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TABLE OF CONTENTS

| | | |
|----------------|---|----|
| Item 1: | Adoption of the annotated draft agenda (C.D. (98) 1 rev.) | 5 |
| Item 2: | Appointments (C.D. (98) Misc. 1 rev.) | 5 |
| (a) | First and Second Vice Presidents of the Governing Council | 5 |
| (b) | Members ad honorem of the Governing Council | 5 |
| (c) | Members of the Permanent Committee | 5 |
| Item 3: | Reports | 5 |
| (a) | Annual Report 2018 (C.D. (98) 2) | 5 |
| (b) | Report of the UNIDROIT Foundation | 8 |
| Item 4: | International Interests in Mobile Equipment | 9 |
| (a) | Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (98) 3) | 9 |
| (b) | Preliminary draft Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment (C.D. (98) 4) | 12 |
| Item 5: | Private Law and Agricultural Development | 15 |
| (a) | Preparation of an international guidance document on agricultural land investment contracts (C.D. (98) 5(a) rev.) | 15 |
| (b) | Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (98) 5(b)) | 17 |
| Item 6: | Transnational civil procedure | 18 |
| (a) | Formulation of ELI-UNIDROIT regional rules (C.D. (98) 6(a) rev.) | 18 |
| Item 7: | International Commercial Contracts: Formulation of Principles of Reinsurance Contracts (C.D. (98) 7) | 20 |
| Item 8: | International Sales Law: Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law (C.D. (98) 8) | 22 |
| Item 9: | International protection of cultural property (C.D. (98) 9) | 23 |
| (a) | Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects | 23 |
| (b) | Private art collections | 25 |

| | | |
|-----------------|--|----|
| Item 10: | Promotion of UNIDROIT instruments (C.D. (98) 10) | 25 |
| Item 11: | Correspondents (C.D. (98) 11) | 27 |
| Item 12: | Library and research activities (C.D. (98) 12 rev.) | 28 |
| Item 13: | UNIDROIT information resources and policy (C.D. (98) 13 rev.) | 30 |
| Item 14: | Proposals for the work programme for the triennial period 2020-2022 and comments received by the Secretariat (C.D. (98) 14 rev. 2) | 32 |
| | Model Law on Factoring | 33 |
| | Transnational Civil Procedure: Principles of effective enforcement | 36 |
| | The harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases | 39 |
| | Artificial Intelligence/Smart Contracts/DLT | 42 |
| | Private Law and Agricultural Development | 44 |
| | Guide for enactment of the UNIDROIT Model Law on Leasing | 46 |
| | International Commercial Contracts: Formulation of general principles of reinsurance contracts | 48 |
| | A Protocol to the Cape Town Convention on Containers | 48 |
| | International Civil Procedure in Latin America | 50 |
| Item 15: | Presentation of the Cape Town Convention and Aircraft Protocol Official Commentary – Fourth Edition (2019) by Professor Sir Roy Goode C.B.E., Q.C. and Professor Jeffrey Wool (Annexe 1) | 52 |
| Item 16: | Administrative matters | 54 |
| | (a) Preparation of the draft Budget for the 2020 financial year (C.D. (98) 15(a)) | 54 |
| | (b) Report of the Secretary-General on the implementation of the new compensation and social security scheme applicable to the UNIDROIT staff (C.D. (98) 15(b)) | 55 |
| Item 17: | Date and venue of the 98th session of the Governing Council (C.D. (98) 1 rev.) | 56 |
| Item 18: | Any other business | 56 |
| | (a) Private Law and Development - Cooperation with the Legal Forum on Law Justice and Development (LFLJD) and possible future work in relation with the "Human-Centered Business Model" Project (C.D. (98) 16) | 56 |
| Item 19: | Panel on "Principles on Reinsurance Contracts" (See Annex) | 57 |
| APPENDIX I | LIST OF PARTICIPANTS | 58 |
| APPENDIX II | AGENDA | 65 |
| APPENDIX III | LIST OF ABBREVIATIONS AND ACRONYMS | 67 |

Notes of the Secretariat:

(1) The Report uses abbreviations and acronyms for UNIDROIT and other organisations' instruments, international organisations or other institutions. The list of such abbreviations and acronyms is to be found in APPENDIX III to this document.

(2) This report follows the order of items as included in the original agenda. It does not follow the order of the oral discussion, which was altered to facilitate the Secretary General's participation in the farewell to UNIDROIT's late President, Professor Alberto Mazzoni.

1. *The First Vice President of the Institute, Mr Arthur Hartkamp, was asked to Chair the session.* He welcomed members of the Governing Council to the Council's 98th session and began by paying tribute to President Alberto Mazzoni, who had passed away on 6 May 2019. He bore witness to Professor Mazzoni's extraordinary work as President over the past eight years and to the legacy which he had left behind, commending his dedication to UNIDROIT. He extended a special welcome to the Ambassador of the Grand Duchy of Luxembourg, His Excellency Mr Paul Dühr, who was attending the session in his capacity as Chair of the UNIDROIT General Assembly.

2. The Vice President recalled that, at its 77th session (Rome, 6 December 2018), the General Assembly had elected the members of the UNIDROIT Governing Council for the period 2019 – 2023. He welcomed Members of the Council who had been appointed for the first time, as well as those who had been re-elected to the Council. He noted that the combination of re-elected and newly appointed Members left the Council well positioned to lead the institute in the years to come.

3. The Vice President noted that the new Secretary-General, Mr Ignacio Tirado, had been elected at the Council's 97th session (Rome, 2-4 May 2018). He relayed that the Council held Mr Tirado in high esteem and conveyed the Council's best wishes to him. The Vice President then expressed his gratitude to Ms Anna Veneziano for her hard work in leading the Institute for a total of twelve months, which included the first eight months of 2018 as Secretary-General *ad interim*.

4. He noted that at the present session, the Council would be called upon to decide on the new Work Programme of the Institute, and hence its future direction. He reported that the past year had been very productive in achieving the goals of the current triennial Work Programme. In particular, he highlighted three of the most significant achievements, noting that these were not to be taken as an exhaustive account of the commendable work done by the Secretariat over the past 12 months.

5. Firstly, the future Protocol to the Convention on International Interests in Mobile Equipment (Cape Town Convention) on Mining, Agricultural and Construction Equipment (MAC Protocol) had featured prominently in 2018 and 2019. He explained that following the assessment of several expressions of interest from States, the decision had been taken to return to South Africa where the Cape Town Convention was first adopted in 2001. He announced that the Diplomatic Conference was scheduled to take place in Pretoria from 11 – 22 November 2019 and promised to be a well-attended event. He underscored the important role of Council members in ensuring the active participation of their States of nationality in the finalisation of the Treaty. He noted that an economic impact assessment on the MAC Protocol had been published in 2018, which represented an important step towards the successful conclusion of the instrument at the Diplomatic Conference.

6. Secondly, the Vice President highlighted the significant progress which had been made in the preparation of the Legal Guide on Agricultural Land Investment Contracts (ALIC). The Working Group had met several times over the preceding 12 months and produced a full draft of the Legal Guide which was ready for open consultations. The Vice President encouraged Members to provide and elicit comments from relevant stakeholders on the draft Legal Guide, which would be presented to the Council for approval at its 99th session in 2020.

7. Thirdly, the Vice President referred to the excellent cooperation between UNIDROIT and the European Law Institute (ELI) which had almost completed the European Regional Rules of Civil Procedure. Despite the complexity of the topic and the many parties involved in the cross institutional collaborative work, it was envisaged that the final draft would be finished by the end of 2019 and presented to the Council for approval at its 99th session in 2020. He noted that an advanced draft of the black letter rules in English had been distributed to the Governing Council for its review.

8. The Vice President then drew the Council's attention to the proposals for the new triennial Work Programme 2020 – 2022. He noted that negotiating the Work Programme would be an arduous

task, taking into account the many interesting proposals received and the Institute's limited financial and staffing capabilities. He explained that the proposals had been hierarchically ranked by the Secretariat in relation to their relevance to the Institute's mandate, feasibility, impact and adequacy in the following order: a Model Law on Factoring, Best Practices in Enforcement, filling Legislative Gaps on several aspects of Bank Resolution and Insolvency, and future work on Digital Assets, Smart Contracts, and Artificial Intelligence.

9. The Vice President expressed his hope that the Council would have fruitful deliberations and produce a prudent, substantive, ambitious, and well-conceived future Work Programme, which would ensure that UNIDROIT continued to play a crucial role in modernising, harmonising and coordinating international private and commercial law. It was with these positive sentiments that he declared the session open.

10. *The Secretary-General, Mr Ignacio Tirado*, welcomed the Council members and Observers and thanked his colleagues and friends of the Institute for their presence. He invited all attendees to join him in paying tribute to the recently deceased President Mazzoni. He recalled the late President's characteristic enthusiasm and energy, expressed his extreme sadness that the President's life had been abruptly interrupted despite the many plans President Mazzoni had in store for the Institute, and recalled the high standard set by Professor Mazzoni as a President, his reverence for the Institute and his passionate dedication to its activities.

11. The Secretary-General noted that President Mazzoni's legacy at the Institute must be considered in connection with the Secretary-General that served alongside him, Mr José Angelo Estrella Faria. Together they had many great achievements: the Legislative Guide on Intermediated Securities, the Principles on Close-Out Netting, a new version of the Principles on International Commercial Contracts, a Legal Guide on Contract Farming, the Space Protocol to the Cape Town Convention, work on Transnational Procedural Law, and so on. Together, they had laid the foundations of a first-rate international organisation with the invaluable support of the Council and the excellent professionals of the Institute.

12. The Secretary-General expressed his gratitude to the late President and the Council for having entrusted him with his role, and expressed his hope that he would live up to the high expectations of the late President and friend, and vowed to do his utmost to realise them in his honour. In concluding, the Secretary-General requested an applause in his memory.

Item 1: Adoption of the annotated draft agenda [\(C.D. \(98\) 1 rev.\)](#)

13. *The Governing Council adopted the agenda as proposed in document C.D. (98) 1 rev.*

Item 2: Appointments [\(C.D. \(98\) Misc. 1 rev.\)](#)**(a) First and Second Vice Presidents of the Governing Council**

14. *The Council renewed the appointments of Mr Arthur Hartkamp as First Vice President of the Governing Council and Mr Jorge A. Sánchez Cordero as Second Vice President, both of whom would serve in these positions until the 99th session of the Council.*

15. *The Secretary-General explained that under the current circumstances, continuity of the existing arrangements should be prioritised. He further explained that in the future the Secretariat intended to propose amendments to the Regulations that would better define the traditional procedure of rotating the second Vice-Presidency position between the most senior members of the Council.*

(b) Members *ad honorem* of the Governing Council

16. *The Council decided to appoint the following former Council members as members *ad honorem* of the Governing Council: Mr Radu Bogdan Bobei, Ms Nuria Bouza Vidal, Mr B. Bahadır Erdem, Ms Monique Jametti, Mr Miklós Király, Mr Lyou Byung-Hwa, Mr Jan Lambert Neels, Mr Wojciech Popiolek, Ms Rachel Sandby-Thomas, Mr Álvaro Sandoval Bernal, Mr Daniel Tricot, Mr Spyridon Vrellis, and Mr Roger Wilkins.*

(c) Members of the Permanent Committee

17. *The Council appointed Ms Kathryn Sabo to fill the vacancy left by the departure of Ms Rachel Sandby-Thomas, and re-appointed Mr Arthur Hartkamp, Mr Jorge A. Sánchez Cordero, Mr Henry Gabriel, and Mr Hans Georg Bollweg as members of the Permanent Committee.*

Item 3: Reports**(a) Annual Report 2018 [\(C.D. \(98\) 2\)](#)**

18. *The Secretary-General presented the Annual Report for 2018. He began by expressing his gratitude to Ms Anna Veneziano for her work as Secretary-General *a.i.* during the first eight months of 2018. He explained that UNIDROIT owed many of the achievements illustrated in the Report to her leadership during that period. He went on to provide a brief introduction of the Report for the benefit of the new members of the Council, beginning with the legislative activities.*

19. *In the area of secured transactions, he highlighted that the MAC Protocol project had continued to gain momentum in 2018. He thanked several Member States for submitting expressions of interest to host the Diplomatic Conference and noted that the decision had been taken to hold the Diplomatic Conference in Pretoria upon gracious invitation from the Government of South Africa. The Secretary-General underscored the importance of the role of the Council members in ensuring the participation of their respective States at the Diplomatic Conference. Among the numerous consultation events undertaken in 2018, he highlighted the Annual Cape Town Convention Academic Project Conference organised by Harris Manchester College, University of Oxford, and also referred to the importance of the independent MAC Protocol Economic Assessment prepared by Warwick Economics and Associates in promoting the beneficial global impact of the treaty.*

20. The past year had also been an important year for the Luxembourg Rail Protocol to the Cape Town Convention, which was approaching entry into force. The Ratification Task Force of the Rail Preparatory Commission had met several times throughout the year to coordinate strategy, and the 8th session of the Rail Preparatory Commission (Rome, 6-7 December 2018) had seen the finalisation of the Registry-related documents.

21. In respect to the Institute's work on Capital Markets, in 2018 work had been limited to the promotion of the Legislative Guide on Intermediated Securities. He explained that several consultation events on the Guide had taken place throughout 2018. He noted that further work in the area of Capital Markets had been proposed for the Institute's future Work Programme in connection with the Digital Economy.

22. Another area of work that had been particularly prominent in 2018 was Private Law and Agricultural Development. The Working Group on ALIC had met several times over the year, which had enabled the collation of the various chapters submitted by experts into a cohesive first draft. The Secretary-General paid tribute to the work of former Legal Officer, Mr Neale Bergman, for the instrument's progress, and also expressed appreciation to Ms Frédérique Mestre for her support in facilitating the consultation phase. Subject to the approval of a funding application that the Secretariat had submitted to the International Fund for Agricultural Development (IFAD), in 2019 the Institute intended to organise several consultation events in Africa, Asia, Latin America and Europe, as well as an online consultation process. A final draft of the Legal Guide on ALIC would be submitted to the Council at its 99th session. The Secretary-General expressed his gratitude to the Food and Agriculture Organisation (FAO) and to IFAD for their continued strong cooperation on the Legal Guide on ALIC, as well as to that on the UNIDROIT-FAO-IFAD Legal Guide on Contract Farming.

23. In the area of Transnational Civil Procedure and UNIDROIT's work with the ELI, the Secretary-General remarked on the progress which the European Regional Rules of Civil Procedure had made since the presentation of the first drafts at the Council's 96th session (Rome, 10-12 May 2017). The draft ELI-UNIDROIT Rules had been discussed at the ELI Annual Conference in Riga, Trier, in September 2018, and most recently at a plenary meeting of the Steering Committee and Working Groups held in Rome in February 2019. He noted that a full version of the black letter rules had been distributed to the Council for their consideration. He further explained that the ELI-UNIDROIT Rules would be consolidated in 2019 with a view to submitting them to the Council at its 99th session in 2020.

24. Finally, the Secretary-General remarked on the progress that had been made in the field of the protection of Cultural Property. He noted that the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995 Convention) continued to attract ratifications thanks to the joint efforts and strong cooperation between the Secretariat and UNESCO, as well as other key agencies in the field.

25. Among the non-legislative activities, the Secretary-General noted the Secretariat's continued efforts to promote UNIDROIT instruments, among which the work on the dissemination of the UNIDROIT-FAO-IFAD Legal Guide on Contract Farming was worthy of special mention. He explained that the Institute was conducting discussions with FAO and IFAD to cooperate in the production of local legal guides, and other materials, which would aid in the implementation of the Guide's core principles by adjusting them to the particular needs of specific countries.

26. Referring to the work of the UNIDROIT Library, the Secretary-General remarked on progress of the library digitisation process. He noted that the digitisation of the Library's oldest collections was of high importance in order to guarantee their preservation. He explained that the Library had reviewed its subscriptions policy, to ensure it retained access to the most important materials in the fields of private international law, international commercial law and comparative law. The Secretary-General expressed his intention to revamp the Library as a research centre, with the

ambition of becoming one of the most prominent research institutes on international private law. Additional funding and donations were being sought to achieve this goal. A series of seminars had been delivered by visiting researchers and professors on their topics of expertise and the Institute was seeking to conclude agreements with leading universities around the world to disseminate the research undertaken in the Library.

27. *Mr Bollweg* thanked the Secretary-General for his impressive report, which reflected an excellent start to his tenure. He wished him success in the challenging task as the new Secretary-General of UNIDROIT. He expressed his gratitude, on behalf of the Council and the Permanent Committee, to Ms Veneziano for her work as Secretary-General *a.i.* in the period before the the new Secretary-General had taken office, and congratulated her for all the achievements of the Institute during this time.

28. *Mr Moreno Rodríguez* expressed his condolences for the passing of Professor Mazzoni, recalling that he was above all and most importantly, a good man. He also expressed his gratitude to the former Secretary-General, Mr Estrella Faria, and echoed the congratulations that had previously been voiced to Ms Veneziano for her impeccable leadership during her time as Secretary-General *a.i.* and to the staff of the Institute. He congratulated the Secretary-General for his appointment, and stated that he looked forward to deliberating upon the proposals received for the 2020 - 2022 Work Programme.

29. *Mr Gabriel* welcomed the Secretary-General. He commended the proposals for the 2020 - 2022 Work Programme, expressed optimism for the possibility of obtaining further funding for additional activities, and looked forward to the development of the Institute under the leadership of the new Secretary-General.

30. *Ms Sabo* noted that the Annual Report transmitted a sense of the Institute's current strength, despite the very sad note on which the Council had begun. She looked forward to working with the new Secretary-General and the rest of the UNIDROIT staff, and was honoured by her appointment as a member of the Permanent Committee.

31. *Mr Sánchez Cordero* echoed the statements of Mr Bollweg, Mr Moreno Rodríguez, and Ms Sabo, expressing his condolences for the loss of President Mazzoni, and extending his heartfelt welcome to the Secretary-General. He also expressed his gratitude to the former Secretary-General Mr Estrella Faria, and to Ms Veneziano for her impressive work in her *ad interim* role.

32. *Ms Dacoronia*, as one of the newly elected members of the Council, expressed gratitude for her appointment, and noted her commitment to contributing to the Institute's aims. She congratulated the new Secretary-General for his appointment and expressed her gratitude to Ms Veneziano for her accomplishments in the *ad interim* period. She also expressed her condolences for the passing of President Mazzoni.

33. *The Council took note of the Secretary-General's report on the activities of the Institute during 2018 and expressed its satisfaction with the work. The Council expressly conveyed its gratitude to Ms Veneziano for the manner in which she had led the Institute as Secretary General a.i. up until August 2018.*

(b) Report of the UNIDROIT Foundation

34. *The President of the UNIDROIT Foundation, Mr Jeffrey Wool*, expressed his condolences for the passing of President Mazzoni, who had been an important figure at the UNIDROIT Foundation, as well as a member of its Board of Governors.

35. He provided the new members of the Council with an introduction on the background of the UNIDROIT Foundation. He explained that the Foundation's two main projects were (a) an analytic framework and guide for the Economic Assessment of International Commercial Law Reform (EA Project); and (b) the development of a Guide on Best Practices in the Design and Operation of Electronic Registries. Both projects had made substantial progress over the past year and were undertaken in partnership with the University of Washington and Harris Manchester College at the University of Oxford.

36. The President of the Foundation explained that the Foundation intended to focus on work in the digital assets and new technology sphere, in light of the proposals for the Institute's future Work Programme concerning the digital economy. Furthermore, building on the experience of the Cape Town Convention Academic Project, the Foundation was supporting the 1995 UNIDROIT Convention Academic Project (UCAP) which was concerned with the Institute's work on cultural property; this presently featured a website designed towards raising awareness on the work of UNIDROIT in the field, but also towards the Library and its activities. The Foundation's Board of Governors had held two meetings in 2019, on 8 April and 7 May respectively, and had recently adopted a new strategic plan. It had also brought on two professional fundraisers as senior counsellors and had strengthened its Board of Governors with the recent addition of Ms Louise Gullifer. He referred the members of the Council to the Foundation website for further information.

37. *The Vice President* thanked Mr Wool for his report and opened the floor for comments.

38. *The Secretary-General* thanked Mr Wool for the work of the Foundation in supporting UNIDROIT, noting the important role of the Foundation's work in increasing the impact and understanding of UNIDROIT instruments.

39. *Mr Meier* expressed his gratitude to the Foundation for its work relating to the EA Project, as it played a key role in the decisions of States at a governmental level. There was a constant demand among legislators for data on the potential economic impact of reforms, and this project would be instrumental to ensuring those needs were met.

40. *Ms Sabo* echoed Mr Meier's remarks, adding that the importance of the Foundation went beyond the economic assessment tools it provided. She highlighted the Foundation's support to the Research Scholarship Programme and its contributions to the Library. She underscored the importance of ensuring that the Foundation raise sufficient funding to maintain its own upkeep and projects as well as support the Institute's work.

41. *The Secretary-General* added that the Foundation was commendably managed by Legal Officer, William Brydie-Watson, and Legal Consultant, Hamza Hameed, who deserved recognition for their work.

42. *Ms Broka* expressed her gratitude to the Foundation and noted that she had been pleased to note the progress of its work over the years.

43. *Mr Estrella Faria*, representative of the United Nations Commission on International Trade Law (UNCITRAL), expressed UNCITRAL's interest in the Foundation's work, reiterating that a major hurdle in legislative reform for governments was adequate assessment of the economic impact of

such reforms. The added value of the Foundation's work in this area would be to develop a methodology that could apply to projects of a different nature where the impact could not simply be accounted for by the reduction of credit costs, as was the case for the Cape Town Convention and its Protocols. UNCITRAL expressed its continued support and willingness to cooperate on the EA Project.

44. Responding to the remarks of the representative of UNCITRAL, *Mr Wool* noted an active interest on behalf of the Foundation in the area of the digital economy, especially in light of the results of the joint UNIDROIT – UNCITRAL colloquium on these issues. The colloquium had raised interesting questions relating to the measurement of economic impact within the digital economy, which was an area the Foundation's EA Project could consider in the future.

45. *The Secretary-General* expressed his agreement with the comment of Mr Estrella Faria, and reiterated that the scope of the EA Project was to develop tools for both *ex post* and *ex ante* impact assessments, and that there had been significant progress in differentiating the types of data which could be collected.

