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1. *Ms Maria Chiara Malaguti, the newly appointed President of UNIDROIT, chaired the second meeting of the 99th session of the Governing Council.¹ The President of the Institute welcomed the members of the Governing Council expressing regret that so many had had to attend the meeting remotely due to the pandemic. Highlighting that UNIDROIT would celebrate its 100th anniversary in five years, Ms Malaguti informed the Council that she aimed to organise a number of parallel activities to celebrate the Institute's centenary and that she relied on the collaboration of all Governing Council members to do so. These events would commemorate the origins and the history of the Institute, as well as present its modernisation and its achievements. The matter would be addressed further on other occasions, but she seized the opportunity to call on the Governing Council, as a body, for the organisation of these future events and activities.*

2. Before calling upon the Council to adopt the annotated draft agenda, the President noted that Governing Council member Ms Stefania Bariatti would be represented by Ms Francesca Clara Villata, in accordance with article 6.6 of the UNIDROIT Statute.

Item 1: Adoption of the annotated draft agenda (C.D. (99) B.1 rev.)

3. *The Governing Council adopted the agenda as proposed in document [C.D. \(99\) B.1 rev.](#)*

Item 2: Appointments of the First and Second Vice Presidents of the Governing Council (C.D. (99) B.1 rev.)

4. The President of UNIDROIT recalled that the Rules of Procedure governing the first meeting of the 99th session of the Governing Council had appointed Mr Arthur Hartkamp as First Vice President, and Mr Alexander Komarov as Second Vice President. Ms Malaguti proposed the same composition for this second part of the 99th session.

5. *The Council renewed the appointments of Mr Arthur Hartkamp, as First Vice President, and Mr Alexander Komarov, as Second Vice President, for the second part of the 99th session.*

Item 3: Reports

(a) Annual Report 2019 (C.D. (98) B.2)

6. The Secretary-General, *Mr Ignacio Tirado*, presented the Annual Report for 2019. He noted that he would be presenting the report of the activities undertaken in 2019 despite being in the third quarter of 2020. He noted that summarising the 2019 was a very difficult task, since the year had been a very positive as far as the implementation of UNIDROIT's mandate was concerned, but an unforgettably sad year from personal perspective.

7. On the one hand, he recalled that 2019 had seen UNIDROIT finalise an International Convention (the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment - the "MAC Protocol") after 14 years of assiduous work. Moreover, the Secretariat had organised or participated in over 58 international events, seminars, and conferences; visited 26 different countries across 5 continents, as part of missions, meetings, or intergovernmental negotiations; and had engaged with various experts from over 100 countries to promote the Institute's activities. He noted that as a result of these initiatives, 14 new States had become a party to different UNIDROIT instruments.

¹ In light of the COVID-19 crisis, the Secretariat proposed that the 99th session of the Governing Council be separated into two meetings, the first meeting was held remotely in April/May 2020 via e-mail to address the most urgent matters. The report of the first meeting is available at: <https://www.unidroit.org/english/governments/councildocuments/2020session/cd-99-a-08-e.pdf>.

8. On the other hand, however, the Secretary-General recalled that 2019 had also been the year of the sad passing of the late President of UNIDROIT, Professor Alberto Mazzoni. He recalled that, together with the former Secretary-General Mr José Angelo Estrella Faria, Professor Mazzoni had been instrumental in the modernisation of the Institute and had led its transformation towards the current efficient and prestigious institution it now is. Mr Tirado emphasised the connection Professor Mazzoni shared with the newly appointed president of the Institute, and shared his enthusiasm for her appointment.

9. Regarding institutional matters, the Secretary-General described 2019 as a year of renovation. A new Governing Council had begun its mandate, and over 13 new members had been elected. He thanked the members of the Governing Council that had left in 2019, reminding them that UNIDROIT remained in debt for their useful collaboration, and reiterated his welcome to the new members. Mr Tirado also noted the renovation within the UNIDROIT Secretariat: two outstanding legal officers, Ms Frédérique Mestre and Mr Neale Bergman, had left after many years of dedication to the Institute, to be replaced by three new legal officers that had arrived in the meantime: Mr Carlo Di Nicola (Senior Legal Officer), Ms Philine Wehling (Legal Officer) and Ms Priscila Pereira de Andrade (Legal Officer). As required by the General Assembly and the Finance Committee, he informed that the Secretariat had finalised the job descriptions and that the transition towards the new social security system had been fully completed during 2019, with 7 staff members already being part of it.

10. The Secretary-General highlighted that in 2019 UNIDROIT had continued its cooperation with several international organisations. In particular, he mentioned the successful cooperation with the “sister” organisations - the Hague Conference on Private International Law (HCCH) and the United Nations Commission on International Trade Law (UNCITRAL). In particular, he noted that the Secretariat had started to cooperate with UNCITRAL on two joint projects and that hopefully this would be only the beginning of an even more intense collaboration. He noted that UNIDROIT had continued to enhance its cooperation with prestigious international universities and informed that a new multi-year agreement had been signed with the Cambridge University and the Aviation Working Group to reinforce the Cape Town Convention Academic Project.

11. Regarding the legislative activities, Mr Tirado named 2019 as the year of the Cape Town Convention, since it had featured predominantly. To summarise the achievements obtained, the Secretary-General referenced his final speech delivered at the end of the MAC Protocol diplomatic conference (held in Pretoria, South Africa, from 11-22 November 2019). He recalled that after 14 years of work, which had led to the adoption of the MAC Protocol, 2 independently written economic analysis had been undertaken; 4 sessions of a multi-party study group had been held; 2 Committees of Governmental Experts, with over 50 States represented had been organised; and countless hours of legal and economic analysis had been consumed by some of the most important academics and best practitioners in the field. He also recalled that thorough consultations had been held with the private sector and detailed negotiations had taken place with government officials and members of international organisations. He mentioned the involvement of around 4500 companies through the Working Group and noted the potential of the MAC Protocol to become a game-changer in the area of access to credit for the MAC equipment.

12. The Secretary-General acknowledged that the work for the preparation of the MAC Protocol had been developed under the leadership of three Secretary-Generals of UNIDROIT. He also acknowledged the participation of Mr Henry Gabriel, member of the Governing Council, as one of the promoters of the Protocol since the beginning. From the Secretariat’s standpoint, he expressed his gratitude to Mr William Brydie-Watson (Senior Legal Officer), noting that his hard work, intelligence, and kindness had been absolutely instrumental to the success in Pretoria.

13. In addition, the Secretary-General informed the Council of the achievements of the Cape Town Convention and its other three Protocols, noting that in 2019 the member States of the Cape

Town Convention had increased to 79 and that the International Registry in Dublin for the Aircraft Protocol had attained one million registrations. Mr Tirado underlined the increasing interest for the Rail Protocol, highlighting that different countries from Europe, Asia and Latin America had started their internal procedures towards ratification. The European Commission, the UN Economic Commission for Africa (UNECA) and other organisations had also expressly shared their support for this “green” means of transportation. The Secretary-General highlighted that the Space Protocol also continued to do well, with an increasing number of countries demonstrating interest in setting up a system of fair competition.

14. In parallel to the work regarding the Cape Town Convention and its Protocols, the Secretary-General referred to the development of other legislative projects in 2019, such as the finalisation of the first version of the Principles of Reinsurance Contract Law, developed together with the Universities of Zurich, Vienna and Frankfurt; the finalisation of the Institute’s work with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) on a Legal Guide on Agricultural Land Investment Contracts; as well as the finalisation of UNIDROIT’s joint project with the European Law Institute (ELI) on the Model European Rules of Civil Procedure. He also noted that the work on the 1995 UNIDROIT Convention on Stolen or Illegally exported Cultural Objects had been intensified, with two new accessions in 2019.

15. The Secretary-General recalled that, last but not least, the new 2020-2022 Work Programme had been approved in 2019, and concluded by expressing his gratitude and congratulating the UNIDROIT Secretariat for the excellent job done.

16. The *President of UNIDROIT* thanked the Secretary-General for his statement and invited Mr Jeffrey Wool to take the floor to share the report on the UNIDROIT Foundation.

(b) Report on the UNIDROIT Foundation (available [here](#))

17. The President of the UNIDROIT Foundation, *Mr Jeffrey Wool*, presented the activities carried out by the Foundation in 2019. He recalled that the Foundation had been established in 1996 to support UNIDROIT’s mission by promoting its instruments, facilitating complementary research, organising seminars and other educational programs, as well as developing best practices particularly in the area of economic development and fundraising. He announced that the Foundation had raised over 250,000 euros since its inception, which had been entirely devolved to UNIDROIT.

18. Mr Jeffrey Wool pointed out that the two most active projects in 2019 had been the Project on Best Practices in the Field of Electronic Registry Design and Operation and the Economic Assessment of International Commercial Law Reform Project. He recalled that this project had been helpful to the MAC Protocol, and was a cutting-edge project for the Best Practices in the Field of Electronic Registries, which intersected with the Cape Town Convention and would also be supportive for the Digital Assets Project. He explained that the two projects had been included, for administrative purposes, in the Cape Town Convention Academic Project (CTCAP), developed under the auspices of the joint partnership between UNIDROIT and the University of Cambridge, with the support of the Aviation Working Group. He reported that the CTCAP had recently organised a “hybrid” meeting in September, in Rome at UNIDROIT, with over 400 participants joining remotely, which demonstrated the prestige and quality of the project.

19. He noted that both projects were now moving towards the final stages of producing best practice guides or framework guides: a Best Practices Guide for the Design and Operation of Electronic Registries on the one hand, and a Best Practice Framework Guide to Economic Assessment at all points in the process of creation of international commercial law, on the other. The latter envisioned that an assessment would take place before the beginning of the project, during the project’s execution, as well as at its end, as an ex post assessment and lessons learned for the future.

20. There had been international organisations and academic institutions had expressed substantial interest in providing support and contributing to the development of the two projects. He highlighted the importance of undertaking an economic analysis in practice, and having a systematic methodology to begin with. He also emphasised that electronic registries were a subset of electronic commerce, noting their relevance for the development of projects in that field.

21. As for the Foundation's support in other UNIDROIT projects and new initiatives, Mr Wool evoked that the Foundation had also been focusing on supporting UNIDROIT's work in the field of cultural property and library digitalisation. He noted that the Foundation had initially developed the website for the Academic Project related to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

22. Regarding administrative matters, Mr Jeffrey Wool announced the departure of Mr Arthur Hartkamp of the Board of Governors and, thus, invited the Governing Council to express their support for the proposal to present Ms Maria Chiara Malaguti for membership of the Foundation's Board of Governors.

23. The *President of UNIDROIT* expressed her gratitude to the Secretary-General and Mr Wool and opened the floor to comments on the two presented reports.

24. *Mr Henry D. Gabriel* supported the nomination of Ms Malaguti, and congratulated Mr Jeffrey Wool and the Foundation for their tremendous work. He highlighted the fact that the two Projects on Economic Development were working well and strengthening UNIDROIT's instruments.

25. *Ms Baiba Broka* congratulated Mr Jeffrey Wool for the work done within the Foundation and supported the nomination of Ms Malaguti, wishing her success.

26. *Mr José Angelo Estrella Faria (UNCITRAL)* expressed his best wishes to Ms Malaguti for her appointment as President of UNIDROIT. He restated UNCITRAL's interest in continuing the cooperation with UNIDROIT and expressed his gratitude to the Secretary-General for the excellent collaboration between the two organisations. He also expressed his gratitude to the President of the UNIDROIT Foundation, noting UNCITRAL's particular interest on the Project on Economic Assessment.

27. *Mr Niklaus D. Meier* congratulated the President of UNIDROIT for her appointment, as well as the Secretary-General for the quality of the "hybrid" events that had been organised enabling both in-person and remote participation in a very satisfactory manner. He expressed his gratitude to the UNIDROIT Foundation for the work undertaken.

28. With respect to the report of the activities held in 2019 and recalling the numbers that the Secretary-General had referred to in his report, in particular that 58 meetings had been organised and the increasing number of States parties to UNIDROIT's instruments, *Ms Kathryn Sabo* noted how exceptional 2019 had been. She congratulated the UNIDROIT Secretariat and highlighted that with the excellent work that had been done, there is a clear path for the years to come. She also manifested her contentment with the appointment of Ms Malaguti as President of the Institute.

29. *The Council congratulated Ms Maria Chiara Malaguti for her appointment as President of UNIDROIT and took note of the Secretary-General's report on the activities of the Institute during 2019, expressing their satisfaction with the work. Further, the Council took note of the report of the UNIDROIT Foundation and expressly supported the nomination of Ms Maria Chiara Malaguti for the Foundation's Board of Governors.*

Item 4: Update and determination of scope of certain projects on the 2020-2022 Work Programme

30. The *President of UNIDROIT* recalled that the Council had approved the courses of action to determine the scope of certain projects included in the 2020-2022 Work Programme during the first part of the 99th session of the Governing Council, held remotely in April/May 2020 via e-mail. She noted that the Secretariat had undertaken several activities, and that each legal officer responsible for each project would present the results of the explanatory work and share an update with the Governing Council.

(a) Best Practices for Effective Enforcement ([C.D. \(99\) B.3](#))

31. The *Deputy Secretary-General, Ms Anna Veneziano*, updated the Council on the status of the project on Best Practices for Effective Enforcement and on the activities held since the remote meeting of the Governing Council. She expressed her gratitude to the Governing Council members for the numerous comments and suggestions that had been sent.

32. The Deputy Secretary-General recalled that the project was based on a proposal by the World Bank regarding a project on the "Development of a Working Paper to Outline Best Practices on Debt Enforcement", which the Secretariat had presented in the context of the discussion of the 2020-2022 Work Programme at the 98th Session of the Governing Council. The proposal had been discussed as a continuation, and a refinement, of the scope of the "Principles of Effective Enforcement" project, which was already a part of the 2017-2019 Work Programme. The project on Best Practices for Effective Enforcement had been included in the new 2020-2022 Work Programme by the General Assembly at its 78th session (Rome, 12 December 2019), upon recommendation of the Governing Council.

33. While there had been substantial agreement on the importance of the topic and on the legal, social and economic impact of the work to be conducted, the Secretariat had been tasked with further refining the scope of the project for the 99th session of the Governing Council. The Deputy Secretary-General noted that, during the remote meeting of the 99th session of the Governing Council, held in April/May 2020, Council Members had commented on the revised Secretariat paper and had authorised the establishment of an Exploratory Working Group to receive expert feedback on the questions raised ([C.D. \(99\) A.8](#), paras. 43-44).

