with members, scheduling meetings and preparing documentation. The Preparatory Commission will also be a forum for assisting States in their ratification of the MAC Protocol.

17. In addition to administering the Preparatory Commission, the Secretariat intends to work closely with the MAC Working Group in a broader international promotional campaign to encourage States to ratify the Protocol. The Secretariat will undertake this promotional work in collaboration with

partner organisations such as the World Bank and UNCITRAL, liaising with established regional organisations such as the EU and the OAS, or utilising relevant fora such as APEC to maximise effectiveness.

18. Over the past three years, the MAC Protocol project has generated increasingly strong support from both negotiating States and the private sector. These high levels of support aided the instrument's rapid progression through the Committee of Governmental Experts in 2017. It is important that the MAC Protocol project maintains this momentum to facilitate the earliest possible entry into force following the Diplomatic Conference. To ensure that the project's momentum is maintained, the Governing Council is encouraged to assign the MAC Protocol project a priority that is sufficient to effectively complete the activities required for the treaty's entry into force.

19. *The Governing Council is invited to recommend work on the implementation of the MAC Protocol be included in the 2020-2022 Work Programme as a high priority activity.*

2. Private law and development: Preparation of an international guidance document on agricultural land investment contracts

20. UNIDROIT's work, in collaboration with FAO and IFAD, in the area of private law and agricultural development traces its origins to a Colloquium on "Promoting Investment in Agricultural Production: Private Law Aspects" (Rome, 8-10 November 2011). That Colloquium explored the nature of the contribution that UNIDROIT might make to global food security efforts, taking into account UNIDROIT's specific mandate and building upon its existing instruments (e.g. the UNIDROIT Principles of International Commercial Contracts), in synergy with the multilateral organisations working for agricultural development. The Colloquium focused on the following potential areas of work: (a) title to land; (b) contracts for investment in agricultural land; (c) legal structure of agricultural enterprises; (d) contract farming; and (e) the financing of agriculture.

21. Arising from that Colloquium, the UNIDROIT Governing Council, in consultation with FAO and IFAD, decided to develop as a matter of priority an instrument on contract farming. Following the preparation of the UNIDROIT /FAO/IFAD Legal Guide on Contract Farming and its adoption by the Governing Council at its 94th session (Rome, 6-8 May 2015), the Governing Council requested that the Secretariat study the feasibility of conducting work in the area of contracts for investment in agricultural land. At its 95th session (Rome, 18-20 May 2016), the Governing Council considered the Secretariat's feasibility study and took note of it, ultimately recommending that work on an international guidance document on agricultural land investment contracts be included in the 2017-2019 Work Programme with a high level of priority. The General Assembly then endorsed that recommendation at its 75th session (Rome, 1 December 2016).

22. Consistent with the high level of priority, the Working Group on Agricultural Land Investment Contracts was constituted – with experts, international Organisation representatives and stakeholders – in early 2017. Since then the Working Group has held four meetings (3-5 May 2017; 13-15 September 2017; 25-27 April 2018; and 9-11 October 2018), collectively resulting in a draft Legal Guide on Agricultural Land Investment Contracts which builds upon UNIDROIT's existing instruments and offers guidance on making such contracts and the contracting process consistent with international principles and standards (e.g. the UN Guiding Principles on Business and Human Rights; the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; and the CFS Principles for Responsible Investment in Agriculture and Food Systems). The Secretariat, moreover, has organised various related events in order to raise awareness about the Guide and to seek stakeholder input on the current draft.

23. As of this writing, it is anticipated that a substantially complete draft of the Guide will be ready for further review and input by the end of March 2019. Given the various important issues treated by it (e.g. land tenure, human rights, investment, sustainable development), the Secretariat

intends to conduct broad consultations to seek stakeholder input on that draft and to revise it accordingly in coordination with the Working Group prior to the Guide's finalisation and adoption. As currently contemplated, the Secretariat is planning to hold an open online consultation – as was done for the UNIDROIT -FAO-IFAD Legal Guide on Contract Farming – by which the draft will be made publicly available on UNIDROIT's website for review and submission of comments. Following the draft Guide's circulation, the Secretariat is also planning to hold regional consultation events around the world, in coordination with Working Group experts. Following that consultation, review and revision process, it is envisaged that the draft Guide will be ready for consideration and adoption by the UNIDROIT Governing Council at its 99th session to be held in May 2020.

24. *On the basis of the work completed by the Working Group and the ongoing consultations and revisions phase, the Governing Council is invited to recommend maintaining the preparation of an international guidance document on agricultural land investment contracts in the 2020-2022 Work Programme at its current high priority level.*

3. Transnational civil procedure: formulation of regional rules

25. In 2014, UNIDROIT and the European Law Institute (ELI) agreed to undertake a joint project for the development of regional rules of European civil procedure based on the American Law Institute (ALI)-UNIDROIT Principles of Transnational Civil Procedure, which were prepared by a joint ALI/UNIDROIT Working Group and adopted by both organisations in 2004. The project, authorised by the UNIDROIT General Assembly at its 72nd session (Rome, 5 December 2013), was developed within the framework of the newly established institutional cooperation between UNIDROIT and ELI. A joint Steering Committee was set up and the drafting was entrusted to a total of eight Working Groups (WGs) created by ELI, so as to provide coverage of most of the issues addressed in the ALI-UNIDROIT Principles and for which European rules were considered to be both useful and feasible ("Service of documents and due notice of proceedings", "Access to information and evidence", "Provisional and protective measures", "Lis pendens and res judicata", "Obligations of the parties and lawyers", "Costs", "Judgments", "Parties" and "Appeals"). The WGs started functioning in successive waves, finalising their drafts for inclusion in a consolidated text reviewed by an overarching "Structure Group", set up to provide substantive coordination. Bi-annual plenary meetings of the Steering Committee and active WG's Co-Reporters (and members), hosted by the two sponsoring organisations, were held to discuss draft texts. The Steering Committee further decided to invite to the annual plenary meetings a number of institutional observers, such as intergovernmental Organisations (in particular the Hague Conference on Private International Law (HCCH)), European institutions, professional associations and research centres as well as ALI). Finally, a list of advisers drawn both from academia and the legal profession, among which a number of members of the UNIDROIT Governing Council, was set up. More information on the development of the project until now and the activities undertaken by the Secretariat in connection to this topic can be found in earlier Governing Council documents (see UNIDROIT 2018 - C.D. (97) 8(a)) and will be further detailed in the 2018 Annual Report (UNIDROIT 2019 - C.D. (98) 2) and in the dedicated Governing Council document (UNIDROIT 2019 - C.D. (98) 6(a)).

26. At the joint project's most recent plenary meeting (Rome, 25-26 February 2019), the latest version of the consolidated draft set of rules and comments were fruitfully discussed. The discussion included: the updated structure of the draft; an introductory part containing the general rules; the revised output of five WGs, an additional set of rules on pleadings developed by the Structure Group; and near to finalised drafts of the remaining WGs. Taking into account the remaining tasks of producing a coordinated text of the black-letter rules and comments in English and French from both a substantive and linguistic point of view, and the need to fill in the remaining gaps, an expedited reasonable timeframe for completion of the instrument was agreed upon with project Reporters and with ELI. At its 98th session (8-10 May 2019), the Governing Council will receive the most advanced draft text available, with a clear indication of the parts where work is still needed. The Secretariat further expects that a finalised consolidated set of draft rules and related comments in English will be

submitted to the ELI Council for approval in early 2020, and simultaneously to Governing Council members in electronic form for information and comments. The finalised instrument, both in English and French, will be submitted to the Governing Council in May 2020 for approval. Thus, the Secretariat intends to continue its cooperation with ELI on this project during the 2020-2022 Work Programme – with a reduced budget in the first part of 2020 – by participating in the meetings of the Steering Committee and by supporting the work of the Structure Group towards finalisation of the instrument, including through managing the master copy of the consolidated draft and cooperating in the French translation. The Secretariat also intends to take part in promotional events co-organised with ELI.

27. *The Governing Council is invited to recommend retaining the Formulation of Regional Rules of Transnational civil procedure in the 2020-2022 Work Programme as a high priority activity until its final completion in May 2020.*

4. Transnational civil procedure: Principles of effective enforcement

28. On the basis of a preliminary feasibility study conducted by Professor Rolf Stürner, former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure, the Secretariat submitted a proposal to develop “Principles of effective enforcement” to the Governing Council at its 95th session (Rome, 18-20 May 2016), as a follow up to the work already accomplished in the field of civil procedure. The study emphasised that the right to effective enforcement represented an integral part of a fair and effective procedure. Moreover, the economic significance of effective enforcement mechanisms, both in decision-making and in contractual execution, could not be overemphasised, and international financial institutions as well as national governments increasingly considered them as a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. Notwithstanding this, however, while there were single international instruments containing specific rules in this area, there was so far no general guidance document at the international level addressing the most relevant issues and providing 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. The project was introduced in the 2017-2019 Work Programme with a low level of priority, pending the conclusion of the ELI-UNIDROIT project on regional rules (see Section 3 above).

29. During the 2017-2019 triennium, the Secretariat undertook limited research work on this topic, in view of its low priority status and the prioritisation of the ELI-UNIDROIT project. In particular, it produced basic 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).

30. 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”. Consideration of this proposal can be found under paragraph C.2 below.

31. *Given the interconnection between the subject matter of the existing project, already authorised by the General Assembly, and the new proposal, it is suggested that the Governing Council consider the desirability of furthering work in this area in the 2020-2022 Work Programme through the new proposal in cooperation with the World Bank (see below, para 63 and Annexe 3).*

5. 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

32. On 14 December 2015, the Secretariat received a communication from the Secretariat of UNCITRAL, inviting UNIDROIT and the Hague Conference on Private International Law (HCCH) to cooperate on a project for the “creation of a roadmap to the existing texts in the area of international sales law (sales contracts) prepared by each organisation, primarily the CISG, the UNIDROIT Principles, and the Hague Principles, and providing an assessment of interactions between the texts, their actual and potential use, application, and impact, all with the goal to facilitate promotion of their appropriate use, uniform interpretation, and adoption.” The topic was included in the 2017-2019 Work Programme with a high level of priority. The three cooperating Organisations set up a restricted joint group of experts who worked almost exclusively through email exchanges and teleconferences due to the lack of dedicated funding. An outline of the guidance document (“the Guide”) was agreed upon in 2017 (Introduction, Determination of the Law Applicable to International Commercial Contracts, Substantive Law of Sales, Recurring Legal Issues Arising in Connection with Sales Contracts, Guidance for Specific Business Sectors), and each chapter was assigned to an expert or a sub-group. The three Secretariats also agreed to consult relevant stakeholders, including associations of judges and practitioners, for comments, before seeking formal approval from their respective governing bodies. In this context, the concept of the Guide was presented at the International Bar Association’s Annual Conference (Rome, 8-12 October 2018).

33. A first non-consolidated draft, which was produced by the experts in February 2019, will be subject to substantive and linguistic revision as well as to further input by the experts – if feasible, through one face-to-face meeting – before circulation for external consultation. As far as the timeline for approval of the Guide is concerned, UNCITRAL has expressed its wish to have the Guide, following completion of consultations, approved by its organs by July 2020, in conjunction with the CISG’s 40th anniversary. The three Secretariats agreed on this timeline. Consistent with that timeline, the draft Guide is to be submitted to the Governing Council in May 2020 for approval.

34. *The Governing Council is invited to recommend maintaining the international sales law project in cooperation with UNCITRAL and the HCCH in the 2020-2022 Work Programme as a high priority activity until its completion in 2020.*

B. Low-priority legislative activities under the 2017-2019 Work Programme

1. Secured transactions: Preparation of Other Protocols to the Cape Town Convention

(a) *Ships and maritime transport equipment*

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

36. A Secretariat memorandum of August 1996 (UNIDROIT 1996 - Study LXXII – Doc. 29) summarised the two main reasons brought forward against the inclusion of security over ships. First, the preparation of international rules governing ships and shipping was described as an issue that was traditionally the preserve of specific international organisations with full participation of shipping circles. Second, it was feared that there might be conflicts with the then newly drafted International Convention on Maritime Liens and Mortgages adopted by the United Nations.⁴ The memorandum further noted, however, that the merits of the inclusion or exclusion of ships under UNIDROIT's envisioned system could best be assessed only once the rules of the Convention were finalised.

37. Following the Cape Town Convention's success, a preliminary study (UNIDROIT 2013 - C.D. (92) 5(c)/(d)) was prepared and submitted to the Governing Council for its 92nd session (Rome, 8-10 May 2013) regarding whether it would be feasible to extend the Cape Town Convention system to ships and maritime transport equipment. The study identified the main issues concerning proprietary security over ships and existing international instruments in this area and concluded that additional harmonisation efforts were warranted (UNIDROIT 2013 – C.D. (92) 5(c)/(d), para. 70). The study also concluded that a potential Protocol, with a narrow scope and adaptation to the peculiarities of maritime law, could avoid the pitfalls that had befallen prior international instruments, particularly regarding maritime liens (UNIDROIT 2013 - C.D. (92) 5(c)/(d), paras. 71, 102). It recommended further study to identify the areas of the law of proprietary security over ships where there was sufficient demand for an extension of the Cape Town Convention system (UNIDROIT 2013 - C.D. (92) 5(c)/(d), para. 103).

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

39. Subsequently, the Secretariat, upon an invitation from the African Shipowners Association, was represented at an African Maritime Conference in Lagos, Nigeria (28-30 September 2015), at which interest was expressed in a possible Maritime Protocol. It was expressed that such a Protocol could enhance African ship-owners access to foreign capital and reduce transactional costs. The Secretariat, moreover, requested any information that the African Shipowners Association and other

⁴ Adopted on 6 May 1993 at Geneva by the United Nations/International Maritime Organisation Conference of Plenipotentiaries held at Geneva from 19 April to 7 May 1993 (United Nations, *Treaty Series*, vol. 2276, p. 39).

stakeholders could provide going forward with respect to the questions of “whether market practice has found or could find alternative solutions in the absence of internationally harmonised rules and whether the extension of the Cape Town Convention system to ships could be a suitable response to the legal challenges in this respect” (UNIDROIT 2013 – A.G. (72) 4, paras. 22-23). On 5 May 2016, the former Secretary-General of UNIDROIT, Mr José Angelo Estrella Faria received a letter from the Secretary-General of the African Shipowners Association, Ms Funmi Folorunso, which briefly expressed the African Shipowners Association’s belief that the possible Protocol would be supportive of efforts to expand the African shipping fleet (UNIDROIT 2016 – C.D. (95) 13, Add. 4 rev., Annex 1).

40. For the Governing Council’s consideration of the 2017-2019 Work Programme at its 95th session (Rome, 18-20 May 2016), the Secretariat submitted a memorandum providing an update regarding (a) recent developments and (b) the preliminary study that it had reviewed in 2013 (see UNIDROIT 2016 – C.D. (95) 13, Add. 4 rev. (the updated study); UNIDROIT 2013 – C.D. (92) 5(c)/(d) (the preliminary study). Regarding recent developments, in addition to describing the interest from the African Shipowners Association, the memorandum described developments at the *Comité Maritime International* (CMI), in particular the establishment of an International Working Group on the topic of “Ship Financing Security Practices”⁵ in order to ascertain, *inter alia*, whether there is a need for a possible Maritime Protocol to the Cape Town Convention. Regarding the update to the preliminary study, the memorandum briefly examined: (a) the economic significance of consensual security over ships; (b) existing and projected international instruments regarding proprietary security over ships; (c) the proposal for an international instrument for the recognition of judicial sales of ships; (d) ships and maritime equipment as registrable assets; and (e) avoiding conflicts with other international instruments concerning enforcement issues (i.e. arrest and judicial sales). On the basis of that update, the Governing Council recommended that work on a possible Maritime Protocol be retained in the 2017-2019 Work Programme as a low priority project so that the Secretariat could continue to monitor developments in this field.

41. Consistent with the assigned level of priority, the Secretariat has continued to monitor the following developments: (a) the ongoing work by CMI’s International Working Group on “Ship Financing Security Practices”; (b) the continued interest of the African Shipowners Association in the possible preparation of a Protocol on matters specific to ships and maritime transport equipment; and (c) UNCITRAL’s preparation of an instrument on judicial sales of ships – for which CMI had developed a draft convention addressing recognition of foreign judicial sales of ships – in order to ensure that any potential friction between that possible instrument and a possible Maritime Protocol is avoided.⁶

42. Should the possible Maritime Protocol be retained in the 2020-2022 Work Programme as a low priority item, the Secretariat would continue to monitor developments in this regard and renew consultations with the International Maritime Organization, CMI, the African Shipowners Association and other stakeholders in order to study further the Protocol’s feasibility. In this way, the Governing Council would be in a position to determine, upon completion of the MAC Protocol or at a later time, whether to proceed with the preparation of a Maritime Protocol.