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

Item 4: International Interests in Mobile Equipment

(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol [\(C.D. \(98\) 3\)](#)

47. *The Deputy Secretary-General, Ms Anna Veneziano*, updated the Council on the progress on the implementation of the Luxembourg Rail Protocol. She noted that 2018, as well as the beginning of 2019, had been a very fruitful period as there had been positive developments in the areas of State ratifications, institutional support, and promotional events.

48. With regard to ratifications, Gabon and Sweden had ratified the Luxembourg Rail Protocol in 2018, which had brought the total number of Contracting States to three. This meant that the Luxembourg Rail Protocol had been signed by nine States (France, Gabon, Germany, Italy, Luxembourg, Mozambique, Sweden, Switzerland and the United Kingdom), ratified by three States (Luxembourg, Gabon, and Sweden) and had also been approved by one contracting Regional Economic Integration Organisation (the European Union). She noted that further ratifications were currently in progress in a number of States. The Luxembourg Rail Protocol would enter into force following four ratifications, as well as the submission of a certificate by the Supervisory Authority confirming that the International Registry was fully operational.

49. The Deputy Secretary-General then read out a statement from Ms Heléne Fritzon, Minister for Migration and Deputy Minister for Justice in Sweden:

"The foreseeability that the Luxembourg Rail Protocol provides for creditors is expected to increase the access to private capital and give railway undertakings more favourable economic conditions. Cheaper and wider financing options make it easier for train operators to invest and the rail sector is strengthened, which is good for the environment and for consumers."

50. She expressed gratitude to the work which UNIDROIT's late President, Professor Mazzoni, had undertaken in furthering the promotion of the Luxembourg Rail Protocol, noting that his commitment to the instrument would be missed moving forward.

51. With regard to institutional progress, the Deputy Secretary-General noted that the Intergovernmental Organisation for International Carriage by Rail (OTIF), which was the Secretariat for the Luxembourg Rail Protocol's Supervisory Authority, had approved the draft statute and rules for the Supervisory Authority on 25 September 2018 at its General Assembly meeting, which had coincided with its 125th anniversary. This anniversary had also allowed the additional promotion of the Luxembourg Rail Protocol to OTIF's constituency. Secondly, on 6-7 December 2018, UNIDROIT and OTIF had held the 8th session of the Rail Preparatory Commission for the establishment of an International Registry under the Luxembourg Rail Protocol in Rome. This session had been attended by more than 30 participating delegations. Moreover, several States had expressed interest in the Luxembourg Rail Protocol and the Preparatory Commission had approved the draft statute and rules for the Supervisory Authority, which had been approved at the aforementioned OTIF General Assembly meeting.

52. On promotional activities, she noted that the Ratification Task Force, the Rail Working Group and the Luxembourg Government had been actively organising and participating in international events promoting the Protocol. This included events in Madrid, Paris, Jakarta, Pretoria, and other cities. A full list of events was available in the 2018 Annual report as well as in document (C.D. (98) 3).

53. She specifically drew the Council's attention to the Secretariat's participation in a high-level seminar entitled "Railway rolling stock financing: a new solution for Africa" in Marrakech, Morocco, organised by the UN Economic Commission for Africa (UNECA). The event had been attended by many high-level governmental officials and private sector representatives, all of whom had agreed on the key role that the Luxembourg Rail Protocol could play in attracting private capital to create a sustainable model for existing and new rail projects in the context of the 2030 Agenda for Sustainable Development, as well as for the African Union's Agenda 2063. At the conclusion of the UNECA Conference, a Resolution had been passed concerning the Luxembourg Rail Protocol which mandated UNECA to "continue its awareness raising and advocacy across the continent" of the Protocol "with a view to elucidating its merits and potential contribution to the financing of rolling stock in rail projects", and to "inform interested parties from the public sector and the private sector across the continent on, and educate them in, the way that private credit and leasing can assist with providing the financial resources necessary to revitalize and expand the African rail network and the benefits of becoming party to the Luxembourg Rail Protocol" (E/ECA/CM/51/2/rev 1). Subsequently, the African Union had also made favourable statements relating to the Luxembourg Rail Protocol.

54. Regarding the Space Protocol, the Deputy Secretary-General informed the Council that in 2017, the Space Preparatory Commission had agreed to constitute a Sub-Group to Reassess Industry Participation for the Promotion and Development of the Space Protocol. This Sub-Group had met several times via teleconference throughout 2018 and had produced documents highlighting the economic benefits of the Space Protocol and the continued support for the instrument, especially from the New Space industry.

55. On promotional matters, in 2018 and 2019, the Secretariat had participated in several events to further promote the Space Protocol. These had included events in Bremen, Toulouse, Bonn, Singapore, Amman, Abu Dhabi, and others. *The Deputy Secretary-General acknowledged Mr Hamza Hameed's contribution in this regard.* A full list of events was available in the relevant sections of the 2018 Annual Report, as well as in document C.D. (98) 3.

56. With regard to institutional matters, the appointment of a Supervisory Authority had been discussed by the International Telecommunication Union (ITU) pursuant to ITU's engagement in the work of the Space Preparatory Commission, at its Plenipotentiary Conference held in Dubai from 29 October to 16 November 2018. After a debate, where some States had expressed support for the ITU to take on the role of Supervisory Authority, others had requested the ITU to continue to monitor

the situation and report back to its constituency, and yet other States had expressed a preference for the ITU not to accept the role of Supervisory Authority, the Plenipotentiary Conference had resolved that the ITU would not accept the role of Supervisory Authority for the Space Protocol in 2018. However, it encouraged UNIDROIT to submit a further invitation to it 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.

57. A new section relating to useful documentation, as well as frequently answered questions relating to the Space Protocol had been added to the UNIDROIT website. The Deputy Secretary-General noted that the Secretariat would continue to promote the Space Protocol as it had done in the past, while at the same time giving due consideration to the important stages of implementation of the MAC Protocol and the Luxembourg Rail Protocol projects.

58. *Ms Sabo* suggested that the MAC Protocol and the Luxembourg Rail Protocol should be given greater priority at the present time, keeping in mind the stage of development both those instruments had reached. She encouraged the Secretariat to continue its promotional efforts on the Space Protocol, but with a reduced priority compared to the MAC Protocol and the Luxembourg Rail Protocol.

59. *Mr Bollweg* noted the strong support of the German Ministry of Economic Affairs for the Space Protocol and expressed support for the Secretariat's proposal to continue promoting the Space Protocol as it deemed appropriate. With regard to the issue of the Supervisory Authority, he noted the efforts that had been made by the Secretariat, in conjunction with the German government, in order to allow the ITU to move towards accepting the role of Supervisory Authority for the Protocol. He added that the ITU Council had expressed its satisfaction with this prospect. However, there remained strong elements focussed on dissuading competition within the space industry. He noted that the postponement of the decision on Supervisory Authority was not ideal. He further noted that it was important to consider alternatives to the ITU in terms of identifying a Supervisory Authority for the Space Protocol. He suggested that the Luxembourg Rail Protocol approach of establishing a new entity to undertake this role could be considered.

60. *Mr Gabriel* expressed agreement with the Secretariat's proposal to continue to promote the Space Protocol as it deemed appropriate, while at the same time ensuring the continued progress of the MAC Protocol and the Luxembourg Rail Protocol.

61. *Mr Komarov* noted a high degree of interest in the Luxembourg Rail Protocol and the Space Protocol in Russia. While progress towards ratification of these instruments was slow due to internal policy matters, the agencies in Russia involved in the railway and space sectors were optimistic about these Protocols and their economic benefits.

62. *Ms Bariatti* agreed with Mr Bollweg and Mr Gabriel with regard to the Secretariat's proposal to allow for the continued promotion of the Protocols of the Cape Town Convention as deemed appropriate. *Ms Fauvarque-Cosson* concurred with this view.

63. *Mr Leinonen* also expressed his support for the Secretariat to set its priorities regarding promotion based on its own assessment of the stage of development of each Protocol. He noted the upcoming presidency of Finland of the European Union in 2020 and the opportunity it provided for promoting the Cape Town Convention and its Protocols.

64. *The Secretary-General* thanked all the Council Members for their support for the Secretariat's proposal to allocate promotional resources to the Protocols of the Cape Town Convention consistent with their stage of development and as the Secretariat deemed appropriate.

65. *The Council took note of the developments in relation to the implementation of the Luxembourg Rail Protocol and the Space Protocol, and it encouraged the Secretariat to continue its promotional efforts.*

(b) Preliminary draft Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment [\(C.D. \(98\) 4\)](#)

66. *Mr William Brydie-Watson (UNIDROIT Secretariat) introduced the MAC Protocol project. He noted that document C.D. (98) 4 provided a summary of the Secretariat's work on the instrument over the preceding 12 months.*

67. Mr Brydie-Watson explained that the Republic of South Africa had offered to host a Diplomatic Conference in November 2019 to adopt the MAC Protocol. He noted that invitations to the Diplomatic Conference were in the process of being distributed by the South African Government.

68. Turning to substantive matters, Mr Brydie-Watson described the Secretariat's four major priorities in preparation of the Diplomatic Conference: (i) the development of a balanced and widely accepted legal text, (ii) preparation of an economic assessment, (iii) private sector engagement, and (iv) public sector participation.

69. In terms of the draft MAC Protocol's legal rules, Mr Brydie-Watson noted that, out of the 34 articles in the draft instrument, the majority of the substantive rules were overwhelmingly consistent with the existing Protocols to the Cape Town Convention. He explained that despite the general consistency, there were a few important divergences in the draft MAC Protocol's legal rules, such as the use of the Harmonized System to establish the scope of the instrument, regulation of interests arising out of immovable property, and the treatment of inventory. He noted that in 2018, six Governments had made 70 proposals in relation to listing additional Harmonized System codes in the draft MAC Protocol annexes to expand the scope of the instrument. He explained that the Secretariat was reviewing the new proposals in collaboration with the World Customs Organization and the MAC Working Group in order to make recommendations to the Diplomatic Conference.

70. In relation to economic impact, he noted that the final MAC Protocol Economic Impact Assessment had been released in August 2018. Undertaken by a group of independent experienced British economists, the economic assessment predicted that over a 10 year period the MAC Protocol could increase the global levels of MAC equipment stock by USD 90 billion, and increase annual gross domestic product in developing countries by USD 23 billion, and in developed countries by USD 7 billion.

71. Mr Brydie-Watson noted that the MAC Protocol continued to enjoy a strong level of support from both the private sector and negotiating Governments. He explained that private sector stakeholders were represented by the MAC Working Group, which had played an active role in negotiations, provided important data on the nature of the equipment to be covered by the treaty and funded the independent economic assessment. He noted that interest in the MAC Protocol from States continued to increase, and highlighted that 51 Governments had participated in the Committee of Governmental Experts negotiations in 2017. He further explained that 40 States had been consulted through 11 workshops and 9 Governmental meetings over the preceding 12 months and that a series of additional regional consultations had been organised for the months leading up to the Diplomatic Conference.

72. Mr Brydie-Watson concluded that on the basis of the high levels of interest from the private and public sectors, the Secretariat was cautiously optimistic that the Diplomatic Conference would be a success. He encouraged Council members to consult with their local governments to encourage

engagement with the MAC Protocol project and attendance at the Diplomatic Conference in November.

73. *The Secretary-General* noted that the Institute wanted the MAC Protocol to replicate the success of the Aircraft Protocol. He noted that the aviation industry had been easier to involve in negotiations, as it was dominated by two major manufacturers. He explained that it was more challenging to engage with private sector stakeholders in the MAC industries, which were more widely dispersed globally. He encouraged Council members to engage with their local industries and put them in contact with the Working Group. He emphasised that private sector engagement in advance of the Diplomatic Conference was particularly important to ensure that the correct Harmonised System codes were included in the MAC Protocol annexes.

74. *Mr Gabriel* thanked the Secretariat for its hard work on the MAC Protocol project over a number of years, noting his satisfaction with the significant momentum the project had built since its proposal for the UNIDROIT Work Programme in 2005. He explained that the industry and the United States Government were excited about the MAC Protocol because it was a win-win instrument for manufacturers, financiers and end-users.

75. *Mr Bollweg* also expressed his support for the MAC Protocol project and voiced his satisfaction that the project had reached the verge of adoption. He commended the Secretariat on its work in consulting with academic experts and preparing analysis on the few open legal issues in advance of the Diplomatic Conference. He noted the importance of the Protocol having a well-balanced amendment mechanism, as treaty amendment created constitutional law issues in many jurisdictions. He urged the Secretariat to continue its work and consult with Government treaty experts on the matter in advance of the Diplomatic Conference. Finally, he thanked the Government of South Africa for offering to host the Diplomatic Conference.

76. *Ms Broka* expressed her gratitude to the Secretariat for its work on the MAC Protocol. She emphasised the importance of the economic assessment in establishing the importance of the MAC Protocol and noted that she would consult with the Latvian Government to encourage it to send a delegation to the Diplomatic Conference.

77. *Mr Meier* thanked the Secretariat for its work. He explained that he had attempted to engage with the private industry in Switzerland on the project but had been unsuccessful. He noted the challenges of engaging industry and trade associations on such a technical instrument and queried whether the Secretariat had prepared any documentation that might assist Council members in that regard. *Mr Brydie-Watson* agreed that it was challenging to engage the private sector on a highly technical treaty that would have significant long-term benefits but required their support in the short term. He noted that the Secretariat would be willing to prepare some additional documentation to assist in private sector consultations in advance of the Diplomatic Conference.

78. *Ms Sabo* thanked the Secretariat for its report and its work in moving the MAC Protocol towards conclusion. She explained that when the project had first been proposed, she had personally spoken against it, due to the absence of interest from industry and States. She noted that the turning point had been when industry and States had become actively supportive of the project. She noted that she now believed that the MAC Protocol had the possibility of replicating the success of the Aircraft Protocol. She underlined the importance of the preparatory work by the Secretariat in ensuring the Diplomatic Conference would be in a position to successfully resolve the remaining legal issues. She noted that Canada would be represented at the Diplomatic Conference. She expressed her support for South Africa hosting the Diplomatic Conference, as it would ensure higher levels of engagement from African States that were well placed to benefit from the instrument. She noted that it would be difficult for Canada to sign the Protocol at the Diplomatic Conference due to the timing of elections in Canada in October 2019, but that it was actively considering the instrument.

She concluded by noting that a successful consultation event had been held in Montreal in April 2019 in partnership with the MAC Working Group and had involved over 60 Government representatives, industry stakeholders and legal experts.

79. *The Secretary-General* noted that the Canadian event had been very successful and could be used as a model for future consultation events in other States, as it involved the right combination of private sector stakeholders (such as financiers and manufacturers) and legal experts.

80. *Mr Moreno Rodríguez* noted his support for the project. He explained that Paraguay had recently ratified both the Cape Town Convention and Aircraft Protocol. He noted that the Paraguayan Ambassador in Rome had met with the UNIDROIT Secretary-General to discuss the MAC Protocol and its potential impact in Paraguay.

81. *Ms Dacornia* queried the draft MAC Protocol's entry into force mechanism. *Mr Brydie-Watson* explained that Article XXIV was modelled on the corresponding provision in the Luxembourg Rail Protocol, which required both a minimum number of ratifications and confirmation that the Registry was fully operational. He noted that the second requirement was important because the MAC Protocol could not operate without a functioning international registry.

82. *The representative of UNCITRAL* noted that while UNCITRAL might not be able to attend the Diplomatic Conference in Pretoria, it was satisfied that the draft treaty had found a suitable solution to prevent undesirable overlap between the MAC Protocol and UNCITRAL's work on the harmonisation of secured transactions law at a domestic level. He suggested that the MAC Protocol would be a welcome new addition to the Cape Town Convention family. He explained that UNCITRAL's secured transaction texts expressly give priority to the international commitments of enacting States and avoid any potential clash with the Cape Town Convention and its Protocols in doing so. Finally, he stated that UNCITRAL was closely following the negotiations in relation to the MAC Protocol amendment mechanism as they faced similar issues in designing amendment mechanisms for their instruments.

83. *Ms Fauvarque-Cosson* noted that UNIDROIT had developed other instruments in the field of agricultural law and development in addition to the MAC Protocol, including the Legal Guide on Contract Farming and the future Legal Guide on Agricultural Land Investment Contracts. She suggested that the three instruments be promoted together. *The Deputy Secretary-General* agreed with Ms Fauvarque-Cosson and noted that the UNIDROIT website had been updated to reflect the synergies between UNIDROIT's projects on agricultural law and development.

84. *Ms Shi* joined her colleagues in congratulating the Secretariat on its work on the MAC Protocol. She noted her belief that both the Luxembourg Rail Protocol and the MAC Protocol were of high importance for China in supporting the implementation of the One Belt One Road Initiative. She explained that the second high-level conference on the One Best One Road Initiative had been held in Beijing in April 2019, which involved the participation of the Chinese President, Xi Jinping. She welcomed further consultations on the MAC Protocol in Beijing before the Diplomatic Conference and volunteered to assist the Secretariat in organising such an event.

85. *The Council* took note of the developments in relation to the MAC Protocol and acknowledged the role of its members in encouraging their own Governments to (i) participate actively in the process leading to the Diplomatic Conference, (ii) attend the Diplomatic Conference with a strong delegation, and (iii) consider signing the Protocol in Pretoria or shortly thereafter.

Item 5: Private Law and Agricultural Development**(a) Preparation of an international guidance document on agricultural land investment contracts [\(C.D. \(98\) 5\(a\) rev.\)](#)**

86. *Ms Frederique Mestre (UNIDROIT Secretariat)* introduced Item No. 5 on the agenda: Private Law and Agricultural Development - (a) Preparation of an international guidance document on ALIC, and presented document C.D. (98) 5(a). She provided a brief overview of the background for UNIDROIT's work in this area, its cooperation with FAO and IFAD as partner institutions, a summary of recent developments, and information on the envisaged consultations and other next steps for the project.

87. Ms Mestre made a presentation of the underlying principles and content of the different chapters and sections of the future UNIDROIT-FAO-IFAD Legal Guide on ALIC (revised version 15 April a copy of which was annexed to the document). This text would be finalised considering the Council's guidance as well as the planned consultations with Member States, other organisations and stakeholders.

88. *Ms Katherine Meighan, General Counsel and representative of IFAD*, expressed her appreciation for the excellent collaboration over the years with UNIDROIT and FAO. Instruments such as the Legal Guide on Contract Farming were important tools and best practice models which IFAD could use in its policy and programmes focussing on the financing of smallholder farmers. Regarding the ongoing preparation and finalisation of the Legal Guide on ALIC and its future implementation, she indicated that IFAD was considering a grant to further support this important work, in particular for the envisaged regional consultations that would bring important insights to the project.

89. *Ms Margret Vidar, Legal Officer and representative of FAO*, stated that, as in previous years, FAO was very pleased with regard to its collaboration with UNIDROIT. UNIDROIT's private law expertise brought great value to support FAO's work in the areas of food security, nutrition, sustainability and resilience. After the successful partnership on the Legal Guide on Contract Farming, the collaborative work on the Legal Guide on ALIC had been a very productive one, building upon FAO and the Committee on Food Security's (CFS) policy documents on tenure rights and on responsible investments. FAO's participation in the Working Group relied on development law experts and on CFS RAI-Principles experts with practical experience of working on the ground with the civil society, the private sector and Governments. She concluded by adding that FAO would be happy to seek new areas of collaboration with UNIDROIT.

90. *Mr Moreno Rodríguez, in his capacity as the Chairman of the ALIC Working Group*, commended the work of all members of the Secretariat, and particularly Mr Neale Bergman, for the progress accomplished over the last year, and the participants of the Working Group who had gathered expertise in a variety of complex areas such as human rights, environmental law, gender, food security, public international law, and private international law. The work had proceeded smoothly over the four sessions of the Working Group, and the draft was at a very advanced stage, almost ready for being submitted for consultations, with the idea of approving the document at the 99th session of the Council.

91. *Ms Sabo* noted that the Canadian Government was very supportive of the project, and had expressed interest in the possibility of developing model provisions for the identification and recognition of legitimate right holders. It also strongly supported the cooperation with FAO and IFAD in this area.

92. *Mr Estrella Faria, representative of UNCITRAL*, regarding references to tendering for selection of the investor in Chapter 2 on contract formation, noted the relevance of the United Nations

Convention against Corruption (UNCAC), which sets out several requirements for contracting states to prevent and avoid corruption in the management of public property and public finances. He further noted that the requirements for tendering might apply also in the context of a transfer of an investment interest to a possible new investor – a situation addressed in Chapter 5 of the draft. In this regard, he pointed out that many countries require public bidding when an infrastructure concession is transferred to a new concessionaire, as reflected in the relevant chapter of the revised version of the Legislative Guide on Privately Financed Infrastructure Projects which UNCITRAL was about to adopt.

93. The representative of UNCITRAL, with regard to the references to foreign investment, investment protection and expropriation, noted that this was a very sensitive topic and suggested that consultations and review be sought on this particular chapter from the United Nations Conference on Trade and Development (UNCTAD).

94. *Ms Fauvarque-Cosson* noted that agricultural land investment contracts were long term contracts, which often gave rise to a number of non-performance situations, and it was therefore particularly important to provide guidance to the parties regarding remedies. She noted that, although the applicable law would most often be the law of the host State, the UNIDROIT Principles of International Commercial Contracts (UPICC) provided a useful reference. The Legal Guide included a Chapter intended to enhance the parties' stability and security by covering excuses – including hardship - and breaches, and corresponding remedies for the main parties, i.e. the investor and the host State, but very importantly also for the legitimate right holders, who were most often third parties, and could in certain circumstances claim third party beneficiary remedies.

95. *The representative of UNCITRAL*, with regard to paragraphs 33 and 34, noted that UNCITRAL no longer made a distinction in terminology between "conciliation" and "mediation", the latter term now being preferred as reflected in the 2018 Model Law on International Commercial Mediation amending the 2002 UNCITRAL Model Law on International Commercial Conciliation. He suggested that the drafters may wish to align the terminology used in the draft with UNCITRAL terminology, and perhaps to make a reference to the relevant UNCITRAL instruments.

96. Concerning the part on settlements, the representative of UNCITRAL suggested to refer to the newly adopted United Nations Convention on International Settlement Agreements resulting from Mediation, known as the "Singapore Convention on Mediation", because in his opinion it would provide an important framework for the enforcement of the settlement agreements.