34. Ms Veneziano pointed out that the UNIDROIT Secretariat had organised two activities in response to this mandate. First, the Secretariat had developed a Consultation Document containing, in its Part V, a set of questions based on the comments received during the Council's remote meeting (Annexe I to document [C.D. \(99\) B.3](#)). She explained that this document had been used for a first round of remote consultations with selected international experts in comparative procedural law, secured transactions, contract law and also with other organisations including, among others, the World Bank and the Union Internationale des Huissiers de Justice. The list of participants, as well as the answers received during the remote consultation process had been included in the document [C.D. \(99\) B.3](#).

35. The UNIDROIT Secretariat had also organised an Internal Consultation Workshop on 21 September 2020, with the participation of the members of the Governing Council, to further discuss open issues with experts and representatives from other organisations, such as the European Bank for Reconstruction and Development (EBRD) and UNCITRAL. She mentioned that the Workshop had been very useful to further define the scope of the project and to discuss the impact of technology on enforcement. She drew the Council's attention to the importance of the subjects discussed during the last panel of the Workshop in particular, mainly regarding the impact of technology on enforcement and how it can provide new architectures, set up new processes and procedures, and also create new assets for enforcement, as well as technology-based remedies that enhance

effectiveness. Ms Veneziano also highlighted the importance of the coordination of this project with UNIDROIT's project on Digital Assets.

36. Regarding the scope of the Project, the Deputy Secretary-General noted that the experts had generally supported the basic approach of the Consultation Document. For some of the questions included in the Consultation Document a consensus on their inclusion in the scope of the project had been reached (for example, on the inclusion of enforcement of provisional and protective measures), while other questions had provoked a more ample debate. She noted that she would concentrate on the latter issues in her presentation to the Council.

37. Referring to Question 2 of the Consultation Document, related to the meaning of the term "enforcement" for the purposes of the project, Ms Veneziano noted that it may refer to different issues when used in an international or national context, leading to potential misunderstandings.

38. She noted that three general points had emerged from the discussions. Firstly, the importance of the adoption of a functional notion of enforcement, which did not necessarily coincide with the technical meaning of the term under any specific domestic law. This notion may embrace a number of different procedures and mechanisms through which a creditor may obtain satisfaction of its claims over assets of the obligor or collateral, by reaching and applying the value of the assets or by obtaining rights on, or control of the assets. The usefulness of developing best practices in relation to each of those procedures would have to be assessed considering the concrete obstacles and challenges they face in various jurisdictions. A second important general point that had been made was that the scope of the project should not be "set in stone" at the beginning; and that a future Working Group should be given sufficient guidance, but also sufficient flexibility. Finally, she noted that a third point had been raised to highlight that the Working Group would need to give particular attention to issues of terminology and common understandings. The Workshop had discussed examples of typical situations that may be included in the scope of the project. The project on Best Practices for Effective Enforcement should consider the processes and mechanisms to execute creditor's rights when they are already recognised by a domestic court decision, independently of whether or not the process would involve another court or a public or private enforcement agent. The project would not exclude the consideration of mechanisms for the enforcement of other non-judicial decisions, such as arbitral awards, and would not develop best practices on the processes through which the creditor obtains the recognition of its claim by a court. She recalled that the latter was the subject of other UNIDROIT projects, developed jointly with other organisations, such as the ALI-UNIDROIT Principles and the ELI-UNIDROIT Rules the latter of which would be subject to the approval of the Governing Council during its 99th session.

39. The experts had however noted that the project would need to consider the relationship between the procedural and the execution phase, *e.g.*, whether it is possible to re-open or open a procedure on the merits of creditor's claims during the execution phase and, if so, what would amount to best practices in this regard.

40. The Deputy Secretary-General underlined that the project would not address procedures required to obtain recognition of judicial decisions or other decisions adopted by foreign jurisdictions, since this topic had already been addressed by instruments of other organisations. However, she clarified that the project would address the domestic procedure that would apply to enforce creditor claims once the enforceability of the foreign decision is determined.

41. She noted that the project would further address situations where the applicable law recognises the right of a creditor to proceed to execution against a debtor, even if the creditor has not initially obtained a judicial decision on the merit, but has an alternative legitimation to proceed to enforcement. Moreover, the experts had agreed that the project should cover the enforcement of both secured and unsecured debt, including the consideration of both judicial and extrajudicial enforcement.

42. Ms Veneziano drew the Council's attention to the discussions held regarding Question 3 of the Consultation Document, related to the types of claims that would be addressed by the project. Based on the results of the consultation and the discussions held during the Workshop, she noted that it had been suggested that the Secretariat should initially devote particular attention to the enforcement of unsecured and secured monetary obligations, particularly those deriving from a repayment of a loan or a payment for goods or services. It had also been noted that the Secretariat may also consider addressing other monetary claims, such as damages, with caution. Experts had also provided a number of good reasons explaining why other contractual claims should not be excluded, such as the obligation to deliver an asset and obligations to do or not to do something, concluding that these issues should be addressed by the project.

43. Regarding the fourth question of the Consultation Document on the exclusion or the inclusion of consumer debts and the enforcement of consumer creditors' claims, the Deputy Secretary-General clarified that the project would initially focus on commercial claims, however, she noted that a number of commentators had also supported the inclusion of enforcement against consumer debtors. During the Workshop, some experts had acknowledged that this question was widely debated and had noted that consumer law, as a special field with different policies and very sensitive issues, should be addressed very carefully. Finally, the Deputy Secretary-General noted that the Secretariat would suggest not to exclude the analysis of consumer debtors *a priori*, but to keep in mind that it should not be considered as the core scope of the project. The Secretariat would inform the Working Group about the discussions held at the Workshop.

44. Many comments had been sent in relation to insolvency-related enforcement, with most commentators supporting its inclusion in the project scope. The reasons indicated for including enforcement in insolvency were that coherence and consistency between insolvency-related and non-related mechanisms were instrumental to effective creditor protection; and excluding insolvency proceedings from the scope would severely undermine the usefulness of the project. However, some concerns had also been expressed, in particular regarding the relationship with existing instruments that already set standards in insolvency proceedings, such as the UNCITRAL Legislative Guide on Insolvency Law and the World Bank Group Principles for Effective Insolvency and Creditor/Debtor Regimes.

45. The Deputy Secretary-General recognised the possible overlap due to the interplay between issues of general enforcement and the substantive law of insolvency, noting, however, that the position of the Secretariat had been clarified during the Workshop. On the one hand, the Secretariat agreed with the majority opinion that excluding insolvency from the scope of the project would send the wrong message, in view of the importance of the effectiveness of creditors' claims in insolvency. On the other hand, she noted the importance of taking into consideration the concerns of the experts and other organisations during the consultations phase. Thus, the Secretariat would not recommend including best practices that may modify substantive insolvency-based rules (e.g., the project would not seek to modify the classic insolvency law rule introducing a moratorium on enforcement following the opening of proceedings, but would limit itself to considering the most efficient ways to conduct enforcement once the suspension is lifted).

46. In addition, the existing international instruments did not address the specific procedures to be followed, for example, when conducting liquidation. Thus, the new instrument would add value if it contained best practices on specific procedural mechanisms facilitating enforcement during insolvency proceedings (e.g., platforms for the liquidation of the value of the assets), also taking into account that, in some legal systems, the same mechanism is used both for enforcement outside and within insolvency. The project should, therefore, be complementary to existing best practices, and the organisations involved in the development of such best practices (i.e., World Bank and UNCITRAL) were, and would continue to be, invited to participate in the development of this project and their concerns regarding insolvency would be duly considered.

47. The *President of UNIDROIT* queried if Ms Sabo, the Chair of the Workshop, had any remarks to add to the Deputy Secretary-General's presentation.

48. *Ms Sabo* stated that the Deputy Secretary-General had provided a clear summary of the written consultations and of the discussions held during the Workshop. She underlined that the discussions had been very helpful to clarify the scope of the project and to define the plan to move forward.

49. *Mr Gabriel* thanked the Deputy Secretary-General for the excellent report, as well as to the Secretariat and the experts for putting together the document presented. He supported the idea for the project to cover both unsecured and secured debts, and both judicial and extrajudicial enforcement. While noting his concerns about the inclusion of consumers as debtors in the scope of the project, he stated that this decision should be taken by the Working Group. He mentioned that he had initially been concerned about addressing insolvency in the project, since it raised a number of domestic issues, but noted that there may be a path forward based on the discussions held during the Workshop and the Deputy Secretary-General's presentation. He recommended that the Working Group deal with this delicate issue with caution.

50. *Mr Hideki Kanda* expressed his appreciation for this project and highlighted the importance of "speed" for effective enforcement. He agreed that the project should include both enforcement outside and within insolvency, and that the Working Group was to be cautious when analysing this latter topic. Commenting on the relationship between technology (e.g., computer programmes and smart contracts) and the enforcement process, he held that while technology may very often contribute to the process of effective enforcement, on the other hand, it may prevent or even destroy the process of enforcement. The interaction between technology and the enforcement process should therefore be examined carefully.

51. *Mr Hans-Georg Bollweg* congratulated the President of UNIDROIT for her recent appointment and expressed his overall contentment with the position being occupied after a long period of time. He expressed his gratitude to the Deputy Secretary-General for the excellent report and to the Secretariat for their excellent work. Noting that he had asked his colleagues responsible for civil procedure in the Federal Ministry of Justice for their remarks, and that they had supported this project in general he mentioned, however, their concern regarding the inclusion of insolvency provisions on the scope of the project. Acknowledging that there are other organisations discussing this topic, he noted that this should not hinder the development of this project. Recognising that the majority agreed with the inclusion of insolvency, he manifested his support as well.

52. *Mr Estrella-Faria* mentioned that UNCITRAL was pleased to see this project moving forward and to actively participate. He recognised the existence of a gap in international guidance documents and standards regarding civil procedure, it recognised the important role that UNIDROIT would have in filling this gap, with a significant practical impact also in terms of the Sustainable Development Goals and in terms of providing standards for countries to improve their domestic judicial systems and also reduce the costs of credit. He noted that the current scope of the project was broader than the one presented previously, and that UNCITRAL had some concerns regarding the inclusion of insolvency. He emphasised that the concerns were not related to any possible overlap or friction between this project and the work already undertaken on secured transactions, since that work did not address the enforcement phase and did not involve any judicial or quasi-judicial aspect. He further mentioned that insolvency did have a procedural component, however manifested his confidence that the Working Group and experts involved would take this into account to avoid any possible frictions. He finally suggested that it may be wise, at this stage, not to focus on forms of enforcement within insolvency proceedings and to concentrate on the wide range of other topics that the Working Group will already have to consider under this project. He commented that at a certain point the need to develop additions to the best practices already developed by UNCITRAL and the World Bank may be considered.

53. *Ms Villata* thanked the Deputy Secretary-General for the useful report. Regarding the inclusion of insolvency, she noted the importance of taking into account the work that has already been done within the European Union in this area, but also expressed the view that the project should not exclude insolvency issues from its scope. She manifested her agreement with those who emphasised the relevance of “speed” for effective enforcement. She noted that the identification of best practices on this matter could also be helpful for other instruments, currently under preparation in other fora.

54. *Mr Antti T. Leinonen* congratulated Ms Malaguti for her recent appointment as President of UNIDROIT. Recalling that he had initially had some doubts about the project, he noted that they had been clarified by the Secretariat and experts involved. He recognised the challenges of the field and noted that the inclusion of insolvency and consumer claims would pose further ones. Although there may be some risks involved, he supported the inclusion of all those subjects, at least during this initial phase of the project. He noted that the Working Group could narrow down the scope of the project in a subsequent phase if necessary, and agreed to continuing the project as proposed.

55. *Mr. Uttamchandani, representative of the World Bank*, expressed his gratitude to the Secretariat for the outstanding and widespread consultation process, as well as for the excellent proposal. He expressed the World Bank’s support of UNCITRAL’s suggestion to proceed with the proposal to include insolvency matters with caution. While enforcement issues did take place inside and outside insolvency, he noted that the majority of the issues raised related to the former situation. He acknowledged that insolvency was an area with dual standard setters, and mentioned that States seeking to harmonise their legislations with best practices, or guidance on best practices, already had multiple documents and instruments to refer to, which raised the concern regarding the potential confusion for national policy makers. He expressed the broad support of the World Bank to this project and endorsed the suggestion made by UNCITRAL to reconsider insolvency matters at a later stage.

56. Recalling the comments made by the representatives of UNCITRAL and the World Bank, the *Secretary-General* clarified that insolvency was not the focus, but only an ancillary part of the enforcement project. He emphasised that enforcement would be analysed in general terms and, depending on the conclusions reached regarding how enforcement may be undertaken in an alternative way (such as by using technology), these conclusions may also be helpful for insolvency. Mr Tirado indicated that the work would begin by addressing enforcement in general, with insolvency to be considered at a later stage. Furthermore, noting that both the UNCITRAL and the World Bank standards did not address specific enforcement mechanisms, such as the liquidation procedure, the *Secretary-General* stated that the project would not contradict the existing standards, nor create a separate additional standard.

57. *The Council took note of the activities undertaken by the Secretariat for the Best Practices for Effective Enforcement project since the Governing Council’s remote meeting held in April/May 2020.*

58. *The Council approved the guidelines provided by the Secretariat regarding the proposed scope of the project, confirmed the high priority status assigned to the project, and authorised the establishment of a Working Group.*

(b) Work on Artificial Intelligence, Smart Contracts and DLT ([C.D. \(99\) B.4 rev.](#))

59. *Mr Hamza Hameed (UNIDROIT Secretariat)* introduced the project, recalling that it had originated from a proposal received from the Ministry of Justice of Hungary, followed by a proposal from the Ministry of Industry and Trade of Czechia relating to work in the domain of “business informatics”, focusing on distributed ledger (including blockchain) technology, artificial intelligence,

and smart contracts. A similar proposal had also been presented to UNCITRAL, and both organisations had decided to explore this domain and identify specific areas in which work could productively be undertaken. To this end, UNCITRAL and UNIDROIT had organised two joint workshops: the first in May 2019 in Rome, and the second in March 2020 in Vienna. The UNIDROIT General Assembly, at its 78th session in December 2019, had approved the inclusion of a project in the area of Artificial Intelligence, Smart Contracts and Distributed Ledger Technology (DLT) in the Work Programme of the Institute for the 2020-2022 triennium at a medium priority, and had asked the Secretariat to more precisely determine the scope of the project and present it for reconsideration at the next session of the Governing Council.