43. *The Governing Council is invited to recommend maintaining the preparation of a Protocol to the Cape Town Convention on matters specific to ships and maritime transport equipment in the 2020-2022 Work Programme as a low priority activity.*

⁵ CMI, Ship Financing Security Practices, <https://comitemaritime.org/work/ship-finance/> (last accessed 6 March 2019).

⁶ See Report of the United Nations Commission on International Trade Law, UNGA Doc. A/73/17 (51st session, 25 June – 13 July 2018), para. 252, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement>; see also UNIDROIT 2016 – C.D. (95) 13 Add. 4, paras. 12-14 (discussing potential areas of friction between the two possible instruments).

(b) Renewable Energy Equipment

44. At its 95th session (Rome, 18 - 20 May 2018), the Governing Council agreed to include the preparation of a Protocol to the Cape Town Convention on matters specific to renewable energy equipment (the "Renewable Energy Protocol") in the 2017-2019 Work Programme as a low priority project (UNIDROIT 2016 – C.D. (95) 15).

45. Consistent with that low priority, throughout 2017–2019 the Secretariat has conducted background research to further determine the viability of a future Protocol on renewable energy equipment.

46. Despite the record levels of investment in renewable energy over the past few years, it is clear that there continues to be a significant investment gap for renewable energy financing, especially in developing countries. It appears that the Cape Town Convention could provide a potential international solution to address some of the legal issues constraining the availability of finance for renewable energy projects. However, further consultations are required to determine whether the Cape Town Convention's international asset-based secured financing framework is the most appropriate vehicle to address these issues.

47. Should the Renewable Energy Protocol be retained in the 2020-2022 Work Programme, the Secretariat would begin consultations with the international Organisations involved in the renewable energy sector (e.g. United Nations Environment Programme (UNEP), the International Energy Agency (IEA), the International Renewable Energy Agency (IRENA) and the International Renewable Energy Alliance (REN Alliance)) to discuss the prospect of extending the Cape Town Convention to renewable energy generation equipment. Further consultations with the renewable energy industry, financiers and manufacturers of renewable energy equipment would also be required. It is anticipated that the proposed activities could be achieved while retaining the "low priority" status assigned to the Renewable Energy Protocol for the 2017–2019 triennium.

48. *The Governing Council is invited to consider whether to retain the preparation of a Protocol to the Cape Town Convention on matters specific to Renewable Energy Equipment on the Triennial Work Programme 2020-2022 as a low priority.*

2. International Commercial Contracts: Formulation of Principles of Reinsurance Contracts

49. In July 2015, the Secretariat was approached by a group of scholars and practicing lawyers – led by Professors Anton K. Schnyder and Helmut Heiss (University of Zurich, as "Lead Agency"), Martin Schauer (University of Vienna), and Manfred Wandt (University of Frankfurt) – who were examining the feasibility of formulating "Principles of Reinsurance Contract Law" (PRICL). The project's purpose was to formulate a "restatement" of existing global reinsurance law, which is largely embedded in international custom and usage, but is seldom the object of legislation. The project leaders expressed the view that the proposed principles presupposed the existence of adequate rules of general contract law. Rather than attempting to re-create such rules, the proposed new principles had to be drafted in such a way as to ensure consistency between the PRICL and the Unidroit Principles of International Commercial Contract (UPICC) and, as a result, Unidroit was invited to participate. The project was financially self-sufficient because it received support from the Swiss National Science Foundation, the German Research Foundation and the Austrian Research Promotion Fund. In addition to the project managers and the international research team, two advisory groups made up of representatives of the global insurance and reinsurance markets advised the research team. The project was included in the 2017-2019 Work Programme as a low priority activity. The Secretariat actively participated in all sessions of the Working Group, with the main purpose of ensuring that the PRICL were in line with the UPICC both substantively and systematically and to provide interpretation and examples of the UPICC's practical application.

50. The Working Group concluded the first part of its work at its last two meetings (Vienna, 16-17 January 2018; Frankfurt, 6-8 June 2018). The following topics were included: "Chapter I: General Part; Chapter II: Duties; Chapter III: Remedies; Chapter IV: Aggregation; Chapter V: Allocation". The relationship of the drafted Principles to the UPICC is expressly addressed and explained at the relevant points in the Comments to the Articles. Consistent with the announced timeline for the project, the Principles of Reinsurance Contract Law (black-letter rules and comments) will be presented to the Governing Council at its 98th session (Rome, 8-10 May 2019).

51. On 22 December 2018, the Secretariat received a communication from one of the project leaders that the Working Group had received funding from the Swiss National Science Foundation and the German Research Foundation, which would support the project for another triennium (1 July 2019 – 30 June 2022), with the understanding that there would be no further prolongation after this period. The topics scheduled to be addressed are: "Chapter VI: Back-to-back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; Chapter IX: Limitation periods". Due to the connections between a number of these topics and the UPICC, and the desirability that this second part of the PRICL continued to refer to the UPICC both in the general choice-of-law clause and in the specific black-letter rules and comments, the PRICL Working Group asked UNIDROIT to continue its involvement under the same conditions as before (i.e. in-kind contribution through participation of a representative in the biannual Working Group meetings). The communication is attached to this document (see Annex 5).

52. *The Governing Council is invited to consider the continuation of UNIDROIT's participation of UNIDROIT in the project during the 2020-2022 Work Programme as a low priority activity.*

3. Cultural Property: Private Art Collections

53. Consistent with this project's inclusion in the 2017-2019 Work Programme as a low priority activity, the Secretariat continued to seek to identify the private law aspects that fall within its mandate. UNIDROIT therefore co-organised with the International Society of Research and Cultural Heritage Law (ISCHAL), the Institut des Sciences Sociales du Politique (CNRS-ENS Cachan-Université Paris-Nanterre) and the Bonelli Erede law firm, a conference in Rome on 16 March 2017 and participated in a training workshop on ethics for collectors in the United Arab Emirates and other States of the Gulf organised by UNESCO and Interpol on 28 and 30 March 2017. Another international conference is planned on the subject in Poland in June 2019.

54. UNIDROIT is evaluating the project's potential and worked with students to develop some aspects of it (e.g. historical and legal perspectives, reports on private collections in some countries). The work on private art collection is closely linked with the promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and in particular to the diligence collectors should exercise when they acquire objects.

55. *The Governing Council is invited to consider whether to recommend retaining the project on Private Art Collections during the 2020-2022 Work Programme as a low priority activity.*

C. Proposed new legislative activities for the 2020-2022 Work Programme

56. By Note Verbale dated 18 June 2018, the Secretariat invited the Governments of Member States to submit proposals for inclusion in the 2020-2022 Work Programme, if possible no later than 30 November 2018. By letter, the Secretariat extended that invitation for submissions to various inter-governmental Organisations with which UNIDROIT has established ties of cooperation on 5 July 2018. In response to those invitations, the Secretariat has received proposals for topics for inclusion in the Work Programme from the Governments of the Czech Republic and the United States, as well as from the African Shipowners Association, the Bank of Italy, the Bureau International des Containers et du Transport Intermodal, the European Banking Institute, the PRICL Working Group (see above para 51), the World Bank, and the UNCITRAL Secretariat.

57. Beyond the general classification in terms of priority following the methodology described in paragraph 3 of the Introduction to this document, the sub-sections below reflect the Secretariat's view of the relative priority between the different proposals received: e.g., projects whose suggested level of priority is "high" are themselves hierarchically ranked by the order below. As stated in Section B above, work on a number of projects will be carried over to the new Work Programme, but likely finished in the initial stages of the next triennium: (i) the *Legal Guide on Agricultural Land Investment Contracts* and the *Formulation of Regional Rules of Transnational Civil Procedure* are to be presented for approval at the Governing Council's 99th session in May 2020; and (ii) the legislative activities for the *MAC Protocol* ought to be finalised within 2020 or a few months into 2021. Hence, new projects will be commenced, or their work intensified, as resources are freed up by the completion of those instruments carried over from the previous Programme. Moreover, two possible projects (ranked 4th and 5th) below are to some extent undefined and/or depend on other organisations. It is thus neither possible nor convenient to regard their current hierarchical status as firm.

58. *The Secretariat would like to invite the Governing Council to allow some flexibility to alter the order proposed below for those two projects depending on further consultations as well as on the coordination with the other organisations involved.*

1. A Model Law on Factoring

59. In December 2018, and in response to the call for proposals for the 2020-2022 Work Programme, the World Bank formally requested UNIDROIT to develop a Model Law on Factoring. According to the narrative of the proposal, the petition is based on the pressing needs of markets in which access to credit is limited, coupled with the fact that existing international rules and standards are largely focused on international or cross-border transactions and fail to provide sufficient guidance to States to develop functional domestic factoring frameworks. The World Bank states in its proposal that "[L]egal gaps in the treatment of accounts receivable financing, assignment and discounting, [...] continue to exist at the national and cross-border level, which negatively affect factoring and accounts receivable-based lending and create disincentives for lenders to develop and use such financing tools. [...] As a result, it becomes important that an internationally approved model law for factoring is developed and approved to provide needed guidance to states in developing their own legislation for factoring in both seller-centric and buyer centric models".⁷

60. Access to credit is a problem globally. In less developed economies, international financial institutions report the existence of a large credit gap,⁸ with millions of businesses struggling to reach adequate levels of financing in the market. But even in the more advanced markets, access to financial capital is difficult for micro, small and medium enterprises, which constitute more than 90% of businesses worldwide. In this context, factoring has become an extremely important legal tool:

⁷ See Annex 3.

⁸ See, for example, the World Bank Group's Finance Gap website: <https://www.smefinanceforum.org/data-sites/msme-finance-gap>.

capable of facilitating credit both to sellers/suppliers and buyers, it allows businesses to rationalise cash flows, reduce transaction costs and to improve the organisational structure of market participants. The importance of these potential benefits is higher, the less developed the jurisdiction. International financial institutions report the frequent lack of adequate, complete, modern laws on factoring, that cover standard and reverse factoring, supply chain financing or that incorporate e-invoice and other IT-based systems that reduce the transaction costs and help foster the formal economy. Stand-alone laws on factoring would also help complement a modern registry-based system of secured transactions.

61. In light of the above, the drafting of a model law on factoring would fill a pressing need in the existing legal infrastructure. Given the nature of the topic, and considering its previous experience in this field, UNIDROIT is best placed to undertake this project. It would complement and conceptually update the Ottawa Convention on International Factoring (1988), therefore drawing and capitalising on UNIDROIT's previous work. It would also be consistent with UNIDROIT's mandate to focus work in areas in which it has substantial expertise. Similarly, the model law would complement the UN Convention on the Assignment of Receivables in International Trade (2001), which has a predominant international component. The potential synergies between a model law on factoring and the existing conventions and best practice-based secured transactions instruments would seem self-evident. Access to credit, especially for the smaller businesses, is nowadays urgent. Making a modern model law on factoring available along the lines expressed would not only help create an international standard but also offer lawmakers across the globe the missing piece needed to complete a set of rules aimed at lowering the cost of credit, enhancing its availability and fostering economic growth. Based on the foregoing as well as on the input provided by international institutions working on the ground, the Secretariat would regard this activity as deserving of a high priority.

62. *Should the Governing Council consider recommending this topic for inclusion in the 2020-2022 Work Programme, the Secretariat would be pleased to consult further with the World Bank and other related organisations with a view to clarifying the scope of the proposal and conducting a preliminary study. The Secretariat invites the Governing Council to recommend work on this topic with high priority.*

2. Transnational Civil Procedure: principles of effective enforcement

63. Having a modern, state-of-the-art law does not guarantee positive results in practice. All too often, jurisdictions enact new pieces of legislation, modernise existing laws and regulations and yet fail to see substantive improvements in the market. Although many obstacles may stand in the way of adequate market legal framework, it is often at the level of implementation that the legal framework falls short. In part due to institutional shortcomings and to inadequately designed legal rules, enforcement of the legal framework is recurrently inefficient, slow and too prone to manipulation. Enforcement is a widespread problem as much as it is wide-encompassing: analysis from international and inter-governmental Organisations repeatedly report shortcomings at the enforcement level both in developing and even in fully developed economies, and the malfunction of the system ranges from inefficient execution of contracts and security rights to delayed judicial decisions at all jurisdictional levels. And enforcement is the litmus test of the entire system of private law: the contractual or judicial adjudication of rights is irrelevant to the extent it cannot be translated into real legal effects.

64. The importance of the topic is not fully mirrored by an abundance of relevant work in the international legal community. While thorough analysis exists and very valuable attempts at identifying best practices have been realised, the complexity of the topic and the different approach adopted by the disparate legal cultures has possibly stood in the way of a global international standard. Following the request for proposals for work to be conducted in the triennium 2020-2022 circulated by the Secretariat in June 2018, UNIDROIT has received a request by the World Bank to work towards a document that identifies the main problems existing in practice and codifies workable, practical solutions. The project would address both in-court and out-of-court procedures as well as

the different institutions and professionals involved, and would examine the challenges that creditors and debtors face during the enforcement process and the tools for overcoming those obstacles. Given the sensitivity of the topic, the Secretariat considers paramount that the instrument reflects consideration of the legal diversity in this area and contemplates the different approaches to enforcement existing in the disparate legal families. And yet, a clear set of recommendations that overcomes the said differences should be identified and spelt out.

65. As a global inter-governmental Organisation, UNIDROIT is well positioned to work on this topic. Given its nature as a global legal institution, it has traditionally been respectful with the tenets of disparate legal traditions and has the potential to extract the best of different systems, reaching a consensus that ensures adequate relief to all the parties involved in the enforcement process. It would also flow naturally from the activities in UNIDROIT's 2017-2019 Work Programme. Indeed, work on enforcement had already been included in that Programme, with low priority until the joint ELI-UNIDROIT work on the regional rules is finalised (see Sections A.3-4 above), and the finalisation of that joint work is foreseen for the beginning of 2020. A feasibility study on enforcement, moreover, was already drafted in 2017, and further work elaborating on the said study was conducted in 2018. Consideration could be given to prioritising the enforcement project as soon as the work with the ELI is completed.

66. *In light of the above, the Secretariat invites the Governing Council to consider recommending an increase in the level of priority of this topic in the 2020-2022 Work Programme, to reflect high priority. Should the Governing Council agree, the Secretariat would be pleased to consult further with potentially interested organisations and in particular with the World Bank, with a view to clarifying scope, methodology and other aspects of the proposal.*

3. The harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases

67. In response to the call for proposals for the 2020-2022 Work Programme, the Bank of Italy, on the one hand, and the European Banking Institute (EBI), a Frankfurt-based, pan-European think tank composed of highly-regarded European universities in the fields of banking and financial law, on the other hand, presented proposals to work on matters related to bank resolution and cross-border cooperation and collaboration.

68. The potential for enormous damage and the rapid and wide-encompassing risk of contagion of bank insolvencies were apparent outcomes of the recent global financial crisis. Central banks and global institutions designed to preserve financial stability managed to agree on a number of best practice solutions that had to be implemented both at national and international levels to stave off systemic risk. Clear examples of these measures are the Financial Stability Board's "Key Attributes of Effective Resolution Regimes for Financial Institutions" or, at a regional level, the European Union's Bank Recovery and Resolution Directive (Directive EU 2014/59). Together with legislative initiatives, institutional collaboration and cooperation was increased substantially. Today's legal and institutional framework is more apt to deal with financial crises than before 2008. And yet, the risk remains and action on the legal front is far from complete. While systemic institutions, either at a domestic or an international level (G-SIFIs), have been given much attention at a regulatory level, the reality is different for the smaller financial entities. Whereas there is consensus as to what constitutes adequate preventive and early-action mechanisms, certain areas of the treatment of actual bank insolvencies remain almost untouched, especially concerning liquidation.

69. The difficulties created by the existing gaps and its pressing relevance is shown by the requests received, almost simultaneously – but independently – by the Bank of Italy, which symbolises the concern of national central banks, and by EBI, a most acute observer of the international legal framework on banking and financial markets. The Secretariat considers that UNIDROIT is well positioned to undertake work that seeks to remedy such gaps. Work could consist of

the drafting of a *legal guide* that identifies best practices and solutions or, following a thorough assessment and further consultations, even of a *model law*. The content should aim to cover, at least, the following matters: (i) the most efficient institutional mechanism for bank liquidation (e.g. judicial system versus administrative model, or a hybrid system); (ii) the type of powers that ought to be assigned to the court/administrative authority; (iii) the entry gate to liquidation proceedings and its coordination with banking resolution systems; (iv) which rules of general corporate insolvency proceedings should apply to the liquidation of banks; and (v) the rules of coordination between national courts/administrative authorities in case of cross-border cases. Further, outside liquidation and from the standpoint of resolution measures, an international standard and coordination mechanisms could be envisaged concerning (a) the domestic system of priorities in insolvency and its relationship with bail-in rules (“no creditor worse off” principle and Total Loss Absorbing Capacity (TLAC) rules); (b) aspects of recognition of resolution measures; and (c) the mechanisms for recognition of contractual clauses that subject banks to resolution systems.