97. In addition, the representative of UNCITRAL referred to a current debate within UNCITRAL Working Group III regarding the possible reform of the entire system of investor-state dispute settlement. There was no final vision of what this would look like in the future, but he suggested that some of the statements that were made in the draft Legal Guide on ALIC may need to be nuanced in the view of what might be the possible outcome of that process.

98. *Mr Meier* commended the work of the Working Group, noting its importance for practitioners. In this regard, in light of the prevailing rather theoretical approach of the document, an Annex providing a checklist would in his opinion be a particularly useful tool for practitioners. He inquired whether it would be useful to provide some examples of contract clauses or standard contract forms, to support the recommendations which were made throughout the document.

99. *Mr Moreno Rodríguez and the Deputy Secretary-General* thanked all members and observers for their comments and reminded participants that their feedback would be sought in the round of consultations on the draft which would be opened very soon.

100. *The Council took note of the update on the work on an international guidance document on agricultural land investment contracts. FAO and IFAD commended the Secretariat for the extremely positive cooperation and high level of expertise.*

(b) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming [\(C.D. \(98\) 5\(b\)\)](#)

101. *Ms Mestre* drew the Council's attention to document C.D. (98) 5(b), which detailed the follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming. She introduced the Legal Guide on Contract Farming and highlighted some of the promotional activities that had been undertaken. She noted that a number of useful promotional documents had been produced by IFAD and FAO between 2016-2017 as part of a joint programme aimed to implement the Legal Guide in diverse contract farming contexts through the preparation of outreach materials, knowledge and implementation tools, to be used in capacity building and development programmes in different countries.

102. Additionally, UNIDROIT had also set up "a Community of Practice on Legal Aspects of Contract Farming" (CoPL/CF) linked to the Global Forum on Law, Justice and Development (GFLJD). This forum had the objective of promoting a favourable legal environment for relationships between agricultural producers and commodity takers based on agricultural production contracts.

103. With regard to projects, activities, and outcomes, the Legal Guide on Contract Farming had been published in Portuguese in Brazil in October 2018 and in Chinese (Mandarin) in March 2019. In Chile, an academic research project: "Strengthening the legal framework for agricultural contracts in Chile and Latin-America", led by the Pontificia Universidad Católica de Valparaíso (Chile), financed by the Chilean public research fund FONDECYT, had facilitated the printing in Chile of the Spanish version of the Legal Guide. Lastly, as part of a global initiative to be implemented by academic partners, the Secretariat was preparing guidelines for the drafting of country-specific legal guides on contract farming, aimed at providing a thorough analysis of the legal rules applicable to contract farming relationships, by transposing the general guidance provided in UNIDROIT/FAO/IFAD Legal Guide on Contract Farming into the domestic context.

104. With regard to meetings, conferences, and promotional events, the Secretariat had presented the Legal Guide on Contract Farming at several events since the 97th session of the Council. This had included a lecture by the Deputy Secretary-General in July 2018 on "UNIDROIT's work on sustainable development – the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming" at Hokkaido University in Sapporo; participation at the IBA Annual Conference all-fora session on "The Future of Food: a Global Issue for Humanity" in October 2018; participation in a Colloquium on "The Legal, Economic and Social Implications of Contract Farming" co-organised by the Faculty of Administration of the University of São Paulo and UNIDROIT in October 2018; participation in an International Colloquium organised by the Faculty of Law of the Pontificia Universidad Católica de Valparaíso - PUCV, Chile, on "The agricultural contract: experiences and developments under Latin-American law and Uniform Law" in October 2018; participation in the Food for Law Conference hosted by McGill University in Montreal and its Centre for Intellectual Property Policy (CIPP) in February 2019; a presentation on "International Regulatory Models for Contract Farming" at a Workshop on "*Agricultura por contrato – Aspectos legales y regulatorios, ordenamiento productivo, instrumentos financieros*" in Bogota, Colombia, organised by the Colombian Ministry for Agriculture and Rural Development (MADR), the European Union (First Programme) and FAO Colombia; and a lecture in April 2019 as part of the 3rd Edition of the Master of Law (LL.M.) in Food Law, at LUISS School of Law in Rome.

105. *Ms Sabo* congratulated the Secretariat for its excellent work towards promoting the Legal Guide on Contract Farming since the 97th session of the Council.

106. *The Council took note of the Secretariat's report on the follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming.*

Item 6: Transnational civil procedure

(a) Formulation of ELI-UNIDROIT regional rules [\(C.D. \(98\) 6\(a\) rev.\)](#)

107. *The Deputy Secretary-General introduced the topic. She drew the Council's attention to document C.D. (98) 6(a) rev., recalling that the project was a continuation of UNIDROIT's previous work in the area of civil procedure in cooperation with the American Law Institute (ALI) which had led to the production of the 2004 ALI/UNIDROIT Principles of Transnational Civil Procedure.*

108. The Deputy Secretary-General summarised the points relating to the background and architecture of the project contained in document C.D. (98) 6(a) rev. With regard to the project activities undertaken in 2018-2019, the Deputy Secretary-General noted that the Co-Reporters of all Working Groups and members of active Working Groups had met with the Steering Committee and the Structure Group in Rome on 9-10 April 2018. This meeting had addressed advanced texts on "Judgements", "Parties and Collective Redress", and "*Lis Pendens* and *Res Judicata*", as well as initial drafts prepared by the newly instituted Working Groups on "Costs" and "Appeals". Part of this work-in-progress had been presented to the UNIDROIT Governing Council at its 97th session (Rome, 2-4 May 2018 (see C.D. (97) 8 (a)). On 6 September 2018, the project had been discussed at the 2018 ELI Annual Conference in Riga. Additionally, a project conference had been held on 26-27 November 2018 in Trier, with participation of numerous project members and external commentators. The conference had been hosted by the Academy of European Law (ERA), and had featured three focus panels which had addressed key project issues, as well as an introductory panel which featured an overview on various aspects of the draft provided by the project Working Groups co-reporters.

109. The final Annual Steering Committee meeting with the Co-Reporters of all Working Groups had been held in Rome on 25-26 February 2019. This meeting had addressed the status of the Consolidated Draft, on the basis of the text provided by the Working Group on "Structure" and had explored the main issues that were still under consideration. The Steering Committee and the Structure Group had discussed the required actions and timeline for the adoption of the final texts both in English and French, for approval by ELI and UNIDROIT and for their final publication. It had also been agreed that Ms Frédérique Ferrand and Mr Emmanuel Jeuland would be invited as additional members of the Structure Group to coordinate and prepare the consolidated version of the Rules in French in cooperation with Mr Loïc Cadiet. It had further been agreed that the Structure Group would be supported in the preparation of the French version of the text by the UNIDROIT Secretariat. A nearly finalised consolidated draft of all the black-letter rules in English, which had been discussed at the meeting in February 2019, and further developed on the basis of that discussion, was available to the Council in the Annex to document C.D. (98) 6(a) rev. The black-letter rules found in this Annex were at different levels of development, consistent with the progress made by the relevant Working Group. Details of these specific developmental levels could be found in document C.D. (98) 6(a) rev.

110. The Project had further benefited from being discussed during a conference organised by the *Wissenschaftliche Vereinigung für Internationales Verfahrensrecht*, which had been held in Hamburg at the Bucerius Law School on 13-16 March 2019.

111. With regard to the activities planned for the project, the Deputy Secretary-General noted that the remaining tasks of producing a coordinated text of the black-letter rules and comments in English and French, both from a substantive and a linguistic point of view, and to fill in the remaining gaps, would be completed in order for a finalised text to be approved by the competent organs of

both organisations in 2020. At the next ELI General Assembly Conference in Vienna on 4-6 September 2019, a complete draft text of the Rules in English would be presented to the ELI Members, and particularly to the Members of the Consultative Committee for this project. A finalised consolidated set of draft text of the Rules and Comments in English was expected to be submitted to the ELI Council in early 2020, and simultaneously to the UNIDROIT Council members in electronic form. The finalised instrument, both in English and French, would be submitted to the UNIDROIT Council in May 2020 for approval.

112. The Secretariat would continue to cooperate with ELI and to support the work of the Steering Committee and Structure Group towards the finalisation of the instrument until its approval and publication. The publication would be subject to an open-access agreement financed by a grant obtained by the ELI. This support activity would include the additional tasks of taking over the management of the master copy of the consolidated draft and cooperating in the French translation of the comments. The Secretariat would also participate in promotional events which would be mainly funded by a grant obtained by the ELI.

113. *Ms Sabo* appreciated the consistency of the text produced by this project with HCCH Conventions relevant to this area.

114. *Ms Fauvarque-Cosson* expressed her satisfaction with the results of this project. She raised a question on Rule 5.6 regarding the concept of proportionality. She queried whether it referred to proportionality of costs (similarly to common law). Another substantive issue was Rule 25/26 on the burden of proof, which seemed influenced by continental law under certain aspects, distributing the roles between the parties and the judge. It would be for the judge to decide the applicable law, but the parties could also bind the judge to a certain legal basis for the claim, which she found was an interesting approach. Referring to Rule 23/24 on parties being obliged to put forward facts in support of the claim, she queried whether in an international context, foreign law would be considered as an element of fact to be brought forward by the parties or an element of law. She also noted that Rule 25/26, when read in conjunction with the rule on burden of proof (in particular Rule 86), posed a similar issue: whether foreign law was a statement of fact (common law) or of law (civil law traditions), when stating that substantive law determined the burden of proof.

115. *The Deputy Secretary-General*, in responding to *Ms Fauvarque-Cosson's* comments relating to burden of proof and applicable law, noted that there were ongoing discussions within the Working Group on the topic relating to international dispute resolution and the treatment of burden of proof. In general, different working groups had taken different approaches when dealing with the application of the rules to international disputes. She added that the solution which was presently found in the text was a compromise and a balanced solution between experts of common law and civil law, especially with regard to the roles of the parties during proceedings. With regard to the comments relating to proportionality, this was another area where substantive discussions were still ongoing. The Structure Group had however agreed to use the notion of proportionality as one of the general principles (rather than as the overarching principle) to be considered when dealing with any specific area. Nevertheless, the finalised text would provide further guidance on this matter.

116. *The Council took note of the developments relating to the joint ELI/UNIDROIT project on the development of regional rules based on the adaptation of the ALI/UNIDROIT Principles of Transnational Civil Procedure.*

117. Agenda Item 6 (b) relating to Principles on Effective Enforcement ([C.D. \(98\) 6\(b\)](#)) was discussed as part of the Agenda Item 14 on Proposals for the Work Programme for the triennial period 2020 – 2022 and comments received by the Secretariat ([C.D. \(98\) 14 rev. 2](#)).

Item 7: International Commercial Contracts: Formulation of Principles of Reinsurance Contracts [\(C.D. \(98\) 7\)](#)

118. *The Deputy Secretary-General* introduced the topic. She recalled that the Secretariat had been approached in July 2015 by a group of scholars and practicing lawyers led by Mr Anton K. Schnyder and Mr Helmut Heiss (University of Zurich, as "Lead Agency"), Mr Martin Schauer (University of Vienna) and Mr Manfred Wandt (University of Frankfurt), who were examining the feasibility of formulating a set of "Principles of Reinsurance Contract Law" (PRICL). This initiative was inspired by the project group on "Restatement of European Insurance Contract Law", which had led to the publication of the Principles of European Insurance Contract Law (PEICL). The purpose of the project was to formulate a "restatement" of existing global reinsurance law, which was largely embedded in international custom and usage, but was 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 UPICC and UNIDROIT had been invited to participate to facilitate this.

119. The Council had decided to recommend this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, and to assign it a low level of priority. The General Assembly had endorsed this recommendation of the Council at its 75th session (Rome, 1 December 2016). The project was kept on low priority as it was always financially self-sufficient since it received funding from the Swiss National Science Foundation, the German Research Foundation and the Austrian Research Promotion Fund. The participation of UNIDROIT was mainly to ensure consistency with UPICC, and also to provide guidance and expertise on UPICC, including examples of their practical application.

120. Besides the project managers, the research team included well-known representatives from Belgium, Brazil, China, Germany, France, Great Britain, Italy, Japan, Singapore, South Africa, and the United States of America. In addition, two advisory groups made up of representatives of the global insurance and reinsurance markets advised the research team. Since the beginning of the project, UNIDROIT had actively attended its workshops (Zurich, 27-30 January 2016; Vienna, 12-15 October 2016; Frankfurt, 8-12 March 2017; Zurich, 28 June-1 July 2017), with the main purpose of ensuring that PRICL were in line with UPICC both substantively and systematically, and to provide interpretation and examples of the practical application of UPICC.

121. On 16-17 January 2018, UNIDROIT had participated in the 5th PRICL Workshop in Vienna, with a focus on ensuring consistency with and providing interpretation of the UPICC provisions concerning Remedies. The 6th Workshop of the Project had been held in Frankfurt on 6-8 June 2018. Since then, a consolidated draft of PRICL was being prepared by the experts involved.

122. The PRICL had been presented as a non-binding set of provisions that parties could either choose as the law governing their contract or incorporate in their agreement. In this respect, PRICL drew on the example of the Preamble of UPICC (see Art. 1.1.1). However, PRICL also contained a provision (Art. 1.1.2) dealing with external gaps, according to which "Issues not settled by the PRICL shall be settled in accordance with the UNIDROIT Principles of International Commercial Contracts 2016". In order to facilitate parties' choice of PRICL, the drafters had further inserted a Base Model Choice-of-Law Clause according to which "[T]his contract shall be governed by the Principles of Reinsurance Contract Law (2019)", and two Base Clauses with an addition for gap-filling, according to which "(a) This contract shall be governed by the Principles of Reinsurance Contract Law (2019) and, with respect to issues covered neither by such Principles nor by the UNIDROIT Principles of International Commercial Contracts (2016), by generally accepted principles of international commercial law," and "(b) This contract shall be governed by the Principles of Reinsurance Contract

Law (2019) and, with respect to issues covered neither by such Principles nor by the UNIDROIT Principles of International Commercial Contracts (2016), by the law of [State X]”.

123. Another important contribution of UPICC to the PRICL project had been the use of UPICC as the general contract law provisions from which PRICL had been drafted. This was reflected in the structure of the PRICL draft. The relationship of PRICL to UPICC was expressly addressed and explained at the relevant points in the comments to the Articles. Such comments referred to the rules of UPICC that had influenced those of PRICL. They also referred to the rules of general contract law contained in UPICC that were not replicated in PRICL but would govern the contract if PRICL were chosen as the law applicable to it.

124. A special panel on the PRICL was to take place at the conclusion of the Council’s ongoing session, featuring a presentation from Mr Helmut Heiss (University of Zurich) on the Introduction to the Principles of Reinsurance Contract Law and their Relationship with the UNIDROIT Principles on International Commercial Contracts”; a presentation from Ms Diana Cerini (Milano Bicocca University) on “Duties” and “Remedies” in the Principles of Reinsurance Contract Law as compared with UPICC; as well as views from the insurance and reinsurance sectors on PRICL by Mr Lari Kuitunen (If P&C Insurance) and Mr Eberhard Witthoff (Munich Re Group) respectively.

125. Additionally, on 22 December 2018, the Secretariat had been informed that the PRICL Working Group had received funding which would support the project for another triennium (1 July 2019 – 30 June 2022), with the understanding that the PRICL Working Group would complete the PRICL adding Chapter VI: Back-to back-cover; Chapter VII: Non-contractual liability clauses; Chapter VIII: Termination and recapture; and Chapter IX: Limitation periods. Due to the connections between these topics and UPICC, and the continued reference to UPICC both in the general choice-of-law clauses and in the specific black-letter rules and comments, the PRICL Working Group had requested UNIDROIT to continue its involvement under the same conditions as before. This was to be discussed by the Council as part of Agenda Item 14.

126. *Ms Fauvarque-Cosson* supported the continued participation of UNIDROIT in this project and expressed her appreciation for the work of UNIDROIT in this area. She noted that this project primarily addressed reinsurance contracts and queried if UNIDROIT was able to envisage additional elements to it, including the possibility of examining insurance contracts themselves, taking PEICL into consideration. *The Deputy Secretary-General* noted that the project had already involved members of the PEICL Working Group. Concerning the scope of the project, it had been determined by the Working Group, of which UNIDROIT was an invited observer. Additionally, this project was based on a proposal by the reinsurance industry, rather than the insurance industry. She added that the nature of reinsurance contracts was largely international and commercial. This allowed for a strong connection with UPICC. It was also clear that reinsurance contracts needed to rely upon a global base of contract law, such as UPICC. Hence, while the Working Group did not agree that insurance contracts were ripe for the development of a harmonised set of global guiding principles, particularly because of their regulatory nature, reinsurance contracts had been deemed ready for such a document. Nevertheless, direct insurers were also involved in the PRICL project.

127. *Ms Dacoronia* queried what the end product of this work would be, wondering if the group would publish a document on their own, or if it would be produced under the auspices of UNIDROIT as part of its work on UPICC. *The Deputy Secretary-General* noted that the Council was presently invited to (i) take note of the finalised version of the black-letter rules and comments of PRICL – First Part, prepared by the PRICL Working Group and attached as Annexe I to document (C.D. (98) 7); (ii) commend their use of the UNIDROIT Principles on International Commercial Contracts as a model and as rules of general contract law; and (iii) to authorise the Secretariat to refer to the text of the PRICL on the UNIDROIT Website once their publication had been finalised. This meant that while this would not be an UNIDROIT instrument, it would still serve as an excellent mechanism for promotion of

UPICC, and would allow for future endeavours in in other specialised areas of contract law where the Secretariat could undertake collaborative efforts.

128. *Mr Sánchez Cordero* noted that an edition of UPICC in Spanish would be published in Mexico, and that an edition would also be published in Paraguay by Mr Moreno Rodríguez, to promote the understanding of this instrument in Latin America.

129. *The Council (i) took note of the finalised version of the black-letter rules and comments of the Principles of Reinsurance Contracts (PRICL), (ii) commended their use of the UNIDROIT Principles on International Commercial Contracts as a model and as rules of general contract law, and (iii) authorised the Secretariat to refer to the text of the PRICL on the UNIDROIT Website once the publication had been finalised.*

Item 8: International Sales Law: Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law [\(C.D. \(98\) 8\)](#)

130. *The Deputy Secretary-General* introduced the topic by summarising the history of the project as found in document (C.D. (98) 8). She specifically noted the tripartite nature of this project and acknowledged the cooperative efforts made by UNCITRAL, HCCH, and UNIDROIT to further this work.

131. She noted that the three Secretariats had envisaged consulting relevant stakeholders, including associations of judges and practitioners, for comments before seeking formal approval from their respective governing bodies for this text. In this regard, a first step had been the presentation of the general concept of this text at the International Bar Association's Annual Conference (Rome, 8-12 October 2018). A first non-consolidated draft had been produced by the experts in February 2019. It was currently being subject to substantive and linguistic revision and would be circulated for further input by the experts. She further noted that the experts had mostly worked remotely, since no funding was allocated to the project. In 2017, a face-to-face meeting was enabled by one of the experts, Mr Stefan Vogenauer, who had also provided financing for it. If feasible, a face-to-face meeting would also be organised before circulation for external consultations.

132. With regard to the timeline for approval of the text, UNCITRAL had expressed its wish to have it approved by its governing organs by July 2020, in conjunction with the CISG's 40th anniversary. The three Secretariats had agreed on this timeline and the draft text would be submitted for approval to the UNIDROIT Council at its 99th session.

133. *Mr Estrella Faria, the representative of UNCITRAL,* expressed his appreciation for the cooperation under this project, noting that the project had been initiated by UNCITRAL. He reminded the Council that this work was based on the precedent of past collaborative work between the three sister organisations, which had culminated in the publication of a document detailing the instruments of the three organisations with regard to security interests. He noted that this previous text had been approved by the governing organs within UNCITRAL, rather than adopted as the documents it produced on its own. This process had enabled UNCITRAL to translate the document into the six working languages of the United Nations. He added that it was the prerogative of the Council, and the governing bodies of the HCCH to determine the type of process to be followed for the finalisation of the present collaborative work. While recognising the challenges in funding for this project, he noted that UNCITRAL looked forward to continuing to pursue this project in collaboration with its sister organisations.

134. *Mr Fredericks* underscored the importance of this guide for emerging markets, in terms of benefits from both the governmental and educational standpoints.

135. In terms of the timeline, the *representative from UNCITRAL* noted that if the document was to be approved by the UNCITRAL governing bodies in July 2020, it would need to be submitted for translation and finalisation at least ten weeks in advance of this date. The HCCH and UNIDROIT also intended to present the final document to their governing bodies. As such, a finalised draft was expected to be ready between December 2019 and February 2020.

136. *The Council took note of the developments in relation to the 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.*

Item 9: International protection of cultural property [\(C.D. \(98\) 9\)](#)

(a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects

137. *Ms Marina Schneider (UNIDROIT Secretariat)* introduced the topic informing the Council that four States had become parties to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 Convention) since the Council's previous session, the last of which had been Latvia. Ms Schneider took the opportunity to thank Ms Broka for her support in this regard. This had brought the status of the 1995 Convention to 46 Contracting States. A number of other States had also made significant progress towards ratification or accession to the 1995 Convention and the Secretariat was actively following up in this regard.

138. Ms Schneider reported that the Secretariat had made an effort to regroup work towards the development of partnerships, as well as the development of tools to facilitate the application and implementation of the 1995 Convention. These activities were based on three main themes.

139. The first of these were training programmes that had been developed with partner organisations, such as UNESCO and the European Union. These were designed for both judiciary personnel and law enforcement agencies. In partnership with UNESCO, a toolkit had been developed for magistrates and law enforcement agencies which had been very well received by judicial bodies. She noted that the Secretariat was awaiting the finalisation of the ELI- UNIDROIT European Rules on Civil Procedure as this would be a useful bridge between UNIDROIT activities in this regard. A second mechanism in which UNIDROIT and UNESCO had combined their training capabilities was the art market, where courses had been arranged with Sotheby's. The two organisations had also approached collectors, and a practical workshop had been planned on the same day as one of the largest art auctions in Asia to discuss best practices for buyers in the art market. An online platform had also been developed, particularly to illustrate the aspects related to due diligence, which was a core part of the 1995 Convention.