60. Mr Hameed further recalled that, following the mandate it had received, the Secretariat had worked on narrowing down the scope of the project and identifying specific areas for future work. On the basis of the conclusions of the two joint workshops, a document had been submitted at the Governing Council's remote meeting in April-May 2020 ([UNIDROIT 2020 – C.D. \(99\) A.4](#)), containing the Secretariat's proposal on the most appropriate scope for the project. Broadly, the project would aim to develop principles relating to the legal nature, transfer and use of tokens. It would focus on private law, and not regulation. It would consist of a legal taxonomy, along with consideration of specific issues arising in various contexts, such as insolvency, secured transactions, identification of the applicable law in cross-border transactions, and the legal position of intermediaries involved in the token markets, such as exchanges and custodians. It would take a functional approach, neutral as to legal culture and seek to identify the rights and obligations arising from transactions in digital assets in different jurisdictions. Further, it would consider how far the principles developed by the project were consistent with existing law. While tokens were a new type of asset, consistency with legal treatment of other types of assets would be important, and consideration would need to be given to what extent existing legal principles could apply by analogy, and what modifications would be required. The project would also take a neutral approach, insofar as possible, in relation to technology, so as to "future proof" the principles. As such, it would seek to develop principles that could apply to any system in which data could constitute a digital asset, rather than being specifically applicable to systems based on DLT or blockchain. In this way, the danger that the work would be overtaken by technological or market developments would be minimised.

61. On the basis of feedback received from the Governing Council, and with a mandate to do so, the Secretariat had set up an Exploratory Working Group, chaired by Mr Kanda. The Group had held five meetings between July and September and had prepared a Preliminary Issues Paper, which could serve as the basis of the Issues Paper that the formally constituted Working Group for this project could consider. Additionally, the Exploratory Working Group had also facilitated the organisation of an Exploratory Workshop on Digital Assets and Private Law which had been held on 17 and 18 September 2020 in a "hybrid" format.

62. Mr Hameed noted that the Exploratory Working Group had further considered how this project would be executed. Consistent with UNIDROIT methodology, a Working Group could be established, composed of international legal experts representing different legal systems and geographical regions. The Secretariat invited the Governing Council to provide input on the structure and composition of the Working Group to be established for this project. Two options were outlined: the first was an "ordinary structure", with a practicable number of selected experts as members of the Working Group, and an additional number of institutions and experts invited to participate as observers; the second consisted of an "enhanced structure", with a smaller number of experts and observers, assisted by a "Steering Committee" with a much larger membership. The Steering Committee members would be regarded as observers in an ordinary Working Group, meaning that the Institute would not bear the financial costs of their participation. Additionally, the meetings of the Steering Committee could be held remotely, or in a "hybrid" format. The Secretariat indicated its intention to submit a draft of the instrument to the Governing Council in May 2022 at its 101st session.

63. *Mr Carlo Di Nicola (UNIDROIT Secretariat)* presented a summary of the Preliminary Issues Paper prepared by the Exploratory Working Group. Regarding the format of the instrument, he explained that the Exploratory Working Group had envisaged the preparation of a set of principles which would include commentary rather than a model law or a convention, noting that these forms could nevertheless be considered for future work. The principles would also include a legal taxonomy of terms related to digital assets and private law, and a consideration of a range of legal issues arising in specific contexts. A functional approach would be taken in order to produce a set of principles which would not be jurisdiction specific but could be applied and reflected in any given legal system, in keeping with the harmonised approach favoured at UNIDROIT. The identified principles would embody best practices and international standards and enable jurisdictions to take a common approach to legal issues arising from the transfer and use of digital assets. As requested by the Governing Council, he noted that the Exploratory Working Group, in consultation with the Secretariat, had proposed renaming the project as the Digital Assets and Private Law Project and, accordingly, the suggested title of the prospective instrument could be “The UNIDROIT Principles and Legislative Guidance on Digital Assets and Private Law”.

64. Regarding the Governing Council’s request concerning the refinement of the scope of the project, he noted that it was recommended to focus on private law issues relating to digital assets, with particular emphasis on proprietary interests. The work would analyse typical common law and civil law systems to ascertain whether their existing legal concepts were appropriate in the context of digital assets. It would seek to identify solutions in areas which presented gaps, as well as where traditional approaches were not appropriate and could benefit from reform. He further noted that when necessary, the discussion would consider technological aspects, and involve experts with a technological background, in order to have a broader conversation.

65. Regarding the subject matter of the project, Mr Di Nicola noted that the work would consider in greater detail the kinds of digital assets which needed to be analysed. The project was not concerned with all kinds of digital data, but rather digital data which could be qualified or considered as an asset. As such, some categories would be excluded from the scope of the project. He noted that the term “asset” itself may have different meanings. For the Project, it was used to describe an object that had value ascribed to it. He noted that the project would be concerned with those assets which were transferable, and largely designed to be traded. In keeping with the purpose of UNIDROIT, the project would focus primarily on digital assets that were created and transferred in the course of commercial transactions.

66. He added that a number of specific areas had been identified for further examination and analysis, including: issues related to contracts involving digital assets; acquisition, disposition and competing claims over those digital assets; the legal nature of the proprietary connection between a digital asset and another real-world asset (also referred to as digital twins); custody services in digital assets; the taking of security over digital assets; insolvency proceedings involving the owner or the custodian of a digital asset; remedies and enforcement; as well as questions of applicable law to issues related to digital assets. He noted that the project would also seek to accommodate diverse types of assets and technologies in order to avoid focusing on a few types of digital assets, and instead generate principles which could be applied broadly regardless of how the technologies were to continue to evolve in the future.

67. Mr Di Nicola recalled that the Governing Council had directed the Secretariat to identify connections between this project and existing UNIDROIT instruments, as well as create synergies with other projects on UNIDROIT’s current Work Programme. Regarding existing instruments, a key aspect in the Digital Assets and Private Law Project concerned the legal analysis of the taking of security over digital assets, presenting a direct link with the UNIDROIT Convention on Substantive Rules for Intermediated Securities and the UNIDROIT Legislative Guide on Intermediated Securities. Regarding synergies with other projects on the current Work Programme, he noted that there were commonalities with the Best Practices for Effective Enforcement Project, and that the project

concerning a Model Law on Warehouse Receipts also presented a clear opportunity for cross-cutting work. Additionally, there were also synergies to be found with the UNIDROIT Foundation project on Best Practices of Electronic Registry Design and Operation.

68. *The President of UNIDROIT* invited Mr Kanda, Chair of the Exploratory Working Group, to take the floor.

69. *Mr Kanda* summarised the outcomes of the Exploratory Workshop on Digital Assets and Private Law held on 17 and 18 September 2020. He noted that a number of fundamental questions relating to the project had been discussed, such as how to conceptualise the relationship between technology and private law issues, and whether digital assets were tangible or intangible assets. He stated that the goal of the Project was to reduce legal uncertainty which judges, lawyers, and market participants would face in the coming years in dealing with digital assets. To this end, he emphasised the importance of ensuring consistency across categories of assets that presented the same functions or the same economic characteristics, suggesting that a functional approach was therefore appropriate. Regarding the examination of digital assets themselves, he noted that distinguishing between native digital assets and non-native digital assets could be helpful. For non-native digital assets, he explained that, in certain circumstances, digital assets could be viewed as representing legal rights in the same way that traditional paper assets represented legal rights, for example, investment securities such as shares and bonds or negotiable instruments.

70. He remarked that digital assets could sometimes be viewed as a result of a shift away from paper documents. In these cases, there was no need to discuss whether papers or registered data were tangible or intangible, because there was already an existing body of private law rules governing securities and negotiable instruments. Accordingly, private law rules would be expected to provide a linkage between digital data and the legal rights being represented. He noted that the notion of digital assets was broader than these types of data and, as such, it would be necessary to examine situations where it was not known whether there was a legal linkage between the digital data and other assets being linked to that digital data. He added that pragmatism demanded work in this area, as native digital assets (such as bitcoin) were being traded regularly and often became the subject of litigation. As such, judges and legal practitioners needed to have private law rules to apply in such cases.

71. Regarding the Preliminary Issues Paper, Mr Kanda noted that the form of the prospective instrument could be a series of principles. He also emphasised the importance of cooperating and coordinating with the Best Practices for Effective Enforcement Project. Substantively, he noted that a preliminary working definition of digital assets could be found in the Preliminary Issues Paper at paragraph 40, recalling that it encompassed digital data having value and which was subject to exclusive control, with one related characteristic being transferability. Regarding the specific areas of law to be considered, it was proposed to focus on property law issues, custody situations, collateral transactions, insolvency, enforcement, and questions of private international law.

72. *Ms Pauknerová* congratulated the President for her appointment and expressed her gratitude for the opportunity to provide comments on the Digital Assets Project proposal and the Preliminary Issues Paper. She recalled that Czechia had submitted the first proposal on artificial intelligence and thanked the Secretariat for their work in establishing the Exploratory Working Group with Mr Kanda as the Chair. She also added that she had attended the Exploratory Workshop which had been organised and commended the high level of discussion. She noted that the Working Group should deal with private law issues, in particular with questions connected to the ownership of digital assets, including the following: (i) contract law and digital assets and related questions of acquisition, ownership, and control over digital assets, and disposal thereof; (ii) the relationship between digital assets and other assets in the legal sense; (iii) principles of private law as they applied to digital assets; (iv) the involvement of third parties as intermediaries to digital assets transactions; (v) the provision of custody services; (vi) the treatment of digital assets in insolvency proceedings and

possible impact of such proceedings on the digital assets; (vii) protection of the ownership or control of digital assets (the question of remedies and enforceability of rights in digital assets); and (viii) the applicable law in international situations involving digital assets.

73. In addition, Ms Pauknerová suggested that the Working Group should firstly define the term “digital assets”. She supported the establishment of the Working Group, agreeing that it ought to be geographically balanced with appropriate representation of Common Law and Civil Law experts. She agreed with the project as presented and noted that it should focus on the definition of digital assets and the mapping of existing property law concepts. She supported the idea of creating a Steering Committee for the Project and recommended the European Digital Finance Association and the European Blockchain Partnership as potential members. She explained that these organisations worked in the area of digital assets and their expertise could help the Working Group in its activities. She indicated that she would also provide additional names of experts for inclusion in the Steering Committee.

74. She added that, while the definition of the scope of the project with regard to specific issues was sufficient, the following aspects should also be considered: (i) the question of the handling of digital assets by machines and liability issues arising therefrom; (ii) issues of ascertainment and securing of digital property without the expression of a will (*e.g.*, in case of death) and the relation with the protection of privacy and personal data; (iii) aspects of on-line settlement of disputes; and (iv) the question of determination of the appropriate court. She invited the Working Group to follow developments on the international level and the EU level (*e.g.*, the proposed EU framework in the cryptoassets area, noting the recent proposal for EU regulation of markets in cryptoassets). She expressed support for the project to become one of the Institute’s high priorities.

75. *Ms Broka* emphasised that this subject was important in Latvia as it aimed to be a leader in the digital sphere within the EU. She expressed her support for moving forward with this project with high priority, noting that the work entailed difficult legal challenges. She agreed that the project should have a strong focus on terminology. Additionally, she endorsed the idea that the Working Group should be comprised of experts in both the law and technology.

76. *Mr Gabriel* complimented the group for the documents produced and the work done so far. He noted that UNCITRAL had published a document on legal issues related to the digital economy in the area of digital assets and emphasised the importance of coordination between the two organisations. He also queried the possibility of seeking coordination with the ALI-ELI Principles for a Data Economy Project. He expressed concerns regarding the inclusion of insolvency in the scope of the project. Lastly, he mentioned the UNCITRAL Model Law on Electronic Transferable Records as an important instrument of relevance to the project’s work.

77. *Ms Sabo* expressed her support for the continuation of the project, noting that the proposed title was more suitable than previous iterations. She agreed that the enhanced structure with a Steering Committee would be beneficial, adding that the Working Group should have a balanced representation from States with different legal traditions and languages, as well as gender. She noted that coordination with the Enforcement Project and UNCITRAL would be important.

78. *Ms Dacornia* congratulated the Secretariat and the experts for their work. She noted that the initial title was too broad and, in order to encompass issues such as digital twins, she proposed that consideration could also be given to naming the project “Transactions in the Digital Sphere”. She also queried whether immovable assets ought to be removed from the scope of the project, as this was potentially a very broad subject. She shared Mr Gabriel’s concerns regarding the inclusion of insolvency, and also securities. She noted that the Working Group should start its work by focusing on the holding, transfer and use of digital assets and digital twins, while excluding immovable assets.

79. *Mr Meier* commended the Exploratory Workshop organised by the Exploratory Working Group. He congratulated the Secretariat for the work done and expressed praise for the hybrid format of the Workshop, inviting the Secretariat to continue with this for future workshops as it allowed for the participation of a larger number of stakeholders. He noted that the project needed to focus on private law rather than regulatory issues, as was reflected in the related documentation and the proposed title of the project. He emphasised this point as the Exploratory Workshop had examined several public law elements (*e.g.*, concerning regulation of financial markets) which should not be part of the Project's scope. He expressed concern regarding overemphasising endogenous assets and cryptoassets such as bitcoin in the scope of the project, on the grounds that the technology could turn out to be a marginal one with the passage of time.

80. He recalled recent Swiss legislation on the subject, in order to express his agreement with the approach taken by the Working Group in seeking to identify existing solutions within private law and whether they could be applied directly or be adapted to new challenges. He took note of all the work done and expressed his support for the Project to continue with high priority. Regarding the organisation of the Working Group, he endorsed whichever methodology the Secretariat deemed most appropriate, while underlining the importance of clearly delineating the respective roles of the Working Group and the Steering Committee.

81. *Ms Villata* regarded this Project to be of the highest importance due to the supranational nature of the subject area and its contemporary relevance. She concurred with her colleagues in noting the importance of having technology and IT experts in the Working Group, as well as legal experts from Common Law and Civil Law jurisdictions, along with experts in the area of conflict of laws. She noted that States had begun adopting their own rules in this area in an uncoordinated manner (particularly with regard to proprietary rights). As such, undertaking work that could support their efforts through a harmonised approach was important. She added that the Project would need to consider existing international instruments applicable to digital assets, including in the area of cross-border insolvency. It would also have to consider how States could adapt their own rules of substantive law to cater to emerging technologies. She concluded that this was therefore an area where a set of principles, or a guide would be especially useful.

82. *Mr Leinonen* noted that the scope of the project remained quite broad and to be clarified. However, the core of the project should be to provide a taxonomy as defining the legal concepts and the legal vocabulary in this area was very important and would be of tremendous added value to the international community. As to the structure of the Working Group, he expressed support for the enhanced structure, with a smaller Working Group to ensure that the work would be done efficiently, and a large Steering Committee as a supporting structure for the Working Group, with clearly defined roles for each. He also agreed with *Mr Meier's* comments that the Working Group should begin by focusing on private law issues.