70. This type of work requires international expertise and a strong interdisciplinary component. The topic includes elements of banking law, international law, capital markets, contract law and secured transactions, areas which lay already at the core of UNIDROIT’S work. Due to its highly technical nature and its rapidly evolving content, the work would be best executed by a nimble inter-governmental Organisation that can complete the work quickly. The proponents of the work strengthen even further the case for UNIDROIT to undertake such work: a central bank and a highly relevant, fully independent academic think tank in the area of international banking law. Given the lack of previous work on this specific topic, and its enormous potential impact, this project might warrant not only inclusion in the 2020-2022 Work Programme, but also a high priority.

71. *The Secretariat invites the Governing Council to consider recommending this topic for inclusion in the 2020-2022 Work Programme with high priority. Should the Governing Council agree, the Secretariat would be pleased to consult further with the Bank of Italy and EBI with a view to clarifying the scope of the proposal and conducting a preliminary study.*

4. Artificial Intelligence/Smart Contracts/DLT: Joint work with UNCITRAL

72. In 2015, the UNIDROIT Secretariat received a proposal from the Ministry of Justice of Hungary to take into consideration the development of model laws in the domain of business informatics, in relation to platform services, software services, hardware services, database handling, and cloud computing. In November 2016, the Ministry of Industry and Trade of the Czech Republic sent the UNIDROIT Secretariat a proposal to include two main topics in the Work Programme: distributed ledger (or block chain) technology and inheritance of digital properties (see UNIDROIT 2017 – C.D. (96) 5, Annex II). This proposal was submitted to the attention of the General Assembly at its 75th session (Rome, 1 December 2016), and later to the Governing Council at its 96th session (Rome, 10-12 May 2016), during which the Governing Council concluded that the Secretariat should continue to follow developments in this regard (see UNIDROIT 2017 – C.D. (96) 15, para. 58). Upon receipt of the Secretariat’s Note Verbale of 18 June 2018 requesting proposals for the 2020-2022 Work Programme, the Czech Republic submitted a second proposal to UNIDROIT, reiterating prior proposals and expressing the need to assess what would be a fair distribution of rights and obligations in contracts for provision of intelligent products and services and to draft model rules for this specific type of a contract. Similarly, the Czech Republic presented a proposal to the UNCITRAL Secretariat requesting that UNCITRAL closely monitors developments relating to legal aspects of smart contracts and artificial intelligence and report back to the Commission on areas that might warrant uniform legal treatment, with a view to undertaking work in those fields if and when appropriate. Following proposal, at its 51st session (New York, 25 June-13 July 2018), the Commission decided that “[t]he Secretariat should compile information on legal issues related to the digital economy, including by organizing, within existing resources and *in cooperation with other organizations*, symposiums,

colloquiums and other expert meetings, and to report that information for its consideration at a future session.”⁹

73. In line with the joint proposal of the Czech Republic and having received a similar mandate from their governing bodies, UNIDROIT and UNCITRAL have agreed to explore the possibility of future joint work in this area. In order to identify the specific topics that could be, if feasible, the scope of the work, a joint, by-invitation only workshop is to be convened at UNIDROIT’s seat (Rome, 6-7 May 2019). The workshop will aim to gather leading experts, particularly in the fields of distributed ledger technology (DLT), smart contracts and areas of artificial Intelligence possibly linked with private law. For further information, the draft agenda for that workshop can be found in Annex 8 to this document.¹⁰ The purpose of the workshop is not to create yet another forum for discussion on these topics or to go into detailed expert analysis of specific items, but rather – and *exclusively* – to identify the most suitable topic(s) for future work by both Organisations. The workshop features a final panel addressing conclusions, which should form the basis for discussion at the Governing Council’s 98th session (Rome, 8-10 May 2019) and, at a later stage, at the General Assembly for final approval of a more defined and specific proposal to be included in the 2020-2022 Work Programme. The importance of the topic and its rapid development would appear to favour classifying the project as a high priority one. However, given the lack of determination of its scope, the Secretariat would consider it prudent to wait until the Governing Council’s 99th session in May 2020 to define the adequate level of priority.

74. *Following a further update by the Secretariat, the Governing Council would be asked to consider providing a general statement of support for the inclusion of this topic in the 2020-2022 Work Programme, tentatively and for the time being with a medium priority level, and to instruct the Secretariat to consult with UNCITRAL and with experts in order to further define the proposal’s scope. The Secretariat would then update the Governing Council regarding the proposal’s progress at its next session in May 2020.*

5. Private Law and Agricultural Development: Possible future areas of work

75. This line of work was introduced following the Colloquium held in Rome on 8-10 November 2011 on “Promoting Investment in Agricultural Production: Private Law Aspects” and has thus far resulted in the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and the current draft of the future Legal Guide on Agricultural Land Investment Contracts.¹¹ In addition to contract farming and agricultural land investment contracts, that Colloquium also contemplated possible work in the following areas: (a) title to land; (b) legal structure of agricultural enterprises; and (c) the financing of agriculture.¹²

76. With respect to these possible areas of work, the Governing Council authorised, at its 91st session (Rome, 7-9 May 2012), the Secretariat “to monitor – resources permitting – developments at the international and national level in respect of reform and modernisation of land tenure regimes[,] and to take note of possible future projects in respect of the legal structure of agricultural enterprises and of an international guidance document to agricultural financing, with a decision to be taken at a later date, in light of the work which will by then have been carried out by UNIDROIT in the field of agriculture.”¹³ The Governing Council further authorised the Secretariat “to promote –

⁹ See Report of the United Nations Commission on International Trade Law, UNGA Doc. A/73/17 (51st session, 25 June – 13 July 2018), para. 253, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/052/21/PDF/V1805221.pdf?OpenElement> (emphasis added).

¹⁰ The current agenda is still subject to possible changes, and only reflects topics, chairs and panellists. But the event will count on a larger list of experts invited to attend. All members of the Governing Council are also invited to actively participate in the workshop.

¹¹ See Section A.2 Section A.2 above regarding the ongoing preparation of an international guidance document on agricultural land investment contracts.

¹² The Acts of the Colloquium were published in the Uniform Law Review, XVII UNIF. L. REV. (2012-1/2).

¹³ UNIDROIT 2012 – C.D. (91)15, para. 99.

resources permitting – those UNIDROIT instruments in the area of finance that are of particular relevance to agricultural financing, in particular the UNIDROIT Conventions on International Financial Leasing and on International Factoring, as well as the UNIDROIT Model Law on Leasing.”¹⁴ In view of the priority given to the work on contract farming and agricultural land investment contracts, the Secretariat has not yet been able to carry out any significant work in these various areas.

77. In addition, by communication dated 3 December 2018, the United States Department of State transmitted to the Secretariat a document containing a proposal supporting future work in this area. In particular, the US proposal supports the “development of model legislative provisions” in the following areas: (a) recordation and recognition of legitimate occupancy and use rights; (b) community trust funds or similar mechanisms; and (c) valuation of communal land.¹⁵

78. In the Secretariat’s view, the possible areas of future work – based on the Colloquium and the US proposal – can collectively be summarised as follows:

- *Legal structure of agricultural enterprises*, for which preliminary research indicates that there seems to be a gap in existing guidance with respect to preparing for, establishing and implementing enterprises that are inclusive of smallholder farmers and legitimate tenure right holders (e.g. joint ventures and partnerships, including PPPs) and for which any work could interface well with the Legal Guide on Contract Farming and the future Legal Guide on Agricultural Land Investment Contracts;¹⁶
- *Title to land*, which could address reform and modernisation of land tenure regimes and appears to overlap with – and could potentially include – work on “recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land”;¹⁷
- *Agricultural finance*, which could seek to improve access to financing – a key impediment to efficiency and technology improvements in the agricultural sector – and could build upon UNIDROIT’S work on leasing and factoring, as well as the future MAC Protocol;
- *Community trust funds or similar mechanisms*, which could seek “to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole”¹⁸ and could build upon the future Legal Guide on

¹⁴ *Id.* para. 100.

¹⁵ See Annex 2 (stating that “[t]he current work UNIDROIT is pursuing on guidance on land investment contracts is an important next step. We believe this work usefully could be expanded through the development of model legislative provisions that states could use to reform their domestic laws to ameliorate some of the legal issues that arise in this area and to establish a level playing field in discussions between investors and local communities. Model provisions on several topics might be helpful: (a) recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land, to enable foreign investors to easily identify and compensate those who lack title but have existing use rights; (b) enabling the establishment of community trust funds or similar mechanisms to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole; and (c) valuation of communal land, to facilitate the calculation of compensation when land is held at the village level. This work could be among the most valuable contributions that UNIDROIT could make in terms of the potential impact on development.”).

¹⁶ The Secretariat recalls the “close relationship” between this proposed work on agricultural enterprises and the proposal presented by the Ministry of Justice of Hungary to the Governing Council at its 95th session (Rome, 18-20 May 2016) for its consideration in connection with the formulation of the 2017-2019 Work Programme. See UNIDROIT 2016 – C.D. (95) 13 rev., paras. 53, 84-85, and Annex 2 (setting out the Ministry of Justice of Hungary’s proposal “to analyse the contractual practice of co-operatives in order to clarify whether their appropriate functioning could be facilitated by an eventual international unification. In this respect, especially the supply co-operatives and sales co-operatives would have relevance.”).

¹⁷ See Annex 2.

¹⁸ *Id.*

Agricultural Land Investment Contracts’ brief treatment of such funds and mechanisms and provide more detailed guidance; and

- *Valuation of communal land*, which could seek “to facilitate the calculation of compensation when land is held at the village level”.¹⁹

79. Consistent with what was done following the adoption of the Legal Guide on Contract Farming,²⁰ the Secretariat suggests that the Governing Council instruct the Secretariat to conduct – as a medium priority item in the 2020-2022 Work Programme – a stocktaking exercise and feasibility study with respect to one or two of these areas in order to determine whether UNIDROIT could make a useful contribution. That study could then be submitted to the Governing Council for consideration at its 99th session in May 2020 in order to determine the next step in the work on private law and agricultural development and its relative priority.

80. *The Governing Council is invited to consider adding one or two of the identified areas of work to the 2020-2022 Work Programme at a medium or low priority level and to instruct the Secretariat, as an initial step in this regard, to conduct a stocktaking exercise and feasibility study.*

6. Guide for enactment of the UNIDROIT Model Law on Leasing

81. On 13 November 2008, a joint session of the UNIDROIT General Assembly and an *ad hoc* Committee of Governmental Experts adopted the Model Law on Leasing. In May 2010, the Governing Council approved the publication of the Official Commentary to the Model Law on Leasing. The Model Law and its explanatory commentary have served their purpose well, influencing the legislation of several nations and assisting the World Bank and other international organisations in their mandate to modernise the legal framework for credit infrastructure. However, by the time the new Work Programme starts, ten years will have passed since that Model Law’s adoption. In that time, other relevant international texts have been approved (i.e., UNCITRAL’s Model Law on Secured Transactions), and substantial experience has accumulated in economies across the globe. In light of these developments, the World Bank – which participated very actively in the drafting of the 2008 Model Law – has formally requested that UNIDROIT consider the drafting of a detailed Guide to Enactment, which would serve the purpose of providing further guidance to domestic legislators in the implementation of their leasing system, helps to ensure a streamlined and more uniform adoption of that Law, and aligns the understanding of the instrument with the most recent developments of the system of secured transactions. Despite its practical importance, given the limited resources available, the Secretariat would suggest that this project be recommended by the Governing Council, but with a low priority level.

82. *Should the Governing Council consider recommending this topic for inclusion in the 2020-2022 Work Programme, the Secretariat would be pleased to consult further with the World Bank with a view to clarifying the scope of the proposal and conducting a preliminary study.*

7. International Commercial Contracts: Formulation of general principles of reinsurance contracts

83. As stated above (paras 51 and 56), the PRICL (Principles of Reinsurance Contract Law), drafted by a Working Group of international academics and other experts led by three high-level European Universities with participation of UNIDROIT, has concluded the first part of its work. This first part will be presented to the Governing Council during its 98th session (Rome, 8-10 May 2019) and further discussed in a panel on the last day of the Governing Council’s session. On 22 December

¹⁹ *Id.*

²⁰ See UNIDROIT 2015 – C.D. (94) 13, paras. 65-68 (reflecting the Governing Council’s instruction for the Secretariat to undertake a stocktaking exercise and feasibility study on land investment contracts, in order to decide whether UNIDROIT’s particular expertise would be of additional benefit in this field).

2018, the Secretariat received a communication from one of the project leaders stating that the Working Group had received additional funding from the Swiss National Science Foundation and the German Research Foundation to enhance the scope and run the project for another triennium (1 July 2019–30 June 2022), with the understanding that there would be no further prolongation after this period. The topics to be dealt with in this extended period of time would be: “Chapter VI: Back-to-back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; Chapter IX: Limitation periods”. Due to the connections between a number of these topics and the UPICC, and the desirability that this second part of the PRICL continues to refer to the UPICC both in the general choice-of-law clause and in the specific black-letter rules and comments, the PRICL Working Group asked UNIDROIT to continue its involvement under the same conditions as before (i.e. in-kind contribution through participation of a representative in the biannual Working Group meetings). The communication is attached to this document (see Annex 5). As with the previous part of the project, the Secretariat would encourage the inclusion of this project in the 2020-2022 Work Programme with a low priority status.

84. *Should the Governing Council consider recommending this topic for inclusion in the 2020-2022 Work Programme, the Secretariat would be pleased to continue participating in the PRICL Working Group and to consult further with participants on the nature of UNIDROIT’s contribution and institutional support to that initiative.*

8. A Protocol to the Cape Town Convention on Containers

85. In the period generally provided to receive proposals for the 2020-2022 Work Programme, the Secretariat received an informal expression of interest on the possible drafting of a new Protocol to the Cape Town Convention for intermodal containers. According to that expression of interest, the Bureau International des Containers et du Transport Intermodal (BIC), an international organisation pertaining to the industry, and a number of relevant financial institutions active in the sector have an interest in the development of such a Protocol. The industry would seem to support a move towards an internationally recognised register of not only security interests but also title interests and possibly certain types of lease interests. The Secretariat required a formal proposal from that organisation in order for it to be considered for inclusion in the Work Programme. The formal request from the BIC has arrived on 12th March 2019. In the said proposal, the BIC proposes to open a dialogue with UNIDROIT to explore the possibility of working towards the drafting of a Protocol. In Annex 7, a more detailed explanation of the reasons for the proposal are spelt out. At this stage, with on-going work for the MAC Protocol to be carried over to the next Work Programme, and with a number of other highly developed proposals for consideration, the Secretariat would regard this project as worthy of a low priority level.

86. *Should the Governing Council consider recommending this topic for inclusion in the 2020-2022 Work Programme, the Secretariat would be pleased to consult further with the BIC and other relevant experts and stakeholders in the field.*

9. International Civil Procedure in Latin America

87. In a letter dated 18 April 2019 (see Annex 9 below), the Department of International Law of the Organisation of American States (OAS) formally expresses its interest in exploring joint work with UNIDROIT concerning international civil procedure. Drawing from informal exchanges and conversations, and consistently with the limited geographical mandate of the proponent, the work would be limited to an instrument -possibly a Guide- that would focus on the Latin American jurisdictions. This type of work would be similar to previous work conducted by UNIDROIT together with the American Law Institute and the current joint work with the European Law Institute. The generality of the proposal does not allow for any detailed consideration at this stage.

88. *The Secretariat would ask the Governing Council to consider recommending the General Assembly to include the possibility of future work on the topic, subject to further consultation with the OAS, a feasibility analysis and availability of resources.*

D. Implementation and promotion of UNIDROIT instruments

1. Depositary functions

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

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

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

2. Promotion of UNIDROIT instruments

92. The promotion of all UNIDROIT instruments should be regarded as an indispensable function and, as such, as high priority activities for the purpose of allocation of human and financial resources. While the Secretariat's activities should ideally cover all instruments prepared and adopted by the Institute, the Secretariat is compelled, for lack of resources, to prioritise its promotion activities and to rely heavily on partnerships with interested organisations. The following paragraphs suggest a few priority areas for the triennium 2020-2022.

93. The Secretariat anticipates that two instruments will be submitted for adoption in the year 2020, namely the ELI- UNIDROIT Regional (European) Rules of Civil Procedure and the Legal Guide on Agricultural Land Investment Contracts. The Secretariat intends to devise and submit the relevant promotion strategy for the Governing Council's 99th session (May 2020), which would be implemented subject to their adoption.