140. Garnering political support was also an important and challenging aspect of the promotion of the 1995 Convention. Support had been gained through the formation of an informal ratification task force at the UN in 2017. On 8 May 2019, the Convention had been presented at a meeting of the Group of Friends of Cultural Property at the UN by a former colleague of the Secretariat, who reported that it had been well received. The Institute had also worked closely with the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) on the political considerations, particularly with regard to promotion in the Gulf States. Work for legislative review was underway in these countries, in view of the future ratification of the 1995 Convention. The 1995 Convention had also benefitted from the support of the Council of Europe, which had adopted resolutions appealing to States to ratify it. The General Assembly of the UN on the matter of the

Restitution of Cultural Property had also expressed a similar appeal, and had announced the launch of UNIDROIT's Academic Project to its constituency.

141. The third area in which promotional efforts were based was research. The Academic Project on the 1995 Convention had been launched precisely with the intent to provide academics with a platform to exchange and reflect upon the instrument, and had gathered many contributors both on an institutional and individual capacity.

142. Alongside the promotion of the Convention, the Secretariat had also promoted the UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects.

143. *Ms Pauknerova* thanked Ms Schneider for her report and noted that most of the preparatory work for the Czech Republic towards its ratification of the 1995 Convention had been done. Unfortunately, the process required a special implementation act which would establish a cooperation between the Ministry of Culture, Customs Authorities and the Police to circumvent the current lack of communication and clarity on matters such as the retention of cultural property of illegally imported goods, the attribution of custodial responsibility, etc. The Czech Republic was therefore extremely interested in the experience of Contracting States and their practices.

144. *Ms Broka* also expressed her gratitude to the Institute and to Ms Schneider in particular as Latvia had recently acceded to the 1995 Convention following a series of exchanges with the Italian Carabinieri force, UNESCO and Ms Schneider, where Ms Broka herself had stressed the value of the 1995 Convention. She was thankful that the accession had taken place but acknowledged that the implementation was also important. The process involved cooperation and contribution of resources between all the institutions and authorities involved, and she was grateful for the support of the Institute in reaching this joint goal.

145. *Mr Sánchez Cordero* noted the great visibility the Institute had gained thanks to its work in the international protection of cultural property and thanked the Secretariat for the quality and diversity of the activities it had carried out in this field. He also reported that the Government of Mexico was committed to ratifying the 1995 Convention. It had not been easy to persuade the cultural community and to reconcile the views of all the parties involved in the ratification. He expressed the hope that the whole of Latin America would soon ratify the Convention, which would represent one of the highlights of the Institute, a fact that Mexico was very conscious of.

146. *Ms Sabo* shared the views of previous speakers, congratulating the Secretariat for obtaining four more ratifications during the year. She noted that Canada was pursuing efforts towards ratification, but caution was required to find the opportune time for this to be realised. She underscored the importance of the development of partnerships, for which she particularly appreciated the efforts of the Secretariat.

147. *Ms Dacoronia* noted that Greece had ratified the 1995 Convention in 2005 and held a strong interest in its ratification in more States.

148. In responding to Ms Pauknerova's remarks, *Ms Schneider* noted that the Secretariat was organising a meeting with two universities in Poland in early June to enhance the Polish ratification process, and the Ministry of Culture had been encouraged to extend the invitation to their colleagues in other countries in the region. Should the Czech Republic not be represented on that occasion, UNIDROIT stood ready to organise a similar cooperation in the Czech Republic.

149. In conclusion, Ms Schneider pointed out that the 1995 Convention had regained importance since its inclusion in the resolution adopted by the Security Council of the United Nations denouncing the destruction of cultural property in armed conflict, as the 1995 Convention was at the forefront of

the defence of cultural property and had regained centre stage. Since its adoption in 1995, all legislative efforts had been inspired by the Convention. Throughout the past year, the issue of restitution of cultural property from colonial times had also been discussed in great depth. Despite the fact that the UNIDROIT and UNESCO Conventions were not retroactively applicable, the inspiring principles were very much at the centre of the efforts of participating States. This had been the case for a resolution which had been passed by the European Parliament in January, which referred both to efforts toward rectifying the past and to returning cultural property. A report had also been commissioned by President Emmanuel Macron (France) on the restitution of Cultural Property and had been delivered in November 2018, which provided an instructive overview of the restitution of cultural property appropriated during colonial times, but also underscored the importance of focussing on the future, which necessarily meant ratifying the 1995 Convention, which was the only one that regulated these aspects.

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

(b) Private art collections

151. *Ms Schneider* recalled that the topic of private art collections was on the UNIDROIT Work Programme for the 2017-2019 Triennium with a low level of priority. UNIDROIT, with the limited resources available, had not made much progress in garnering the support of private art collectors, but continued to dedicate interns towards the research of the topic to take stock of the status of the appetite for possible instruments in the field. There had been a continuous effort in collecting relevant material. She reminded the Council that the Institute had held an event on Private Art Collections in Rome and the publication of the acts of that seminar were due next month. The second day of the events that was planned in Gdansk in May was completely dedicated to private art collections and the issues that had specifically been raised during the Seminar in Rome. It would be followed by a restricted working group meeting in order to determine a way forward.

152. *Mr Sánchez Cordero* noted that there had been many discussions on the topic of private art collections in various parts of the world, particularly by the Union International des Avocats, the International Law Association and the Accadémie International de Droit Comparé. All such discussions had expressed great expectations among law practitioners on what UNIDROIT could do for the international cultural community. He therefore encouraged the Institute to maintain its efforts in the field.

153. *Mr Sánchez Cordero's* comments were also echoed by *Ms Sabo and Ms Dacornia*, who specifically referred to the development of principles as a potentially useful instrument to be developed in the future.

154. *The Council took note of the activities of the Secretariat in relation to private art collections and encouraged the Secretariat to continue to work on this topic.*

Item 10: Promotion of UNIDROIT instruments [\(C.D. \(98\) 10\)](#)

155. *Ms Schneider* introduced the topic. She recalled the growing importance of promotional activities for the Institute and its instruments, which benefited from the high level of priority assigned by the Governing Council and the General Assembly since 2012. She pointed out that the Annual Report contained the promotional activities carried out by the Institute during the previous year, and that document C.D. (98)10 focussed on the numerous activities carried out from the beginning of 2018 onwards.

156. Ms Schneider then described the efforts that had been put into promoting some instruments in particular. She pointed out that the 2016 edition of UPICC had been particularly promoted that year thanks to the work of the dedicated Working Group of the IBA focussed on the publication of case studies presenting the practical application of the Principles. The IBA had organised its annual conference in Rome, and had shed light on this work in two panels on the subject.

157. Ms Schneider underscored the importance of the Council members themselves, given their tireless involvement in promotional activities worldwide. She described two such efforts of former members of the Council, namely the translation of UPICC into Romanian by Mr Radu Bogdan Bobei, and his forthcoming handbook of international law which referred to UPICC, as well as the efforts of Ms Bouza Vidal with her publication of two commentaries on UNIDROIT instruments. She further mentioned Mr Moreno Rodríguez's promotional efforts both within the International Bar Association and in his continent, which he may want to illustrate personally in more depth. The same applied to the work carried out by Ms Pauknerova, who had published extensively on UPICC.

158. As far as the Cape Town Convention and the Aircraft Protocol were concerned, Ms Schneider, as the Officer in charge of the Depositary functions of the Institute for the Convention and existing Protocols, noted that the instruments had received many expressions of interest from States. She noted that the Convention and its Protocol had been promoted on several occasions throughout the past year in both political and academic circles with the participation of the Secretary-General, the Deputy Secretary-General and other members of the Secretariat.

159. Ms Schneider also recalled that UNIDROIT had received an increasing number of requests from universities to present the Institute, its achievements, current Work Programme and its working methods to their students. Among them was the recent visit of two delegations of students from Strathmore Law School in Nairobi, which had impressed the Secretariat in terms of the level of involvement and the level of preparation demonstrated in the discussions. Additional details relating to the participation of Council Members in meetings, or other promotional activities could also be found in document C.D. (98) 10, as well as in the Annual Report 2018 (C.D. (98) 2).

160. *Mr Moreno Rodríguez* informed the Council that the Organisation of American States (OAS) had recently approved a Guide on the Law Applicable to International Commercial Contracts in the Americas. This was largely based on UPICC and was a largescale endorsement of the instrument in the Americas. He expressed his appreciation to the UNIDROIT Secretariat for all their assistance in this matter. Additionally, he noted that the Paraguayan version of UPICC was ready to be circulated, and noted the important role played by the Vis Moot in the promotion of UPICC. He added that 20 cases in the Paraguayan High Court, and three cases in the Supreme Court had cited UPICC – this was reflected in the UNILEX Database. He also noted that a regional moot court competition that would take place in Asunción in 2019 would focus largely on UPICC as its applicable law.

161. *The Deputy Secretary-General* asked the Council to consider taking note of the publication of the OAS Guide and to express its appreciation for the efforts made by Mr Moreno Rodríguez in this regard. She also noted the importance of the Vis Moot, as well as the cooperation with the IBA, in furthering efforts to promote UPICC.

162. *Mr Gabriel* noted the importance of regional guides such as that issued by the OAS, as well as national law reforms, which were based on UPICC as testament to the success of UPICC as an instrument.

163. *Ms Fauvarque-Cosson* noted that the French Civil code had been undergone one of its most important reforms since 1804, which included a reform of contract law (finalised in 2018). The reform had been largely inspired by UPICC, and when the Ministry of Justice had begun working on the reform ten years previously, they had called upon her for consultation, given that she had taken part

in the UPICC Working Group. She had worked very closely with the Ministry to raise awareness of UPICC, as well as of the Principles of European Contract Law. She stated that, while the reform itself had not specifically paid homage to UPICC, she had done so on two occasions: in her contribution to the works published for Mr Bonell's 70th Birthday (*Eppur si muove*), where she had illustrated the impact of UPICC on the reform of the French Civil code, as well as in a bilingual publication explaining the impact of UPICC on the some 300 articles of the civil code. Given the potential impact and resonance of this reform on a global level, especially in African States, she proposed that the time was now ripe to proceed with the Uniform Act on Contract Law. She also mentioned a *Ius Comune Casebook* publication that had been published recently, where she had addressed the impact of UPICC on the reform of the French civil code. *The Vice President* thanked Ms Fauvarque-Cosson for these important updates on recent events, and noted how encouraging it was to see a successful code reform such as France's inspired by the relatively recent work of UNIDROIT and other European Principles.

164. *Ms Pauknerova* informed the Council that UPICC had recently been given consideration as part of the reform of the Czech Civil Code and would be relied upon by Czech courts more often moving forward. *Mr Meier* noted the importance of promotional work in this area and expressed his appreciation for those involved in this process.

165. *The Council took note of the publication of the OAS Guide and expressed its appreciation for the work undertaken in this regard.*

166. *The Council took note of the activities held by the Secretariat to promote UNIDROIT instruments, and reiterated the importance of promoting UNIDROIT's work and instruments.*

Item 11: Correspondents [\(C.D. \(98\) 11\)](#)

167. *Ms Schneider* introduced the topic drawing the Council's attention to document (C.D. (98) 11). She noted that the Institute presently had 46 active, 1 institutional, and 53 emeritus Correspondents. A full list could be found in Annexe IV of document (C.D. (98) 11). She noted the sad demise of Professors Jan Ramberg, in January 2018, and of Professor Ole Lando, in April 2019, both of whom had been UNIDROIT Correspondents since 1980.

168. With regard to renewals, she noted that the term of the 46 active Correspondents and of the single institutional Correspondent would expire on 31 May 2019 and, in accordance with the new rules, the UNIDROIT Secretariat had contacted those who had been active during the 2016-2019 term to determine whether they wished to be reappointed for another term of three years, from June 2019 to May 2022 (34 out of 46). The outcome of this process was that 24 had explicitly asked to remain in the category of active Correspondents and indicated areas of UNIDROIT activities in which they proposed to collaborate (some had also commented on the future draft Work Programme for the triennium 2020-2022); 6 had actively collaborated with the Secretariat on various ongoing projects for the promotion of UNIDROIT instruments during the last three years, although they had not responded to the Secretariat's enquiry; and 1 institutional Correspondent had responded favourably to be reappointed. A full list of the Institute's recommendation for reappointments could be found in Annexe V of document C.D. (98) 11.

169. Regarding proposals for the appointment of new Correspondents, she noted that the Secretary-General was exploring ways to enhance the general visibility of the Institute in the near future, including an enhanced role of the network of Correspondents, and therefore suggested that no new Correspondents for the term 2019 – 2022 be appointed for the time being. A full proposal on how to proceed would be put forward for discussion and approval at the 99th session of the Council. In order to facilitate further reflection on the network of Correspondents, the Secretariat had provided

a table showing the distribution of the UNIDROIT Correspondents by region and country in Annexe VI of document C.D. (98) 11.

170. *Mr Gabriel* appreciated the efforts of the Secretariat to refine the list of Correspondents. He expressed appreciation for the Secretary-General's vision of allowing the Correspondents to play a greater role in the international promotion and recognition of the Institute, as well as noting the prestige associated with being an UNIDROIT Correspondent.

171. *Ms Dacoronia* queried the status of the Greek Institute of Foreign and International Affairs as an Institutional Correspondent. *Ms Schneider* noted that this Institute had not responded to a request to renew its status, but UNIDROIT would look forward to taking it on board as an institutional Correspondent in the future.

172. *Ms Shi* noted the absence of Correspondents from China and the importance of including correspondents from the region. She queried if there was any list of qualifications for an individual to be appointed as a Correspondent at UNIDROIT. *Ms Schneider* provided clarifications on the procedure to be appointed as a Correspondent, noting that the proposal could come from the Secretariat, or the members of the Council. The Council would then approve candidates based on their *curriculum vitae*. *The Deputy Secretary-General* added that while there were no official criteria for this, important factors could be considered such as prior involvement in the Institute's work, or expertise in UNIDROIT's work areas. The process for involving new Correspondents, in particular geographical diversity, would be considered when the Secretary-General would present his updated vision to the Council at its next session. Moreover, Correspondents could be of any age, as long as their profiles were relevant and appropriate for them to be able to fulfil the functions any Correspondent was expected to fulfil.

173. *Mr Bollweg* noted the prospect of allowing experts who had been party to the negotiations of the MAC Protocol to continue to stay involved with the Institute after the MAC Protocol Diplomatic Conference.

174. *Ms Fauvarque-Cosson* enquired if there was a process which was followed when a Correspondent became a Member of the Governing Council. *The Vice President* noted that if such was the case, the individual would no longer be a Correspondent during their term on the Governing Council.

175. *The Council took note of the Secretariat's report on the results of the procedure for renewal of active Correspondents whose mandate would expire on 31 May 2019 and of the proposal of the Secretary-General in this regard to be presented at the Council's 99th session.*

Item 12: Library and research activities [\(C.D. \(98\) 12 rev.\)](#)

176. *Ms Bettina Maxion (UNIDROIT Secretariat)* drew the attention of the Council to document C.D. (98) 12 rev. She noted that the UNIDROIT Library had continued its collaboration with other Roman and foreign libraries, including strong collaboration with the Max-Planck Institute for Comparative and International Private Law in Hamburg. She recalled that at its 96th session (Rome, 10-12 May 2017), the Council had agreed that the Secretariat should proceed with the digitisation of Library materials so as to offer readers an even broader range of research material. In 2018, the Library staff had continued its internal digitisation process, with about 300 monographs and articles of the international and international commercial law sections being scanned and added as digitised objects to the electronic catalogue.

177. Efforts had also been made towards digitising the Gorla Collection, one of the Library's most important collections. It had been donated to the UNIDROIT Library in 1987 by Professor Gino Gorla, former Professor of Comparative Law at the University of Rome "La Sapienza", and comprised a collection of antique books which had served as a support for his research on case law in Europe from the 17th to the early part of the 19th Century. This collection of over 550 titles comprising about 900 volumes was composed of treatises, commentaries, collections of *decisiones*, *resoluciones*, *consilia*, *responsa*, *allegaciones and controversiae forenses*, as well as a number of books dealing specifically with commercial law and maritime law.

178. Ms Maxion explained that there were two main different categories of digital objects that had been added to the Library Collection. The first one consisted of scanned monographs and articles accessible only to users with privileged user rights, with a dedicated password. Secondly links to external digital collections, such as American university libraries and numerous European institutions and libraries had been added. This category was an extremely resource-saving option to enrich the electronic library collection. She, thereafter, showed the Council examples of these objects.

179. The software module ADAM for the implementation of the digitised objects into the online catalogue, distributed by the firm Ex Libris, had been acquired in November 2017. It had been integrated into the ALEPH 500 library management system, and made it possible to easily connect a large quantity of electronic documents to the catalogue data. The professional book scanner "Alpha Planetario" had been ordered and delivered in February 2018. Thanks to the greatly improved technical resources, the full entry into the partial digitisation of the UNIDROIT library collection had been secured.

180. She noted that moving forward, attention would also be given to the physical preservation of the Gorla Collection. For this a report had been commissioned of the "*Istituto centrale per il restauro e la conservazione del patrimonio archivistico e librario*" (ICRCPAL), and the recommendations of the report would be implemented in due course. Suitable shelving, as well as a humidifier, would also be acquired as necessary. She also added that the furniture in the reading rooms had recently been replaced to allow researchers and scholars to undertake their work with more modern and adequate facilities.

181. With regard to acquisitions, the Library's holdings had increased by 989 titles, of which 563 had been purchased outright, 132 obtained on an exchange basis, while 294 further titles had been received as gifts. The expansion of the Library's holdings had been hampered by steady increases in the price of publications and a lack of resources. Additionally, in 2018, as in previous years, the Library had received donations in kind from the Max-Planck Institute for Comparative and International Private Law in Hamburg.

182. With regard to cooperation with academic institutions, the UNIDROIT Secretariat had promoted cooperation with academic institutions or fora in relation to UNIDROIT activities. Memoranda of Understanding had been signed in 2018 with Zhongnan University of Economics and Law (ZUEL) (P.R. China), the Islamic Azad University (Iran), Pontificia Universidad Católica de Valparaíso and the Asociación Chilena de Derecho Internacional Privado (ADIPRI), and in 2019 with the University of Nicosia (Cyprus), the University of Opole (Poland) and the Strathmore University (Nairobi, Kenya) to contemplate the collaboration in research projects for the promotion of UNIDROIT's purposes and achievements and the participation in UNIDROIT research and internship programme.

183. With regard to research activities and internships, in 2018 ten scholars had been awarded a grant under the Scholarship Programme thanks to contributions from the Ministry of Commerce of the People's Republic of China (MOFCOM), the UNIDROIT Foundation, as well as from members of the UNIDROIT Governing Council. Additionally, the Library had welcomed 31 researchers as interns.

184. A new initiative had been started in January 2019, at the initiative of the Secretary-General, relating to the organisation of a series of lectures and presentations on topics related to the areas of research of visiting scholars' areas of research at the UNIDROIT Library. These were attended by members of UNIDROIT Secretariat and current guests in the library as well as by interested outside expert participants. For this, UNIDROIT had partnered up with institutions such as the Bank of Italy and Roma Tre University.

185. *Ms Sabo* expressed her appreciation for the work done at the UNIDROIT Library, especially with regard to digitisation and preservation of the Gorla Collection. She also acknowledged the efforts of UNIDROIT's late President in this regard.

186. *The Council took note of developments regarding the Library and research activities, in particular regarding the digitisation of the library's collections.*

Item 13: UNIDROIT information resources and policy [\(C.D. \(98\) 13 rev.\)](#)

187. Introducing this item on the Agenda, *Ms Lena Peters (UNIDROIT Secretariat)* recalled that publications were one of the ways in which, under Article 1 of the Statute, the Institute pursued its objectives. Since the writing of the Statute in 1940, the nature of publications had changed. The Institute now published monographs in addition to the periodical of the Institute, the Uniform Law Review, and had a general website as well as the specialised UNILEX database on UPICC and the UN Convention on Contracts for the International Sale of Goods (CISG).

188. Since 2013, the Uniform Law Review was published by Oxford University Press. It was available both on paper and online, and subscriptions could be to either or to both. Data indicated that subscriptions to paper copies had decreased year by year, while at the same time subscriptions to online copies had increased steadily. In addition, the Uniform Law Review was present in more than 800 OUP Developing Country subscriptions, which were collective subscriptions including a number of reviews. The majority of the visits to the Uniform Law Review page on the OUP website came from Europe, with North America second and Asia third. Furthermore, the introduction of the peer review system had meant that academics who needed to publish in periodicals of standing for their academic career could publish in the Uniform Law Review without hesitation. She indicated that it was listed in Category A of the list of the Italian National Agency for the Evaluation of Universities and Research Institutes and in the Thomson Reuters database – the Emerging Sources Citation Index. OUP were pursuing more such avenues.

189. Turning to monographs, *Ms Peters* stated that the fourth edition of the Official Commentary on the Cape Town Convention and Aircraft Protocol authored by Sir Roy Goode had been printed in April. She recalled that it had been presented to the Council the day before (See Agenda Item 15), by the author and Mr Jeffrey Wool. Sir Roy Goode had started work on the Official Commentary on the Cape Town Convention and the MAC Protocol, and the Official Commentaries on the Rail Protocol, and possibly the Space Protocol, would also be updated sometime in the future. The third edition of the Aircraft Protocol's Official Commentary existed also in an electronic, pdf version, with internal and external links. This had been prepared following an agreement between the Institute and Aviareto, as the latter wanted an electronic version for the users of the Registry. The third edition of the Aircraft Protocol's Official Commentary and the second of the Rail Protocol's Official Commentary had been translated into Chinese, thanks to Law Press China. The Secretariat was awaiting information regarding their interest in preparing a translation of the fourth edition of the Aircraft Protocol's Official Commentary.

190. Four editions of the UPICC had been published. All four editions had been translated into several languages, where possible supervised by a member, or former member, of the Council or the

Working Group, or even prepared by them. The Institute had published the English and French versions of the fourth edition (the 2016 Principles), as well as a small edition of the Spanish version. To cover all Spanish-speaking countries, four other editions were being prepared: in Paraguay, thanks to Mr Moreno Rodríguez; in Mexico, thanks to Mr Sánchez Cordero; in Chile, and in Colombia. Mr Moreno Rodríguez had brought the good news that the publisher of the Paraguayan edition had informed him that it had just been published. The Chinese translation was ready, thanks to Mr Zhang Yuqing, former member of the Governing Council, and the copies due to the Institute were expected shortly. The Russian translation, prepared by Mr Alexander Komarov, member of the Governing Council, would be printed later in 2019 and the Romanian translation, thanks to Mr Radu Bogdan Bobei, former member of the Council, had been published in 2018. A Korean Translation had also been prepared in 2018. Latvian and Portuguese translations were underway, and agreements were being concluded for translations into Arabic and Persian.