83. *Ms Bénédicte Fauvarque-Cosson* congratulated the President for her appointment, along with the Secretariat for the work done so far. She supported the approval of the project, as well as its refined scope. The participation of technical experts was essential since the project was highly technical from both the legal and the technological points of view. Recalling that this subject was being examined by many other organisations, it was important to consult initiatives such the ALI-ELI Project on Principles for a Data Economy. Regarding the scope of the project, she agreed that the analysis should follow a private law approach. She explained that there was also a need to conduct an analysis from a Common Law and a Civil Law perspective, citing the example of proprietary interests and the need to define what the equivalent concept in Civil Law would be.

84. Regarding the approach of taking known concepts of Common and Civil Law and analysing whether they could be applied to digital assets, *Ms Fauvarque-Cosson* pointed out that the translation from English to French would be a very difficult task (*e.g.*, how to distinguish token from digital asset, and how to translate those terms). In conclusion, she expressed her full agreement with the

continuation of the project, emphasising the importance of having a balanced Working Group with experts from both the Civil Law and Common Law traditions, as well as a gender balance.

85. *The representative of UNCITRAL* recalled that UNCITRAL had presented, at its 53rd Commission session, a proposal to work on legal issues related to the digital economy. He noted that UNCITRAL had developed these proposals in consultation with UNIDROIT based on the outcomes of jointly organised workshops in Rome and in Vienna. He informed the Council that there had not been a final decision on this matter. However, based on initial discussions, and preliminary support from Member States, UNCITRAL's work would focus on the use of Artificial Intelligence for contract formation ("AI to trade"), and on legal issues arising out of data transactions. He noted that UNCITRAL had made express reference to the fact that UNIDROIT would be developing its own project on digital assets, in cooperation with UNCITRAL. He made a distinction between two parts of the work: one being a stocktaking exercise in the relevant areas, and the other being any kind of legislative undertaking, specifying that only the former was being envisaged for the time being.

86. The representative of UNCITRAL sought confirmation from the UNIDROIT Secretariat that the taxonomy relating to digital assets would remain a part of a joint taxonomy effort that UNCITRAL was currently envisaging (which included artificial intelligence, data transactions, and other relevant areas). He mentioned that, regardless of the kind of instrument which would be produced, UNCITRAL would continue to encourage the work on a taxonomy, jointly with UNIDROIT, and possibly also extending the invitation to the HCCH.

87. *The Secretary-General* confirmed that the Institute's work on taxonomy relating to digital assets would remain a part of the joint taxonomy effort with UNCITRAL. He thanked the representative of UNCITRAL for the clarification of the work which UNCITRAL was undertaking as this addressed concerns expressed regarding possible overlap between UNIDROIT's and UNCITRAL's respective work in this area. Referring to Ms Dacornia's comments, the Secretary-General clarified that the work of UNIDROIT on digital assets would mostly concern a property analysis, rather than transactions being the main core of the project, as this was already being carried out by UNCITRAL and others. While noting that some members of the Council had expressed reservations on the consideration of insolvency and its implications for digital assets, once the proprietary aspects were clarified, it would be unhelpful to leave out secured transactions and insolvency matters over these assets as there was a need in practice to clarify these concepts. He agreed, however, that these points could be discussed at a later stage of the Project.

88. *The Secretary-General* agreed that the Working Group should seek to limit the analysis to private law issues while underlining that, in reality, there were other aspects which would in some regards border on regulatory issues. He explained that a large number of these assets were held by custodians and intermediaries, and thus were naturally linked to financial markets. While regulatory issues would never be the focus of the Project, he noted that there was not always a very clear-cut boundary between public law and private law issues, meaning that it would improper to completely neglect considering regulatory issues where necessary.

89. *The Secretary-General* welcomed the support for an enhanced working group supported by a Steering Committee, noting that such a structure would allow for a high level of debate and discussion within the Working Group, and support for the work from a large number of interdisciplinary experts who would make up the Steering Committee.

90. *The Council took note of the Secretariat's preparatory work for the proposed Digital Assets Project undertaken since the 99th Governing Council remote meeting held in April/May 2020 and confirmed the high priority status given to the project, allowing the Secretariat to establish a Working Group.*

91. *The Governing Council approved the temporary change of name of the project to "Digital Assets and Private Law" and decided in favour of an "enhanced" structure for the project which would entail setting up a Steering Committee composed of additional experts from different technical and legal fields and reflecting a diversity in terms of legal systems background and geography.*

(c) Legal Structure of Agricultural Enterprises (C.D. (99) B.5)

92. *Ms Priscila Pereira de Andrade (UNIDROIT Secretariat) introduced the project on Legal Structure of Agricultural Enterprises, noting that it had been recommended for inclusion in the 2020-2022 Work Programme by the Governing Council at its 98th session² and that it had also been approved by the General Assembly at its 78th session³, with a medium priority level. She explained that this Project would be the third project to be developed under UNIDROIT's collaboration with FAO and IFAD on private law and agricultural development. She recalled that the first project of the tripartite partnership between UNIDROIT/FAO/IFAD had been the Legal Guide on Contract Farming, jointly adopted in 2015, whereas the second project was the future Legal Guide on Agricultural Land Investment Contracts (ALIC), which would be submitted for adoption by the Governing Council at its 99th session.*

93. She highlighted that the new work on Legal Structure of Agricultural Enterprises was considered as the natural follow up to the other two projects in terms of providing further guidance on legal forms and contractual networks that could be arranged to conduct agricultural activities. Ms Andrade noted the need to analyse how enterprises were being established and regulated internally for the inclusion of small farmers. Considering the instructions that had been provided by the Governing Council at its 98th session, she noted that the Secretariat had prepared a feasibility study (document [C.D. \(99\) B.5](#)) explaining the origins of the project, summarising the existing initiatives, identifying some of the possible issues that may be addressed, and envisaging the next steps to further evaluate the additional benefits of the new project on Legal Structures of Agricultural Enterprises.

94. Regarding the origin of the Project, Ms Andrade recalled that the Secretariat had organised a Colloquium in 2011 on "Promoting Investment in Agricultural Production: Private Law Aspects". Five potential areas that UNIDROIT could work on in the field of private law and agricultural development had been debated on that occasion, including legal structures of agricultural enterprises. She noted that the acts of the Colloquium had been published in the Uniform Law Review in 2012, and that the discussions had been summarised by the Secretariat and presented to the Governing Council at its 91st Session. She emphasised that the Colloquium had allowed the Secretariat to acknowledge that, although the area of legal structures of agricultural enterprises presented a very wide range of legal aspects and concerns, there was a strong interest in analysing the legal forms, integration and the different coordination techniques adopted between the various participants of the agricultural production process.

95. Regarding the feasibility study, Ms Andrade noted that some initiatives currently undertaken in a number of international organisations had been analysed in order to avoid duplication. However, she mentioned that, because of the COVID-19 outbreak, the Secretariat had not been able to organise all the planned meetings, thus, the initiatives mentioned in the document were illustrative and subject to additional research. She noted that some important work has been carried out by FAO, IFAD, UNCITRAL, the International Labour Organisation (ILO), and by some Special Rapporteurs on the right to food to assist domestic legislators and policy-makers to improve, for example, the business models for small scale farmers, and also to provide guidance on the legal frameworks adopted for small and medium-sized enterprises.

² UNIDROIT 2019 – [C.D. \(98\) 14 rev. 2](#), para. 78-82.

³ UNIDROIT 2019 – [A.G. \(78\) 12](#), para. 51.

96. She drew the attention of Council to pages 5-9 of the document ([C.D. \(99\) B.5](#)) to highlight that the work undertaken by other international organisations addressed some of the challenges regarding complex license requirements, costly business registrations procedures, problems to access finance and allocation of risks. While the identified initiatives were related to this project, it seemed that they had not formulated legislative guidance regarding the private law aspects of the legal structures adopted within different business models adopted in the agriculture sector. She pointed out that a legal analysis of the pros and cons of each business model in terms of membership, access to credit, decision-making procedures, allocation responsibilities, as well as regulation of profit-sharing seemed to be lacking. Ms Andrade underlined that there is a gap in terms of specific legal analysis of the governance aspect of contractual arrangements adopted within the different business models in the agricultural sector.

97. She noted that this project could tentatively work on the contractual and corporate side of the different business models envisaged in FAO's and IFAD's guidance documents, to determine the challenges for the inclusion of smallholders and to define, from a legal standpoint, the most efficient organisational models. In particular, she mentioned that the project could consider identifying: (i) which would be the optimal legal structure to promote access to adequate domestic and foreign agricultural markets by smallholders; (ii) how contractual and company networks can increase the size of agricultural enterprises either directly or through collaboration within and across agricultural commodities; (iii) which legal instruments are best suited to promote access to capital, know-how, and technology; and (iv) which legal and contractual remedies are available to address unfair commercial practices in agri-food activities. In addition, she underlined that consideration could be given to ways to ease access to insurance, which is crucial in the agricultural sector (*i.e.*, which legal forms are best suited to favour access to insurance markets).

98. Regarding the next steps, Ms Andrade noted that the Secretariat intended to continue its consultations with other Secretariats and to conduct further research with a view to convene a colloquium with FAO and IFAD. Subsequently it proposed to establish a core expert group to define the potential scope, content, and form of such an instrument.

99. The *Secretary-General* reiterated that this would be the third project with FAO and IFAD, highlighting the importance of the collaboration between the three organisations. The project intended to tie up the work of the two previous instruments and to lend a private law analysis to some documents on how to conduct agribusinesses that had already been produced by other organisations .

100. *The representative of FAO* expressed her gratitude for the decade of collaboration between FAO, IFAD and UNIDROIT and for its continuous success. She noted that FAO had a development law service, which aimed to assist countries to strengthen their national legal frameworks, bearing in mind international law instruments, best practices and the Sustainable Development Goals (SDGs). Highlighting the SDGs, she drew attention to the overarching principle of "leaving no one behind" and emphasised that when defining the scope of the project it is necessary to bear in mind vulnerable small farmers and family farmers and make sure that they are really included. She also shared FAO's interest in participating in the colloquium.

101. *The representative of IFAD* expressed her appreciation for the invitation to participate in the Governing Council session and noted that IFAD was an international financial institution and a specialised UN agency with the mission of investing in rural people and empowering them to increase their food security, improve the nutrition of their families and increase their incomes. She underlined that IFAD helped them to build resilience, expand their businesses and take charge of their own development by providing them access to finance markets, technology, and information. She noted that IFAD was focusing on providing financial resources to rural populations in the most remote regions of developing countries, and had provided over US\$22.4 billion in grants and low-interest loans to projects that had reached an estimated 512 million people.

102. The representative of IFAD noted that UNIDROIT and IFAD had been working together for many years in the area of private law and agricultural development, with very satisfying results. She highlighted how the collaboration with UNIDROIT and FAO was another way to help mobilise resources. She informed the Council that IFAD had provided financial support to the two previous projects on contract farming and agricultural land investment contracts through grants, as well as via the technical team who had provided feedback on the drafting of the guides. She remarked that IFAD was now exploring new ways of supporting the project on Legal Structures of Agricultural Enterprises and was looking forward to continuing the work in order to create and disseminate knowledge to developing countries.

103. *Mr Gabriel* thanked the Secretariat for the excellent background document and emphasised the relevance of this project. He expressed his gratitude to Mr Estrella-Faria, who had had the idea of launching UNIDROIT's work in the field of private law, agricultural development and food security. He expressed his support for the continuation of the project and for the organisation of a study group, as well as for the organisation of a colloquium. He agreed to maintain the medium level of priority for this project at this stage but stated that eventually it could be shifted to a high priority. Mr Gabriel expressed his concerns about the suggestion of including land tenure and indicated that the project should not include this topic.

104. *Ms Sabo* agreed that the scope, content and form of the future document needed to be further defined through a colloquium or other means of consultations. She also agreed that the work should not address, at least not at this stage, the unification or harmonisation of domestic rules. She noted that Canada was committed in supporting legal and regulatory reform in those systems that economically marginalise women and girls, and highlighted the relevance of this project since it aimed at promoting more inclusive farm business models with specific consideration to women and young entrepreneurs. She however expressed her concerns regarding the inclusion of contractual networks on the scope of the project. She recalled that UNCITRAL had decided not to undertake work in this area, noting that one of the reasons was because the form of these contractual networks existed in very few systems. In addition, noting the limited use of contractual networks globally, she expressed her doubts on the usefulness of including this topic on the project's scope. She recommended to focus on the cooperation between agricultural businesses and possibly consider multiparty contracts, which are more widespread than contractual networks.

105. The *Secretary-General* thanked FAO and IFAD for their support. Responding to Ms Sabo's remarks, he mentioned that this project would be essentially different from the one proposed by UNCITRAL, since contractual networks would not be the sole aspect analysed to verify how agricultural enterprises may grow, interact or cooperate to adapt and adjust to the needs of the market. He noted that UNIDROIT would not replicate work already undertaken by other organisations and underlined that the decision to include or not to include contractual networks within the scope of the project would be discussed at the colloquium and reported back to the Council.

106. *The Governing Council took note of the feasibility study and authorised the Secretariat to conduct further research and preliminary consultations with a view to convene a colloquium and subsequently establish a core expert group to define the potential scope, content, and form of such an instrument.*

(d) Bank Insolvency (C.D. (99) B.6)

107. The *Secretary-General* introduced this project by recalling that it had been proposed by the Bank of Italy and by the European Banking Institute (EBI), with the objective of further conducting work on the aspects that remained unaddressed by the Financial Stability Board (FSB) and the main financial actors following the 2008 global financial crises. He emphasised that the parts which had not been covered precisely included insolvency and liquidation of small banks, non-systemic banks or those which may be resolved but a part still remains to be liquidated. He mentioned that those

banks were typically regulated nationally by corporate law and that no international guidance had been developed on this front. Moreover, he noted that a number of issues that occur in practice, as had been explained by the EBI concerning coordination and also *ex ante* issues, such as the priorities of bank insolvency issues at the domestic level, had a great impact when it came to assessing regulatory capital measures. He noted that the Governing Council had previously expressed uncertainty as to the real necessity to work in this field and on the allocation of resources for this project.

108. With this in mind, the Secretary-General noted that the Secretariat had undertaken thorough research to identify the support or, on the contrary, confirm lack of support for this work. He noted that the Secretariat had been able to discuss this project with the Financial Stability Institute, which was mainly concerned with the research perspective of issues that need to be tackled in the financial architecture. He expressed their interest in the project's topic, in particular considering the outbreak of the COVID-19 pandemic and the likelihood that bank insolvency may become, unfortunately, a more topical matter. They had also manifested the opinion that this work should be done by a global institution and that they would find it more difficult to collaborate with regional institutions given their own global mandate. Thus, they were keen to collaborate with UNIDROIT to further pursue this project, offering to eventually help finance its preliminary exploratory phase, if necessary, as well as to share their own expertise.