(a) UNIDROIT Principles of International Commercial Contracts

94. In 2016, the fourth edition of the Principles of International Commercial Contracts was approved by the Governing Council. Since then, the Secretariat has undertaken a host of promotional activities to disseminate knowledge on the Principles and to enhance their worldwide practical application. These efforts, coupled with the activities undertaken by the members of the Governing Council and former members of the Working Group, were instrumental in raising awareness on the variety of uses of the Principles, particularly as a tool in the drafting and interpretation of contracts and in dispute resolution. Moreover, there are on-going projects in cooperation with other organisations in this regard. Thus, the Secretariat anticipates retaining the promotion of the Principles as a priority area for the next triennial Work Programme.

95. Subject to the Governing Council's views, in the 2020-2022 Work Programme, the Secretariat will continue to cooperate with the International Bar Association and will otherwise promote the Principles through cooperation with other organisations, conferences and lectures, similar to what was done in the previous triennium.

(b) UNIDROIT /FAO/IFAD Legal Guide on Contract Farming

96. Co-authored by UNIDROIT, the Food and Agriculture Organisation of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming was published in 2015 in English and French, and in 2017 in Spanish. Under an implementation programme financed by IFAD, and relying on UNIDROIT's cooperation, in 2016-2017, FAO prepared outreach materials, knowledge and implementation tools based on the Legal Guide, to be used in local capacity building and development programmes in diverse contract farming contexts.

97. As part of the promotion plan of the Legal Guide, which was focused in particular on legal aspects, UNIDROIT launched a Forum intended as a platform to promote sharing and dissemination of knowledge, as well as projects pursued individually by partners and members, or on the basis of joint initiatives, in order to strengthen the legal environment for contract farming operations. Actions in the triennium 2017-2019 included the translation of the Legal Guide in Portuguese and Chinese as a basis for the preparation of dissemination tools, as well as academic or regulatory projects developed in South American countries. Over the triennial period 2020-2022, subject to the Governing Council's views, the UNIDROIT Secretariat intends to develop a global project of preparation of Legal Guides under a country approach, which will significantly increase the operational impact of the Legal Guide for users in domestic environments.

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

98. The UNIDROIT Secretariat is often asked to offer technical assistance in connection with the 1995 Convention and in respect of the 2011/2011 UNESCO- UNIDROIT Model Provisions on State ownership of undiscovered cultural objects, owing, among other things, to the upsurge in trafficking in cultural objects, the adoption by the UN Security Council and General Assembly of various resolutions and the legislative activity of the European Commission in this field. UNIDROIT is one of the competent inter-governmental Organisations called upon to facilitate the implementation of such resolutions, also within the UN's Informal Task Force to promote ratification of the 1995 Convention.

99. On 19 January 2019, the European Parliament adopted a resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars. In this report, the European Parliament asks Member States to accede to the 1995 Convention and the European Commission, in its future work, to take into account or incorporate the principles set out in the 1995 Convention on issues relating to rules on provenance research, documentary records or transaction registry, cooperation with third countries, and to establish fruitful partnerships favouring the return of cultural property. UNIDROIT has been approached to collaborate.

100. UNIDROIT's excellent collaborative links with other organisations active in the field of cultural property have, in recent years, done much to compensate for the lack of funds. UNESCO regularly involves UNIDROIT to attend national and regional capacity building seminars on the fight against illicit traffic in cultural property, and important meetings are already planned for the coming months (e.g. regional and national seminars organised at the specific request of countries in order to improve their understanding of the 1970 UNESCO and 1995 UNIDROIT Conventions in view of accession).

101. Beside UNESCO, at the institutional level and subject to the Governing Council's views, UNIDROIT intends to pursue its close collaboration with several other organisations in this field, often becoming a member of ongoing expert groups, such as the European Union, the Council of Europe and its Parliamentary Assembly, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Customs Organisation (WCO), the International Council of Museums (ICOM) and the

International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) in Rome and in Sharjah, United Arab Emirates.

102. The Academic Project on the 1995 Convention (UCAP) created in 2018 is attracting institutional and individual partners to develop projects and raise awareness on UNIDROIT's instruments in this field (e.g. among universities, the judiciary, practising lawyers etc.). UCAP, together with the UN Informal Task Force, have been acknowledged by the UN General Assembly in its Resolution 73/130 on the "Return or restitution of cultural property to the countries of origin" adopted in December 2018.

(d) UNIDROIT instruments on capital markets

103. With the Governing Council's adoption of the UNIDROIT Legislative Guide on Intermediated Securities at its 96th session (Rome, 10-12 May 2017), UNIDROIT completed the third instrument resulting from its work on transactions on transnational and connected capital markets, which has sought to promote legal certainty and sustainable growth in this very significant area of economic activity. The Legislative Guide is intended to promote the first instrument – the UNIDROIT Convention on Substantive Rules for Intermediated Securities, which was adopted at the final session of the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities (Geneva, 5-9 October 2009) – by summarising the Convention's key principles and rules and by offering guidance on choices to be made and matters to be addressed or clarified in establishing an intermediated securities holding system or evaluating an existing one. The Legislative Guide also complements and promotes the second instrument – the UNIDROIT Principles on the Operation of Close-Out Netting Provisions, which were adopted by the UNIDROIT Governing Council at its 92nd session (Rome, 8-10 May 2013) – by offering guidance consistent with those Principles and incorporating references to them.

104. Subject to the Governing Council's views, the Secretariat intends to continue its efforts to support, in a cost-effective manner, the promotion and implementation of the Legislative Guide and its fellow capital markets instruments. Such efforts include, *inter alia*: building upon and promoting these instruments and their principles and rules in the context of any related future work (see, e.g., paragraph 81 et seq. regarding distributed ledger technologies); providing assistance to States and stakeholders that express interest in these instruments; participating in conferences and events concerning capital markets law; and continuing to collect and update the supplementary resources made available on UNIDROIT's webpage for the Legislative Guide (i.e. model examples and bibliographic references).

105. *The Governing Council is invited to recommend retaining the promotion of the abovementioned instruments as a high priority activity on the 2020-2022 Work Programme.*

E. Non-legislative activities

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

107. With these objectives in mind and subject to the Governing Council's views, the following paragraphs indicate the priorities and policy guidelines proposed by the Secretariat for the Institute's non-legislative activities in the triennium 2020-2022.

1. UNIDROIT Library and Depository Libraries

(a) Cooperation

108. The Institute's cooperation strategy with other Roman and non-Roman libraries should be further pursued and intensified. A first inter-library meeting took place at UNIDROIT in April 2011, organised together with the David Lubin Memorial Library of the Food and Agriculture Organization of the United Nations (FAO). Numerous meetings have been organised in recent years with the participants of the library network (e.g. FAO, Biblioteca Hertziana, Biblioteca Vaticana, Académie Française, Beniculturali, Università La Sapienza, ILO, ICCROM, ISS, Banca d'Italia, British School of Rome, Pontificia Università S. Tommaso D'Aquino, Biblioteca della Corte Costituzionale) The idea is to continue a series of regular library meetings in order to strengthen inter-library cooperation and networking and to improve library services at a time when almost all institutions are economising with respect to library expenses. The proposal to establish such a Roman library network and to meet regularly has met with great interest from all participants, and this very fruitful collaboration is to be intensified in the coming years, also with regard to new library partnerships.

(b) Resource sharing

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

(c) Catalogue enrichment, databases, digitisation

(i) Catalogue enrichment

110. In addition to intensifying cooperation with other libraries, in the 2020-2022 triennium, particular attention will be given to enriching the electronic catalogue, in expanding the availability of electronic databases, and in the digitisation of parts of the Library's collection. In the age of e-books, Internet bookstores and similar services, the demands on library catalogues have fundamentally changed. Users have come to expect, in addition to the bibliographic information, further additional information as orientation and guidance in the selection of literature. With the so-called catalogue enrichment, libraries can offer their users crucial added value: direct and free access to additional information about titles found, paired with additional research started by the full text search in the table of contents.

(ii) *Databases*

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

(iii) *Digitisation*

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

113. Therefore, in the 2020-2022 triennium, the UNIDROIT Library intends to continue with the challenging project of the digitisation of library materials, in particular with the ongoing digitisation of monographs of the "Gorla collection". The "Gorla Collection" was donated to the UNIDROIT Library in 1987 by Professor Gino Gorla, formerly Professor of Comparative Law at the University of Rome "La Sapienza". It is a collection of rare, antique books, which served as a support to his research on case law in Europe from the 17th to the early part of the 19th Century. It contains over 550 titles comprising about 900 volumes and including treatises, commentaries, collections of *decisiones*, *resolutiones*, *consilia*, *responsa*, *allegationes* and *controversiae forenses*, as well as a number of books dealing specifically with commercial law and maritime law.

114. Thanks to the advanced technical equipment that has been available to the UNIDROIT Library since 2018 (i.e. book scanner, special software for processing digital objects, etc.), the digitisation can be carried out directly in the UNIDROIT Library.

(d) Acquisition Policy

115. The fourth priority action for the library in the triennium 2020-2022 will be the development of a more sharply focused acquisition policy. In 2017, the UNIDROIT Library's holdings increased by 1118 titles, of which 642 were purchased outright, 147 were obtained on an exchange basis, while 329 further titles were received as gifts. The expansion of the UNIDROIT Library's holdings has been hampered by steady increases in the price of publications and a chronic lack of resources.

2. Information resources and policy

116. In the course of 2012, the Secretariat initiated a policy of coordinating UNIDROIT's different sources of information, which before then had been managed by different members of staff, with a view to establishing more coherent and cost-effective management.

117. The sources of information on UNIDROIT materials and work have a central role to play in the Institute's promotion. Not surprisingly, the electronic tools currently available to the Secretariat have a capacity for widespread use that far exceeds the impact of traditional paper-based tools, even if the paper-based publications are still central to the promotion of the Institute's work and mandate. In other words, the paper-based and the electronic resources complement each other. To some extent, they also compensate for the meagre resources allocated to the promotion of UNIDROIT's instruments. In consideration of the importance of the sources of information in promoting the Organisation and

its work, it is submitted that the collective project “Information Resources and Policy” should be given high priority.

(a) Uniform Law Review and other publications

118. In June 2012, an agreement was signed with Oxford University Press (OUP), under which OUP took over the publication of the *Uniform Law Review* starting with volume XVIII (2013). The initial agreement was for a period of five years, which was tacitly renewed in 2018. The Review is available in three formats: print only, online only, or both print and online. Contributions submitted to the Review for publication are subject to peer review, meaning that they are reviewed by experts in the field before they are accepted. The yearly Publisher’s Reports indicate that while subscriptions to the paper copy of the Review have decreased, subscriptions to the electronic version – in particular when the Review is part of the collection subscriptions offered by OUP – have increased steadily. Importantly, the electronic version has extensive world-wide distribution; in fact, more than 800 recipients in developing countries benefit from free or discounted subscriptions. Interest in the Review from scholars in developing countries can be evinced from the number of articles submitted for publication by scholars from above all Africa and the Middle East. Subjects of interest in this context include in particular the UNIDROIT Principles of International Commercial Contracts and the Cape Town Convention system. Information on UNIDROIT instruments and projects – thanks to the Uniform Law Review – therefore spreads world-wide, far beyond what the resources available to the Institute for the promotion of its instruments would allow.

119. Monographs published by UNIDROIT are linked to, or the product of, specific projects of the Institute. Thus, 2019 will see the publication of the fourth edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, and the third edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Luxembourg Protocol thereto on Matters specific to Railway Rolling Stock*. The first edition of the *Official Commentary on the Convention and Space Protocol* was published in 2013, while the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Mining, Agricultural and Construction Equipment* will be published in 2020. All four Official Commentaries are authored by Professor Sir Roy Goode.

120. In 2017 the *Principles of International Commercial Contracts 2016*, the fourth edition of the Principles, were published in English and French. The Spanish edition was published in 2018 and will be published in special editions in 2019 in Mexico, Paraguay, Colombia and Chile, on the basis of agreements concluded with the publishers thanks to the good offices of Messrs Sánchez Cordero, Moreno Rodríguez, Jorge Oviedo Albán and Álvaro Rodrigo Vidal Olivares respectively. Translations into Chinese and Korean are expected in 2019, while Romanian and Russian translations were published in 2018. The importance of the Principles and its increased use is evidenced also by the cases decided, both by domestic courts and arbitral tribunals, and reported on in the UNILEX database. UNILEX is regularly fed with case reports submitted by correspondents. It should also be noted that to ensure that it can be consulted by users world-wide, that database’s software was completely updated in 2018.

121. In 2015 the UNIDROIT/FAO/IFAD *Legal Guide on Contract Farming* was published in both English and French and the Spanish version appeared in 2017. A Chinese translation was published by Peking University Press and a Portuguese translation was published by Editora Universidade de Viçosa, both in 2018. Earlier instruments include the *UNIDROIT Guide to International Master Franchise Arrangements* (1998; 2^{ed.} 2007). It should also be noted that in 2020 the publication of the *Legal Guide on Agricultural Land Investment Contracts* is anticipated, with the publication of the *ELI/UNIDROIT Rules of European Civil Procedure* expected soon after they have been adopted by both organisations, probably in late 2020 or early 2021.

122. In 2013 the Secretariat started publishing UNIDROIT instruments (previously only available for download and print in A4 format) in booklet form to serve as hand-outs at conferences and meetings and which can be mailed wherever necessary at a very limited cost. Since 2013, all the most recent instruments have been printed in booklet form and are reprinted as necessary.

123. A major effort, which enhanced the importance of both the work of UNIDROIT and its mandate, was the preparation of the Essays in the honour of a long-standing collaborator of the Institute, Professor Michael Joachim Bonell, coordinator of the Working Group for the Preparation of Principles of International Commercial Contracts, celebrating his 70th birthday. Over 150 academics and other experts contributed to the publication.²¹ Most articles deal with uniform or comparative law subjects, often UNIDROIT instruments and in particular the Principles of International Commercial Contracts. Although recognised as a work of high quality and interesting contributions, the meagre resources at the disposal of the Secretariat for the promotion of the two volumes comprising this publication have limited its dissemination. Despite this, the Essays have been sold as far afield as Japan and Argentina.

(b) Website

124. The UNIDROIT website was first created in the 1990s. In 2012, the Secretariat started work on the creation of a new, more user-friendly website, using up-to-date technology developed since the creation of the original website. The new website became operative on 10 January 2014. The operation of the website has continually been under review and modified or integrated as its utilisation made the necessity to enhance certain features and to add others apparent.

125. However, the time has come to again review and update the website completely: the fast development of technology and the need to make the website ever more attractive, have prompted the Secretariat to start the preparation of an up-to-date website. The possibilities offered by new technology are being explored, bearing in mind that the architecture of the website and its aesthetic appearance must always serve its contents. As yet, it is not possible to fix a time for the start of the operation of this new website, as it must be created using due care, for it to fully assist in promoting knowledge of the Institute and its work. The importance of the website cannot be over-stated. The Secretariat is convinced that the website enhances the UNIDROIT's visibility and constitutes a most effective tool to disseminate information, which must be kept up-to-date both as to technology and contents.

(c) Social Media

126. The purpose of the Institute's social media program is to promote UNIDROIT's work to a wider audience in an innovative, efficient and cost-effective manner.

127. UNIDROIT launched its social media program during the Institute's 90th anniversary celebrations in April 2016. UNIDROIT currently maintains accounts on LinkedIn (2016), Facebook (2016), Twitter (2018) and Youtube (relaunched in 2019). Maintaining a presence on LinkedIn allows the Institute to inform practitioners and legal professionals about its projects, whereas Facebook promotes UNIDROIT to a younger generation of lawyers, academics and students. UNIDROIT expanded its presence on social media by establishing a Twitter profile in February 2018, to allow UNIDROIT to reach an additional audience in the promotion of the Institute. Twitter also allows researchers, visiting professionals, interns and other stakeholders to interact with UNIDROIT in a more dynamic manner. At the start of 2019 UNIDROIT relaunched its presence on Youtube in order to promote videos of expert presentations made at the Institute by international legal experts and visiting scholars.

128. The three key performance indicators for the Institute's social media program are (i) number of followers, (ii) the "reach" of the social media program (the total number of people that see UNIDROIT social media content) and (iii) the number of referrals to the UNIDROIT website. Since its launch, the

²¹ See Eppur si muove: *The age of Uniform Law – Essays in honour of Michael Joachim Bonell, to celebrate his 70th birthday*, UNIDROIT (edit.), 2016.