191. Ms Peters recalled that a Chinese translation of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming had been published in 2018 by Peking University Press, the English and French versions having been published in 2015 and the Spanish translation in 2017.

192. An initiative to celebrate the 90th anniversary of the Institute had been the preparation of the volume UNIDROIT 90 Years, which was used for representation purposes. Copies were available to Council members. A major effort had also been the publication in 2016 of two volumes of Essays in honour of Mr Michael Joachim Bonell ("*Eppur si muove*: The age of Uniform Law – Essays in honour of Michael Joachim Bonell, to celebrate his 70th birthday, UNIDROIT (ed.), 2016"). It comprised some 122 articles by 125 authors, including several members of the Council.

193. The UNIDROIT website had first been created in the 1990s. In 2012, the Secretariat had started work on the creation of a new, more user-friendly website, using up-to-date technology. The new website had become operative on 10 January 2014. The time had come to again review the website completely. It was hoped that a new website would become operative before the Council meeting in 2020. Ms Peters informed the Council that the request by outside researchers for documents prepared for many past studies had prompted the Secretariat to start to scan all the documents of past studies with the aim of posting them on the website. It was a project that would take time to complete, but it was hoped that all document would be available on the website in a not too distant future.

194. Of the first 100 pages of the website consulted since the previous Council meeting, the page most consulted was the English page on the UNIDROIT Principles 2016 (individual chapters being listed separately), followed by the page "About UNIDROIT", the page on contracts, the Cape Town Convention and the status of the Cape Town Convention.

195. Ms Peters recalled that since April 2016 UNIDROIT was active on social media. UNIDROIT currently maintained accounts on LinkedIn, Facebook, Twitter and YouTube. The social media programme was very successful, providing access to the website to young lawyers who were more prone to use social media for quick information. She stated that Mr Hamza Hameed, who had contributed towards setting up and looked after the social media programme, would be happy to provide any information as required.

196. Lastly, UNIDROIT had asked member States to appoint specific libraries or other official institutions to act as Depository Libraries for UNIDROIT documentation, indicating what materials they would be interested in storing (only documents, or also publications, the Uniform Law Review, etc.). Not all States had appointed Depository Libraries and not all of these had wanted all materials, but some States were still keen to maintain them. The list of member States on the website also indicated if Depository Libraries had been appointed.

197. *Ms Sabo* suggested that if a new website was to be prepared, attention should be paid to improving the transition between the language versions of the site. Frequently, when a user wanted to switch language for a certain page, the link was to a general page instead of precisely the same page.

198. *Mr Sánchez Cordero* stressed the importance of translations of the latest edition of UPICC to avoid confusion between the different editions, for example in the case of arbitrators faced with different editions. *Ms Peters* indicated that the translators of previous versions were contacted to see if they were interested in producing the latest edition. Usually they were, as was the case with the translators of the Chinese, Arabic and Persian versions, as well as the Russian and Romanian versions. This was also the reason written agreements were concluded with the translators, giving them the right to the copyright of the translation and consequently the right to act in the case of copyright infringements. The Institute published only in its official languages; in the case of other languages, the translators not only translated the publication, they also contacted the publishers.

199. *Mr Sánchez Cordero* stressed that more publicity should be given to the new editions as they were published, so that the awareness of their existence increased. *The Deputy Secretary-General* recalled that the publication of other language versions was publicised on the website.

200. *The representative of UNCITRAL* referred to the moot courts which were held and that often used UPICC. He wondered if UNIDROIT had thought of creating a mobile application for UPICC which lawyers active in the moot court and otherwise could use. He also wondered if thought had been given to the posting on the website of lectures on items of interest, thus creating an online legal library. *The Deputy Secretary-General* informed the Council that consideration had been given to the development of a mobile application. *Ms Peters* added that the posting of lectures and lessons was being considered. *Mr Hameed* added that one lecture of a visiting scholar that had been held at the Institute had also been posted and two more were being processed for publication on the Institute's YouTube Channel.

201. *The Governing Council expressed its satisfaction at developments with the information resources and reiterated its support for the programme.*

202. *Mr Michael Joachim Bonell (Consultant, UNIDROIT)* presented the recently revised version of the UNILEX Database on UPICC and CISG. He displayed the new functionalities available on this platform to the Council, underlying the important role this database played in further promoting the UPICC. *The Council appreciated the efforts of Mr Bonell in this regard.*

Item 14: Proposals for the work programme for the triennial period 2020-2022 and comments received by the Secretariat [\(C.D. \(98\) 14 rev. 2\)](#)

203. *The Secretary-General* opened the discussion on the proposals for the 2020-2022 Work Programme by drawing the Council's attention to document C.D. (98) 14 rev. 2. The document included a list of new proposals received by the Secretariat and put to the Council for consideration, ranked in order of priority by the Secretariat. Additionally, the document also detailed ongoing projects which the Secretariat proposed to retain on the 2020-2022 Work Programme, as well as the Institute's proposed non-legislative and promotional activities. The Secretary-General noted that all the proposals were received from governments, intergovernmental organisations, or from institutions involved in work in a particular area. The full text of each proposal could be found in the Annexes to the relevant document of the GC.

204. The Secretary-General noted that the Secretariat had considered a number of factors in ranking the proposals received; these factors included looking at the theoretical and practical

relevance of a topic, its feasibility, its potential impact as law reform, as well as its compatibility with UNIDROIT's experience, expertise, and resources. Additionally, the Secretary-General noted that in order to deliver results despite the limited amount of resources available to the Institute, UNIDROIT would seek to increase its collaborative work with UNCITRAL and the HCCH, in order to ensure that there was no duplication of work. The Secretariat would also allocate resources specifically in areas which had the greatest possible positive impact to the international community, by means of prioritising the most practical proposals, rather than those which had greater academic or theoretical value. As such, in order to prioritise the most practical work, it was important to take input from entities and institutions involved in legislative activities on a global level, and to make efforts towards addressing legal issues which those entities were facing in conducting their work. The Secretariat considered it especially relevant and useful to have received several proposals from highly specialised, hands-on global institutions, such as the World Bank, which had submitted projects in response to legal issues it had encountered in its field work.

205. The Secretary-General highlighted the natural affinity between international financial institutions and rule-making organisations such as UNIDROIT, UNCITRAL, and the HCCH. He explained that the affinity resulted from the development institutions' utilisation of internationally harmonised rules to help improve the legal framework of their clients and derive better value from their development projects. Consequently, it was important to strengthen the relationship between institutions such as the World Bank and UNIDROIT, and to work towards drafting instruments which would be positively received and utilised in States in which these organisations were operating. Doing so would ensure that UNIDROIT's mandate for drafting instruments which had a large impact on global commerce and trade would be fulfilled, and that UNIDROIT would become an indirect facilitator of global economic growth.

206. The Secretary-General noted to the Council that for the next three years, he intended to have the Secretariat work on at least three core projects simultaneously, by hiring new staff members at a junior level and creating a staffing structure under which a senior officer would work with a junior officer on each project.

207. Upon the *Vice President's* request to briefly describe all the new proposals, *the Secretary-General* drew the Council's attention to Page 17 of document C.D. (98) 14 rev. 2., and provided a brief description of all the proposals.

208. *The Vice President* then invited the Secretary-General to detail each proposal individually for consideration by the Council.

Model Law on Factoring

209. *The Secretary-General* introduced the first proposal relating to a model law on factoring, which had been submitted by the World Bank. He noted several reasons why the Secretariat supported the inclusion of the project as a high priority item on the 2020-2022 Work Programme; among other reasons: i) it related to law reform which was urgently required by the international community and could have a quick and important impact; ii) it fit well with the Institute's other projects and expertise; and, iii) given the existing expertise available within the Secretariat the project would be relatively straightforward to undertake and may possibly even be completed in two years. Additionally, the project was supported by the World Bank as well as the industry which would ultimately rely on the instrument.

210. The Secretary-General noted that a model law on factoring was justified as the existing instruments in the field were either limited in scope to the extent they were designed to regulate international factoring, or had not fully addressed specific facets of factoring as they were part of a larger package of highly complex laws. For example, the United Nations Convention on the

Assignment of Receivables in International Trade, as well as the UNCITRAL Model Law on Secured Transactions had sections relating to the outright assignment of receivables, which were linked to the mechanics of factoring. However, it had been suggested that the complexity of the existing instruments was not always well received by implementing states, who reportedly showed interest in the introduction of complete laws on factoring.

211. The Secretary-General recalled that, based on the justification of the proposal, the lack of a specific stand-alone, fully-fledged international standard on factoring, domestic laws based on local economic interests and non-compliant with best practice in the area of secured transactions were being adopted. Conversely to what could be expected, this led to largescale fragmentation in factoring laws across the developing world. Furthermore, the existing rules embodied in the existing instruments did not fully cover all elements of the factoring relationship, and examples were provided. Factoring, and at times even leasing, had additional complexities that needed to be addressed which were other than issues of priority: rules on the rights and responsibilities of the parties concerning the receivables; rules on warranties; or certain liability rules in cases of sales of receivables, etc. Hence, separate rules that detailed the features and functionalities of factoring, reverse factoring, and supply chain financing would be very useful, especially in developing countries which depended upon these financing mechanisms for access to credit.

212. The Secretary-General stressed that the proposed model law on factoring would not deviate from existing rules provided by the UNCITRAL Model Law on Secured Transactions or the UN Convention on the Assignment of Receivables in International Trade, but would only add additional elements which would be specific to factoring, reverse factoring, and supply chain financing. Additionally, there had been a rapid influx of fintech platforms and providers of factoring and reverse factoring, which were operating independently of domestic secured transactions regimes. The emergence of such platforms posed several risks, especially as platform-based systems were not coordinated amongst each other and therefore created additional issues of priority. Furthermore, States had also started to use e-invoices as a document of title for factoring purposes. E-invoices were not sufficiently addressed by existing international instruments. The proposed model law on factoring would cover such issues, and would lead to greater harmonisation by filling gaps in the existing instruments. The work on this project would be done in close coordination with UNCITRAL in order to ensure full compatibility with the UNCITRAL Model Law on Secured Transactions, as well as the UN Convention on the Assignment of Receivables in International Trade.

213. *Mr Gabriel* thanked the Secretary-General for his explanation of the proposal. He explained that he had consulted with industry representatives who concurred with the Secretary-General's note on the need for a model law specific to factoring. He noted that the industry had indicated that such a law was necessary to facilitate commerce, and that the UNCITRAL Model Law on Secured Transactions was too complex and comprehensive for some developing countries to confidently adopt. He expressed his support for the proposal and reiterated that it was also supported by the World Bank and the industry.

214. *Ms Sabo* expressed concern that the proposed project might fragment the UNCITRAL Model Law on Secured Transactions. She recognised the difficulties States faced in implementing a full-fledged secured transactions law regime, and the complex nature of this task. However, she noted that a model law specific to factoring, particularly addressing gaps in the UNCITRAL Model Law on Secured Transactions, would necessarily also have to be complex, keeping in mind the complicated nature of factoring transactions. She noted that Factors Chain International (FCI), with the endorsement of the African Export Import Bank, had already drafted a model law on factoring in 2016. She queried if the FCI model law had already addressed the concerns raised by the proposal. Lastly, she noted that addressing issues relating to fintech platforms would further add to the complexity of the proposed instrument.

215. *The Secretary-General* noted that the Secretariat was aware of the existing model law developed by FCI. He suggested that the FCI instrument had not been broadly implemented as it had been developed by a private entity and, despite its merits, it was not recognised as an international standard. He further explained that the FCI model law might not fully reflect recent developments in the industry, as it did not consider supply chain financing, or the interests of SME's in developing countries. Additionally, he noted that FCI would be consulted while drafting the proposed model law on factoring. The Secretary-General informed the Council that the Secretariat had recently received a letter from an important factoring industry association, which supported the need for a new model law in this area which was drafted by a public organisation such as UNIDROIT. On the matter of complexity, the Secretary-General noted that new technologies were already being used in developing countries which needed factoring law reform, and as such, it was important to develop an instrument that covered such innovations. However, the Secretariat would work closely with UNCITRAL to first define the scope of this project in order to ensure that it did not enter into unnecessarily complex areas and focussed primarily on enabling factoring in developing economies.

216. *Ms Broka* noted that factoring was regulated in Latvia through its domestic commercial code which worked well to facilitate the practice. She agreed that fintech raised several concerns and supported the need to address those concerns. However, she stressed the importance of avoiding duplication, and reminded the Council about the 1988 UNIDROIT Convention on International Factoring, as well as the UNCITRAL instruments which had already been discussed. She noted the importance of defining the scope for this project well, in order to ensure that it was most beneficial to those who needed it.

217. *Ms Bariatti* supported the proposal, keeping in mind that factoring was a specific tool which needed its own specific rules, especially in countries which had yet to develop such rules on their own and faced difficulties in accessing credit. Additionally, she noted that work done at the EU level to develop rules for receivables clearly evidenced that factoring was an area which required its own specific set of rules, and could not be bundled up with other rules on secured transactions. She concluded by noting that, while it was true that many countries already had rules on factoring, others did not, and it was important to work towards a uniform and harmonised set of rules in this area in order to promote more cross border commercial activities.

218. *The representative of UNCITRAL* expressed agreement on the significance of using receivables for financing purposes including as collateral, in outright sales or factoring, as well as within supply chain financing, and noted the recent developments in the market due to fintech. He noted that some of those issues were addressed by the United Nations Convention on the Assignment of Receivables in International Trade. Additional texts dealt with secured transactions more broadly and also dealt with the use of receivables as collateral and provided that the same rules would apply to outright transfers. He explained that the aim was to provide a comprehensive and integrated approach to secured financing using all types of movable assets. The UNCITRAL approach also provided for a functional approach, such that any transaction that had a security function were covered by the UNCITRAL Model Law on Secured Transactions. Reforms based on UNCITRAL texts addressed the existing fragmentation among financing laws for movable assets. Nevertheless, UNCITRAL was reassured by the Secretary-General's pledge on close consultation and coordination with UNCITRAL regarding the proposed project to ensure that the rules to be provided by the proposed model law on factoring were closely coordinated with the rules in the relevant UNCITRAL texts. This would allow States to undertake an incremental approach to eventually achieve a comprehensive secured transaction regime including the use of receivables for financing purposes. Hence, the intention of the proposed model law on factoring should be made very clear in the instrument itself. It should serve as first step for States in implementing a comprehensive secured transactions system. He concluded by noting that UNCITRAL supported the project and looked forward to working in close coordination on it with the UNIDROIT Secretariat.

219. *Mr Moreno Rodríguez* expressed support for the proposal and noted that the UNCITRAL Model Law on Secured Transactions had been submitted to the Congress in Paraguay for adoption. He noted that the stakeholders and industry in Paraguay had clearly expressed the necessity of a model law on factoring and the proposed project would meet their needs. He added that close coordination with UNCITRAL was very important and should be encouraged.

220. *Ms Shi* queried the difference between the proposed model law on factoring and the 1988 UNIDROIT Convention on International Factoring, and queried whether the present proposal would cover only domestic factoring. She noted that the 1988 UNIDROIT Convention on International Factoring only had 10 Contracting States and questioned whether the proposed model law would overlap with its provisions.

221. *Mr Komarov* noted that he had been part of the Diplomatic Conference for adoption of the 1988 UNIDROIT Convention on International Factoring, and that the development of this Convention was a very progressive development as not many countries had their own laws on factoring at that time. Many States had thereafter introduced their own laws on factoring based on the 1988 Convention. For the proposed model law on factoring, it was important to consider the interest of those parties which would be using factoring, rather than just the businesses practicing or offering it. He concluded by noting his support for the proposal and agreed that it would be a useful project for UNIDROIT to undertake.

222. *Mr Gabriel* noted to the Council that the 1988 UNIDROIT Convention on International Factoring dealt only with international factoring, whereas most factoring was done domestically. He stressed the importance of factoring as a financing tool which had been key to the success of many developing industries, including cotton and other textile industries in Europe.

223. *Mr Kanda* expressed support for the proposal, noting the importance of factoring and its necessity for the industry. He emphasised the need for close coordination with UNCITRAL and looked forward to seeing the results of the project.

224. *Mr Leinonen* noted that the industry in Finland did not show enthusiasm about the proposed project; however, he was convinced of its necessity and its value for developing economies around the world. He noted that it was important to clearly define the relationship the model law would have with other instruments in the field to ensure that the instrument did not lead to additional fragmentation of the law.

225. *The Secretary-General* reiterated that the Secretariat would work in close coordination with UNCITRAL on the project, and that the scope of the project would be precisely defined to ensure that it did not lead to further fragmentation of the law. He confirmed that the 1988 UNIDROIT Convention on International Factoring dealt only with international factoring, while the proposed model law would provide guidance to States wishing to reform their domestic system of factoring.

226. *The Council agreed to unanimously recommend to the General Assembly to allocate high priority to the development of a model law on factoring as part of the Institute's Work Programme for 2020-2022.*

Transnational Civil Procedure: Principles of effective enforcement

227. *The Secretary-General* drew the attention of the Council to Paragraphs 63-66 of Document C.D. (98) 14 rev. 2. This related to the proposal for the development of a legal guide on best practices of effective enforcement. This proposal had a mixed origin: it had been proposed by the World Bank, which had been encountering practical on-ground problems relating to the enforcement of laws, particularly in developing countries; additionally, this proposal was also linked to an item previously

on the Work Programme relating to enforcement, which had been given low priority in light of other ongoing work on procedural law. While there were many problems in relation to the enforcement of judicial decisions, the problem of enforcement was also important in contractual enforcement, or, more commonly, regarding the enforcement of security rights, or right arising from secured transactions (additional examples included enforcement of foreclosure, enforcement of mortgages etc). These issues in enforcement occurred for a number of reasons, including those relating to repossession which involved bailiffs, and court officers, or processes and systems which created large delays (for example, an inefficient system of appeals). Due to a lack of proper enforcement mechanisms, many systems faced difficulties, which led to costs being incurred by domestic economies, as well as institutional burdens faced by court systems.

228. The Secretary-General acknowledged that this was a difficult area to work within, as most international procedural law reform (such as in areas of judicial decisions, contract law, secured transactions, etc.), and most best practice guides developed internationally for different areas of the law, were silent on the question of enforcement. While there was agreement among the international community that enforcement needed to be expedient, the mechanism to achieve such expediency had not yet been defined. This would be addressed under the proposed project. The project would work on developing a set of best practices in enforcement mechanisms.

229. The work would not aim towards a hard law instrument which could interfere with domestic public law or administrative law systems, but rather would only be providing guidance for countries who needed it, on how to best ensure effective enforcement in different areas. The Secretary-General additionally noted that there were large amounts of data available in this area on reasons why enforcement was ineffective, and that this project would seek to rely upon this data and its analysis for its work.

230. *Mr Gabriel* sought clarification from the Secretary-General on the differences between Paragraphs 28-31, Paragraphs 63-66, and the actual proposal from the World Bank, as there was a lack of consistency and clarity in these three sections, particularly regarding terminology.

231. *The Secretary-General* noted that there had been certain overlaps, as parts of this proposal stemmed from an older low priority item on the 2017-2019 Work Programme, which was considered to be a rather classical procedural law matter, and that the main proposal could be found in Paragraphs 63-66. He additionally noted that the enforcement of security rights would be among the items considered by this project, as well as foreclosures of any type, debt enforcement in tort, contract, or secured transactions, etc. The Secretariat would define the scope of the project before proceeding, including, *inter alia*, judicial decisions with judgments, executing titles (e.g. notarised deeds), bills of lading, and security rights over collateral. However, debt enforcement in the proposal had been used in a general manner.

232. *The Deputy Secretary-General* added that among the elements that would be considered would be the language and the conceptualisations used. Hence, once the scope was defined, the terms and language used to address the scope would also be given careful consideration. *The Secretary-General* noted that it would also likely encompass enforcement of decisions of a legal officer in insolvency. As such, if there were found to be instances of overlap with work done by UNCITRAL (for example in the area of asset tracing), then the Secretariat would coordinate with UNCITRAL, and other institutions accordingly.

233. *Mr Fredericks* queried whether there would be an overlap between this proposed project, and the HCCH Judgments Project, which was to have a Diplomatic Conference in July 2019.

234. *Ms Fauvarque-Cosson* noted the high degree of complexity involved in drafting this instrument, mentioning that there might be overlap with the work of other organisations, and with

other existing instruments which would need to be examined closely. She noted that the scope of the proposed project seemed to be very broad, and that it would require refinement due to the sensitivity of areas such as judicial and extrajudicial enforcement. She also queried whether the scope of this project would be limited to enforcement in an international context, or also extend to domestic matters.

235. *The representative of the HCCH* noted that the Judgements Project dealt strictly with private international law and did not delve into the mechanics of domestic enforcement. The HCCH therefore looked forward to UNIDROIT's work in this area.

236. *Ms Sabo* sought clarification on whether this project would only cover extrajudicial and judicial enforcement, or if it would also extend to execution of judgements, similar to the work of the HCCH. She expressed the need for additional clarity on this subject and requested that the studies referenced in the proposal by Mr Stürner, and on feasibility, be shared with the Council.

237. *The representative of UNCITRAL*, referencing his former role as Secretary-General of UNIDROIT, noted that the main focus of this project as it presently appeared on the 2017-2019 Work Programme, and as had been reflected in the study by Mr Stürner, was to promote best practices for the domestic enforcement of court judgements, taking into account that the HCCH Judgements project covered only cross border enforcement of judgements. Additionally, this work was intended to be done in close collaboration between UNIDROIT, the HCCH, and UNCITRAL. He noted that several existing instruments noted the importance of enforcement, without delving into the details, this was the case with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Singapore Convention on the Enforcement of Mediation Settlements, and the UNCITRAL Model Law on Arbitration. These instruments, among others, left the question of enforcement to domestic systems of civil procedure. He added that UNCITRAL was favourable to the proposal under consideration, which would look at matters such as the use of self-help remedies (which would be especially useful in areas relating to the digital economy), and para-judicial enforcement (such as the use of promissory notes). He noted that there was synergy between the three sister organisations in this area, and that UNCITRAL looked forward to contributing to this project, to the extent required.