109. The Secretary-General recalled the existence of an on-going project, in an advanced stage, to establish a chair with the Bank of Italy to support a high level researcher which would be jointly financed by UNIDROIT and the Bank of Italy. He noted that the Secretariat believed that there may be an opportunity to conduct further analysis in this field, in particular to assess the needs in the actual reality of banking law. He underlined that the objective was not to ask for the endorsement of the Governing Council to start a new project, but to initiate a partnership and undertake exploratory work on this matter.

110. He acknowledged that UNIDROIT had not done any work on banking law previously but noted that the Institute had also never worked in the field of agricultural development or capital markets until the former Secretary-General had proposed his vision to do so. He, therefore, expressed that there may be a possibility to open new areas of work and noted that UNIDROIT had the resources to conduct it.

111. *Mr Meier* congratulated the Secretariat for its work and showed no objection to the proposed action, noting that it seemed very important to involve national financial markets supervisory authorities, as banking matters are closely related to these national authorities. He also drew attention to the need to ensure that the work undertaken is useful for the actors and stressed that the agenda should be established by the Secretariat and not by the funders.

112. *Ms Sabo* thanked the Secretary-General for his presentation and noted that, at this stage, the concerns of the Canadian Government remained. While being sceptical, she stated that she looked forward to hearing a more detailed report and that, in the meantime, she agreed with the continuation of this exploratory phase.

113. *Ms Villata* noted that the cooperation with the FSI could add some expertise, and also financial support. She underlined that neither the Hague Conference nor UNCITRAL had considered working on this field and, thus, emphasised that UNIDROIT could play a role in enhancing further initiatives in other international fora. She expressed her support for the continuation of this project and with its feasibility study, as proposed by the Secretariat.

114. While expressing scepticism, *Mr Gabriel* mentioned he could see the virtue of moving forward with the exploratory work. He highlighted, however, the importance of not allocating too many of UNIDROIT resources to the project.

115. *Mr Kanda* expressed his agreement with the proposal presented by the Secretary-General and recalled that, in the case of a cross-border bank insolvency, the principles of the FSB suggested two approaches: one being the statutory approach and the other contractual. He noted that in the case of Lehman Brothers, the insolvency administrators had entered into a contract, what they called a protocol, rather than relying on traditional judicial insolvency procedures, taking place simultaneously in different jurisdictions. He noted that the contractual approach, as suggest by the FSB principles, could be the approach that UNIDROIT could further consider, since its expertise can play an important role in this area.

116. The *Secretary-General* appreciated the arguments brought by Mr Kanda and noted that the FSB indeed had two approaches, one of which - the contractual approach – regarded the inclusion of contractual clauses, selecting disputes resolutions mechanisms, which had been part of the proposal that had initially been presented for UNIDROIT to consider. He underlined the interest in analysing cross-border insolvency cooperation and contractual clauses, but also reiterated that the FSB seemed to have no interest in working on these two additional topics, so this part would need to be tackled without the FSI. In response to Mr Gabriel’s concern regarding the use of UNIDROIT’s resources to conduct the preliminary research, the Secretary-General recalled that the project had medium priority and, therefore, confirmed that resources allocated to it would be limited. He noted that the financial support only concerned research activities, and perhaps the organisation of meetings. Mr Tirado explained that the Secretariat was envisaging to contact central banks, agencies, banking regulators, to further understand the actual needs and to acknowledge the different existing models for bank liquidation. He highlighted that the Secretariat had the intention of conducting interviews and questionnaires and that the FSI will provide contacts in order to do that. Regarding Ms Sabo’s intervention, the *Secretary-General* stated that the Secretariat would address her concerns and reconvene in the next session of the Governing Council.

117. *The Governing Council took note of the information provided and agreed with the proposed action plan leading to the drafting of a feasibility study to be presented to the Governing Council at its 100th session.*

Item 5: Model Law on Warehouse Receipts (C.D. (99) B.7)

118. *Ms Philine Wehling (UNIDROIT Secretariat)* noted that the initial proposal for this project on the Model Law on Warehouse Receipts had originated from a proposal by the UNCITRAL’s Secretariat in mid-2019, which invited UNIDROIT to consider conducting joint work on this topic. By then, the idea had been discussed within UNCITRAL for some time, and a feasibility study had been carried out by the Kozolchuk National Law Center (NatLaw). Subsequently, she noted that the Secretariat of UNCITRAL and UNIDROIT had also developed preliminary research and had co-organised a joint webinar in March 2020 to discuss the feasibility of formulating international legislative guidance on warehouse receipts, with a broad audience of experts and organisations specialised in the field. Based on the conclusions and recommendations of the webinar, the UNIDROIT Secretariat had submitted the proposal to the Governing Council at its remote meeting held in April/May 2020, to recommend that the General Assembly include the project on a Model Law on Warehouse Receipts on the 2020-2022 Work Programme with a high priority status, subject to the approval of a parallel mandate by the UNCITRAL’s Commission. She recalled that the Governing Council had unanimously endorsed this proposal. Ms Wehling emphasised that whenever reference was made to a “model law”, it should be noted that, in the view of the Secretariats, a Model Law would be the most useful final product of the project. However, she explained that it was UNCITRAL’s practice to defer the final decision on the form of an instrument to its member States.

119. In terms of relevance and feasibility, Ms Wehling noted that the need for and desirability of a model law on warehouse receipts had been ascertained by both Secretariats and had been confirmed at the webinar held in March 2020. She highlighted that several countries had already initiated some legislation reforms, including both developing and developed countries, such as France

most recently. She remarked that, while the policy objectives for reforms may be diverse, they usually sought to facilitate access to credit, attract private sector investment in the agricultural sector, and improve agricultural trade.

120. At an international level, she noted the scarcity of international guidance for legislative reform, and that no international model law on warehouse receipts, nor any international instrument on warehouse receipts specifically, had been adopted. She outlined the presence of a few guidance documents developed by organisations working on the ground, which sought to provide legislative assistance to countries, in particular the World Bank, FAO and the European Bank for Reconstruction and Development (EBRD). Thus, she underlined that the envisaged model law should be built upon these existing documents and take a step further in developing an international model law that may be transformed into domestic legislation. She reiterated that the model law may be a practical and useful tool for legislators, as well as for organisations providing legislative assistance at the country level.

121. Ms Wehling highlighted that UNCITRAL and UNIDROIT were very well placed to undertake this work. UNCITRAL had for instance produced several instruments that were highly relevant, such as the Model Law on Electronic Transferable Records and the Model Law on E-Commerce. She also clarified that this project would fit in perfectly with the on-going projects in the field of private law and agriculture development, and moreover can build upon the close and successful cooperation with FAO and IFAD. She noted that there were also important synergies with other on-going UNIDROIT projects, such as the digital assets project or the model law on factoring, as well as other projects on secured transactions in general.

122. In terms of the scope of the project, Ms Wehling stated that the idea was to cover all private law aspects of warehouse receipts systems and to embrace both electronic and paper, as well as negotiable and non-negotiable receipts. She explained that the model law would be a very comprehensive instrument covering all relevant aspects, such as: the form and the content requirements; the negotiability and transfer of receipts; the rights and obligations of the parties concerned; and the creation third-party effectiveness of security rights. She highlighted that the text should contemplate the issuance and transfer of electronic warehouse receipts, including through e-platforms and DLT.

123. Regarding the working method, she noted that it was envisaged to establish a close cooperation between both Secretariats and to conduct this project in two phases. Ms Wehling explained that first the UNIDROIT Secretariat would lead the preparatory work through a Working Group and prepare comprehensive draft texts for the instrument by 2022. Once completed, the draft instrument would be presented to the Governing Council for approval. Then, she noted that in the second phase, the draft text would be submitted to intergovernmental negotiations through an UNCITRAL Working Group. The result would be a joint, co-branded UNCITRAL/UNIDROIT Model Law or other type of international legislative guidance instrument.

124. Ms Wehling observed that, since the Governing Council's remote meeting in April/May 2020, the Secretariat had identified potential experts for the future Working Group and would suggest Ms Eugenia G. Dacornia as chair of the Group. She drew the attention of the Council members to the list of potential experts included in document ([C.D. \(99\) B.7](#)). She also informed the Council that the UNCITRAL Secretariat had presented the project proposal to its Commission in September and it had received very positive comments during the discussions. She noted that the members of the Governing Council would be informed immediately of UNCITRAL's final decision on the project proposal.

125. *Mr Estrella-Faria* pointed out that this topic had been in the UNCITRAL's work programme since 2016, and had also been the topic of a colloquium organised in 2017 in Vienna, submitted to Working Group VI. When the work of the Working Group VI was approaching completion, UNCITRAL

had reached out to UNIDROIT because of its existing line of work on private law and agricultural development, as well as due to the idea of cooperating with the Rome-based organisations. He underlined that the project was deemed an ideal avenue of cooperation, which had not been explored since the late 80's. He noted that UNIDROIT would pursue the preparatory work and then, at a certain point it would pass the work on to UNCITRAL, which would then have this instrument eventually adopted as a jointly developed instrument. He concluded by noting that UNCITRAL was still waiting for the Commission's final decision, but highlighted that the reactions for this proposal had been very positive and had obtained many expressions of support to proceed with the cooperation.

126. *Ms Dacornia* expressed her gratitude for her designation as chair of the Working Group. She noted that it was a very interesting project and that she expected that UNCITRAL's Commission would also approve the project proposal.

127. *The Governing Council* took note of the preparatory work undertaken by the Secretariat for the proposed Model Law on Warehouse Receipts Project since the remote meeting of the 99th Governing Council session held in April/May 2020, and confirmed their recommendation that the General Assembly approves the inclusion of this item in the 2020-2022 Work Programme.

Item 6: Development of a Model Law on Factoring (C.D. (99) B.8)

128. The *Secretary-General* noted that this project should have been introduced by the UNIDROIT Senior Legal Officer William Brydie-Watson, who unfortunately could not be present. He explained that following a proposal by the World Bank, which had identified the need to develop a new factoring standard law, fully coordinated with the work of UNCITRAL on secured transactions, the Factoring project had been included in the 2020-2022 Work Programme with the unanimous consensus of the Governing Council at its 98th session. He recalled that some preparatory work had been undertaken in 2019 and that some meetings had been held in 2020. The *Secretary-General* invited the chair of the Working Group, Mr Henry Gabriel, to further present the project.

129. *Mr Henry Gabriel* thanked the Secretary-General for the introduction and explained that the document presented for the Council's consideration (C.D. (99) B.8) contained a list of the members of the Working Group and also a list of the observing organisations, which had been participating very actively. He recalled that the Working Group had held its first meeting in July (on-line) and that it had been very successful. He noted that a lot of work had been undertaken, in particular regarding some of the core issues of the project. He pointed out that a second meeting would take place in December 2020, and that hopefully two more meetings would be organised during the following year, which should be enough to complete the project. He noted that a subcommittee was dealing exclusively with conflict of law issues and further explained that this subcommittee had already held one meeting for which a summary report was being prepared and presented to the Working Group in December. He concluded by highlighting that the project was up-to-date and developing well.

130. *The Governing Council* took note of the progress made by the Factoring Model Law Working Group at its first session.

Item 7: UNIDROIT instruments in the COVID-19 pandemic (C.D. (99) B.9)

131. The *President of UNIDROIT* opened the second day of the Governing Council reiterating her welcome to all attendees. She acknowledged the participation of the President of the European Law Institute (ELI) Ms Christiane Wendehorst for her presence and Mr Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law (HCCH). She then invited the Secretary-General to present the seventh item on the agenda regarding UNIDROIT's instruments in the COVID-19 pandemic.

132. The *Secretary-General*, Mr Ignacio Tirado, underlined some of the challenges that COVID-19 had created in the field of contracts and private relations. He noted that the Secretariat aimed to analyse how some of UNIDROIT's instruments may assist the legal community in this pandemic, both in a domestic and in an international context. The Secretariat had begun by identifying the instruments that could be of assistance, such as the UNIDROIT Principles of International Commercial Contracts (UPICC) and the Cape Town Convention instruments. He also highlighted that the Secretariat had begun cooperating with other partner organisations to evaluate the usefulness of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (LGCF) and the possible contribution of the 1973 Will's Convention.

133. Mr Tirado reported that the Secretariat had already issued a Note on the UPICC and the COVID-19 Health Crisis, which had been the first of a series of 'Notes of the Secretariat'. These Notes were tools to help identify elements and facts that needed to be considered to apply UNIDROIT's instruments. He emphasised that the Notes were not to be deemed as an interpretation of UNIDROIT's instruments. The Note on the UPICC had been prepared by the Secretariat with the support of experts who had been involved in the drafting of the Principles, focussing on the regulation of force majeure and hardship. He stressed that the definition of force majeure in the UPICC was open and flexible and did not tie force majeure to the impossibility of performance. He added that the regulation of hardship in the Principles had been a model for many legislations, and had been useful to set the stage for the renegotiation and reallocation of contracting parties' rights.

134. Moreover, the Secretary-General stated that the use of the UPICC would be a good means to avoid excessive conflict and would contribute to enhancing the use of mediation and arbitration both at domestic and international level. Further, he acknowledged the usefulness of the Principles to draft clauses to protect the parties and to regulate the contractual relationship going forward, as well as a suitable solution for countries who wanted to update and modernise their legislation.

135. To conclude, the Secretary-General informed the Council that the Note on the UPICC and COVID-19 had been received with great interest, and had been presented internationally in a joint seminar with the International Bar Association (IBA).

136. Ms *Philine Wehling* (UNIDROIT Secretariat) presented the Secretariat's work on the development of a guidance document regarding the legal implications of the COVID-19 pandemic on contract farming. In terms of background, she explained that this work would be based on and promote the LGCF, which had been elaborated by UNIDROIT in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD). Ms Wehling reported that the three organisations had agreed to continue their collaboration to analyse the guidance on the legal implications of COVID-19 that the legal guide on contract farming can provide. She also highlighted that the Secretariat had invited Mr Fabrizio Cafaggi to collaborate in the development of this work as he had been one of the main contributors to the elaboration of the LGCF.

137. Ms Wehling described the activities that had already been undertaken, noting in particular the collection of data through desk research and interviews with stakeholders, as well as through surveys that had been sent to public and private stakeholders and active organisations in the field. She highlighted that the Secretariat and its partner organisations had, so far, identified that the governmental containment measures adopted in view of the pandemic, such as restrictions on cross-border movements of employees and other workers or the closure of agriculture markets had both direct and indirect impacts on contract farming operations. She explained that the main question that had been raised was whether the contracting parties could evoke the pandemic or any of the governmental containment measures as an excuse for non-performance or as grounds to request the renegotiations of the contracts or exercise other remedies.