UNIDROIT social media program has exceeded expectations on all three key performance indicators. As of 8 March 2019, the Institute had 3,646 followers on LinkedIn, 2,768 followers on Facebook, and 337 followers on Twitter who receive several weekly updates on UNIDROIT activities. These figures represent an annual growth rate of 98% for LinkedIn followers and 43% for Facebook followers. In relation to the Institute's "reach" on social media, UNIDROIT content was delivered to 182,894 people on Facebook, while it was displayed on news feeds 263,327 times on LinkedIn, and around 198,000 times on Twitter over the past twelve months. In 2018, social media referred 3367 people to the UNIDROIT website, making it the largest source of referrals for the website outside of search engines. 68% of these referrals came from Facebook, highlighting the continued importance of UNIDROIT's presence on that particular platform.

129. UNIDROIT has achieved these outcomes by adopting a social media strategy based upon (i) frequent posts (ii) content tailored to the audience on relevant social media platform (iii) diverse content and (iv) partnerships with relevant agencies. UNIDROIT participates in a Social Media roundtable organised by the US Mission to the UN Agencies in Rome which brings together the social media officers of the largest Rome-based international agencies to share knowledge and coordinate promotional campaigns. This has allowed UNIDROIT to benefit from the expertise and experience of larger organisations which have entire teams dedicated to digital communication.

130. None of UNIDROIT's social media accounts require subscription fees. Unidroit utilises a program called SocialChamp to simultaneously post content to its different platforms, which significantly lowers the amount of time required to maintain UNIDROIT's social media accounts. Through SocialChamp posts can be scheduled in advance, which allows UNIDROIT to promote content at strategic times to ensure maximum engagement.

131. Governing Council members are invited to follow UNIDROIT on Facebook, LinkedIn, Twitter and Youtube.

3. Internships and scholarships

132. The Library welcomes visiting scholars and researchers from all over the world. A Scholarship Programme relying on extra-budgetary contributions (and until 2014 also on a modest contribution from the general budget) has enabled 15 and 20 researchers every year since 1992 to carry out individual research in the UNIDROIT Library, for average periods of two months. The UNIDROIT Secretariat now intends to develop "research chairs" funded by interested donors, and to devote priority attention to cooperation schemes with national universities or research centres, in line with the objectives of these various institutions, as a basis for joint research projects and research stays at UNIDROIT for academics and postgraduate students. The Secretariat would like to revive the Institute as a research centre. Thus, researchers are invited to present the conclusions of their work in open workshops held at the Library. Further, prestigious international scholars are invited to present their work to the UNIDROIT community. The intention of the Secretariat is to enhance this part of the Institute's work, making the Institute a research hub in the centre of Rome.

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

134. *The Governing Council is invited to recommend retaining the non-legislative activities of the Institute at their current levels of priority on the 2020-2022 Work Programme.*

Conclusion

135. *The Secretariat would invite the Council to consider the information provided in this document, its Annexes and Addenda, as well as in the related documents, and to make recommendations to the General Assembly on the topics and activities to be included in the 2020-2022 Work Programme, including their relative level of priority.*

ANNEX 1 – PROPOSAL OF THE CZECH REPUBLIC

Proposal received via e-mail from the Ministry of Industry and Trade of the Czech Republic on
30 November 2018



Proposal on Artificial Intelligence

CZ would like to bring to the attention of the member states of UNIDROIT the possibility to consider for further study the field of Artificial Intelligence with the aim of possible introduction of international legal framework that would benefit development in this field. We consider UNIDROIT to be the right place to start the discussion as any intended work would include broad range of issues, especially liability issues, where an international solution would be the most suitable and enabling for the industry while at the same time providing sufficient protection to users of AI. There is a proven track of excellence within UNIDROIT in providing international solutions in a variety of fields and in this respect we would like to invite you to consider UNIDROIT's engagement in this sector.

Artificial Intelligence

The phenomenon of artificial intelligence has been discussed in law and legal science already since 1960s. Since 2010s the interest of lawyers in AI has increased rapidly. The most probable reason for this shift lies not only in growing use of AI in everyday life but especially in specific legal challenges posed by the technology.

There is a number of definitions of AI. None of them, however, has been universally accepted. Generally speaking, AI is a science of developing systems capable of solving problems and performing tasks by means of simulating intellectual processes. AI can be taught to solve a problem but it can also study the problem and learn how to solve it by itself without human intervention. Different systems can reach different levels of autonomy and can act independently. Moreover, their functioning and its outcomes are unpredictable as those systems act as "black boxes".

Nowadays, artificial intelligence plays an important role in the current trend of automation called Industry 4.0. AI is presumed to change economic functioning of companies and have a huge impact on the society. Recent public debates have focused on the necessity to regulate the very field of artificial intelligence namely with regard to liability, privacy protection or intellectual property as well as in individual application fields such as autonomous vehicles or lethal autonomous weapons.

The debates are justified and should be reflected. However, currently the majority of problems related to use of AI stems from contractual relationships. These relationships are often based on contracts of adhesion that are drafted by the stronger party (a provider of a technology) and for her benefit and only amplify the lack of control of users of intelligent products and services both with regard to technical functioning and defining the mutual legal relationship. Lack of legal rules governing contracts for provision of intelligent products and services disempower users of this technology and contribute to widening of the already disproportional positions of the parties.

Proposed field of work

Contractual relationships currently govern the majority of legal relationships between providers and users of intelligent products and services. Freedom of contract enables providers of these services who are often in the position of a stronger party to a contract to draft one-sidedly contracts of adhesion. Therefore, the stronger party defines who will bear the risk of potential harm while at the same time retaining control over the technology and its development. Moreover, the stronger party can significantly influence position of a weaker party at court proceedings. Such contracts may not provide enough safeguards for the weaker party that, in fact, gives up part of her autonomy and delegates it to an autonomous system that provides no or very limited guarantees. Moreover, if dynamic AI models (algorithms that are constantly changing based on data with a limited or even absenting human supervision) are used, a user contributes to shaping how a system works by providing it with data on own activity, preferences, dislikes, etc. while not being aware of how an intelligent system adapts its behaviour. The users not only have a disputable level of control over a continuously developing technology that they use but at the same time they have a very limited control over the legal relationship with the provider of this technology. This position puts users in risk and over the time it may result in mistrust and unwillingness of users to use certain AI applications.

Therefore, it is necessary to *assess what would be a fair distribution of rights and obligations in contracts for provision of intelligent products and services* and *draft model rules for this specific type of a contract*. Namely, it should be assessed up to which degree liability can be limited and what influence this should have also in the area of the tort law, how a user should be informed about functioning of an intelligent system, what are the reasonable expectations on functioning of this particular system including information about how to check its performance, information about how a user can influence functioning of a system and, therefore, share the risk with a developer. This applies not only to users who are natural persons but also to users who are legal persons (companies, non-profit organizations, etc.).

Given the fact that AI technology and services based on it are often provided internationally, parties need to be provided with efficient means for protecting their interests and bearing risk only when they have at least a certain degree of control over it. Without international approach, some countries might intentionally avoid adopting specific rules in order for companies to use their unfit laws for escaping liability by limiting it with help of contractual provisions. Solutions on the international level are the only means how to guarantee safe and responsible development of AI while safeguarding both interests of the humanity as well as individual companies. The international community should focus on all the mentioned issues as soon as possible before the problems related to artificial intelligence and its application domains including robotics become to produce partial and non-systematic solutions on national levels. Such partial solutions could prevent international provision of services due to increased demands on compliance with various legal standards, increased rate of trade disputes, as well as increased uncertainty about return on investments.

Consequently, we are of the opinion that UNIDROIT should deliberate introducing the topic of artificial intelligence into its considerations and eventually its working programme.

ANNEX 2 – PROPOSAL OF THE UNITED STATES OF AMERICA

Proposal received via e-mail from the United States of America State Department
on 3 December 2018



United States Department of State

Washington, D.C. 20520

The United States of America appreciates the opportunity to submit a proposal for the UNIDROIT work program for 2020-2022. We expect that, during this three-year period, much of the Secretariat's work will be focused on implementation efforts for projects already in progress, primarily the Fourth Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment; the ELI-UNIDROIT Transnational Principles of Civil Procedure; and the International Guidance Document on Agricultural Land Investment Contracts. In terms of new projects, the United States would like to suggest the continuation of work on land investment contracts. Additionally, we propose that UNIDROIT consider exploratory work on tools for tracing assets in the context of insolvency and other civil proceedings, which could be conducted in tandem with similar work at the United Nations Commission on International Trade Law (UNCITRAL). We also look forward to the proposed upcoming conference on smart contracts to see if it can identify legal topics in need of future work.

Continued Work on Land Investment Contracts

As the United States noted in its submission for the 2017-2019 work program, the adoption of the Legal Guide on Contract Farming was a significant accomplishment, creating a valuable reference tool for those engaged in the relevant commercial sectors and creating a framework for a long-term partnership with other Rome-based organizations working in these areas. The work done on agricultural investment contracts builds further on the initial success on this topic by finding additional ways to apply private law expertise to global efforts on food security and agricultural development.

Global demand for products such as food, biofuels, and timber continues to grow, and with it, the need for cross-border projects involving investment in land. As the United States has noted previously, land-based investments in developing markets are often made in contexts in which land governance frameworks are weak, land rights are undocumented, and a plurality of overlapping land uses and claims exist. These complexities lead to unique legal considerations in the formation of land-based investment contracts, and expose investors and communities to serious and potentially prohibitive risks. The multilaterally-developed instruments—the Principles for Responsible Investment in Agriculture and Food Systems (RAI), and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)—remain the leading framework in this area. The current work UNIDROIT is pursuing on guidance on land investment contracts is an important next step. We believe this work usefully could be expanded through the development of model legislative provisions that states could use to reform their domestic laws to ameliorate some of the legal issues that arise in this area and to establish a level playing field in discussions between investors and local communities. Model provisions on several topics might be helpful: (a) recordation and recognition of legitimate occupancy and use rights in the context of an investment on state-owned land, to enable foreign investors to easily identify and compensate those who lack title but have existing use rights; (b) enabling the establishment of community trust funds or similar mechanisms to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole; and (c) valuation of communal land, to

facilitate the calculation of compensation when land is held at the village level. This work could be among the most valuable contributions that UNIDROIT could make in terms of the potential impact on development.

Exploratory Work for Cooperation with UNCITRAL

The United States has long supported greater coordination among the private international law organizations. Cooperation on the exploration and potential development of new instruments may be a productive way to harness the expertise of these organizations. One topic that could be particularly productive for cooperation between UNCITRAL and UNIDROIT is the exploration of work to develop tools, such as model legislative proposals or guidance, for the tracing of assets and their recovery in the context of insolvency and commercial fraud. Commercial fraud is a significant international problem that results in billions of dollars of losses annually. As cross-border commerce increases, so does the ability of the perpetrators of fraud to divert funds to multiple jurisdictions in an attempt to conceal the location of the assets. The ability to trace and recover assets that have been moved across borders can be vital for enabling victims of commercial fraud to obtain the maximum recovery possible.

The United States has suggested work on this topic at UNCITRAL, and given UNIDROIT's expertise, we think this is an excellent project of the two organizations to engage in jointly. Additional exploratory work in this area by UNIDROIT during the 2020-2022 triennium could be beneficial, particularly if UNCITRAL decides to focus its work primarily on aspects related to insolvency.

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

ANNEX 3 – PROPOSAL OF THE WORLD BANK

Proposal received via e-mail from the World Bank on 20 December 2018



WBG Recommendations for UNIDROIT's Future Work Program.

I. Development of the Model Law on Factoring

1. The need for and importance of the new Model Law on factoring

Factoring is a financing product, which consists of a financial company providing liquidity to a supplier of goods or services through the purchase of accounts receivable or invoices. Factoring can provide liquidity to firms of all sizes, and can take place in different forms, with traditional factoring in seller-centric models, or with reverse factoring and supply-chain financing in buyer-centric models. In that respect factoring can play an important role bridging the financing gap for unserved and underserved businesses and entrepreneurs.

Important international rules and standards currently exist to promote the development of factoring – including the UN Convention on the Assignment of Receivables and the Convention on International Factoring (Ottawa Convention). These instruments, however, largely center on international or cross-border transactions and do not provide sufficient guidance to states to develop functional national factoring frameworks. The UNCITRAL Model Law on Secured Transactions, on the other hand, does provide elaborate asset specific rules for the development of national rules for assignments in security, and provides uniform priority rules and registration requirements for all factoring transactions. Adoption of the Model Law in itself, however, is not sufficient to develop a fully functional national factoring system.

As a result, states that have adopted basic principles and rules on secured transactions, including the development and launching of collateral registries, are increasingly considering adopting standalone factoring laws as a way to promote this type of financing.

Legal gaps in the treatment of accounts receivable financing, assignment and discounting, however, continue to exist at the national and cross-border level, which negatively affect factoring and accounts receivable based lending and create disincentives for lenders to develop and use such financing tools. In recognition of this void, Factors Chain International, the largest global association representing factoring entities, has adeptly quilted isolated rules and principles from the three instruments mentioned above to form a type of model law. This model law, by its own admission, however, was not the result of an extensive consultation process involving various states and stakeholders, does not comprehensively and methodically develop uniform rules for seller- and buyer-centric factoring models, does not develop international best-practices and is not sanctioned by an international standard setting body.

2. Recommendation for future work

As a result, it becomes important that an internationally approved model law for factoring is developed and approved to provide needed guidance to states in developing their own legislation for factoring in both seller-centric and buyer centric models.

UNIDROIT, having developed the Ottawa Convention in 1988, is uniquely positioned to lead this work. Like with the Model Law on Leasing which was inspired by Ottawa's "Financial Leasing Convention", principles enshrined in the "Factoring Convention" can be used to develop such a model which can also draw on many intentionally approved texts including UNCITRAL Model Law on Secured Transactions (2016) and the United Nations Convention on the Assignment of Receivables in International Trade (New York 2001). Most importantly, latest experiences and practices in structuring and implementing reverse factoring and supply chain finance arrangements can be taken into account when preparing the new text. In this respect, WBG will be keen to share these experiences and contribute to the development of the model.

II. Development of the Explanatory Guide for the Model Law on Leasing.

1. Background.

Recognizing the need to promote leasing as a financing instrument and to support the creation of the modern legal framework for leasing among states, in 2008 UNIDROIT adopted a Model Law on Leasing based on international best practices and experiences and taking into account the UNIDROIT Convention on International Financial Leasing (Ottawa Convention 1988).

The International Finance Corporation (IFC), member of the World Bank Group (WBG) has supported the efforts of UNIDROIT to develop a Model Law on Leasing since October 2005, resulting in highly effective collaboration between the two bodies. IFC participated in the UNIDROIT Advisory Board sessions and helped to organize and actively participated in the meeting of Governmental experts held in South Africa in May 2007.

The UNIDROIT Model Law was developed in the course of an extensive consultation process involving various stakeholders. Most importantly, representatives from developing countries, particularly from Africa and the Middle East, actively participated in the process, thus further strengthening the Model Law's appeal and outreach to economies in transition.

In a leasing transaction, lessor, in capacity of an owner of the leased asset, transfers the use and possession of the asset to the lessee in exchange for periodic payments, hence the lessee is an economic owner of the asset which generates income to repay lessor's investment. Leasing, as an alternative to a bank loan tool to finance acquisition of machinery and equipment, plays an important role to reducing the financing gap for underserved and unserved SMEs that are willing to expand their businesses and invest in productive assets. One of the key components of WBG's Credit Infrastructure Program in the area of leasing is legislative and regulatory reform so as to create a conducive legal climate for leasing and support the development of this financing tool. To achieve this objective, WBG, among other things, works in partnership with governments to develop or amend their laws and regulations governing leasing transactions.

UNIDROIT Model Law on Leasing since its adoption has been instrumental in assisting WBG with the implementation of the reform initiatives in this area. The Model Law strengthened WBG's efforts in advising Governments to improve the legal framework for leasing. Additionally, the Model Law helped to create an effective legal environment for leasing in those jurisdictions in which WBG does not have active projects and to increase the sustainability of the WBG's advisory work to improve the legal framework for leasing. It also helped promote consistency and uniformity of leasing legislation across various states. Specifically, WBG supported the adoption of the leasing legislation based on the Model Law in such markets as Palestine, Afghanistan, Jordan, Yemen, Tanzania, Haiti, Laos and others.

2. The need for and importance of future work

In the past 10 years since the adoption of the Model Law and various reform initiatives that followed to incorporate fully or partially model law provisions in the bodies of national legislation, valuable experience has been accumulated to enhance the text of the model law, align in closer to the

internationally recognized principled of secured transactions and ensure its efficient incorporation into national legal systems.