238. *The Secretary-General* confirmed that the project would not look at international judgements but would focus on best practices which could be implemented on a domestic level. Keeping in mind the direct link of effective enforcement to the public and administrative law of States, this area is highly sensitive – and this was why the proposal was to simply to document and draft best practices, rather than for creating an imposing treaty or convention. Such a best practices guide, based primarily on already available data, would be useful for countries looking to reform enforcement mechanisms within their jurisdictions. UNCITRAL and the HCCH would be called upon to cooperate to avoid overlap and specially to create synergies with their instruments. Self-help remedies would also be analysed in terms of the conditions to which they best applied. The project would furthermore aim to cover procedural hindrances to enforcement (such as an inefficient appeals system), as well as decisions, contractual rights, secured transactions rights, semi-jurisdictional elements, and enforcement of notarised documents. The work would analyse the best practices associated to enforcement in a multitude of areas and provide a set of standards for States looking to reform their domestic systems. The Secretary-General also noted that the enforcement of decisions in online dispute resolution and alternative dispute resolution, including arbitration, could also be considered, in the absence of any reason to exclude them. Considering that this would only be a best practices document to provide guidance in the resolution of an important issue faced in many States, it would be beneficial to have a broader scope.

239. *Ms Shi* noted the usage of the word transnational in the title, and queried if this should be changed in order to reduce the confusions being created.

240. *Mr Gabriel* noted the protective nature of all domestic procedural laws and reflected upon the problematic nature of developing a best practices guide designed to recommend changes to the same. He expressed concern regarding the scope of the proposed project, especially in relation to the definition of debt. He requested that the Secretariat submit a scope document to the Council, in order for the Council to decide how to go forward with this project.

241. *Ms Sabo* concurred with the view expressed by Mr Gabriel, and looked forward to an elaborate proposal defining the scope of the work to be undertaken as part of this proposed project, and requested the Secretariat to submit such a document, as well as a possible feasibility study, to the Council at its next meeting.

242. *Mr Schuermans* noted that this proposal related to international public law, and that the recognition of treaties, and international court decisions by States could also be an area which could be examined.

243. *Mr Calvo Caravaca* drew the distinction between enforcement from a procedural point of view (e.g. recognition of a deed) and material enforcement of sentences. He noted that a soft law instrument relating to material enforcement would be beneficial to the international community.

244. *The Secretary-General* thanked all the representatives for their interventions and noted that the Secretariat would take these comments into consideration when preparing the documents requested, including a consideration of whether or not the word 'transnational' should be used in the title. He noted that this project would seek to extensively rely on the data available on enforcement in order to identify best practices, and this could be stressed in the scope document to be prepared. The Secretary-General also recalled that a feasibility study already existed, alongside the proven need for guidance on the topic as expressed by many years of practice of World Bank teams. Hence, the Secretary-General sought preliminary approval for the Council to recommend putting this item on the 2020-2022 Work Programme, in order for the Secretariat to prepare the documents requested by the Council. These documents would be submitted to the Council for comments in advance of its 99th session.

245. *The Council agreed to recommend to the General Assembly to assign medium priority to this proposal. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as an enhanced feasibility analysis. There was substantial agreement on the importance of the topic and on the impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note to be presented at the 99th session, the Governing Council would reconsider giving the project a high priority status.*

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

246. *The Secretary-General* noted that the Secretariat had received two separate proposals, one from the Bank of Italy, and one from the European Banking Institute (EBI), relating to the harmonisation of rules in cases of the insolvency of a bank. The EBI was a European academic think tank which was closely linked to the European Central Bank (ECB). Following the 2008 global financial crisis, many international stakeholders, financial authorities, including the Financial Stability Board (FSB), the Bank for International Settlements (BIS), and the banking industry, had gathered their efforts to protect the banking and financial sectors from contagion and risk. These efforts had culminated in the passing of new laws and directives in the United States of America and Europe respectively, which had worked jointly with efforts made at the international level by the IMF and others. The entire architecture of banking regulation was highly comprehensive and covered almost all institutions that had the capacity to cause systemic damage or had a cross border element to

them. However, one area that was lacking in the architecture was the final stage, where the matter related to a bank which was too small to cause systemic damage, or an already insolvent financial institution, which needed to be liquidated without any additional resolution. This last stage relating to bank liquidation was left purely to domestic legislation, which often differed substantially from country to country.

247. The domestic bank liquidation systems could greatly benefit from the introduction of a harmonised set of rules, especially with the high degree of global interconnection between markets as was presently the case. The Secretary-General gave examples of issues such as differing systems of priorities in bank insolvency, a lack of specific provisions for sale and liquidation of banks in a manner which would continue the facilitation of credit, or provisions relating to the handling of such claims by specific authorities. Due to the lack of a system of best practices in this area, central banks faced several problems when liquidating a local bank with linkages to other markets which had differing rules on the same issue. This was especially problematic to SMEs working with banks that filed for bankruptcy, as well as to interconnected banking markets. There were also effects of local liquidations on financial institutions at a higher level.

248. The insolvency of financial institutions was handled through the existence of *ex ante* buffers which had a total loss absorbing capacity (TLAC) (Minimum Requirement for own funds and Eligible Liabilities (MREL) in the European Union), which implied the existence of written definitions of debt and equity in cases of insolvency. Harmonisation was necessary to address the application of bail-in rules, in a manner consistent with TLAC/MREL provisions, which was a cumbersome cross-border issue due to the existence of differing local rules of priorities on the bank liquidation process. No action had yet been taken in this area due to the fundamentally domestic nature of the problem. The FSB had agreed upon legislation for central banks, as insolvency of a central bank had the capacity to cause damage to the entire financial system. Local banks did not pose such a risk, and hence had not been the subject of dedicated insolvency rules, despite their growing connections to international markets.

249. Keeping this in mind, the Bank of Italy and the EBI had deemed it suitable for this work to be undertaken by a global institution, which was not necessarily part of the global financial ecosystem. This was because such an institution had the flexibility and capacity to bring together experts without needing the experts to be representative of their own institutions (which was a problem that international financial institutions found difficult to avoid). Furthermore, the local nature of the issue meant that there might also be a limited ambition for the FSB to undertake this work.

250. *Mr Gabriel* queried whether the Bank of Italy and the EBI would be providing funding for this project, given the heightened degree of importance they had associated to it. He noted the global nature of this project and expressed concern with producing international standards in an area where almost every country had a differing set of rules. He noted that the Secretariat had sought approval from the Council to discuss further with the Bank of Italy and the EBI to define the specific scope of the project, and that this in turn was necessary to determine its priority on the 2020-2022 Work Programme. He additionally noted that at this stage the Government of the United States of America did not look favourably upon this proposal, due to fears of entering into an extremely highly regulated area where it would be difficult to create harmonised rules. Lastly, he noted that, in the choice between a legal guide and a model law in this area, if the Council were to recommend one of the two, he would recommend only working on a legal guide at the present moment, leaving open the option to work on a model law in the future.

251. *Mr Meier* expressed his lack of conviction for this proposal, noting that while a harmonised system for liquidation of large international banks was important, this already existed – and that smaller banks which posed no systemic risks did not require any such systems. He noted that he had requested an opinion on the matter from the relevant authorities in Switzerland, who had agreed

that local small banks did not need a harmonised system of insolvency law, and that they largely depended upon savings for financing. Moreover, as the insolvency of a local bank did not have any international issues to be solved, it was better dealt with through domestic law. He added that he was interested in parts (b) aspects of recognition of resolution measures and (c) the mechanisms for recognition of contractual clauses that subject banks to resolution systems in Paragraph 69.

252. *Ms Sabo* shared the concerns expressed by Mr Gabriel relating to the banking sector being highly regulated in all countries and noted that the project might not be very feasible at the present time. Moreover, she queried whether UNIDROIT was well suited to work on banking law, or if such a project should be conducted at other institutions.

253. *The Secretary-General* noted that a proposal to do work relating to bank insolvency had been presented at UNCITRAL on several occasions and had been rejected. As such, there was no impetus to undertake such a project at UNCITRAL. While UNIDROIT had done some work on banking law in the past, the Secretary-General noted that this was an area of expertise for him, and that he had been involved with institutions working in this area for many years. He drew a comparison to when UNIDROIT initially undertook work on agricultural contracts, without specifically having an expertise in that area. As such, he did not foresee the lack of capacity at UNIDROIT being a problem while conducting this proposed project. Additionally, he added that this was an under-regulated area wherein domestic liquidation of banks often fell under corporate insolvency laws, which were not adequate to address the matter. He agreed that while the banking industry in general was highly regulated, the particular area of bank liquidation had not been looked at in the past and could greatly benefit from this harmonised and centralised work.

254. *Ms Bariatti* in light of her extensive experience in the area of bank insolvency, noted the need for harmonisation of laws in this area. She added that several factors had to be considered when looking at insolvency, or pre-insolvency, including the citizenships of the depository, the debtors, the bond holders, and the shareholders of the bank, all of whom could come from different countries. The cross-border impact of any bank insolvency raised important concerns, which would benefit from the existence of uniform rules on the matter. She recommended that the Secretariat undertake preliminary work in this area and present a specific proposal to the Council at its next meeting, so that the Council might be able to make a reasoned decision on continuing to include this topic in the Institutes Work Programme. She added that some rules related to bank insolvency were already present in Italy, that they were incomplete and had not been tested. However, the EU had a certain amount of competency over rule-making in this area, and as such, it would be important for the Secretariat to scrutinise the possible overlaps and crossovers within existing domestic and international laws on this subject, and how the Secretariat could work in cooperation with European institutions on this matter. An example of this could be seen in the work done by the EU in the field of Maintenance Obligations, wherein the EU had taken advantage of work initiated by the HCCH to build upon it further to develop EU level regulations.

255. *Mr Bollweg* noted that he had consulted the German Banking Association on this matter and had felt that while this was an interesting proposal, the target was highly ambitious. Moreover, there was existing regulatory work in this area on the EU level; and while there were gaps within this regulation, there were various approaches on how to address them. There was a risk that there could be an overlap and a conflict between work done under this project, and existing international and regional laws. He supported the suggestion that the Secretariat further develop this proposal in order for the Council to be able to make a properly informed decision at its 99th session.

256. *Ms Shi* noted the courageous nature of the proposal, keeping in mind the difficulties associated with the harmonisation of insolvency law, especially in the banking sector. She noted that as the banking sector was highly regulated, any work in this area would require a substantial amount of effort from the Secretariat. She enquired as to the scope of the project, and whether it would

apply only to banks, or also to financial institutions. Additionally, she sought clarity on whether the project would cover only insolvency, or also solvent liquidation of banks.

257. *The Secretary-General* clarified that the proposed project would only cover insolvency, and would not look at solvent liquidation of banks. He added that the scope related to deposit taking institutions which entailed risks for the collectives, and that this would be clarified as the proposed project moved forward. Additionally, the proposed project would largely concern domestic legislation, but would also have an international element to it, keeping in mind the cross-border impact of a bank's insolvency. While countries which had never faced the insolvency of a local bank might not see this as an issue, it was still very prevalent in other parts of the world and should be regarded as an important issue, keeping in mind its significance to many countries. With regard to overlaps with the EU – the project would be an effort to develop global best practices, and the EU's practices would also be looked at in the development of this guide. Additionally, the Secretary-General agreed on the importance of sections (b) and (c) of the proposal, as these were problems already being faced by European institutions, and would also be quite useful to include in the 2020-2022 Work Programme. Lastly, the Secretary-General agreed with Mr Gabriel's recommendation to pursue a legal guide on this subject rather than a model law.

258. *Mr Gabriel* and *Ms Broka* noted the usefulness of the Secretariat preparing a document delineating the exact scope of this work for the Council's consideration at its next meeting. Ms Broka noted that there were additional issues with regard to self-liquidation of banks based on sanctions, and this was perhaps an additional area which could be considered as part of the scope document.

259. *Mr Meier* noted the importance of consulting national banking authorities before formally undertaking work in this area, as it would not be useful to pursue a purely theoretical project.

260. *The Secretary-General* noted that sanctioned liquidation would be excluded from the scope of this project, as it did not relate to private law, and was outside the mandate of the Institute. Similarly, the proposal did not include consideration of voluntary liquidation on request from the shareholders of a bank. He added that national authorities would be consulted in preparing an explanatory document for this proposal.

261. *The Council* agreed to recommend to the General Assembly to assign medium priority to this proposal. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global institution. This would include including exploring parts (b) and (c) of the original proposal. There was agreement on the importance of the topic and on the possible impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note, the 99th session of the Governing Council would reconsider the status of the project.

262. *The Secretary-General* noted that there was greater consensus relating to the project on effective enforcement, rather than bank insolvency, and as such, the Secretariat would give it greater priority, but would still aim to produce additional documentation in both areas for the Council's consideration at its 99th session.

Artificial Intelligence/Smart Contracts/DLT

263. *Ms Pauknerová* introduced the proposal noting that the government of Czechia had submitted a proposal to the Council to recommend including law reform relating to artificial intelligence (AI) on UNIDROIT's 2020-2022 Work Programme at a medium priority level. She noted that this had initially been presented to the Council at its 97th Session (Rome, 2-4 May 2018). It had been stressed since then that this work could be done jointly in collaboration with UNCITRAL and the HCCH. She noted

that Mr Kozuka, an UNIDROIT Correspondent, had also noted that the OECD could be considered as an additional collaborator. Furthermore, the EU's recently released coordinated plan on AI could also be examined as part of the project. She stressed that there was a need for an international global legal framework in this area, and noted that UNIDROIT, and other intergovernmental organisations as the ideal forum for this effort. She highlighted UNIDROIT's track-record of providing excellent international legal solutions to complex global problems, and hence noted the Institute as the ideal organisation to lead the work on AI, noting that a soft law instrument in this area would be beneficial to the international community.

264. She added that AI related to the science of developing systems capable of solving problems and performing tasks by means of simulating intellectual processes. As such, AI was able to learn and solve problems without human intervention and possessed enormous capabilities. The field of AI needed to be regulated with regard to provisions on liability, privacy, and intellectual property. An important example of the use of AI was autonomous cars, for which many countries had already found legal solutions, and other countries were making efforts to regulate.

265. She noted that the rise of AI raised specific legal issues which needed to be addressed at a global level, given that most problems relating to AI stemmed from contractual relationships, which were based on contracts of adhesion, and could benefit greatly from specialised legal rules dictating their governance – as most adhesion contracts were drafted by one party which exercised a large amount of power.

266. *The Vice President* noted that the Secretariat's proposal for work in this area could be found in Paragraph 74 of document C.D. (98) 14 rev. 2. The Secretariat had sought permission from the Council to recommend to the General Assembly to allow consultations with UNCITRAL in order to further define the scope of this project, as it could also include areas such as Smart Contracts and Dedicated Ledger Technologies (DLT), as well as AI. He noted that the initial scope of the project was very broad, and that it would be useful for the Council to presently accept the Proposal in its present formulation, and allow the Secretariat to come back to the Council at its next meeting to present a more detailed document specifically outlining the work to be undertaken.

267. *The Secretary-General* noted that the Secretariat had convened a joint colloquium with UNCITRAL to narrow the subject-matter and potential scope of this project. During this, it had been found that there was great interest in this area, with particular reference to a general project on digital assets, i.e. assets consisting of tokens which were used and held within distributed ledger technologies and blockchain technology. This would include both endogenous assets (not linked or representing an asset off the blockchain) and exogenous assets (representing an asset which existed off the blockchain). This project would require work on categories and conceptualisations, in order to develop a set of definitions for terminologies and concepts used within this area. This would entail establishing a taxonomy of terms used as part of the digital economy. Such a document could enable the international community to use these terminologies with greater clarity and certainty and allow for additional work to be done.

268. Furthermore, there were three different topics which needed to be addressed relating to these assets, i) matters of insolvency, ii) conflict of laws rules, and iii) matters of enforcement. Moreover, the institutional element for where such issues should be discussed also had to be factored in. The Secretary-General added that in the conclusion of the colloquium, it had been decided that, if recommended by the Council and the General Assembly, another colloquium would be held with a narrower focus to closely delineate the specifics of the work to be undertaken. UNCITRAL had also expressed informal support for the project and had noted that they might seek to become partners on the deliverables once they had had the opportunity to submit it to their administrative organs.

269. *The representative from UNCITRAL* confirmed the interest and support of UNCITRAL for this project and looked forward to working with UNIDROIT on the matter.

270. *Mr Bollweg* noted the challenging nature of work on law relating to AI, and that many governments faced these challenges. Moreover, this was also on the agenda of many intergovernmental and regional organisations. He noted that technical developments in this field were very fast in nature, and that it was not useful to spend too much time developing these rules, as the speed of development of the rules needed to be kept up to pace with the speed of the development of the technology. He looked forward to the proposal of the Secretariat next year and towards reaching a final decision on the matter.

271. *The Secretary-General* reemphasised a point which was agreed upon during the joint colloquium with UNCITRAL, that there would not be an effort to regulate the technology, but rather to apply legal thinking to existing technologies in a way which was comprehensive and rendered a service to the community. This legal analysis would be inclusive of the thoughts of experts from different international organisations, and would only facilitate future work in this area.

272. *Mr Kanda* supported the Secretariat's proposal but noted that the original proposal from Czechia primarily concerned consumer protection in the use of artificially intelligent products and services, and was quite different from the line of work which the Secretariat had proposed.

273. *The Secretary-General* noted that it was unlikely that UNCITRAL and UNIDROIT would work on the consumer protection element. He added that the Secretariat requested the Council to allocate additional resources on a different part of the proposal, which related to an internal analysis of how these technologies applied to existing UNIDROIT instruments. This analysis would be separate from the joint work with UNCITRAL and would be designed to determine if existing UNIDROIT instruments needed to be revised in light of these new technologies.

274. *Ms Sabo* requested that all the presentations from the joint colloquium with UNCITRAL be made available to the Council, alongside a summary of the conclusions which had been reached. She noted support for the Secretariat's proposal and added that the Council would have to make many important decisions at its 99th session. She also expressed support for the Secretariat to conduct an internal review of the impact of new technologies on UNIDROIT instruments, and to explore areas of additional work in this sphere independent of UNCITRAL.

275. *The Council recommended to the General Assembly that it include this item on medium priority on the 2020-2022 Work Programme. The level of priority assigned was merely formal. The Secretariat was asked by the Council to conduct further research to narrow down the scope of the project, which, based on the conclusions of a joint colloquium with UNCITRAL, would be initially confined to digital assets. The Council, at its 99th session, would adopt a decision on the final scope of the project and reassess its level of priority. The proposed form of the joint work with UNCITRAL would also be reassessed at the 99th session of the Council. The Council also recommended that the Secretariat conduct additional research on the impact of Smart Contracts/DLT/AI on existing UNIDROIT instruments.*

Private Law and Agricultural Development

276. *The Secretary-General* drew the attention of the Council to Paragraphs 75-82 of document C.D. (98) 14 rev. 2., noting that UNIDROIT's present work in the field of agricultural development had almost come to a conclusion, with the final document to be approved at the next session of the Council (for full report see discussion under Agenda Item 5). He recalled the important work the Institute had undertaken in the area of agricultural development, in partnership with FAO and IFAD, and stressed on the importance of having the Institute continue to undertake work in this area. He

noted that the United States of America had submitted proposals for new work which could be found in Paragraph 78 of document C.D. (98) 14 rev. 2.

277. In an earlier session, *the representatives of FAO and IFAD* had remarked upon the five areas of proposed work. They noted that they would not recommend prioritising work on 'Valuation of Communal Land', as well as issues of land registration and 'title to land', as work had already been done in these areas by other organisations, including FAO. They added that subjects such as 'Legal Structure of Agricultural Enterprises', 'Agricultural Finance', and 'Community Trust Funds', were all important areas which could be considered for future work, and were linked to one another in several ways. The main concern for FAO and IFAD had been to ensure the protection of rural, nontendered, small scale, and private farmers, as well as to tackle issues such as malnutrition and tender insecurity. Hence, their emphasis would be towards promoting further tender security, by means of giving due consideration to the impact on farmers of any work done by UNIDROIT and its partners. Their recommendation was to ensure utmost inclusivity for stakeholders such as rural farmers, and end users in any project which was to be prioritised on the 2020-2022 Work Programme. The concept of Public Private Producer Partnerships, noted by IFAD, could also be a useful area to explore further.

278. *The Secretary-General* noted the support for the topic related to 'Legal Structure of Agricultural Enterprises' – adding that the topic related to issues faced in the field by FAO, and concerned the analysis and drafting of a guide which provided clarity and guidance on how to develop vehicles for agricultural contracts and the use of agricultural land. It would also cover the need for land tenure, and would include public private partnerships. Such a guide would be very useful for low- and middle-income countries, as well as improve the protections offered to farmers in all parts of the world.

279. He added that the Institute's partners raised objections to the other proposals: the issue of 'title to land' was considered rather sensitive and not fit for harmonisation; the issue of 'valuation of communal land' had already been addressed by other organisations, and was not a legal issue for UNIDROIT to look into; and 'agriculture finance', and 'community trust funds' were also areas which had already been looked at by other organisations.

280. *Mr Gabriel* stressed the importance of continuing to work in the area of agricultural development with FAO and IFAD, keeping in mind that UNIDROIT had now also developed an expertise in this area. He expressed support for work on the 'Legal structure for agricultural enterprises' as it fit well with the expertise of the Institute, and it was an area in which work on harmonisation was required. He noted that 'Agricultural Finance' and 'Communal Trust Funds' could be kept at a lower priority, and that it was important to refrain from conducting work on 'title to land' and 'valuation of communal land' issues, as these were areas with strong governmental interests, and were largely governed by local customary law, which should not presently be the subject of work for UNIDROIT.

281. *Ms Sabo* noted the importance of avoiding duplication with work which had already been done by other organisations. UNCITRAL had already done work on public private partnerships (PPP), on micro, small and medium enterprises (MSME), and on business registrations; there was also a working group presently completing work on a simplified legal entity to address concerns faced by MSMEs. She noted that the area of 'Legal structure of agricultural enterprises' was the most useful and feasible out of the proposed topics for inclusion on the 2020-2022 Work Programme. She also expressed agreement with Mr Gabriel on the need to refrain from working on 'title to land' and 'valuation of communal land' issues as it was not feasible to expect harmonisation in these areas. She agreed that there was already existing work in areas of 'agricultural financing' and that tools to facilitate this already existed.