138. Based on the information gathered, Ms Wehling highlighted that the guidance document would have two objectives: the first would be to provide recommendations to parties and other stakeholders on how clauses regarding force majeure, hardship or changes of circumstances and other remedies would apply in the current pandemic situation. She noted that the guidance document would follow a similar approach to the one taken by the Note on UPICC and COVID-19 and explained that its purpose would be to lead the reader to ask the relevant questions and identify the relevant facts and circumstances of the case at hand. The second objective would be to provide guidance to parties and regulators on how contracts and legislations could be designed or adapted to better accommodate future pandemic situations. She emphasised that the guidance document would aim at promoting both legal certainty as well as a fair balance of risks between the contracting parties.

139. In terms of next steps, Ms Wehling reported that the Secretariat and its partners would continue to collect and analyse the data to prepare a first draft of the guidance document. To conclude, she noted that a webinar would be organised to present and discuss the draft with a broader audience of experts and stakeholders.

140. *Mr Carlo Di Nicola (UNIDROIT Secretariat)* presented another UNIDROIT instrument that the Secretariat had identified as being potentially relevant during the COVID-19 pandemic. He drew the Council's attention to the 1973 UNIDROIT Convention providing a Uniform Law on the Form of an International Will and the issues that the Secretariat had identified while contemplating what the impacts and potential connections between this instrument and the COVID-19 pandemic would be.

141. The first question was whether, nearly fifty years after its adoption in 1973, the Convention was still relevant to the needs of today's world, particularly in the current context of the global pandemic. The second was whether the Secretariat ought to deploy additional efforts and invest additional resources, even if limited, to further promote the ratification of this instrument, and finally, should the answer to the latter be positive, how the Secretariat might best proceed in that regard.

142. Mr Di Nicola noted that the 1973 Washington Convention permitted for a single document to meet the validity requirements of multiple countries and thus function as an "international will". Quoting from the Explanatory Report, he highlighted that the Convention did not aim to harmonise or to unify the forms that already existed in the various national legislations; rather, it proposed a new kind of will, being an international one, thus providing testators with clarity when dealing with assets found in different jurisdictions.

143. On the status of the Convention, he noted that it had so far been ratified by 13 Contracting States with the most recent ratification occurring in 2014 by Australia. While the Secretariat had not been able to undertake a comprehensive review of its effectiveness, it noted that the majority of the commentary from academics and practitioners alike praised the Convention as a very useful tool whose attractiveness and relevance could only increase as the membership of Contracting States grew.

144. While noting that the current global pandemic had made international travel and transportation of assets much more difficult and expensive, Mr Di Nicola stressed the usefulness of an instrument to facilitate the execution of wills which contain an international component. Finally, in terms of potential next steps, he explained that the Secretariat proposed to conduct further research to identify the extent to which the 1973 Washington Convention was being used in practice, and prepare a document with an update on the status of the Convention, and also explain how it could be useful to address the challenges of a global pandemic. He also shared the idea of preparing a publication, potentially in the Uniform Law Review or elsewhere.

145. The *President of UNIDROIT* expressed her gratitude to the Secretary-General and to the legal officers Ms Philine Wehling and Mr Carlo Di Nicola for their explanations and then opened the floor for questions and comments.

146. *Ms Fauvarque-Cosson* acknowledged that the work proposed by the Secretariat regarding the 1973 Washington Convention appeared to be interesting and promising. She queried how this consideration of the Convention's contemporary relevance would grapple with the new European regulation in the field of succession, noting it had already clarified the right of the testator to choose the applicable law. She highlighted the importance of taking this regulation into account, in particular to identify the different circumstances that may exist depending on whether the Contracting States to the Convention were members of the European Union or not.

147. *Mr Di Nicola* pointed out that whereas the new European regulation addressed the question of applicable law in relation to successions, the 1973 Washington Convention dealt with an entirely separate matter (i.e. the creation of a new form of will called an international will), and, consequently, there should not be any inconsistencies between the Convention and the new European regulation. Indeed, similarly to the relationship with the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of the Clauses of a Will, he noted their probable complementarity. In addition, he emphasised the Convention's international scope beyond the confines of the European Union to note that at any rate it would continue to remain relevant to address the relationships between European States and other countries of the world.

148. *Ms Fauvarque-Cosson* acknowledged that the great advantage of the 1973 Washington Convention was that it allowed for the validity of an additional form of will – the international will. She further noted that the new European regulation had also greatly relaxed the conditions of form which had led her to raise her query regarding the usefulness of this Convention in the context of the European Union.

149. *Mr Di Nicola* thanked *Ms Fauvarque-Cosson* for the clarification and reiterated that in his opinion the instruments were complementary, and that the relaxation in terms of form in the European regulation could potentially contribute to highlight the relevance of the Convention. He underscored that this question should be further explored.

150. *Ms Fauvarque-Cosson* also congratulated the Secretariat for preparing a Note on the UPICC and COVID-19 and noted that it would be useful to further address the issues included in the Note's paragraph 39 on the lack of objective predictability of the change in circumstance and on the duration of the second wave. She also underlined that it may be interesting to involve arbitration institutions, such as the International Chamber of Commerce to further understand whether reference had already been made to the UPICC and COVID-19 in the context of arbitral awards.

151. In addition, *Ms Fauvarque-Cosson* sought clarification as to whether the UPICC provisions on hardship were mandatory or suppletive, noting that some articles in the UPICC (such as Art. 3.1.4 on fraud, threat, gross disparity, and illegality) specified that these provisions were mandatory. Given the soft-law nature of the UPICC, she queried whether, in the context of COVID-19, some theoretical reflection should be undertaken on the binding nature of the Principles for those provisions on hardship.

152. *Ms Sabo* commended the Secretariat for the initiative of the guidance document on the UPICC and COVID-19, which she considered both timely and useful. She expressed concern regarding the promotion of the Cape Town Convention in the context of COVID-19, cautioning the UNIDROIT Secretariat from providing any kind of interpretation of a binding international instrument. She praised the method chosen to analyse the relationship between COVID-19 and contract farming, as it involved reaching out to other international organisations and soliciting expert input, and suggested that the same could be done to analyse the impacts on agricultural land investment contracts.

153. In relation to the International Will Convention, she noted the importance of the figures highlighted in the document prepared by the Secretariat regarding economic relations between certain Canadian provinces and U.S. States – especially in terms of real estate holdings – and

remarked that she looked forward to sharing it with the relevant authorities in the Province of Québec. She further noted that many governments had been looking at making modifications to formal requirements relating to wills and testaments during the pandemic, such as provisions for remote witnessing of legal documents. She queried whether it would be useful to promote the 1973 Washington Convention bearing in mind how it could function in the context of electronic wills, which were being looked at closely in Canada at the time.

154. The *President of UNIDROIT* thanked all members for their interventions and passed the floor to the Secretary-General.

155. The *Secretary-General* clarified that all notes and documents regarding the COVID-19 pandemic referred to non-binding instruments and did not purport to provide an interpretation from the Secretariat. Responding to Ms Fauvarque-Cosson's remarks on hardship and its mandatory character, he mentioned that the Note on the UPICC and COVID-19 is a "dynamic note" and indicated that it would be updated as circumstances evolve.

156. *The Council took note of and commended the Secretariat for its work in preparing a series of guidance documents regarding the impact of COVID-19 on the application of a number of leading UNIDROIT instruments (e.g., the Note of the UNIDROIT Secretariat on the UNIDROIT Principles of International Commercial Contracts (UPICC) and the COVID-19 Health Crisis, as well as the UNIDROIT, the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) joint document providing guidance on the legal implications of the COVID-19 pandemic on contract farming operations).*

157. *The Council encouraged the Secretariat to continue its additional COVID-related work on ALIC and the International Wills Convention, as well as its related outreach initiatives.*

Item 8: Transnational civil procedure: Adoption of ELI-UNIDROIT regional rules ([C.D. \(99\) B.10 rev.](#))

158. The *Deputy Secretary-General, Ms Anna Veneziano*, introduced the document [C.D. \(99\) B.10 rev.](#)), drawing the Council's attention to the Annexes, containing the black letter rules in both English and French, the finalised draft of the ELI - UNIDROIT European rules on civil procedure in English complete with comments, and the French translation of parts 1 to 7 of the rules and comments. She noted that she would focus on project activities undertaken after the 98th session of the Governing Council, referring to document C.D. (99) B.10 for earlier actions and more details. She would also give a brief presentation of the Rules, taking into account that an international workshop had been co-organised by ELI and UNIDROIT on the last day of the Governing Council (25 September 2020), with participation of experts involved in the drafting of the instrument as well as external discussants.

159. Ms Veneziano announced that the draft had been approved by the ELI Council in July and by the ELI membership through electronic vote in August 2020. She acknowledged that Ms Christiane Wendehorst, president of the ELI, and Mr José Angelo Estrella Faria, UNIDROIT's former Secretary-General had been among the initiators of this project, noting that the cooperation with the ELI had begun at a workshop organised at the University of Vienna in 2013, to discuss how to develop regional rules based on the American Law Institute (ALI)-UNIDROIT Principles, followed by the creation of a Steering Committee with representatives of the two organisations, lately composed by herself and Diana Wallis as Co-Chairs, and Remo Caponi, John Sorabji and Rolf Stürner and. She also noted that the names of all the participants that had contributed to the development of the project had been included in the first page of the document. She explained that almost fifty experts representing a variety of legal systems, languages, and also different legal expertise, had been organised into nine Working Groups, covering all the phases of civil proceedings from its inception to appeals, coordinated by an overarching Structure Group. The project had also benefitted from observers such

as the ALI, the HCCH, and the EU institutions and professional organisations, as well as advisors including members of UNIDROIT's Governing Council.

160. Ms Veneziano noted that the ELI-UNIDROIT project had taken relatively longer than others and had lasted for almost seven years due to the breadth of its scope and the time required to process the input. In terms of the activities that had been undertaken by the Secretariat since the 98th session of the Governing Council, she noted that a smaller drafting team, including John Sorabji and Rolf Stürner, had built on the work of the Structure Group and taken on the responsibility for the additional drafting and consolidation of comments. She noted that a complete draft had been finalised in July 2019 and that it had been circulated for feedback and discussed at an event co-organised by ELI and UNIDROIT, which had taken place during the Annual Conference of the ELI General Assembly in September 2019. Ms Veneziano also reported that a French team had conducted a revision of the French translation of the black letter rules in parallel and had provided input for the English draft. The translation of the comments in French had been undertaken by the UNIDROIT Secretariat and was in the course of being completed.

161. Ms Veneziano noted that the draft had been submitted to the scrutiny of two ELI assessors, Professor Matthias Storme and Judge Raffaele Sabato, in January 2020, and that UNIDROIT and ELI had simultaneously circulated the draft to the ELI Senate, Advisory Committee, Membership Consultative Committee, as well as to the members of the UNIDROIT Governing Council. The revised version of the black-letter Rules and Comments produced by the Drafting Team and resulting from the round of comments had been submitted to the ELI Executive Council for approval in June 2020, resulting in the approval by the Council in July and by the ELI Membership in August 2020.

162. The Deputy Secretary-General highlighted that the Working Groups had considered the ALI-UNIDROIT Principles and other sources including the European legal traditions, relevant European Union legislation and relevant international legislative sources. She briefly illustrated the organisation and content of the instrument, highlighting that the rules had been divided into twelve parts, accompanied by comments, with an added Preamble which had sprung from an elaboration of a comment under rule 1. The Preamble not only presented the scope, purpose and methodology of the rules, but it clarified that the rules do not represent a complete model code of civil procedure nor a depositary of common core provisions: they offer model rules for the future development of civil procedure. She underscored a number of overarching procedural duties imposed upon courts, parties, and their lawyers on which the rules had been based, the most significant of which were the duty of co-operation and that of proportionality. She further noted that co-operative case management by parties and court had been a central feature of the rules.

163. Ms Veneziano concluded by reporting that the ELI and UNIDROIT had agreed on a memorandum of understanding for the publication of the rules and that they had been aiming at an open access publication. She then drew the attention of the Council to the discussions regarding the response of the legal community to COVID-19, and the appropriateness of the use of modern communication and recording means, such as electronic communication between courts and parties and between parties; videoconferencing; audio transmission in hearings and in evidence-taking; disclosure and production of electronic data and documents and their evidential evaluation; as well as reference to the possibility of electronic platforms in collective proceedings. She noted, however, that the rules were technologically neutral and did not address these issues in detail given the different levels of technological support between systems.

164. *Ms Christiane Wendehorst*, President of the ELI, took the floor to express her gratitude to Ms Veneziano and to UNIDROIT, with which it had been an honour and a privilege for the ELI to embark on this journey. She emphasized the impressive piece of work that had been developed.

165. *Ms Fauvarque-Cosson* congratulated UNIDROIT and the ELI for the extraordinary accomplishment, though expressed a need for caution in the manner in which the principle of

proportionality had been addressed, in particular in rule 8 on the proportionality of costs. She noted that its interpretation may have been too broad, as corresponding to the English principle or to the law of the EU or civil law countries. She then noted that she would submit her comments regarding rule 26, paragraph 3 in writing.

166. *Mr Hans-Georg Bollweg* thanked Ms Anna Veneziano and all the other experts involved for the impressive work. He noted that the results had been extremely useful and appreciated the idea of the open access publication of the rules. He queried whether there had been plans to promote the rules and their implementation into national law entirely or partly, especially as far as it concerns member States.

167. *Ms Dacornia* thanked Ms Veneziano and the ELI for the initiative and for accomplishing this very important work.

168. *Ms Veneziano* acknowledged that the substantial work had been done by all the experts and expressed her gratitude to the Secretariat, in particular she thanked Ms Lena Peters, Ms Frédérique Mestre, Ms Marina Schneider, Ms Françoise Ghin, Ms Isabelle Dubois and Ms Valentina Viganò for their contribution to the finalisation of the text.

169. Responding to Ms Fauvarque-Cosson's question, the Deputy Secretary-General noted that the issue on how to address the principle of proportionality had been very much debated and there had been different positions in relation to its relevance compared to other overarching and general principles that had also been recognised in the rules. She explained that it had been decided to emphasise the principle of proportionality as an element of novelty of civil procedure in different jurisdictions, even in those systems where it had not been completely acknowledged. Ms Veneziano recalled that the principle of proportionality had been balanced with a number of other principles in the section regarding the overarching principles, such as the principle of co-operation. She invited Ms Fauvarque-Cosson to attend the workshop that would take place on the last day of the Governing Council to further discuss this issue. Responding to Mr Bollweg, she confirmed that the Group had discussed some plans for the promotion and implementation of the rules at the national level, however noted that the COVID-19 situation had limited the possibilities to fully develop the plans. The Secretariat would inform Council members in due course of these events.