Whereas it may not be feasible to revisit the Model Law itself to align its provisions on third party effectiveness and priorities to those of modern secured transaction laws (UNCITRAL Model Law on Secured Transactions) and make additional changes to reflect latest practices and experiences, it may be possible to adopt a comprehensive Guide to Enactment for the Model Law to facilitate the adaptation of the model to the national legal systems. Often times, during implementation of the Model Law government clients could benefit from further guidance than that presently contained in the explanatory notes to the Model Law. In this regard, it would be very useful to develop a more detailed explanatory guide to each provision of the model law that will explain the rationale for such provisions or principles and contain useful examples from legal and business practice.

We, therefore, recommend that the Institute considers the adoption of an elaborate Guide to Enactment for the Model Law on Leasing with the view to promote understanding of its text on the part of policymakers and streamline its uniform adoption. Further, the Institute may wish to consider if adjustments of some articles of the Model Law itself could be warranted to ensure closer alignment of financial leases to the principles of modern secured transactions law as they apply to third party effectiveness and priority of functional equivalents to security interests. WBG will stand ready to share its learnings and experiences in this area to contribute to both writing the new Guide and introducing amendments into the Model Law.

III. Development of a Working Paper to Outline Best Practices on Debt Enforcement

1. Background

An efficient system for enforcing debt claims is crucial to a functioning credit system. A creditor's ability to take possession of a debtor's property and to sell it to satisfy the debt is the simplest, most effective means of ensuring prompt payment and mitigating creditor risk. Accordingly, a modern, credit-based economy requires predictable, transparent and affordable enforcement of both unsecured and secured credit claims by efficient mechanisms outside of insolvency, although designed to work in harmony with the insolvency system.

While credit may be unsecured and requires an effective enforcement system, an effective system for secured rights is especially important in emerging markets where this is still predominantly the strong preference for lending. Secured credit plays an important role in developing credit markets, with a range of sources and types of financing available through both debt and equity markets. In some cases, equity markets can provide cheaper and more attractive financing, but emerging markets often offer fewer options, and equity markets are typically less mature than debt markets. As a result, most financing is in the form of debt. In markets with fewer options and higher risks, lenders routinely require security to reduce the risk of non-performance and insolvency.

The ALI UNIDROIT Principles are primarily designed to give guidance for first instance procedures and only minimally do they address issues of enforcement. Although Principle 29 emphasises the need for speedy and effective enforcement, this topic was considered beyond the scope of the 2004 ALI UNIDROIT Principles. A preliminary feasibility study was conducted by Rolf Stürner,²² and submitted to the Governing Council at its 95th session. The Study provides a more detailed analysis of the legal obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and of the advantages of filling in the gaps of the ALI/UNIDROIT Principles of Transnational Civil Procedure in this regard.

²² Emeritus Professor at the University of Freiburg (Germany) and former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure

The World Bank Principles on Effective Insolvency Regimes for Creditor/Debtor Regimes addresses the need for mechanisms that provide efficient, transparent and reliable methods for recovering debt, including the seizure and sale of both immovable and movable assets and the sale or collection of intangible assets. However, these Principles are relatively limited in scope and can potentially be expanded in light of new challenges and developments faced in numerous countries since 2009, including in the context of transnational procedures.

2. The need for and importance of future work

A research paper jointly undertaken by both institutions, that further explores the challenges that creditors and debtors face during the enforcement process and the tools for addressing these obstacles, will help articulate the need for best practices in enforcement. Although both the UNIDROIT and World Bank principles might be amended in light of this work, identifying such amendments would not necessarily be the objective of this paper.

It is proposed that the initial scope of the research remain relatively broad, examining both in-court and out-of-court processes as well as the different institutions and professionals involved, although this could be narrowed as the working group identifies the primary obstacles for enforcement.

ANNEX 4 – PROPOSAL OF THE BANK OF ITALY

Proposal received via e-mail from the Bank of Italy on 20 December 2018



Research topic: The Harmonization of rules for the compulsory liquidation of failing banks.

Bank resolution consistent with the Key Attributes has been conceived as a special administrative procedure to deal with bank crises when private sector solutions, regulatory actions taken within a reasonable period of time, or ordinary insolvency proceedings are not viable strategies to mitigate risk to financial stability. Therefore, having a set of extraordinary tools to come into play when the resolution triggers are fulfilled and financial stability is under threat (in certain jurisdictions, the so called 'public interest' requirement) does not prevent jurisdictions from keeping in place general insolvency rules to be applied to failing banks when their liquidation can be carried out in an orderly manner, without financial stability implications.

According to the *Key Attributes*, national resolution regimes should include a broad range of powers to enable the resolution authority to achieve the objectives of the KAs, including powers to ensure the continuity of systemically important functions and "*liquidation options that provide for the orderly closure and wind-down of all or parts of the firm's business in a manner that protects insured depositors, insurance policy holders and other retail customers*" (see *Preamble*, par. 3 (i)). However, despite liquidation options being described as part of a resolution regime, the convergence process sought by the Key Attributes is limited to the general powers, tools and elements of a resolution legal framework that are specifically described therein and are not intended to affect bank insolvency regimes in member jurisdictions.

This means that member jurisdictions keep their discretion in regulating bank insolvency proceedings, including as to whether the court might be involved in these proceedings and with what powers. Actually, a variety of options are in place around the world as to which authority is in charge of proceedings aimed at the compulsory liquidation of banks (in some jurisdictions these proceedings are carried out under the control of the resolution authority or another administrative authority, with or without supervision by a court; in others, they can only be started upon a decision by the court, at the initiative either of the supervision authority or, in some cases, of the creditors) and as to the powers that this authority can exercise in order to ensure a smooth liquidation of the failing entity. In this fragmented scenario, severe coordination problems may arise in cross-border scenarios, due to the lack of appropriate harmonized cooperation mechanisms among the different authorities that may have the responsibility to take action in the jurisdictions involved. In addition, while in some jurisdictions bank liquidation is subject to the corporate insolvency rules that apply to failing commercial businesses, other jurisdictions subject banks to the general bankruptcy rules, albeit with exceptions/adaptations to address the specific nature of banks. Finally, there are countries that provide for a special regime which applies only to banks.

The bankruptcy legal framework that applies to all corporations might not be well suited to address the peculiar features of banks' activity even in cases when a crisis does not pose systemic concerns for which the resolution toolkit would be necessary. An inadequate design of winding-up procedures could adversely affect the interaction of these procedures with resolution. Indeed, a bank insolvency regime that is unable to effectively pursue an orderly liquidation and safeguard the public interests involved in a bank crisis (including in a non-systemic scenario), might induce recourse to resolution (which is not painless for the financial system and should be an extraordinary measure) in cases where it could be avoided.

Another element which could affect the proper interaction between resolution and insolvency proceedings concerns the events that trigger a bank's winding up. The insolvency test might be inappropriate for banks due to the nature of their business, which might require prompt activation of a bankruptcy procedure, well before a state of balance-sheet insolvency materializes, when the viability of the institution is no longer granted. The absence of harmonization on all these aspects may again hinder coordination at a cross-border level and result in inefficient outcomes.

ANNEX 5 – PRICL WORKING GROUP PROPOSAL

Proposal received via e-mail on 17 January 2019



universität
wien



University of
Zurich^{UZH}

Dear Prof. Tirado, dear Anna

On 4th December 2018 the PRICL Working Group has received notice by the Swiss National Fund and the German Research Association, that the funds for running a second period of the PRICL project have been granted. The second period will run from 1st July 2019 - 30th June 2022. The project will then be finished and not prolonged any more.

The PRICL Working Group is very happy that UNIDROIT has included the PRICL project in its work programme for the triennium 2017 – 2019. In view of the prolongation of the project we wanted to ask UNIDROIT to stay on board and include the project also in its programme for the triennium 2019 - 2022. From our point of view it would be highly desirable to have the co-operation continue as it was practiced in the past (i.e. participation of a representative of UNIDROIT in the workshops of the PRICL Working Group, financed by the Working Group).

Should you consider proposing such a prolongation to the Governing Council in May 2019, you may find the enclosed draft text helpful. It describes the new project in a similar way as the first part has been presented to the Governing Council before. Please feel free to use, change or ignore it as you consider appropriate.

I will be at your disposal for any further questions or requests.

I look very much forward to meeting you in early May in Rome!

With my best wishes for a merry Christmas and a happy New Year 2019,

Yours

Helmut Heiss

Prof. Dr. Helmut Heiss, LL.M.
Lehrstuhl für Privatrecht, Rechtsvergleichung und IPR
Universität Zürich
Treichlerstrasse 10
8032 Zürich

Attachment:

Formulation of principles of reinsurance contracts

Upon the Governing Council's recommendation, the General Assembly decided, at its 75th session on 1 December 2016, to include the topic of drafting "Principles of Reinsurance Contract Law (PRICL)" in the Institute's work programme for the triennium 2017 – 2019 and assigned a low priority to it. In a sense, the Governing Council has thereby revived an initiative which was positively assessed in a similar fashion by UNIDROIT between 1932 and 1936 but was not pursued due to the disruption in the Institute's work caused by the conditions leading to war.

The principles are being drafted by a global PRICL Working Group headed by the Universities of Zurich, Frankfurt/Main and Vienna. The PRICL Working Group has received financial support from the Swiss National Science Foundation, the German Research Foundation and the Austrian Science Fund for the first project period.

In Art. 1.1.2 PRICL, a direct connection is established between the PRICL and the PICC: "Issues not settled by the PRICL shall be settled in accordance with the UNIDROIT Principles of International Commercial Contracts 2016 ("PICC"). Essentially, the new principles on reinsurance contracts have been drafted as a "special part" of the UNIDROIT Principles of International Commercial Contracts. To ensure that the PRICL are in line with the PICC both substantively and systematically, a UNIDROIT representative attends and participates in the Working Group's meetings.

The first project period will expire on 1 July 2019. The Project Group will have published its results (Principles and Comments) by then. The following topics have been dealt with: "Chapter I: General Part; Chapter II: Duties; Chapter III: Remedies; Chapter IV: Aggregation; Chapter V: Allocation". The relationship of the drafted Principles to the PICC is expressly addressed and explained at the relevant points in the Comments to the Articles.

In December 2018, the Project Group again received financial support from the Swiss National Science Foundation and the German Research Foundation for a second and final project period, lasting from 1 July 2019 to 30 June 2022. The topics scheduled to be dealt with in this period are: "Chapter VI: Back-to-back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; Chapter IX: Limitation periods". Due to the obvious connection between these topics and the PICC, the Project Group seeks further cooperation with UNIDROIT in the project.

In the view of the Secretariat, the project has made an important contribution to the restatement of an area of commercial law that is largely uncodified and this will be beneficial to an industry that is international by nature. The subject matter is therefore closely related to the UNIDROIT Principles.

Should the Governing Council consider recommending this topic for inclusion in the UNIDROIT Work Programme for the triennium 2019-2022 by the General Assembly, the Secretariat would be pleased to continue participating in the PRICL Working Group.

ANNEX 6 – EUROPEAN BANKING INSTITUTE PROPOSAL

Proposal received via e-mail on 27 January 2019



Subject: The harmonization of national insolvency laws for banks

Dear Professor Tirado,

TBTF: As a consequence of the Global Financial Crisis of 2008, banks all over the world suffered severe financial difficulties. Governments faced the choice to either have these banks fail under normal, corporate insolvency laws, or prop them up with enormous amounts of tax payer money to avoid the potentially systemically disruptive knock-on effects of bank insolvencies. Unsurprisingly, many governments felt forced to choose the latter option. The axiom 'too big to fail' ('TBTF') describes how states became in fact hostages of big credit institutions. Several commentators have argued that the result was moral hazard in the governance of credit institutions, who, backed up an implicit state guarantee, felt free to engage in risky behaviour, and a run of banks far even more size to secure their status.

Progress has been made: Over time, it became generally acknowledged that specific rules were needed for banks suffering from severe financial difficulties in order to avoid the unattractive choice between bail-outs and the application of the ill-adapted general (corporate) insolvency law. Several jurisdictions responded by introducing specialist regimes for bank recovery and resolution ('bank resolution regimes'). Their adoption has been promoted and spurred by the Financial Stability Board's (FSB) 'Key Attributes of Effective Resolution Regimes for Financial Institutions' ('Key Attributes'). This soft law text, published in 2011 and revised in 2014, sets out the core elements that the FSB considers to be necessary for an effective resolution regime and has led to considerable harmonisation of substantive bank resolution law.

Critical/ gaps remain: However, despite these achievements, there are at least three issues where the development has stalled. We consider these issues to be of critical importance for an effective bank resolution, especially regarding cross-border operating banks. These gaps pose significant risks of systemic nature, because precisely the biggest and systemically most important banks may not be resolved in a manner that is effective globally. We believe each of the three issues could be solved by an international instrument for the harmonisation of national insolvency laws for banks.

NCWO: The first issue concerns the principle 'no creditor worse off than in liquidation' ('NCWO'), which is part of the Key Attributes and many of the new bank resolution regimes. According to this principle, creditors should receive in resolution as a minimum what they would have received in a liquidation under the otherwise applicable national insolvency regime. The NCWO principle may have made the new resolution regimes politically palatable and clear some constitutional stumbling stones. However, it requires resolution authorities to calculate, for all measures that affect the failing bank's creditors, the hypothetical result of the measure for the same creditors under the otherwise applicable, national insolvency regime. Consequently, each and every difference between national insolvency regimes becomes critical in cross-border resolution. This stifles the procedure and makes it prone to litigation.

Moreover, foreign courts may use the NCWO principia to refuse recognition of foreign resolution measures and thus frustrate their effectiveness. This problem can only be mitigated by the harmonisation of national insolvency laws for banks, in particular with regard to the priority ranking of creditors' claims.

Recognition of resolution measures: Foreign courts may in particular feel obliged to refuse recognition of resolution measures where those measures negatively affect residents of their jurisdiction. The resolution of cross-border operating banks is still dominated by 'ring-fencing', i.e. the natural instinct of courts to safeguard assets for local creditors. Cross-border recognition is therefore clouded by doubts over the equal treatment of creditors. To counter these problems, the FSB has suggested a soft law approach, which depends on the voluntary cooperation and coordination of national authorities. Yet it remains uncertain that they will be ready or allowed to give up valuable assets of banks in times of crisis without being legally obliged to do so. Moreover, authorities may invoke concerns over financial stability where their creditors have to shoulder the burden of the losses incurred by a failing foreign bank. Any rule that would require courts to recognise foreign resolution measures and limit refusal to a well-defined set of circumstances would greatly enhance legal certainty, contribute to the effective resolution of a bank and make resolution less prone to litigation.

Recognition of contractual clauses: Some resolution regimes require banks and their counterparties to include a contractual term in their transactions by which they recognize that these transactions may become subject to a resolution measure. In this way, the efficiency of resolution action is supported by the parties' agreement. Absent a global rule for the recognition of resolution measures as just advocated, several jurisdictions have had to content themselves with such contractual recognition rules. However, even if the relevant parties had (initially) agreed to a contractual recognition clause, it is uncertain whether foreign courts will recognise foreign resolution measures. They may invoke the same concerns of equal treatment and financial stability that also impede the direct recognition of foreign resolution action to deny such clauses any effect. The enforceability of these contractual clauses in courts around the world has not been tested, and when it were, it may be too late. What is needed therefore is a rule of international law that requires courts to recognise such clauses and allows them to refuse recognition only in a well-defined set of circumstances. Such a rule would greatly enhance legal certainty and thus contribute to the effective resolution of banks.

Conclusion: The effective resolution of banks, especially in cross-border settings, is a matter of systemic importance. Whilst progress has made by the adoption of resolution regimes around the world, critical gaps remain, in particular with regard to NCWO and the recognition of resolution measures. A number of commentators predict that the status quo is insufficient to secure effective bank resolution and will fail at the moment it is most needed. To avoid this situation, international harmonisation is indispensable. We are convinced UNIDROIT could play a leading role, and the ESI would be delighted to assist in whatever way you deem fruitful.