282. *Mr Fredericks* noted the important issue of 'land grabbing' which was faced in Africa and some other parts of the world. This related to the expropriation of land of private individuals without

any kind of compensation. He noted that this issue was highly politically laden, and often involved governments taking control of land which was previously held by local populations. He added that this issue could possibly be addressed by a project on 'title to land' issues. He stressed on the sentence in the proposal for 'title to land issues' stating 'recordation and recognition of legitimate occupancy and use of rights in the context of investment on State-owned land' as an important area which needed further consideration in order to resolve issues of land grabbing which were politically driven and culturally motivated, and were largely faced in the developing world.

283. *The Secretary-General* noted that similar issues had been addressed by the Legal Guide on ALIC. Moreover, this was a highly politicised issue and involved large amounts of domestic and customary law issues which were difficult to offer harmonised reforms for. *Mr Fredericks* agreed that while such was the case, the Legal Guide on ALIC could potentially consider extending its coverage of the area. *The Secretary-General* thanked Mr Fredericks for raising this important issue, and recommended that South Africa raise this issue in the consultation process to be undertaken for the Legal Guide on ALIC.

284. *Mr Gabriel* noted the seriousness of the issue of land grabbing as raised by Mr Fredericks, and its large economic and social repercussions. However, he noted that UNIDROIT was not the right institution to address this problem.

285. *Mr Moreno Rodríguez* agreed with this assessment, noting that this was not the type of work UNIDROIT usually undertook as it would go beyond investment contracts, which was the primary subject matter of the Legal Guide on ALIC.

286. *Ms Fauvarque-Cosson* noted that the Legal Guide on ALIC dealt with the issue of land grabbing to a certain extent, as it sought to address issues related to contracts involving extortion and unfair terms. While if it did not go as far as covering some of the issues raised by Mr Fredericks, this was because some of those issues did not involve contracts, and Legal Guide on ALIC only applied where a contract existed. She noted that while it was not possible to restructure the Legal Guide on ALIC entirely, more emphasis could be placed on such issues in the consultation process. Nevertheless, throughout the drafting process, the ALIC working group had emphasised the effort to not impinge upon issues of state sovereignty. The Legal Guide on ALIC sought to create awareness on this matter and was limited in its capacity to solve political problems.

287. *The Secretary-General* summarised that the issue of land grabbing had a strong public law element, which might be outside the scope of UNIDROIT's work. However, this could be considered in the consultation process for the Legal Guide on ALIC, and included as a reference for future work by other organisations. With regard to avoiding overlaps with UNCITRAL's work on PPPs and on MSMEs, the Secretary-General noted that this work was very general, and not specific to the agricultural sector. He added that work in this area at UNIDROIT would be mindful of the general frameworks provided by UNCITRAL.

288. *The Council agreed to recommend to the General Assembly to put Legal structure of agricultural enterprises on the 2020-2022 Work Programme at a medium priority. The assigned level of priority was merely formal. The Council agreed that funds allocated to this project could only be used to analyse its feasibility and potential impact, as well as to further define its scope. Subject to a more defined proposal, it would be reassessed by the Council at its 99th session, where its priority might be redefined.*

Guide for enactment of the UNIDROIT Model Law on Leasing

289. *The Secretary-General* introduced the proposal relating to a guide for the enactment for the UNIDROIT Model Law on Leasing. He noted that this was a proposal submitted by the World Bank,

which had initially enquired about the possibility of amending the model law to address its limitations relating to using leasing as a security right. This limitation was highly problematic, particularly in common law countries, and had come about as a consequence of similar work being done at UNCITRAL on secured transactions. This had resulted in the model law not being widely used. As such, the Institute did not see it feasible to amend the instrument itself at this point in time, and thereafter, the World Bank had made a proposal to draft a Guide to Enactment for the model law. This guide would seek to address some of the limitations the model law had by means of providing explanations for them, and noting how States could consider making slight adjustments to the model law in order to ensure that its national implementation was not constrained by the same issues which it presented.

290. *Mr Gabriel* acknowledged the existence of limitations within the Model Law on Leasing and reminded the Council that this model law had intended to be a steppingstone for economies to implement a more complete system of leasing and secured transactions law. As such, he disagreed with taking the approach proposed of offering workarounds to the model law, where such was not the purpose of the model law to begin with. He noted that consideration could be given in the future to amending the model law or drafting a new instrument. Moreover, he noted that the UNCITRAL Model Law on Secured Transactions was an already existing instrument which addressed many of the shortcomings of the Model Law on Leasing. In conclusion, he suggested not to include this item in the Work Programme. *Ms Sabo* expressed her agreement with Mr Gabriel's reasoning and noted that such a guidance document would not be a good use of the Institute's resources and would cause further fragmentation of the law in this area. *Mr Meier* also expressed his agreement with this view.

291. *Mr Moreno Rodríguez* drew a comparison with the OAS Inter-American Convention on the Law Applicable to International Contracts which had faced similar issues of incompleteness. The OAS had considered a similar approach of working on a guidance document for implementation and noted that the same could be useful for the Model Law on Leasing.

292. *Ms Dacoronia* wondered about the different treatment for the proposals from the World Bank relating to factoring and leasing, as the World Bank's proposals were all based on on-ground realities relating to these issues. *Mr Gabriel* responded noting that while the proposed work on factoring involved the creation of a new instrument; with leasing, it involved working towards changing the utility of an already existing instrument. As such, while it was advisable to pursue a new instrument, it was not advisable to make changes to already existing instruments in this manner.

293. *Mr Moreno Rodríguez* queried whether this guide to enactment would also address limitations in UNCITRAL's work on leasing.

294. *Mr Bollweg* noted that the division responsible for leasing at the German Ministry of Justice was of the opinion that this proposal would be useful in order to allow the Model Law on Leasing to become a reliable tool for States to develop national leasing laws. This was bolstered by the opinion of the World Bank. As such, he recommended retaining this item on the Work Programme at low priority.

295. *The Secretary-General* explained that factoring and leasing were two distinctly different areas with differing on-ground needs for regulation. With factoring, the Institute would not be undermining its own previous work, but would rather be developing an instrument that addressed issues previously not covered by other international instruments. The Secretary-General noted that the present proposal for a guide to enactment for the Model Law on Leasing was an *ex post* change to an instrument already adopted by UNIDROIT. As such, he noted that while he agreed with Mr Gabriel and Ms Sabo on not accepting this proposal in its present form, he added that it may be useful to continue to monitor developments in this area, and to address new issues which arose in leasing law as a result of the lack of use of the Model Law on Leasing, and perhaps limited use of the UNCITRAL

Model Law on Secured Transactions. This future enactment guide would not seek to revise the existing model law on leasing, but rather would seek to address the new issues which had arisen in the area, while maintaining the commitments made to UNCITRAL in the drafting of the existing model law.

296. *Mr Moreno Rodríguez* expressed his agreement on the updated proposal made by the Secretary-General, noting that in the implementation of the UNCITRAL Model Law on Secured Transactions in Paraguay, it had been found that there were certain deficiencies which needed further attention. *Ms Broka* concurred with the Secretary-General, noting that while the Model Law on Leasing was used in Latvia, there were practical problems with its implementation which could be resolved through a guide to enactment.

297. *Ms Sabo, Mr Gabriel, and Ms Dacornia* stressed the need to ensure that a guide to enactment did not revise, or attempt to change the Model Law on Leasing, but rather only served as a complimentary document for it. Moreover, such an enactment guide should not seek to recommend changes or modifications to the UNCITRAL instruments in this area.

298. *The Council agreed to recommend to the General Assembly to place this item on the 2020-2022 Work Programme on low priority to monitor developments in the area. The Secretariat would return to the Council to seek approval if it determined that any additional work was necessary.*

International Commercial Contracts: Formulation of general principles of reinsurance contracts

299. *The Secretary-General* introduced the proposal to allow UNIDROIT's continued participation in Part 2 of the work on 'Formulation of Principles of Reinsurance Contracts' on the Work Programme at a low priority. *The Deputy Secretary-General* noted that this work was funded by the Swiss National Fund and the German Research Association, and was led by Mr Anton K. Schnyder and Mr Helmut Heiss (University of Zurich, as "Lead Agency"), Mr Martin Schauer (University of Vienna) and Mr Manfred Wandt (University of Frankfurt). Moreover, certain areas of this project were closely linked to the UNIDROIT Principles of International Commercial Contracts. Retaining this item on the 2020-2022 Work Programme would ensure continued participation by UNIDROIT in the annual meetings of this Working Group.

300. *The Council agreed to recommend to the General Assembly to retain 'Formulation of Principles of Reinsurance Contracts' on the 2020-2022 Work Programme at low priority.*

A Protocol to the Cape Town Convention on Containers

301. *The Secretary-General* introduced the proposal for a Protocol to the Cape Town Convention relating to Containers. He noted that the proposal had been submitted by the Bureau International des Containers et du Transport Intermodal (BIC) which had indicated that a number of relevant financial institutions and industry participants active in the sector had an interest in the development of such a Protocol. He noted that while individual containers were low-value equipment, the usual market practice was to trade containers in large numbers. The Secretary-General noted that the proposed project could assist in establishing a closer relationship with stakeholders in the shipping industry, which might assist in future negotiations regarding the Maritime Protocol to the Cape Town Convention (an existing low priority item on the Work Programme).

302. He suggested that the Council consider including the project on the 2020-2022 Work Programme as a low priority item, so that the Secretariat could gather additional information on the whether the Cape Town Convention was an appropriate vehicle for facilitating asset-based financing of shipping containers.

303. *Mr Brydie-Watson*, on behalf of the UNIDROIT Secretariat offered to provide some additional background on the proposed project. He explained that the proposal was a result of the participation of maritime and shipping industry experts at the 7th Cape Town Convention Academic Conference in Oxford on 12-13 September 2018. He noted that the proposed project had attracted significant interest from the industry. BIC and the private sector had already conducted two informal consultations with financiers and other industry participants to ascertain their support for this project. He suggested that, should the project be adopted on the 2020-2022 Work Programme, the Secretariat already had an established relationship with private industry which would assist in preparing a feasibility paper.

304. *Mr Bollweg* expressed some hesitation regarding the proposed project. He suggested that shipping containers were an unsuitable type of equipment to be the subject of a Cape Town Convention Protocol, due to their low value. He viewed the premise of the proposal to be driven by the need to facilitate global searching of containers through an international registry, rather than to facilitating financing.

305. *Ms Sabo* agreed with Mr Bollweg's view, on the basis of the low value nature of shipping containers. However, she noted that the Council required more information to be able to make an informed decision on the matter. *Prima facie*, the proposal did not seem compatible with the Cape Town Convention system. As such, she noted her preference to reject the proposal in its present form, and for the Secretariat to request the BIC to present additional information, which the Council could consider in its next assessment of the Work Programme. *Mr Leinonen* expressed agreement with this approach.

306. *Mr Meier* noted that he had consulted industry participants on the matter, and they had expressed interest in doing further work in this area. He suggested that additional analysis needed to be conducted in order to determine the suitability of the proposal and that he would recommend its inclusion on the Work Programme as a low priority item.

307. *The Secretary-General* noted that he had exchanged with the Comité Maritime International (CMI), which had informally expressed a high degree of interest in the proposed project. He explained that if the Council were to recommend the inclusion of the proposal at low priority in the 2020-2022 Work Programme, most of the work would be undertaken by the industry participants interested in developing this instrument. He queried whether the Institute had anything to lose by including this item in the Work Programme as a low priority project.

308. *Mr Gabriel, Mr Leinonen, Mr Bollweg, and Ms Sabo* noted the reputational risk associated with accepting projects, at any level of priority, which had not been subject to sufficient research. As such, they recommended that the proposal should not be included on the 2020-2022 Work Programme at the present moment, and that the Secretariat should liaise with BIC and invite them to submit a new proposal to the Council once the concept had been further developed.

309. *Ms Fauvarque-Cosson* noted that solutions for the issues expressed by BIC were more probable in areas such as blockchain registry systems, rather than the Cape Town Convention. She noted that the Cape Town Convention was seemingly not a suitable vehicle to address the concerns identified in the proposal.

310. *The Deputy Secretary-General* noted that BIC could be involved in the UNIDROIT Foundation project on Best Practices of Electronic Registry Design and Operation. This could be a means of assisting them in finding a solution to the problems which the international shipping container industry faced in terms of registration, and would also be a mechanism to continue to engage them in possible future work with UNIDROIT.

311. *The Council agreed to recommend to the General Assembly to reject this proposal in its present form, but to invite BIC to present a more detailed proposal to the Council at its 101st session where it would determine the Institute's Work Programme for the 2023-2025 Triennial.*

International Civil Procedure in the Americas

312. *The Secretary-General introduced the proposal from the Department of International Law as the technical secretariat of the Inter-American Juridical Committee of the Organisation of American States (OAS) on a document expressing interest on the part of the Committee in exploring a joint work project with UNIDROIT related to the topic of International Civil Procedure. This proposal was in its infancy and needed to be elaborated upon further by OAS. However, *prima facie*, the work aligned well with previous work conducted by UNIDROIT together with the American Law Institute and the current joint work with the European Law Institute.*

313. *Mr Moreno Rodríguez noted that the relevant OAS Committee would further discuss this proposition at its next meeting, to which the Secretary-General had been invited. This work would be similar to work UNIDROIT had done in the past and would have a very high impact on American States.*

314. *Mr Gabriel and Ms Fauvarque-Cosson expressed support for this proposal, as it aligned well with previous UNIDROIT work. They noted the importance of work in this area while stressing the need to allocate resources to it in a manner consistent with past practices, wherein the projects with the American Law Institute and the European Law Institute were largely funded by those partner organisations.*

315. *The Secretary-General noted an additional possibility of similar work on civil procedure in Asia, so as to complete the global coverage of UNIDROIT instruments in the area of civil procedure law. However, this would be subject to a relevant proposal being received for this work.*

316. *The Council accepted the proposal to recommend to the General Assembly to include the possibility of future work on the topic, subject to further consultation with OAS, a feasibility analysis and availability of resources.*

317. The Governing Council took note of the proposed Work Programme and comments received from member States and UNIDROIT Correspondents, and agreed to recommend the adoption of the Work Programme for the triennium 2020 – 2022 to the General Assembly with the level of priorities indicated below:

A. Legislative activities

1. Secured Transactions

Continuation of existing work:

- (a) Implementation of Rail and Space Protocols: high priority
- (b) Implementation of the Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment: high priority
- (c) Preparation of other Protocols to the Cape Town Convention:
 - (1) Ships and maritime transport equipment: low priority
 - (2) Renewable energy equipment: low priority

The Governing Council agreed that, after the adoption of the MAC-Protocol by the Pretoria Diplomatic Conference, it should get the opportunity in 2020 to discuss a promotion of one of the other Protocols already inserted in the Triennial Work Programme to a higher priority.

2. **Private law and agricultural development**

Continuation of existing work:

(a) Preparation of an international guidance document on agricultural land investment contracts: high priority

New work:

(b) Legal structure of agricultural enterprises: medium priority

The assigned level of priority was merely formal. The Governing Council agreed that funds allocated for this project could only be used to analyse its feasibility and potential impact, as well as to further define its scope. Subject to a more defined proposal, it would be reassessed by the Governing Council at its 99th session, where its priority might be redefined.

3. **Transnational civil procedure**

Continuation of existing work:

(a) Formulation of Regional Rules of Transnational civil procedure: high priority

New work:

(b) Principles of effective enforcement¹: medium priority

The assigned level of priority was merely formal. The Governing Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as a feasibility analysis. There was substantial agreement on the importance of the topic and on the impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note to be presented at the 99th session, the Governing Council would reconsider giving the project a high priority status.

(c) International Civil Procedure in Latin America: low priority

4. **International sales law**

Continuation of existing work:

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: high priority

5. **International commercial contracts**

Continuation of existing work:

Formulation of Principles of Reinsurance Contracts: low priority

6. **Cultural Property**

Continuation of existing work:

Private Art Collections: low priority

7. **Leasing and Factoring**

New work:

(a) Model Law on Factoring: high priority

(b) Guide for enactment of the UNIDROIT Model Law on Leasing: low priority

¹ The pre-existing project on enforcement was to be enhanced and its scope redefined, and hence, that project is included here as new work.

8. **Insolvency law**

New work:

The harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases: medium priority

The assigned level of priority was merely formal. The Governing Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global institution. This would include including exploring parts (b) and (c) of the original proposal. There was agreement on the importance of the topic and on the possible impact of the work to be conducted. Subject to agreement with the Secretariat's enhanced note, the 99th session of the Governing Council would reconsider the status of the project.

9. **Law and technology**

New work:

Artificial Intelligence/Smart Contracts/DLT: medium priority

The assigned level of priority was merely formal. The Secretariat was asked by the Governing Council to conduct further research to narrow down the scope of the project, which, based on the conclusions of a joint colloquium with UNCITRAL, would initially be confined to digital assets. The Governing Council, at its 99th session, would adopt a decision on the final scope and reassess the level of priority. The proposed form of the joint work with UNCITRAL would also be reassessed at the 99th session of the Governing Council. The Council also recommended that the Secretariat conduct additional research on the impact of Smart Contracts/DLT/AI on existing UNIDROIT instruments.

B. Implementation and promotion of UNIDROIT instruments

1. Depository functions: high priority
2. Promotion of UNIDROIT instruments

(a) UNIDROIT Principles of International Commercial Contracts: high priority

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

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects: high priority

Item 15: Presentation of the Cape Town Convention and Aircraft Protocol Official Commentary – Fourth Edition (2019) by Professor Sir Roy Goode C.B.E., Q.C., F.B. A. and Professor Jeffrey Wool ([Annexe 1](#))

318. *Sir Roy Goode C.B.E., Q.C., F.B.A. and Mr Jeffrey Wool* informed the Council of the recent publication of the Fourth Edition of the Official Commentary on the Convention on International Interests in Mobile Equipment and Aircraft Protocol. The First Edition of the Official Commentary had been published in 2002 pursuant to Resolution No. 5 of the Cape Town Diplomatic Conference.

319. The Fourth Edition expanded upon the Third, which had been published in 2013. It accounted for additional ratifications of the Cape Town Convention and its Aircraft Protocol over the preceding five years; experiences from the aviation industry, based on a large number of transactions registered under the Cape Town Convention and its Aircraft Protocol; as well as updates to the International Registry for aircraft objects which had been progressively updated, and substantially enhanced.

320. *Sir Roy* recalled anecdotes from the drafting process of Official Commentaries over the years, and thanked all the individuals involved in facilitating the drafting of the same. He noted the significant challenge of drafting a comprehensive commentary, especially considering the innovative law reforms which the Cape Town Convention and its Aircraft Protocol had introduced to secured transactions law and the aviation sector. *Mr Wool* stressed the important role which the Official Commentary played in facilitating the implementation of the Cape Town Convention and its Aircraft Protocol, and the great reliance which the industry placed on this document. He expressed his gratitude to *Sir Roy*, as well as to all those involved in the drafting of the Official Commentaries, recalling anecdotes and experiences from the aviation sector which had been significantly positively impacted by the comprehensive solutions and explanations offered in the Official Commentary for provisions of the Cape Town Convention and its Aircraft Protocol.

321. *The Deputy Secretary-General, as well as Members of the Council*, noted the important role which the Official Commentary played in augmenting the process of implementation of the Cape Town Convention and its Aircraft Protocol. The important promotional value of the Commentary was also stressed, as well as the reliance on the Commentary by Governments, private sector, and institutions alike, in enhancing their understanding of the Cape Town Convention and its Aircraft Protocol.

322. *The Council expressed its gratitude to its author, Sir Roy Goode, and to Mr Jeffrey Wool on their extensive work towards the preparation of the Fourth Edition of the Official Commentary to the Cape Town Convention and its Aircraft Protocol, and took note of its official publication.*

Item 16: Administrative matters**(a) Preparation of the draft Budget for the 2020 financial year [\(C.D. \(98\) 15\(a\)\)](#)**

323. *The Secretary-General* introduced the draft Budget for the 2020 financial year, as set out in document C.D. (98) 15(a), which had been approved by the Finance Committee at its spring session (Rome, 4 April 2019). He explained the process of preparation of budget documents at UNIDROIT, wherein the Finance Committee would approve a first draft at its spring session, which would then be discussed and opened for comments by the Council, and later discussed by the Finance Committee again at its meeting in the autumn, and finally considered for approval by the General Assembly. This process was designed to create maximum transparency and reliability.

324. *The Chair of the Finance Committee, Mr Benito Jiménez, a representative of Mexico*, noted that the 2020 Budget approved by the Finance Committee had an increase of 53,130 EUR compared to the budget for 2019. This increase was a result of the application of the new Contributions Chart, as consistent with the UN Scale of Assessments 2019-2021 adopted by the UNIDROIT General Assembly at its 76th session (Rome, 7 December 2017). He commended the austere nature of the budget which had been drafted, noting that most expenses had remained the same, except for some additional costs associated to the upkeep of the building.

325. *The Secretary-General* reiterated that the increase in the budget was not intentional, but was only procedural and a direct result of the application of the new Contributions Chart. He noted that some States which had seen increases in their annual contributions had been in arrears for several years. As such, the increase in the budget may not materialise.

326. Regarding receipts, the Secretary-General noted that all areas had remained the same as compared to the 2019 budget, with an increase only in contributions due to the application of the new Contributions Chart. He added that there may be some additional funds available for specific projects through the UNIDROIT Foundation.