170. *The President of UNIDROIT* invited the Council to adopt the *ELI-UNIDROIT* European model rules on civil procedure.

171. *The Governing Council welcomed the update relating to the joint ELI-UNIDROIT project on the development of regional rules based on the adaptation of the ALI-UNIDROIT Principles.*

172. *The Council congratulated UNIDROIT and ELI for the extraordinary work and agreed with the adoption of the ELI-UNIDROIT Model European Rules of Civil Procedure.*

Item 9: International Sales Law: Adoption of Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) (C.D. (99) B.11)

173. *The Deputy Secretary-General, Ms Anna Veneziano* drew the Council's attention to document [C.D. \(99\) B.11](#) and its addendum – the consolidated English version of the Tripartite Legal Guide - which had been provided by UNCITRAL on a confidential basis. She noted that the Tripartite Legal Guide had already been presented at the Workshop jointly organised by UNIDROIT, the HCCH and UNCITRAL on 22 September 2020, and reiterated UNIDROIT's gratitude to the two sister organisations as well as to the experts involved. She recalled that the Tripartite Legal Guide had been unanimously approved at the remote meeting of the 99th session of the UNIDROIT Governing Council held in May 2020, subject to minor amendments by the UNCITRAL Commission session. She reported that the

UNCITRAL Commission had discussed the draft Tripartite Guide at the Commission session held remotely in July 2020, together with adjustment proposals deriving from different sources, in particular from the UNCITRAL Secretariat and the CISG Advisory Council. She added that proposals had been made for the insertion of a reference, *inter alia*, to: the HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, which had been adopted after the conclusion of the first draft of the Guide; the ICC Force Majeure and Hardship clauses 2020; the OHADA Uniform Act on General Commercial Law. All proposed adjustments had been agreed upon by the three Secretariats. She announced that UNCITRAL had approved the publication of the Guide including the proposed adjustments.

174. The Deputy Secretary-General highlighted that the consolidated revised text of the Guide in English had been presented to the Governing Council members, whereas the versions in the different official languages of the United Nations were in progress. She recalled that the draft had also been submitted to the Governing Council in French and that first versions had been prepared in Arabic, Chinese and Spanish. She then invited the Governing Council to take note of the documents and to authorise the publication of the Guide in its current form.

175. The *representative of the UNCITRAL* expressed his gratitude to Mr Luca Castellani, who had been the initiator of the project. He reported that the Commission had authorised the UNCITRAL Secretariat to publish the document, though it required editing to conform with the UN practices which would entail slight editing to the English version of the Guide than the one presented to the Governing Council. He noted that the preparation of versions of the document in the other five official languages of the United Nations including a version in Russian. The Legal Guide would be available in all six languages would be published both in electronic and in printed form. He expressed his gratitude to UNIDROIT, for the support as a partner, to the Hague Conference, to the five experts who had participated, and to those who had sent comments, including the last minute comments sent by the CISG Advisory Council, which had contributed to the clarification of some points. UNCITRAL would be looking forward to participating in future promotional events with UNIDROIT.

176. *Mr Christophe Bernasconi*, Secretary-General of the HCCH, expressed his gratitude to the two sister organisations, as well as to the five experts who had done a remarkable job. He expressed his recognition to Ms Ning Zhao, who had led the project on behalf of the HCCH. He noted that the Hague Conference would be looking forward to the joint promotion of this important Guide, recalling the excellent presentations of the Workshop that had taken place on Tuesday, 22 September 2020. He was certain that the Guide would provide further opportunities to promote the instruments of all three organisations.

177. *The President of UNIDROIT* opened the floor for questions and comments.

178. *Mr José Antonio Moreno Rodríguez* congratulated the President on her recent appointment. He acknowledged the incredible work that had been done by the three sister organisations on the Tripartite Guide, thanking and congratulating the Deputy Secretary-General and the UNIDROIT Secretariat, and noting the practicality and high-quality of the instrument. He expressed his full support for the approval of the document and commended the HCCH and UNCITRAL for the substantial contribution of their organisations to the Guide.

179. *Ms Monika Pauknerová* noted that the final version of the document was substantially different from the first versions, and recalled that some of the Governing Council members had raised a number of particular remarks at the beginning of the drafting process. She thanked all the contributors and underlined the usefulness and importance of the Guide for the practice of arbitration courts and also for her students of international commercial law. She noted that the Guide could be published as a book and offered to the international chambers of commerce, arbitration centres and universities.

180. *Ms Fauvarque-Cosson* echoed the congratulations that had been expressed and noted the usefulness of the Guide. She drew the attention of the Council members to the difficulty of advancing the idea that the parties could, in a contract that would be submitted to State courts, choose a non-State law regulation. She explained that based on the Rome I Regulation, it was not currently possible to designate a non-State law as the applicable law in the EU, although it was possible – and the Guide took this into account – to simply incorporate these non-State rules, such as the UNIDROIT Principles by referencing them in the contract.

181. Furthermore, she noted that the procedural rules that had been adopted by the ELI and UNIDROIT contained a rule providing that the parties may agree on the legal basis of the claim in the case of the application of a foreign law, or in an international context. The parties could agree not only to apply a State law, but also to apply, for example, the UNIDROIT Principles before the judge at the time the dispute arises. This would allow the parties to freely dispose of their rights, as established by rule 26 paragraph 3 of the adopted instrument. *Ms Fauvarque-Cosson* noted that UNIDROIT had been working on the possibility of choosing an applicable law that would not be a State law, but she sustained that this rule could be put forward, in allowing to go even further than what had been written in paragraph 47 of the Guide.

182. *The Governing Council* took note of the discussions held during the 53rd session of the Commission of UNCITRAL and acknowledged the work undertaken by the HCCH.

183. *The Council* expressed its gratitude for the work of the three sister organisations and authorised the publication of the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales), with the limited adjustments approved by the UNCITRAL Commission at its 53rd session (July 2020).

Item 10: Private Law and Agricultural Development: Adoption of a Legal Guide on Agricultural Land Investment Contracts ([C.D. \(99\) B.12](#))

184. *Mr Carlo Di Nicola* (UNIDROIT Secretariat) underscored the importance of this ambitious and challenging project, which had the important task of bringing together two worlds that had not been combined often: that of private and contractual law and a plethora of themes which had been generally considered in the area of public law. He expressed his recognition of the excellent work that had been undertaken by the Working Group of experts, which had been headed by Governing Council member *Mr Moreno Rodriguez*. He also expressed his gratitude to *Mr Estrella Faria*, former Secretary-General of UNIDROIT, and currently representative of UNCITRAL, recalling that he had been the one to introduce this topic to the UNIDROIT Work Programme. He also expressed his gratitude to the former colleagues that had contributed for the development of this topic, *Ms Frédérique Mestre* and *Mr Neale Bergman*.

185. Regarding the latest developments of the Project, he noted that at the 98th session of the Governing Council, it had been determined that the Zero draft of the ALIC Guide would be subject to broad and extensive consultations to obtain feedback from the experts and other institutions, who would eventually be charged with the implementation, promotion and practical application of the Guide. The Secretariat had implemented this request by organising three regional consultation workshops, in Beijing (China), São Paulo (Brazil), and Nairobi (Kenya), respectively, supported by a generous grant provided by partner organisation IFAD. Consultations had also taken place online through a number of key platforms. In this regard, he expressed his recognition to FAO which, through the Global Forum on Food Security and Nutrition forum, had generously supported the consultations. The Secretariat had been able to gather numerous comments and feedback as a result.

186. Regarding the final phases of the finalisation of the Guide, *Mr Di Nicola* noted that the Secretariat had analysed all the comments and feedback received, together with the Drafting Committee, which had met in March 2020 in Rome to determine the best ways to modify, amend or

extend the Zero Draft. He expressed his gratitude to Drafting Committee members Mr James Gathii, Mr Lorenzo Cotula and Ms Margret Vidar, noting their excellent work to implement the comments in the finalised draft.

187. *The President of UNIDROIT* gave the floor to Ms Priscila Pereira de Andrade (*UNIDROIT Secretariat*).

188. *Ms Pereira de Andrade* expressed her gratitude for the opportunity to present the final draft of the ALIC Guide, referring to colleagues that had previously worked on the guide, and expressing her gratitude to Governing Council member Mr Moreno Rodriguez. She pointed out that the ALIC Guide provided concise legal guidance to support the alignment of national legislation and the conduct of private investors with international law and voluntary principles and standards, as well as best international practices which promote more responsible agricultural land investment. She noted that the future Guide aimed to contribute to the implementation of soft norms adopted by international instruments, such as the VGGT, the CFS RAI Principles and the UN Guiding principles on business and human rights.

189. She highlighted that the ALIC Guide had been developed under the partnership between UNIDROIT, FAO and IFAD, which had also previously developed the Legal Guide on Contract Farming and would hopefully continue for the development of the new project on legal structures of agricultural enterprises. She recalled the intervention of FAO officer Ms Margret Vidar, who had underscored that the UNIDROIT/FAO/IFAD partnership aimed at further articulating private and public law instruments, with the intent to contribute to the achievement of a number of Sustainable Development Goals, such as those related to zero hunger, poverty reduction, empowerment of youth and women, environmental protection and protection of human rights, which in general strengthen the livelihood of smallholder farmers.

190. Regarding the content of the future ALIC guide, Ms Pereira de Andrade provided an overview of the content of the seven chapters: Chapter 1 on “The Legal Framework”, which addressed various sources of law that may be applicable to an ALIC, highlighting that the Guide may bridge certain gaps in the legal framework of the hosting State, through contractual reference to international best practices; Chapter 2 on “Parties and Contractual Arrangements”, which examined the potential contracting parties and other stakeholders, addressing the definition of “Legal and legitimate tenure right holders”, and also describing some of the possible contractual arrangements; Chapter 3 on “Significant Pre-Contractual Issues in ALICs”, describing each of the contractual stages and presenting some key elements of the pre-contractual process, also addressing the notion of “Free, prior and informed consent” (FPIC); Chapter 4 addressed the rights and obligations of the parties, also providing information related to investment protection, regulatory autonomy of the States and presenting the content that may be included in clauses related to monetary implementation and transparency; Chapters 5 and 6 on the management of the contractual relationship, addressed the issues that could appear during the implementation of the ALIC and analysed means to deal with non-performance, as well as presented the possible remedies for conflicting situations; and Chapter 7 on grievance and dispute resolution mechanisms.

191. Ms Pereira de Andrade also underscored the importance of the checklist of issues that had been included in Annex 1 of the Guide, which summarised the main guidance that the contracting parties and other stakeholders could consider when envisioning a responsible agricultural land investment. The Annex clearly established the steps and the actions to be taken when establishing the contractual relationship and noted that it could be useful for legal counsels that represent investors, governments or legal tenure right holders. To conclude, she drew the attention of the Council to the next steps that the Secretariat would undertake after the final approval of the ALIC by the Governing Council, as well as by the two partner organisations, the FAO and IFAD. She indicated the intention of the Secretariat to organise a launch event in 2021, with a one day workshop and the participation of the Working Group experts. To conclude, *Ms Pereira de Andrade* reiterated

her gratitude to her colleagues at UNIDROIT, to all the experts from FAO and IFAD, and to the experts of the Working Group.

192. *Mr Moreno Rodríguez* expressed his gratitude and congratulated the former Secretary-General of UNIDROIT, Mr Estrella Faria for his formidable and essential vision in the conception of the ALIC Guide. He also thanked the current Secretary-General, Mr Tirado, for his effective leadership in the project's final stages. He extended his acknowledgements to Mr Di Nicola, Ms Pereira de Andrade, Mr Neale Bergman and Ms Frédérique Mestre for their significant contribution to the work of the Secretariat. He noted that the ALIC Guide had been the result of three years of hard work and highlighted that its preparation had been an incredible journey and that he had been confident that the ALIC Guide would have a positive reception in the prestigious academic circles and in practice. Finally, he expressed what an honour it had been for him to Chair the Working Group and thanked all the members, expressing his favourable opinion for the approval of the document.

193. *The representative of FAO, Ms Margret Vidar*, congratulated all the people and organisations that had been involved in the project, highlighting that the Working Group had been an excellent mixture of contract law and land law experts, creating a partnership that had something new and which would make the ALIC Guide a ground-breaking instrument. She added that the Guide represented the importance of the collaboration within the three Rome-based agencies, and she had been extremely pleased with the process and with the result. She clarified that FAO had not yet formally approved the final draft, which was subject to review and approval through different channels. She added that there may be some small corrections, but stated that the organisation would probably approve it without major issues.

194. *The representative of IFAD, Ms Cynthia Colaiacovo*, thanked all the Governing Council's members and recalled her statement during the first day of the 99th session of Governing Council meeting. She expressed her gratitude and support for the UNIDROIT/FAO/IFAD Legal guide on ALIC. She recalled a number of questions that were usually raised regarding the role of the law in development and how attorneys could work towards a sustainable development, and stated that the Working Group had addressed those issues, in particular the role of legal security and juridical certainty for sustainable development. She noted that each year there had been an increase of ALIC to attract investments, improve security and create employment, which had been very positive considering the financing gaps in agricultural sector. She underlined that although welcomed, this investment came with a number of legal, social and environmental issues, which needed to be addressed to enable ALIC to serve as a tool for sustainable development and as an instrument accentuating contractual relationships.

195. Ms Cynthia Colaiacovo underscored the importance of providing such a comprehensive analysis of matters faced in ALIC - which may not be necessarily considered by the business community - especially regarding IFAD's commitment to the sustainable development agenda issues, such as gender, indigenous peoples, environmental and social assessments, human rights and others. She noted that sometimes even attorneys were not aware of the huge impact of contracting guidance tools, such as the ALIC Guide, in the world of rural development. She highlighted the relevance and opportunity of the ongoing collaboration with UNIDROIT, and noted that UNIDROIT had a great capacity to work with well-known experts, and their contribution reflected in the high quality of the work, as is the case of the ALIC Guide.

196. *The representative of UNCITRAL* noted his appreciation for this work and informed the Council members that UNCITRAL had been working on the possible reform of investor State dispute resolution mechanisms, and that the Working Group organises side events alongside with its meetings. He announced that, given the importance of this topic for the development of the agenda of UN system and the relation with the issue of dispute settlement, UNCITRAL would discuss, with UNIDROIT and the other Rome based organisations, opportunities to support the promotion of the ALIC Guide. He noted, for example, that UNCITRAL could share mailing lists of people who work in

governmental and in UN agencies on the reform of the investment dispute settlement mechanism; and which could have an interest in looking at the substantive law aspects of investment and the importance of what had been accomplished so far. He congratulated the Working Group for the work that had been done and reiterated UNCITRAL's support and interest in assisting the development of this project.