Yours sincerely,



Prof.
dr. Bart P.M. Joosen
President of the Academic Board
European Banking Institute

BACKGROUND EUROPEAN BANKING INSTITUTE

The European Banking Institute based in Frankfurt is an international centre for banking studies resulting from the joint venture of Europe's preeminent academic institutions which have decided to share and coordinate their commitments and structure their research activities in order to provide the highest quality legal, economic and accounting studies in the field of banking regulation, banking supervision and banking resolution in Europe. The European Banking Institute is structured to promote the dialogue between scholars, regulators, supervisors, industry representatives and advisors in relation to issues concerning the regulation and supervision of financial institutions and financial markets from a legal, economic and any other related viewpoint. The Academic Members of ESI are the following:

1. Universiteit van Amsterdam, Amsterdam, The Netherlands
2. Universiteit Antwerpen, Antwerp, Belgium
3. University of Piraeus, Athens, Greece
4. Alma Mater Studiorum - Università di Bologna, Bologna, Italy
5. Academia de Studii Economice din București (ASE), Bucharest, Romania
6. Universität Bonn, Bonn, Germany
7. Trinity College, Dublin, Ireland
8. Goethe-Universität, Frankfurt, Germany
9. Universiteit Gent, Ghent, Belgium
10. Helsingin yliopisto (University of Helsinki, Helsinki, Finland)
11. Universiteit Leiden, Leiden, The Netherlands
12. Universidade Catolica Portuguesa, Lisbon, Portugal
13. Universidade de Lisboa, Lisbon, Portugal
14. Univerze v Ljubljani / University of Ljubljana, Ljubljana, Slovenia
15. Queen Mary University of London, London, United Kingdom
16. Université du Luxembourg, Luxembourg
17. Universidad Autonoma Madrid, Madrid, Spain
18. Universidad Complutense de Madrid/CUNEF, Madrid, Spain
19. Johannes Gutenberg University Mainz (JGU), Mainz, Germany
20. University of Malta, Malta
21. Università Cattolica del Sacro Cuore, Milan, Italy
22. University of Cyprus, Nicosia, Cyprus

23. Radboud Universiteit, Nijmegen, The Netherlands
24. Université Panthéon - Sorbonne (Paris 1), Paris, France
25. Université Panthéon-Assas (Paris 2), Paris, France
26. Stockholms Universitet/University of Stockholm, Stockholm, Sweden
27. Tartu Olikool/ University of Tartu, Tartu, Estonia

ANNEX 7 – PROPOSAL OF BUREAU INTERNATIONAL DES CONTAINERS ET DU TRANSPORT INTERMODAL

Proposal received by e-mail on 12 March 2019



UNIDROIT
Via Panisperna 28
00184 Rome
ITALY

Attn: Professor Ignacio Tirado Secretary-General

CC: William Brydie-Watson
Legal Officer

By mail and email
i.tirado@unidroit.org
w.brydie-watson@unidroit.org

12 March 2019

Dear Sirs,

A Container Protocol to the Cape Town Convention?

I am writing to propose that UNIDROIT considers the possibility of a Protocol to the Cape Town Convention relating to intermodal containers. As explained further below, the BIC has been looking into issues around the financing of containers. The BIC is now at a stage where it thinks it would be beneficial to draw this to the attention of UNIDROIT with a view to UNIDROIT and BIC co-operating to explore the issue further.

I understand that UNIDROIT's Governing Council meeting in early May will set a three year work programme through to 2022. The immediate purpose of this (relatively brief) initial letter is to place something before UNIDROIT in time for consideration by the Governing Council.

General background on BIC

The BIC – or Bureau International des Containers et du Transport Intermodal to give it its full name – was established in 1933 by the International Chamber of Commerce and is based in Paris. Formed as a non-profit association under French law (law of 1901), the BIC is a truly international organization, with over 2100 members in over 120 countries. In the early years its emphasis was on rail and road transportation. This expanded into maritime transport after World War II and especially into a focus on the transportation by sea of containers after this was developed in the late 1950s. The BIC has worked closely with the ISO on the standardization of containers throughout the 1960s and right up until today. The BIC holds NGO consultative status at the International Maritime Organization and the World Customs Organization.

BIC's focus and work

In the late 1960s the BIC developed and implemented a system for identification of individual containers and began publishing the International Register of Container Owners in 1970. Every container owner or principal operator can be allocated a four-letter BIC Code, in compliance with ISO

6346 – and thus in compliance with the International Customs Conventions that refer to this marking standard (the Customs Convention on Containers and the Istanbul Convention). These codes have been allocated to over 2,100 owners/operators, providing near-complete coverage of the world's container fleet.

The BIC's Global Container Database, known as 'BoxTech', allows owners/operators to register their entire container fleets in a central data repository, including technical details for each container. Each container is individually identified by reference to the owner's/operator's BIC Code and container number, e.g. WXYU1234567. This makes key container technical details instantly available to trading partners and other users in the supply chain. It also allows the posting of alerts against specific containers, including when containers go missing or require recovery by an owner following the default of a lessee. BoxTech allows owners to notify the sale of containers, providing visibility to interested parties that the relevant units are no longer part of a particular owner/operator's fleet. BoxTech is accessible to anyone via the internet.

The BIC operates two other databases on behalf of the industry: The BIC LoCode database and the Global ACEP Database, operated under the guidance of the IMO. More information can be found on BIC's website: <https://www.bic-code.org/>.

Financing issues

BIC's traditional focus has been on providing a transparent record of containers with an emphasis on operational and practical issues. Within the last year or so, however, BIC has been considering issues around the financing of containers following a series of discussions with the law firm Watson Farley & Williams LLP and with a number of financiers and container owners. The legal and other points driving those discussions have in outline been the following:

- (a) There is no system in place for registration of title to, and security interests over, containers. As far as we are aware there are generally no domestic, asset-specific registers covering containers (and to the extent there may be such domestic registers they do not have an international profile or impact). There is no international register equivalent to the Cape Town Convention registers of international interests for specific asset classes. The BIC's efforts in developing the International Register of Container Owners, the BIC Code and BoxTech have historically been driven by operational issues rather than legal and financing issues.
- (b) Under English law at least the law determines the effect of a disposition of property in a container is the law of the place where the container is located when the disposition occurs, i.e. the *lex situs* (without reference to the doctrine of *renvoi*). This makes for uncertainty as regards the transfer of title and also the creation of a legal mortgage and renders express choice of law vulnerable.
- (c) Although individual containers do not have a high value they are typically financed in large batches (see further below). For new containers it means that it is possible to look at the *lex situs* at the time of delivery of the containers from the manufacturer as they are normally delivered at the point of manufacture. However for second hand containers, the containers in a batch that were delivered at or around the same time will have become located in many and disparate locations making diligencing the local rules on disposition of property and creation of security effectively impossible.
- (d) The process of recovery of containers following a default either by a borrower, where security has been granted over the containers in favour of the financiers, or by a lessee, where the lessor is the owner of the containers, is rendered complex at least from a legal perspective as a result of having to rely on recognition of foreign judgments and foreign law governed security interests. Whilst the track record on recovery of containers following a default is remarkably high given the legal issues, this is largely as a result of reliance on a self-help

where those dealing with recoveries simply pay the local depots' storage charges and port dues in the jurisdictions where the containers are in order to keep them moving.

- (e) The issues around title and security along with the uncertainty surrounding recovery strategies contributes to the narrowing of the pool of financiers willing to look at the asset class.
- (f) Further these issues may lead to difficulties for example for ratings agencies to be able to fully and properly assess recovery risk from a legal perspective.

In summary we believe that many of the points referred to above overlap with the issues which drove the development of the Cape Town Convention and its application to other asset classes. BIC has now reached out to a number of key stakeholders, including financiers and owners of containers (both lessors and liner companies). An initial informal meeting will be taking place in London on March 25.

Brief economic background

The value range of individual shipping containers (both new and resale values) is as follows:

- 20-foot containers tend to fluctuate around the USD 2,000/unit mark (re-sale value around 50%)
- 40-foot containers tend to fluctuate right around the USD 3,500/unit mark (re-sale value around 40%)
- Refrigerated units are around USD 12-15k/unit. (Re-sale value around 20-25%)

The total value of shipping containers currently in circulation is estimated at just over USD 105 billion (replacement value).

The value of shipping container acquisitions financed in 2018 was approximately USD 10 billion.

The value range of container sales/acquisitions can be anywhere from USD 100k to USD 180 million, with a typical order being in the USD 20-40 million range.

Suggested next steps

Against the above background it seems to BIC that it would now be appropriate to open a dialogue with UNIDROIT about the possibility of extending the Cape Town Convention to containers. The BIC's longstanding role as an industry body and facilitator of centralised, transparent and detailed information about containers means that it believes it would have a great deal to offer in the development and operation of a Containers Protocol to Cape Town, if that possibility gains traction.

We will be happy to report on the outcome of the initial informal industry meeting on March 25 referred to above.

It is hoped that this letter is timely as regards UNIDROIT's own processes and consideration of the issue and we look forward to establishing a dialogue at your convenience.

Yours faithfully,


Douglas Owen
Secretary General

ANNEX 8 – DRAFT PROGRAMME OF THE UNIDROIT-UNCITRAL JOINT WORKSHOP

With the Patronage of



*Ministry of Foreign Affairs
and International Cooperation*

DRAFT AGENDA JOINT UNCITRAL/UNIDROIT WORKSHOP

**Rome, Seat UNIDROIT
6 and 7 May 2019**

DAY I**9 am - 9.30 am INTRODUCTION**

Opening address delivered by Mr Pasquale Velotti (Deputy Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements, Italian Ministry of Foreign Affairs and International Cooperation)

Introductory remarks delivered by Ms Anna Joubin-Bret (Secretary, UNCITRAL) and Professor Ignacio Tirado (Secretary-General, UNIDROIT)

9.30 am - 11.00 am PANEL I. Mapping the market, defining concepts and understanding applications and business models in the area of DLT, Smart Contracts and AI

This "conceptual" panel, will discuss and agree upon (to the extent possible) the main concepts and definitions. There is much confusion as to the specific legal meaning of AI/Fintech concepts, such as smart contracts and digital assets, which are mainly defined technologically. The objective of the panel will be precisely to try to identify the main topics/items that need consensus within the international community and precise legal definitions. The panel will also touch upon cross border issues (jurisdiction/applicable law)

Chair: *Professor Henry Gabriel (UNIDROIT Governing Council member, Elon University)*

Panelists:

Professor Louise Gullifer (University of Oxford)

Professor Teresa Rodríguez de las Heras (Universidad Carlos III Madrid)

Professor Tetsuo Morishita (Sophia University, Tokyo)

11.00 am - 11.30 am Discussion with the floor**11.30 am - 11:45 am Coffee**

11:45 am - 1 pm PANEL II. Institutions and participants

The “institutional” panel would help understanding the adequate scope of the work to be undertaken by our joint-venture (without implying that we should focus our work on the regulatory aspects): Should there be some type of institutional framework in place in case of ex ante supervision/regulation and in case of ex post trouble? If so, how/what type of framework? Further - and less controversially-, the panel should address (a) institutional structures that have already grown up or are likely to grow up in the future; and (b) whether any other institutional structures should be mandated to exist or encouraged to exist. The panel will address these issues in the context of two important areas:

Artificial Intelligence: Consideration of (i) the matter of liability arising from the use of AI in, for instance, robots or decision-making, and how standards for such liability could be set, and (ii) challenges presented by decisions based on algorithms including related regulatory and liability issues. (The issues relating to liability also will be considered by Panels III and V.)

Custody of Digital Assets: Consideration of (i) the means of access and control and the use of custodians in holding of digital assets such as cryptocurrencies and cryptosecurities (as to the need/convenience of their participation and a legal analysis of the main elements of access and custody), (ii) private international law aspects of custody, and (iii) issues arising out of the insolvency of custodians, including private law rights of investors, characterization of assets, and treatment in insolvency proceedings.

Chair: Professor *Charles Mooney (University of Pennsylvania)*

Panelists:

Professor Alzbeta Krausova (Institute of State and Law, Prague)

Dr Phillip Paech (London School of Economics)

Professor Matthias Haentjens (University of Leiden)

Professor Ross Buckley (University of South Wales)

1 pm - 1.30pm **Discussion with the floor**

1.30 pm - 2.30pm **LUNCH**

2.30 pm - 4:00 pm **PANEL III. DLT, Smart contracts and AI in the transactional lifecycle: general contract law issues**

The “operational” panel touches upon specific operations and how DLT, smart contracts and AI would fit in the realm of traditional contract law, from the point of view of general contract law (including the relationship with other fields such as torts)

Chair: Professor *Giusella Finocchiaro (University of Bologna)*

Panelists:

Dr Mateja Durovic (Kings College London)

Professor Houman Shadab (New York Law School)

Professor Vincent Gautrais (University of Montreal)

Dr Nikita Aggarwal (Oxford)

4 pm - 4.30pm **Discussion with the floor**

4.30 pm - 4.45 pm **Coffee**

4.45 pm - 6.15 pm PANEL IV. DLT, smart contracts and AI in specific business sectors: focus on fintech

This panel examines particular business usages of DLT and Smart Contracts with a view to: (a) discussing whether there are particular business usages which themselves call out for harmonisation of the relevant law or of standards (b) debating whether any issues that arise in a particular business usage are examples of wider issues in private law which could benefit from harmonised principles or rules. In particular, the panel will discuss the (proprietary and) conflict of laws analysis of exogenous DLT tokens, the potential impact of technology on the enforcement of security interests in financial assets, DLT/Smart Contracts in international sale of goods/commodities, and the legal issues in the financing of rights to payment in the blockchain context.

Chair: Professor Louise Gullifer (University of Oxford)

Panelists:

Dr Peter Werner (ISDA)

Dr Andrea Tosato (University of Pennsylvania)

Dr Thomas Keijser (Radboud University)

Dr Marek Dubovec (NatLaw, Arizona)

6.15 pm - 6.45 pm Discussion with the floor**DAY II****9.30 am - 11:00 am PANEL V. What happens when things go wrong? Liability, execution, remedies**

This panel will discuss the impact of digital emerging technologies on the legacy liability regimes and consider self-executing remedies and their relationship with procedural law and insolvency

Chair: *Professor Teresa Rodríguez de las Heras (Universidad Carlos III Madrid)*

Panelists:

Professor Hannah Lim Yee Fen (Nanyang University, Singapore, participating via remote video contribution)

Professor Gerhard Wagner (Humboldt University of Berlin)

Professor Eugenia Dacoronia (UNIDROIT Governing Council member, University of Athens)

Hon. Ole Böger (District Court Judge, Hanseatic Court of Appeal Bremen)

11:00 am - 11.30 am Discussion with the floor**11.30 am - 11:45 am Coffee break****11:45 am - 12:45 am PANEL ON CONCLUSIONS**

This panel will summarise the findings of each prior panel and present them in a form that could be taken into consideration by the UNIDROIT Governing Council and by UNCITRAL

Chair: *Professor Hideki Kanda (UNIDROIT Governing Council member, Gakushuin University)*

Panelists:

All panel chairs

ANNEX 9 – PROPOSAL OF THE ORGANISATION OF AMERICAN STATES

Proposal received by e-mail on 18 April 2019



OAS

More rights
for more people

April 18, 2019

Antigua and Barbuda

Argentina

The Bahamas

Barbados

Belize

Bolivia

Brazil

Canada

Chile

Colombia

Costa Rica

Cuba

Dominica

Dominican Republic

Ecuador

El Salvador

Grenada

Guatemala

Guyana

Haiti

Honduras

Jamaica

Mexico

Nicaragua

Panama

Paraguay

Peru

Saint Kitts and Nevis

Saint Lucia

Saint Vincent and the Grenadines

Suriname

Trinidad and Tobago

United States of America

Uruguay

Venezuela

Ignacio Tirado
Secretary General
International Institute for the Unification of Private Law
Rome, Italy

Excellency,

The Department of International Law presents its compliments to the Distinguished Secretary General of the International Institute for the Unification of Private Law (UNIDROIT).

On behalf of Dr. Ruth Correa, Chair of the Inter-American Juridical Committee and as its technical secretariat, we are pleased to express interest on the part of the Committee in exploring a joint work project with UNIDROIT related to the topic of International Civil Procedure. The details of such a collaborative initiative could be discussed during July / August at the forthcoming 95th Regular Session of the Committee, at which your participation is greatly anticipated.

The Department avails itself of this opportunity to reiterate to your Excellency, the Secretary General of UNIDROIT, the assurances of its highest consideration.

Dante Negro
Director

Department of International Law
Secretariat for Legal Affairs

Technical Secretariat of the Inter-American Juridical Committee
Organization of American States

cc. R. Correa, Chair, Inter-American Juridical Committee

ANNEX 10 – COMMENTS RECEIVED FROM UNIDROIT CORRESPONDENTS

1. Article 5(3) of the UNIDROIT Statute mandates the Governing Council to prepare the ground for the adoption by the General Assembly of the new triennial Work Programme by analysing comments and proposals submitted by member Governments and the Institute's correspondents with a view to formulating recommendations. The Secretariat has prepared documents containing comments on the proposed new Work Programme and suggestions for projects and activities to be included in the UNIDROIT Work Programme for the triennium 2020-2022 (cf. UNIDROIT 2019 – C.D.(98) 11).

2. In accordance with UNIDROIT's usual practice, Institute's correspondents were informed about the status of all items on the current and proposals for the future triennial Work Programme. Some of them submitted comments: Mr Sono (Japan), Mr Kozuka (Japan), Mr Morán Bovio (Spain), Mr Özsunay (Turkey), Mr Sanchez Gamborino (Spain), Mr Stürner (Germany), Ms Veytia (Mexico), and Mr Wool (United States of America). Those comments are reproduced below.