327. Regarding expenditure, the Secretary-General noted that the foreseeable increase in receipts had been allocated as follows: (i) 500 EUR increased under Chapter 1(2) (auditing costs), since a new auditor needed to be appointed and market prices seemed to have gone up slightly; (ii) 20,000 EUR under Chapter 1(4) (Committees of Experts), which was to cater for the starting of new projects requiring more expert meetings, as well as due to the fact that the amount of expenditure included for 2019 was unusually low due to the end of some projects which did not require further Working Group meetings; the new Work Programme would require a higher number of meetings involving experts; (iii) 5,000 EUR under Chapter 1(5) (Official journeys and promotion of activities), which would largely be allocated for promotional work following the Diplomatic Conference for the MAC Protocol scheduled for November 2019; (iv) 1,000 EUR under Chapter 1(6) (interpreters) also for the aforementioned meetings of experts. Under Chapter 2, there would be no increase in salaries and allowances; however, based on the new proposed Work Programme, the number of staff members at the Secretariat might be increased slightly – the costs for this would be covered by the salary of an existing senior staff member who would be retiring in 2019. Under Chapter 3, (social security charges) there had been an increase of 20,000 EUR in order to correct the situation created by the change in charges applicable to the previous Secretary-General, whose social security scheme had been channelled through the UN, and the present Secretary-General who came under the regular scheme; additionally, the social security charges applicable to newer staff members would also be higher than those applicable to past ones, especially with the introduction of the new social security scheme adopted. Under Chapter 5, cost of Heating (Chapter 5(2)) and Water (Chapter 5(3)) had been increased by a total of 7,000 EUR to cater for the possible additional maintenance costs of pipes.

328. The Secretary-General noted that Mr Neale Bergman had recently left the Secretariat to return to the United States of America. The Institute had started the recruitment process to find a suitable candidate to fulfil the empty slot on the Secretariat created by Mr Bergman's departure. Additionally, the Secretary-General expressed his heartfelt appreciation for Ms Frédérique Mestre, who would be retiring in 2019. Following her retirement, the Institute would start a recruitment process to hire two additional Secretariat Members at the P2-P3 levels.

329. *Ms Sabo* thanked the Secretary-General and the Chair of the Finance Committee for presenting the budget for 2020. She commended the adoption of an austere budget, and one that matched the requirements of the new proposed Work Programme. She noted the challenges associated with arrears and issues of cash-flow, in cases where some Member States did not pay their dues. She recommended reductions to travel expenses in the case where problems in cash-flow arose, rather than reducing funding for the library.

330. *The Secretary-General* agreed with possible cash-flow problems which might occur in the future; he noted that the Institute maintained a working-capital fund which served as a buffer for such circumstances. Additionally, the Institute had also retained a considerable surplus from the budget of previous years, and could rely on this if the need arose. Lastly, the Secretary-General, noting that there were several States which had seen their annual contributions reduced as a result of the application of the new Contributions Chart, requested Council members to relay a request from the Secretariat to their governments, for those States to kindly waive their reductions, at least for the 2020-2022 triennial, keeping in mind the importance of such finances for the Secretariat. He also requested Council members who belonged to States which were in arrears, to request their Governments to address the matter.

331. *The Council considered the draft Budget for the 2020 financial year and authorised the Secretariat to transmit it to member States without amendments.*

(b) Report of the Secretary-General on the implementation of the new compensation and social security scheme applicable to UNIDROIT staff [\(C.D. \(98\) 15\(b\)\)](#)

332. *The Secretary-General* noted that the new compensation scheme, based on the UN salary scales localised for Rome, had been in place since February 2018. The final implementation of this had been less costly than initially anticipated. Additionally, the Secretary-General noted that the Secretariat, upon being requested to compare the compensation packages for UNIDROIT Staff and those at the UN, had provided a detailed comparison chart to the Finance Committee at its 86th session, comparing net salaries for all categories and grades across common family situations. This chart had generally been very well received by the Finance Committee as an additional instrument to improve transparency. The Secretariat was presently preparing a brief write-up of the methodology used to produce this chart.

333. Regarding social security aspects, the International Service for Remunerations and Pensions (ISRP) scheme had an overhead fund management fee of 23,000 Euros per year. This was considered too high in the case where only four staff members would be participating in the scheme. As a result, the Secretariat had contacted local banks and insurance companies in order to seek information and consider possible alternative arrangements. At the same time, the Secretariat had informed ISRP that it was considering alternative arrangements and inquired again whether there could be a reduction in the minimum annual fee considering UNIDROIT's relatively small staff and the size of its budget. In response to that request, ISRP offered to reduce that fee significantly for the first two years. As such, the Secretariat was in the process of fully implementing the new Social Security regime and anticipated to complete this work in 2019.

334. *The Council took note of the update regarding the implementation of the new compensation and social security scheme applicable to UNIDROIT staff and possible next steps.*

Item 17: Date and venue of the 99th session of the Governing Council [\(C.D. \(98\) 1 rev.\)](#)

335. *The Council agreed that the 99th session of the Governing Council should be held from 6 – 8 May 2020, at the seat of UNIDROIT in Rome.*

Item 18: Any other business

(a) Private Law and Development - Cooperation with the Legal Forum on Law Justice and Development (LFLJD) and possible future work in relation with the “Human-Centered Business Model” Project [\(C.D. \(98\) 16\)](#)

336. *Ms Mestre recalled that this subject was not a part of the current UNIDROIT Work Programme, but referred to an initiative of the Global Forum on Law, Justice and Development (GFLJD), of the World Bank Group, to promote a project regarding a “Human Centred Business Model”. This project involved a high number of partners and was still seeking a global coordinator and funding. Meanwhile UNIDROIT, which had carried out preliminary work on the corporate governance of social enterprises, had been invited to participate in the future development of the project in its capacity of co-leader with the University of Florence, for the pillar on Legal Framework and Governance. The Council had authorised the Secretariat to accept this request at its 96th session (Rome, 10-12 May 2017), and to invest time and preliminary research compatibly with the Work Programme topics that had priority.*

337. *In this context, UNIDROIT, represented by its President, had participated in presentations of the project, one in June 2017 at the University of Barcelona, and another in November 2017 in Paris organised by the High Council of French Notaries supported by the French Ministry for Europe and Foreign Affairs. In June 2018, the Organisation for Economic Co-operation and Development (OECD) had accepted to coordinate the overall project, through its Development Centre. While leaving the project strongly anchored within the GFLJD, the OECD’s role would significantly strengthen the project and further promote cooperation opportunities with key international partners.*

338. *Mr Marco Nicoli, on behalf of the OECD, thanked the UNIDROIT Secretariat for its support regarding this project. As part of this, on 12-13 November 2018, UNIDROIT had hosted an event organised in collaboration with the OECD Development Centre and the University of Florence, comprising two Workshops devoted to a review of Research Papers on the Guiding Principles (social and environmental sustainability) and Corporate Governance. Additionally, at the IMF-World Bank spring meetings in April 2019, a session had been held on the “Human-Centred Business Model: Sustainable Business Practices for Sustainable Development Outcomes”. The panellists for this session included high-level officials from the World Bank, the OECD, and the French Government. The OECD looked forward to continuing to work with UNIDROIT on this project, and towards finalising project papers, and conducting pilot studies for this project in the near future.*

339. *The Council took note of the information provided and authorised the Secretariat to continue monitoring and collaborating towards the development of the HCBM project, compatibly with other priority assignments of the Work Programme.*

340. *Mr Moreno Rodríguez recalled the desire of the late President of UNIDROIT to open regional offices of the Institute in different parts of the world, in order to augment the impact of UNIDROIT’s work internationally. He added that in a recent meeting between the Secretary-General and members of the Ministry of Foreign Affairs of Paraguay, the Government of Paraguay had expressed interest*

in offering a seat for a regional UNIDROIT office in Asunción. He noted that it was the intention of the Paraguayan government to further explore this matter in the future.

341. *Mr Sánchez Cordero* expressed his deepest condolences, on behalf of the entire Council, for the passing away of the President of UNIDROIT, Professor Mazzoni. He expressed confidence in the ability of the Secretary-General, as well as the Deputy Secretary-General, and the entire Secretariat, in leading the direction of the Institute and ensuring it continued to deliver high-quality work.

342. *Seeing no further points to be discussed, the Vice President declared the session closed.*

Item 19: Panel on “Principles on Reinsurance Contracts” ([See Annex](#))

343. *The Vice President* introduced the panellists ahead of an informative session on the Principles of Reinsurance Contracts. *The Deputy Secretary-General* introduced the subject matter, and was followed by presentations by Mr Helmut Heiss (University of Zurich) on ‘Introduction to the Principles of Reinsurance Contract Law and their Relationship with the UNIDROIT Principles on International Commercial Contracts’; Ms Diana Cerini (Milano Bicocca University) on ‘“Duties” and “Remedies” in the Principles of Reinsurance Contract Law as compared with the UNIDROIT Principles on International Commercial Contracts’; Mr Lari Kuitunen (If P&C Insurance) on ‘A Direct Insurer’s View on the project’; and Dr Eberhard Witthoff (Munich Re Group) on ‘A Reinsurer’s View on the project’. This was followed by a short discussion relating to the project.

344. *The Council expressed appreciation to the panellists Professors Helmut Heiss and Diana Cerini and Mr Lari Kuitunen and Dr Eberhard Witthoff for an informative session on the Principles of Reinsurance Contracts (PRICL).*

APPENDIX I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS**

(Rome, 8 – 10 May 2019 / *Rome, 8 – 10 mai 2019*)

**MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

| | |
|--------------------------------|--|
| Ms Stefania BARIATTI | Professor of International Law School of Law Università degli Studi di Milano Milan (Italy) |
| Mr Hans-Georg BOLLWEG | Head of Division Federal Ministry of Justice Berlin (Germany) |
| Ms Baiba BROKA | Adviser to the Minister of Environmental Protection and Regional Development Riga (Latvia) |
| Mr Yusuf ÇALIŞKAN | Professor of Law İbn Haldun University School of Law İstanbul (Turkey) |
| Mr Alfonso-Luís CALVO CARAVACA | Professor of Private International Law Carlos III University of Madrid Madrid (Spain) |
| Ms Eugenia G. DACORONIA | Attorney - at - law Professor of Civil Law National and Kapodistrian University of Athens Law School Athens (Greece) |
| Ms Bénédicte FAUVARQUE-COSSON | Conseiller d'Etat Professeur de droit Université Panthéon-Assas Paris II Paris (France) |
| Mr Eesa Allie FREDERICKS | Academic Deputy Director Research Centre for PIL in Emerging Countries University of Johannesburg Johannesburg (South Africa) |

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| Mr Henry D. GABRIEL | Professor of Law School of Law Elon University North Carolina (United States of America) |
| Mr Arthur Severijn HARTKAMP | former Procureur-Général at the Supreme Court of The Netherlands; Professor of European Private Law Radboud University, Nijmegen Den Haag (The Netherlands) |
| Mr Inho KIM | Professor of Law School of Law Ewha Womans University Seoul (Republic of Korea) |
| Mr Hideki KANDA | Professor Law School Gakushuin University Tokyo (Japan) |
| Mr Patrick KILGARRIFF | Legal Director Department for Business, Energy and Industrial Strategy London (United Kingdom) |
| Mr Alexander S. KOMAROV | Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation) |
| Mr Antti T. LEINONEN | Director General Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland) |
| Mr Ricardo L. LORENZETTI | Chief Justice Supreme Court of Justice Presidente de la Corte Suprema de Justicia de la Nación Buenos Aires (Argentina) <i>Excused</i> |
| M. Niklaus D. MEIER | co-chef de l'Unité de droit international privé Office fédéral de la Justice Bern (Suisse) |

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| Mr Attila MENYHÁRD | Professor of Civil Law Head of department (ELTE Law Faculty Civil Law Department) ELTE Állam- és Jogtudományi Kar Budapest (Hungary) |
| Mr José Antonio MORENO RODRÍGUEZ | Professor of Law Attorney Asunción (Paraguay) |
| Ms Monika PAUKNEROVÁ | Professor of Private International Law and International Department of Commercial Law Charles University, Faculty of Law Prague 1 (Czech Republic) |
| Ms Kathryn SABO | General Counsel Constitutional, Administrative and International Law Section Department of Justice Canada Ottawa, Ontario (Canada) |
| Mr Jorge SÁNCHEZ CORDERO | Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico) |
| Mr Luc SCHUERMANS | Professor Emeritus Universiteit Antwerpen Law School Antwerpen (Belgium) |
| Ms SHI Jingxia | Professor of Law Dean, School of Law China University of International Business & Economics (UIBE) Director of UIBE International Law Institute (ILI) Beijing (People's Republic of China) |
| Ms Carmen Tamara UNGUREANU | Professor of Law Doctoral Supervisor - International Trade Law "Alexandru Ioan Cuza" University Iasi (Romania) |

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| EUROPEAN UNION / <i>UNION EUROPEENNE</i> | Mr Dirk STAUDENMAYER European Commission Head of Unit DG JUSTICE Unit A2 Brussels (Belgium) |
| FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) / <i>ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)</i> | Ms Margret VIDAR Legal Officer FAO Legal Office Rome (Italy) |
| HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) / <i>CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE (HCCH)</i> | Mr Philippe LORTIE First Secretary The Hague (Netherlands) |
| INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO) / <i>ORGANISATION INTERNATIONALE DE DROIT DU DEVELOPPEMENT (OIDD)</i> | Ms Megan KOSSIAKOFF Deputy General Counsel Rome (Italy) |
| | Ms Claudia MELONI Legal Consultant Rome (Italy) |
| INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) / <i>FONDS INTERNATIONAL DE DEVELOPPEMENT AGRICOLE (FIDA)</i> | Ms Katherine MEIGHAN General Counsel Rome (Italy) |
| UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) / <i>COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI)</i> | Mr José Angelo ESTRELLA FARIA Senior Legal Officer and Head Technical Assistance Section International Trade Law Division Office of Legal Affairs Vienna (Austria) |
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| CYPRUS / <i>CHYPRE</i> | Mr Dionysis DIONYSIOU Second Counsellor Embassy of Cyprus in Italy |
| HOLY SEE / <i>SAINT-SIEGE</i> | Mr Paolo PAPANTI-PELLETIER Juge Tribunal de la Cité du Vatican Secrétairerie d'Etat de la Cité du Vatican <i>excused</i> |
| INDONESIA / <i>INDONESIE</i> | Mr Gustav Daud SIRAIT First Secretary Head of Multilateral Section Embassy of the Republic of Indonesia in Italy Ms Santa Marelda SARAGIH Second Secretary Embassy of the Republic of Indonesia in Italy |
| IRELAND / <i>IRLANDE</i> | Mr Manus CARLISLE Policy Officer Embassy of Ireland in Italy |
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| MALTA | Mr Adam KUYMIZAKIS First Secretary Embassy of Malta in Italy |
| NIGERIA | Mr Nu'umanu Hannafi BAMALLI Foreign Service Officer Embassy of Nigeria in Italy |

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| SERBIA | Ms Mirjana GLINTIC Research Assistant Institute of Comparative Law Belgrade |
| SLOVENIA | Ms Judita Dolžan Undersecretary International Cooperation Office Ministry of Justice Ljubljana Ms Romana BERNIK Secretary International Cooperation Office Ministry of Justice - Ljubljana |

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| Ms Diana CERINI | Full Professor of Comparative Private Law School of Law Università degli Studi di Milano Bicocca (Italy) |
| Mr Herman COUSY | Professor Emeritus University of Leuven (Belgium) |
| Sir Roy GOODE | Emeritus Professor of Law University of Oxford United Kingdom |
| Mr Helmut HEISS | Full Professor Attorney-at-law University of Zurich |
| Mr Lari KUITUNEN | If P&C Insurance Finland |

Mr Eberhard WITTHOFF
Lawyer, Head of Claims Dpt
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Mr Jeffrey WOOL
Secretary-General
Aviation Working Group
London (United Kingdom)

UNIDROIT

Mr Ignacio TIRADO
Secretary-General / *Secrétaire Général*
Ms Anna VENEZIANO
Deputy Secretary-General / *Secrétaire Générale adjointe*
Ms Frédérique MESTRE
Senior Legal Officer / *Fonctionnaire principale*
Ms Lena PETERS
Senior Legal Officer / *Fonctionnaire principale*
Ms Marina SCHNEIDER
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Mr William BRYDIE-WATSON
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Legal Consultant / *Conseiller juridique*
Mr Marco NICOLI
Senior Counsellor (UNIDROIT Foundation)/*Conseiller Principal (Fondation d'UNIDROIT)*
Ms Bettina MAXION
Librarian / *Bibliothécaire*

APPENDIX II**AGENDA**

1. Adoption of the annotated draft agenda (C.D. (98) 1 rev.)
2. Appointments (C.D. (98) 1 rev.)
 - (a) First and Second Vice Presidents of the Governing Council
 - (b) Members *ad honorem* of the Governing Council
 - (c) Members of the Permanent Committee
3. Reports
 - (a) Annual Report 2018 (C.D. (98) 2)
 - (b) Report on the UNIDROIT Foundation
4. International Interests in Mobile Equipment
 - (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (98) 3)
 - (b) Draft Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment (C.D. (98) 4)
5. Private Law and Agricultural Development
 - (a) Preparation of an international guidance document on agricultural land investment contracts (C.D. (98) 5(a) rev.)
 - (b) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (98) 5(b))
6. Transnational civil procedure
 - (a) Formulation of ELI-UNIDROIT regional rules (C.D. (98) 6(a) rev.)
 - (b) Principles on Effective Enforcement (C.D. (98) 6(b))
7. International Commercial Contracts: Formulation of Principles of Reinsurance Contracts (C.D. (98) 7)
8. International Sales Law: Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law (C.D. (98) 8)

9. International protection of cultural property (C.D. (98) 9)
 - (a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects
 - (b) Private art collections
10. Promotion of UNIDROIT instruments (C.D. (98) 10)
11. Correspondents (C.D. (98) 11)
12. UNIDROIT Library and research activities (C.D. (98) 12 rev.)
13. UNIDROIT information resources and policy (C.D. (98) 13 rev.)
14. Proposals for the Work Programme for the triennial period 2020 – 2022 and comments received by the Secretariat (C.D. (98) 14 rev. 2)
15. Presentation of the Cape Town Convention and Aircraft Protocol Official Commentary – Fourth Edition (2019) by Professor Sir Roy Goode C.B.E., Q.C. and Professor Jeffrey Wool (Annexe 1 hereto)
16. Administrative matters
 - (a) Preparation of the draft Budget for the 2020 financial year (C.D. (98) 15(a))
 - (b) Report of the Secretary-General on the implementation of the new compensation and social security scheme applicable to the UNIDROIT staff (C.D. (98) 15(b))
17. Date and venue of the 99th session of the Governing Council (C.D. (98) 1 rev.)
18. Any other business
 - Private Law and Development - Cooperation with the Global Forum on Law Justice and Development (GFLJD) and possible future work in relation with the “Human-Centered Business Model” Project (C.D. (98) 16)
19. Panel on “Principles on Reinsurance Contracts” (Annexe 2 hereto)

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

| | |
|-----------------------------------|---|
| 1995 UNIDROIT Convention | UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) |
| Aircraft Protocol | Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (2001) |
| Cape Town Convention or CTC | Convention on International Interests in Mobile Equipment (2001) |
| ELI/UNIDROIT Rules | Joint project with the European Law Institute to formulate European transnational civil procedure regional rules (ongoing) |
| Geneva Securities Convention | UNIDROIT Convention on Substantives Rules for Intermediated Securities (2009) |
| Legal Guide on ALIC | Future UNIDROIT/FAO/IFAD Legal Guide on Agricultural Land Investment Contracts |
| Legal Guide on Contract Farming | UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (2015) |
| Guide on Intermediated Securities | UNIDROIT Legislative Guide on Intermediated Securities – Implementing the Principles and Rules of the Geneva Securities Convention |
| Luxembourg Rail Protocol | Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (2007) |
| MAC Protocol | Future Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment (ongoing) |
| Netting Principles | Principles on the Operation of Close-out Netting Provisions (2013) |
| Space Protocol | Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (2012) |
| UNESCO/UNIDROIT Model Provisions | UNESCO/UNIDROIT Model Provisions on State Ownership on Undiscovered Cultural Objects |

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|------------------------------|--|
| UNIDROIT Principles or UPICC | UNIDROIT Principles of International Commercial Contracts (editions issued 1994, 2004, 2010, 2016) |
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OTHER INTERNATIONAL INSTRUMENTS

| | |
|-----------------------------------|---|
| CFS-RAI Principles | Principles for Responsible Investment in Agriculture and Food Systems (2014) |
| CISG Convention | United Nations Convention on Contracts for the International Sale of Goods (1980) |
| Hague Principles on Choice of Law | The Hague Principles on Choice of Law in International Commercial Contracts (2015) |
| Hague Securities Convention | Convention on the law applicable to certain rights in respect of securities held with an intermediary (2006) |
| Harmonized System or HS System | Harmonized Commodity and Coding System |
| VGGT | Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (2012) |

INTERNATIONAL ORGANISATIONS AND OTHER INSTITUTIONS

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| ALI | American Law Institute |
| CEDEP | <i>Centro de Estudios de Derecho, Economía y Política</i> |
| ELI | European Law Institute |
| ERA | Academy of European Law |
| EU | European Union |
| FAO | Food and Agriculture Organization of the United Nations |
| FCI | Factors Chain International |
| HCCH | Hague Conference on Private International Law |
| IBA | International Bar Association |
| ICCA | International Council for Commercial Arbitration |

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|----------|---|
| IFAD | International Fund for Agricultural Development |
| IISD | International Institute for Sustainable Development |
| INTERPOL | International Criminal Police Organization |
| ISCHAL | International Society for Research on Art and Cultural Heritage Law |
| ITU | International Telecommunication Union |
| NatLaw | National Law Center for Inter-American Free Trade |
| OECD | Organisation for Economic Co-operation and Development |
| OUP | Oxford University Press |
| ULCC | Uniform Law Conference of Canada |
| UN | United Nations |
| UNCITRAL | United Nations Commission on International Trade Law |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNIDROIT | International Institute for the Unification of Private Law |
| UNODC | United Nations Office on Drugs and Crime |
| WCO | World Customs Organization |

GROUPS

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| CFS | Committee on World Food Security |
| Committee of Governmental Experts / CGE2 | The second session of the UNIDROIT Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment |
| Committee on Emerging Markets | Committee on Emerging Markets Issues, Follow-up and Implementation |

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|---|---|
| Economic assessment project | UNIDROIT Foundation Project on Economic Assessment of International Commercial Law Reform |
| Forum on Legal Aspects of Contract Farming GFLJD | Forum on Legal Aspects of Contract Farming (has succeeded the "Community of Practice") Global Forum on Law, Justice and Development |
| Rail Preparatory Commission | Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock pursuant to the Luxembourg Rail Protocol |
| Ratification Task Force | Ratification Task Force |
| Space Preparatory Commission | Preparatory Commission for the establishment of the International Registry for Space Assets pursuant to the Space Protocol |
| UCAP | 1995 UNIDROIT Convention Academic Project |