Comments received from Mr Hiroo Sono (29 April 2019)

First of all, I congratulate UNIDROIT on the productive and successful current triennial term 2017-2019. The legislative activities which are proposed to be carried over from the current term to the next term, especially those that are assigned high level of priority, are also close to completion, and I am happy to see that the prospect of UNIDROIT's contribution to unification of private law in those area continue to be promising.

The proposed new legislative activities for the next triennial 2020-2022, including the suggested level of priority assigned to them generally seems adequate. The following are some comments on some of the individual projects.

1. A Model Law on Factoring Updating the Ottawa Convention on International Factoring (1988) by developing a Model Law for domestic factoring would be a good continuation of UNIDROIT's previous engagements in the subject. However, the coverage of such Model Law may significantly overlap with UNCITRAL's Model Law on Secured Transactions (2016) which also provides rules for outright transfers of receivables and factoring transactions. Therefore, care should be taken to ensure that the rules in the Model Law on Factoring will be consistent with the Model Law on Secured Transactions in order to avoid juxtaposition of conflicting regimes. To that end, it is also desirable that a close coordination with UNCITRAL will take place.

2. AI/Smart Contracts/DLT The impact that artificial intelligence, smart contracts, and distributed ledger technology may have on private law is an important topic that may be seen as a subset of a broader topic relating to the impact of social and economic change brought about by the development of artificial intelligence and digital technology. As such, I believe it warrants great attention, and I agree that this is a topic that should be included in the 2020-2022 Work Programme. Given the rapidly changing nature of technology and business practice, which is evident from the fluctuation of proposals made to the Secretariat by differing states since 2015 (para 72 of the Draft Triennial Work Programme), I also support the suggested approach that begins with a careful study to identify the issues. In that study, the question of what role private law can play in this area should also be addressed, as often the rights and obligations of the parties are more often defined by technology than by contracts or private law rules. Moreover, collaboration with UNCITRAL is also desirable in order to efficiently utilize the limited resources.

3. Private Law and Agricultural Development I generally support UNIDROIT's recent activities in developing a framework of private law to facilitate agricultural development. However, among the possible areas of future work listed in para 78 of the Draft Triennial Work Programme, I would hope that a careful approach be taken especially with respect to areas on "title to land", "community trust

funds”, and “valuation of communal land”. Clear rules in those areas would certainly facilitate investment, but it also intervene with public policies of states or may disturb communal values of each community. (With respect to work on “title to land”, or rather on “recordation and recognition of legitimate occupancy and use rights”, it is likely that such recordation system would require a system that extends beyond recordation of agricultural land, and would need to cover recordation of title to land generally.) Therefore, among the areas suggested, it is my view that it would be wise to give priority to “legal structure of agricultural enterprises” and “agricultural finance”.

Comments received from Mr Souichirou Kozuka (19 April 2019)

As active correspondent of UNIDROIT, I have had the opportunity to read the Draft Triennial Work Programme 2020-2022 (C.D. (98) 14 rev.) and have the comments as follows. The paragraph numbers cited in the comments below are those of the Draft Triennial Work Programme.

1. General remarks on the legislative activities

- First of all, I congratulate the Institute for its achievements in the past three years. The developments of the draft Protocol to the Cape Town Convention concerning the Mining, Agricultural and Construction Equipment (MAC Protocol), the draft Legal Guide on Agricultural Land Investment Contracts, the draft text of the ELI-UNIDROIT Principles of Transnational Civil Procedure as well as the draft guidance document on international sales law are all commendable achievements. I am of the opinion that works on these instruments, all of which are close to completion, shall be concluded in the early years of the next triennium with high priority.

- It is also noted that the Institute has made great efforts in promoting the Luxembourg Rail Protocol and Space Protocol to the Cape Town Convention. I see that the Luxembourg Rail Protocol is approaching to entry into force, which reflects, at least partly, the efforts of the Institute. The promotional activities of the Space Protocol on various occasions have also been remarkable, and appears to have raised significant interest in the Protocol among the commercial space community. I strongly recommend that these activities are also continued with high priority.

- As I mentioned in my comments for the past triennial programme, the unification of law has come to include two, different kinds of activities. One is the production of instruments, mainly in the field of commercial law, useful in reforming and modernising the domestic law, while the other is the formation of identifying (restating) the just and equitable principles of law on certain subjects. It is expected that the Institute makes a good balance in covering both areas in its activities. The achievements of the past triennial period have satisfied such expectation, and I hope the Institute keeps a balance in this respect during the next triennium as well.

2. Comments on the proposed new activities

1) *Model law on factoring*

- I take note of the fact that, among the proposed new legislative activities, the Secretariat suggests to place high priority on the Model Law on Factoring (paras.62). Given the importance of factoring in the financing of businesses, the work will be useful, in particular in the context of law reform in emerging market economies. Given that the Institute produced the two Ottawa Conventions on Factoring and Leasing in 1988 and then the Model Law on Leasing in 2008, the Institute is in an appropriate position to work on the Model Law on Factoring, which will complement the previously made instruments. Therefore, I agree with the suggestion and recommend that this subject be conducted with high priority.

2) *Principles of effective enforcement*

- The proposed work on the principles of effective enforcement (paras.63 to 66) will also be useful in the context of commercial law reform. It will also suit the Institute’s focus on the private law and development (though the work so far has been related only to agricultural development, as elaborated in paras.20 to 23). It being said, I have some doubt about placing this subject under the umbrella of “transnational civil procedure.” Admittedly, it is conceivable that the mutual recognition

of courts' decisions could be an issue if the asset over which the enforcement is sought can easily move around, as in the case of ships. In most other cases, however, the enforcement is a matter of domestic procedure, and the international element of it is found in the significance of transparency and predictability especially for foreign creditors unfamiliar with the local specificities, which I believe sufficiently justifies the Institute's engagement in the work on this subject. The proposal of the World Bank (as seen in Annex 3) reads to be in the same line.

From the evaluation above, I am of the view that this subject shall also be included in the Work Programme with high priority, based on good communications with the World Bank.

3) *Principles of Reinsurance Contract Law*

- As regards the just and equitable principles part of the uniform law activities, the participation in the Principles of Reinsurance Contract Law (PRICL) shall be a valuable opportunity. Being part of the drafting Group of PRICL, I find that this is a project to restate what the practice has developed without codification. While the reinsurance might appear to be a specialised sector of the industry, its rules, in fact, reflect the general rules of insurance, not affected by policy considerations such as consumer protection, which is most relevant in the case of retail insurance products. The PRICL also provides an opportunity to show the usefulness of the UNIDROIT Principles of International Commercial Contracts. The fact that the project is funded by an academic foundation (para.83) and that the financial commitment of the Institute will be minimal also justifies the Institute's engagement in this work.

4) *Subjects related to digital technologies*

- The issues of digital technology, such as the artificial intelligence, smart contract and distributed ledger (as discussed in paras.72 to 74), are of course important to the commercial activities in the modern world. However, this issue may deserve careful study, not least because (a) these technologies raise more serious problems with regards to data law, as opposed to the private law in the traditional sense, and (b) the rights and duties of users of these technologies tend to be determined by the technological architecture (the "code") and not by contract, still less by law. While transnational harmonisation efforts are important, the international organisation that have traditionally focused on private law may wish to make careful studies about how best to address these issues in a globally harmonious manner. It is also noted that the Organization for Economic Co-operation and Development (OECD) is already working on some aspects of the agenda through its Artificial Intelligence Expert Group (AIGO). If the Institute considers including these issues in the Work Programme, the possibility to collaborate with OECD may be worth examining.

5) *Container Protocol to the Cape Town Convention*

- Finally, I note that the Bureau International de Containers et du Transport Intermodal (BIC) has approached the Institute and requested consideration of the possibility of Containers Protocol to the Cape Town Convention (para.85). Containers may be an appropriate subject of the Cape Town Convention, as high value, mobile asset lacking internationally harmonised legal regime. Still, because the International Working Group on Ship Finance and Security Practice of the Comité Maritime International (CMI) has also identified a reason for addressing the container financing, I am of the view that the Institute may, at this moment, observe how such organisations close to the industry practice as BIC and CMI develop their works.

3. Non-legislative activities

- Among the Institute's non-legislative activities, all of which are very important, I emphasise the essential role of the UNIDROIT library, publication and scholarships programme. Legislative works of high quality can only be achieved on the basis of solid theoretical foundation. Having a library with rich collection of books, which further enjoys being a member of a network of libraries, is an invaluable asset of the Institute. Publication of Uniform Law Review and hosting of researchers from

around the world are also bases of future activities of the Institute. Notwithstanding the financial and other practical constraints, I hope that the Institute maintains these activities in the next triennium and further.

Comments received from Mr David Morán Bovio (26 April 2019)

1) Principles on Reinsurance appears as a very important topic for UNIDROIT. Rules on that topic would be a useful addition to the Principles on International Commercial Contracts. I personally support that work. I'm fully convinced that there is a real need for work by UNIDROIT along the lines of the work on the Principles. Discussion of this topic will probably lead to a discovery of other topics for future work, such as work on bitcoin, which I would also support.

2) Model Law on Factoring is a topic which could be seen as disruptive in the sense that it would lead to a continuation of the fragmentation of receivables finance law. In addition, a model law on factoring could lead to a duplication of efforts and waste of resources, as it would have to deal with issues addressed in other uniform law texts, such as United Nations Convention on the Assignment of Receivables in international Trade (New York 2001) that recently received "green light" from the US Senate for ratification by the US, and the UNCITRAL Model Law on Secured Transactions. Moreover, a model law on factoring would detract from the need to address receivables finance and secured finance issues in one comprehensive law following a functional approach. Furthermore, a model law on factoring would either not address fully the rights of parties in factoring transactions, as it could not address rights in proceeds of receivables (e.g. bank accounts) or go into a discussion of proceeds issues and thus require coordination with secured transactions law. But provided that UNCITRAL's Model Law on Secured Transactions already has a section on outright assignment of receivables, efforts should be made to avoid overlap and to ensure consistency between both model laws.

Comments received from Mr Ergun Özsunay (29 March 2019)

On this occasion I would like to point out that I have checked the Draft Triennial Work Program for 2020-2022. I fully support this Program. For the time being I do not have any proposal or suggestion relating to the near future activities of UNIDROIT.

Comments received from Mr Francisco Sanchez Gaborino (18 April 2019)

About the Memorandum prepared by the Secretariat for comments and possible new proposals, as Item nr. 14 on the Agenda, for decision of triennial work 2020-2022 by the Governing Council of UNIDROIT, in its session to be held at Rome, next 8-10 May 2019, in my opinion, this Memorandum is very complete and carefully worded, so surely high valuable for the meeting. My congratulations therefore to those of you who have worked on it!

My proposal therefore is minor.

I would only suggest a small addition in letter D of the Document. At present, letter D.2 –"Promotion of UNIDROIT Instruments"- (nr. 90 –nr. 103, pages 24-26) includes four letters: a) –page 24-, b) and c) –page 25 and 26-, and d) –page 26. Well, I suggest to add, in letter D of the Document, perhaps as letter e), a reference to the CMR Protocol of 20 February 2008 on electronic CMR consignment note.

I believe this kind of electronic document of transport must be strongly promoted, because of its many advantages, and thus in Spain (the association of hauliers involved in international transport, ASTIC, member of IRU, I am legal counsel of) we are making efforts in this sense: at our initiative an eCMR consignment note has been used for the first time in international traffic –January 2017, between Spain and France- and even in combined road/maritime ro-ro transport –February 2019, between Spain and Italy-.

Anyway, there are still some obstacles –not always justified- to its full implementation: inertia in operational proceedings by hauliers and their clients, fear of not knowing how to use software, mistrust that although the clear wording of the Protocol in practice this edocument won't be accepted by courts of justice as basis of a claim, cost of the electronic document, etc.

This is why I find important to know the degree of use of the eCMR in the almost twenty countries which have ratified this Protocol, and which seem to be the main obstacles for it, so as to try to overcome them, to know if respective national case law accepts or not this technical way of road transport agreement (exact information about dates of the decisions and courts who issue them), etc.

Comments received from Mr Rolf Stürner (20 April 2019)

As the author of the already existing preliminary feasibility study, I hope that the Governing Council may give its consent to start the project on Principles of Civil Enforcement during the next period, and I would highly appreciate to join the future work on this interesting and attractive project.

Comments received from Ms Hernany Veytia (18 April 2019)

As per the draft on the Triennial Work Programme 2020-2022 I strongly recommend you to clearly define what is the "strategy line" of the Institute in the period and explain the role to be played by all the stakeholders in the so called ecosystem. What is the vision/mission and the specific key performance indicators you plan to achieve in such short period. From the "tasks" or project to be developed in the period looks from the low priorities (and budget) that the Institute rather prefers to be a "follower", supporter of the works funded by other institutions, rather than lead the "academic research" on specific areas.

A collaboration agreement with the World Bank could be very helpful for both institutions, UNIDROIT works as a matter of fact are already contributing to the two goals the WB has for the world to achieve by 2030. End extreme poverty by decreasing the percentage of people living on less than \$1.90 a day to no more than 3% and promote shared property by fostering the income growth of the bottom 40% for every country.

As Correspondent, I will also be delighted in working with you and the World Bank for example, in designing and lead an independent GLOBAL LEGAL LABORATORY under the auspices of both institutions. As illustration, the laboratory could provide (re)insurance coverage to valuable assets against catastrophes affecting cultural property or the EMAC industries. The laboratory will be able to detect major obstacles, and the relevant UNIDROIT study work would be able to design a suitable solution on how to overcome in short term those obstacles. Once the solution has been successfully implemented in the laboratory in specific territories, the World Bank and the member states may be interested in a sovereign risk insurance framework incorporating more than one UNIDROIT instruments.

Other than the definition of the strategic line of the Institute, I invite you to reconsider the priority you will allocate to the new technologies. I noticed that the dates of the meeting of the Governing Council coincide with the dates an exhibition at the Scuderia del Quirinale of a notary and landlord who died 500 years ago: Leonardo da Vinci: "The Science before the Science". Perhaps would be a good idea to invite before the works at the Institute to visit the exhibition. I think that after visiting the exhibition the lawyers from different jurisdiction will become aware on how before the Renaissance when someone needed a large infrastructure project, solve an agricultural or transportation project they asked the artist for a solution. Since that time every single science has become more and more specialised. Legal services were not the exception. To become an exceptional lawyer the path was always the same: become more and more specialised. The new technologies allow to incorporate and interact data from different areas, bringing transdisciplinary insights to the decision maker. With DATA SCIENCE, which includes but it is not limited to big data analytics it is possible to filter and connect trillions of datasets in seconds. Since nowadays businesses

have learned not only to back up supply chain data in the cloud, they have also embraced the idea that cloud- based platforms can help manage freight bookings, tracking, payment and beyond.

Multinational corporations have not only equipped their employees, inclusive in Africa with mobile phones to make them available anywhere, anytime, they've also exploited smart apps that allow many crucial supply chain operations to be conducted anytime, anyplace or anywhere. Meanwhile, savvy supply chain executives saw big data coming over the horizon and correctly anticipated it would come with the tools needed to sift, filter, and make that data truly useful. Now, we are presented with a trio of exciting new technologies that promise to enhance supply chain management operations even further; the Internet of Things (IoT), artificial intelligence (AI)/machine learning and blockchain. Taken independently, these technologies could potentially greatly improve many processes central to today's global supply chains. But, taken together IoT, AI, and blockchain form a powerful inflection point that could radically transform tomorrow's supply chains. The robust combination of these new technologies could activate a genuinely autonomous supply chain and UNIDROIT has the opportunity to provide an international suitable legal framework for B2B and 3PL (third party logistics providers) the direction in which the new, disruptive technologies could push international supply chain operations forward into an exciting future.

A parallel financial supply chain also runs alongside B2B and 3PL dispatching invoices and dispersing funds according to previous agreed terms and schedules.

I would be happy in showing you how big data analytics and an information hub can be used in the topics mentioned in Annex 2 "Proposal of the United States of America".

- A) Recordation and recognition of legitimate occupancy and use rights in the context of an investment on state- owned land, to enable foreign investors to easily identify and compensate those who lack title but have existing use rights
- B) Enabling the establishment of community trust funds or similar mechanism to facilitate the ability of foreign investors to deliver project-related compensation to affected communities as a whole; and
- C) Valuation of communal land to facilitate the calculation of compensation when land is held at the village level.

Comments received from Mr Jeffrey Wool (19 April 2019)

I wonder whether EA should be applied (to each candidate project) as part of the assessment of what should be on the WP. Of course, it is not dispositive, but is it not relevant consideration for decision-makers?