197. *The Secretary-General* remarked the extraordinary work that had been undertaken for the development of the ALIC Guide. Mr Tirado expressed his gratitude to the Governing Council, to the President, and also to the Secretariat for the approval of three instruments in one session. He acknowledged that it had been a result and a merit of the previous President and of the previous Secretary-General, who had led the work of these three projects for many years. Therefore, he congratulated Mr Estrella Faria and acknowledged the legacy of the late President Alberto Mazzoni.

198. *The Council expressed its appreciation for the finalisation of another joint project and approved the UNIDROIT/FAO/IFAD Legal Guide on Agricultural Land Investment Contracts, subject to possible minor adjustments during the process leading to the approval by the partner organisations.*

199. *The Council noted the prospective programme of activities for the implementation of the Legal Guide in 2020-2021.*

Item 11: International Interests in Mobile Equipment

200. *The Secretary-General* emphasised that the Cape Town system continued to grow. He noted that Zambia had recently acceded to the treaty and informed that the Cape Town countries represented almost 80% of the global population and 72% of the global GDP. He drew the Council's attention to the Aircraft protocol and noted that COVID-19 had caused a terrible crisis in the airline industry, creating extraordinary problems for airlines which had normally been borrowers in the Cape Town scheme. He reported that UNIDROIT had been vigilant and had been monitoring the development of the application and the respect of the treaty around the world. He reported, with appreciation, that the level of resilience and the degree of compliance with the treaty had been very good. He acknowledged that, after the pandemic crisis, the Cape Town instruments would be even more important to facilitate access to finance, to allow countries to grow again and to thrive based on enhanced legal certainty.

(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol ([C.D. \(99\) B.13](#))

201. *The Deputy Secretary-General* updated the Council on the developments regarding the Luxembourg Rail Protocol. She noted that, while the status of the Rail Protocol had not changed since the last session of the Governing Council in May 2019, the Secretariat had undertaken numerous activities to promote the implementation and entry into force of the Protocol, in cooperation with the Rail Working Group, the Ratification Task Force, as well the Intergovernmental Organisation for International Carriage by Rail (OTIF), and other organisations.

202. *Ms Veneziano* emphasised that the Protocol only needed one additional ratification/accession alongside the issuance by the Supervisory Authority of a certificate confirming that the International Registry is fully operational to enter into force. She reported that the Secretariat had been informed that work for ratification is progressing in several jurisdictions, noting that Spain had set up an interministerial commission, and legislative work towards the implementation of the Protocol. The United Kingdom had also indicated its intention to resume the process towards ratification with the launching of a public consultation in the course of 2020. As a result of the promotional activities undertaken by the Secretariat in cooperation with other institutions, as well as of the endorsement by the UN Economic Commission for Africa (UNECA) a number of African States had been actively considering the ratification of the Protocol. She referenced South Africa, Nigeria, Kenya and also the

Mauritius law reform commission, which had opened a consultation with relevant stakeholders with the participation of the Rail Working Group and the UNIDROIT Secretariat, and had submitted a report to the attorney general with a draft legislative text.

203. Acknowledging that the pandemic situation had understandably shifted the priorities of many governments, Ms Veneziano noted that the Secretariat had continued to liaise with the interested governments. She emphasised that this type of instrument would be exceptionally important for all economies post pandemic.

204. For further details on the conferences, seminars and meetings regarding the Luxembourg Rail Protocol held in 2019 and 2020, Ms Veneziano referred to the Annual Report and to the document [C.D. \(99\) B.13](#), which had been presented to the Governing Council. In particular, she highlighted the UNECA plenary meeting that had taken place in Marrakesh (Morocco) in March 2019, as well as the Fifth Week of the Programme for Infrastructure Development in Africa (5th PIDA Week) held in Cairo (Egypt) in November 2019 which had urged African States to ratify the Luxembourg Rail Protocol. She recalled the involvement of regional and global intergovernmental organisations, as well as academic bodies and governments of specific States in the organisation of a number of other events where the Secretariat and the Secretary-General had participated. She also mentioned the Luxembourg Rail Protocol event organised during the MAC Protocol diplomatic conference in Pretoria.

205. Ms Veneziano further noted that the EU had organised a number of events featuring the presentation of the benefits of the Luxembourg Rail Protocol, including a meeting held during the EU Working Party on Civil Law Matters at the EU Council, in Brussels, under the Finnish Presidency. She also reported that a workshop had been organised in Lagos (Nigeria) by Aston University and in cooperation with the Rail Working Group on 10 March 2020, noting that the Secretary-General and Mr Howard Rosen (Chairman of the Rail Working Group) had participated remotely, due to the Covid-19 outbreak.

206. To conclude, Ms Veneziano reported that a third edition of the Official Commentary on the Convention on International Interests in Mobile Equipment and the Luxembourg Protocol on Matters Specific to Railway Rolling Stock was being prepared by Professor Sir Roy Goode, and expected to be published in late 2021. She also noted that the UN Economic Commission for Europe (UNECE) Inland Transport Committee, upon recommendation of its Working Party on Rail Transport had approved the establishment of a Group of Experts on the Unique Rail Vehicle Identification System created by the Luxembourg Rail Protocol (URVIS) and had invited UNIDROIT to observe. She recalled that the Luxembourg Rail Protocol did not determine the way the URVIS number can be permanently fixed on the rolling stock, and the Group of Experts had been tasked with providing recommendations to solve this challenge, in conformity with current industry practice.

207. *Mr Hamza Hameed (UNIDROIT Secretariat)* updated the Council on the Space Protocol and noted that similarly to the Rail Protocol its status had not changed. He reported that the Secretariat had continued its efforts for the implementation of the Space Protocol and had been working with governments, international organisations, industry and academia to promote the treaty, and had been working towards the establishment of the infrastructure necessary to allow the treaty to enter into force. Recalling that in 2017 the members of the Space Preparatory Commission had agreed to constitute a subgroup to reassess industry participation for the promotion and development of the Space Protocol, Mr Hameed noted that the subgroup had met once since the last Governing Council session, in May 2019.

208. Mr Hameed also reported that the Space Protocol had featured in several high-profile events held in different parts of the world. In particular, he noted that the Secretariat had presented the Protocol at an event co-hosted by the US Department of State, the Thai Geo-Informatics and Space Technology Development Agency (GISTDA), and the Space Generation Advisory Council (SGAC) in Bangkok (Thailand) in August 2019, as well as at a joint conference on Space Law and Policy,

organised by the UN Office for Outer Space Affairs, the government of Turkey and the Asia-Pacific Space Cooperation Organisation, in Istanbul in September 2019. He highlighted that the Secretariat had delivered two lectures, via videoconference, to the students of the Advanced Master's LLM in Air and Space Law Programme at Leiden University.

209. Mr Hameed pointed out that the Secretariat had been conducting an industry survey on the impact of COVID-19 on space financing, and would report on its results at the next session of the Governing Council in 2021. He noted that the Secretariat had continued its work on establishing the international infrastructure, largely relating to the issues of appointing a supervisor authority and the establishment of an international legislative space protocol. To conclude, he noted that the Secretariat had continued to receive expressions of interest from various governments who had been considering using the financial mechanisms facilitated by the Space Protocol.

210. *The Council welcomed the information provided by the Secretariat on the Institute's depositary functions and, on the activities, undertaken for the promotion of the implementation of both the Luxembourg Rail Protocol and the Space Protocol.*

(b) Implementation and status of the MAC Protocol (C.D. (99) B.14)

211. *The Secretary-General* firstly noted that the implementation and status of the MAC Protocol ought to have been presented by senior legal officer Mr William Brydie-Watson, who unfortunately had not been able to join the Governing Council meeting in person. He then recalled that in 2018, at its 97th session, the Governing Council had approved the convening of the MAC Diplomatic Conference, noting that between the years 2018 and 2019 the Secretariat and many members of the Governing Council had engaged in a number of activities to prepare for the event, organising and executing more than 32 regional and international consultation events. He highlighted that the summary of all the events that had been organised were in the 2019 Annual Report and in document [C.D. \(99\) B.14](#).

212. In addition, he noted that the Secretariat had also released an independent economic analysis and an in-depth legal analysis of selected issues to further facilitate the process of the Diplomatic Conference. A small group of experts had been convened to ensure that all the possible elements of friction of the text had been at least thoroughly analysed in preparation for Pretoria. He noted that the work conducted by the small group of experts had contributed to streamline the negotiations.

213. Mr Tirado recalled that the MAC Diplomatic Conference had taken place from the 11th to the 22nd of November 2019 and that over 150 delegates from 42 states, one regional organisation, 3 intergovernmental organisations, 4 non-governmental international organisations and some experts had attended as observers. He noted that Ms Sandea de Wet (South Africa) had been elected as the President of the Conference, Mr Dominique D'Allaire (Canada) had served as the Chair of the Commission of the Whole, and Sir Roy Goode (United Kingdom) had been nominated as the Reporter. It was the Secretariat's opinion that the result of the Conference had been an absolute success. In addition, he noted that the negotiations had taken place in an open, positive and collaborative spirit.

214. In terms of the adopted text, the Secretary-General drew the Council's attention to four articles that had changed compared to the original text discussed in Pretoria. He outlined article 7, which concerned the priority of international interest over equipment which had comeled or integrated with an immovable asset; article 8 under which contracting States had been given the right to opt out of making it compulsory for their relevant administrative authorities to, in a very expedient manner, allow for the export of the asset; article 10 which had eliminated options b and c existing in previous versions of the Protocol in case of insolvency of the borrower; and article 12 in which contracting States had been allowed to opt out of the Protocol's application to equipment held as inventory by a dealer. The Secretary-General highlighted that four states had signed the Protocol upon adoption: the Republic of Congo, Republic of Gambia, Republic of Paraguay and Republic of

Nigeria. He recalled that 20 additional States had expressed their support for the treaty during the signing ceremony and had declared their intention to start the process leading to ratification and signature of the MAC protocol.

215. Based on the final resolution of the Conference, Mr Tirado noted that the Secretariat had been given 90 days to undertake the verification process of the texts, as well as to review and compare the English and the French texts. In the case of the English version and also the equivalent French, the Secretariat had identified a minor error in article 19. Taking into account article 79 of the Vienna Convention on the Law of Treaties, he noted that the Secretariat had amended this error and had circulated the text for comments not only to signatory States, but also to a wider range of countries that had participate in the Drafting Committee of the Diplomatic Conference. He informed that the error-correction process had been finalised, and the text had been consolidated both in French and in English.

216. The Secretary-General explained that, following the final resolutions, the Secretariat had established the Preparatory Commission of the MAC Protocol, which would be acting as the Provisional Supervisory Authority until the Protocol enters into force. The three main responsibilities of the Preparatory Commission included the selection of a Registrar to operate the MAC Protocol International Registry; work towards the establishment of a Supervisory Authority; and the preparation of the first edition of the International Registry Regulations. The *Secretary-General* announced that the Preparatory Commission had already met and a second meeting was in the process of preparation.

217. *Mr Gabriel* recalled that he had had the privilege of being in Pretoria, representing the US and also that he had introduced the proposal for the MAC Protocol to UNIDROIT fourteen years ago. He expressed his gratitude to the members of the Governing Council who had understood the importance of the Protocol and had kept it on the Work Programme for years. He recognised the importance the Protocol would have to get capital assets to developing economies and announced that the US government would be signing the MAC Protocol soon.

218. *Mr Bollweg* noted that the finalisation of the fourth protocol represented the right time for some general thoughts and remarks. He expressed the need to analyse and reassess the situation and to draw consequences for the future after twenty years of negotiations, recalling that he had been one of the strongest supporters of the project from the very beginning in 1999. In his opinion, the Aircraft Protocol had gained its unique success due to the financial support that the Working Group and Mr Jeffrey Wool had from the aircraft industry to promote the instrument. He opined that the other Protocols had not been as successful as the first two instruments for different reasons, which all related to the industry. He noted that the finalisation of the Space Protocol had also been contrasted by the industry, noting that even if it had been adopted, the establishment of the ITU as a supervisory authority had failed in 2019, and that the Preparatory Commission had not opened the request for applications to run the international registry. He also queried if the advisory board of the Aircraft Protocol would allow the aircraft registry to extend the registration to space assets in future. Mr Bollweg highlighted the difficulty to identify other States willing to join Germany in its efforts for its promotion of the Space Protocol.

219. In relation to the MAC Protocol, *Mr Bollweg* drew the Council's attention to the final part of the Diplomatic Conference where, in his opinion, the strongest part of the industry, the representatives of the creditors, had pushed for the initiative to deviate from the well-functioning system of all the other protocols, deleting the different options of insolvency remedies from the text, and only keeping the most creditor-friendly option in the text. Consequently, he noted that the final text had not been consistent with the fair balance between the creditor and debtor interests and might prevent States from ratifying in the future. He expressed his concern that the Diplomatic Conference had opposed delegations that had argued against these changes and thus hesitated to support the MAC Protocol. Mr Bollweg, recommended preventing one-sided influence on future

protocols from parts of the industry aiming to accomplish their own financial interests in the interest of the future Work Programme.

220. *Ms Sabo* noted that Canada was a party to the Aircraft Protocol and recognised its success, whereas the Rail Protocol had not raised the same kind of interest from a North American perspective, though she believed that there may be potential in other continents. While noting that she had never been a strong supporter of the Space Protocol, she recalled that she had not been a strong supporter for the MAC Protocol for different reasons. However, given the interest that had been expressed during the drafting process and the Diplomatic Conference she confirmed that, in her opinion, the MAC Protocol had some potential for success. She noted it would be worth investing the effort in its promotion. She congratulated the Secretariat on the work undertaken for the elaboration of the Convention and for its promotion, in particular with respect to the MAC Protocol. She also expressed her gratitude for the careful management of the process which had led to minor amendments.

221. The *Secretary-General* thanked Mr Bollweg for his remarks and, respectfully, expressed disagreement. He firstly noted that the Diplomatic Conference had taken place in a very good environment and that the negotiations had been clear, open, and collegiate. He recalled that the German delegation had been instrumental to the drafting of the vast majority of the articles of the Protocol and reiterated that they had been a very important delegation. He noted that the eliminations that Mr Bollweg had referred to related to article X, where only "option A" and national law had been retained. He recalled that one of the observers had made the proposal for elimination of Options B and C and the represented States had decided to accept it. Then, he explained, that from a procedural point of view there had been a petition for a review of the decision the following day, and a majority of States had to agree to revise the vote over an article which had already been closed. He clarified that there had been not enough support by the states to reconsider, as had been reported in the proceedings of the Conference.

222. From the material side, the Secretary-General highlighted that he disagreed with Mr Bollweg's affirmation that the only option left in the Convention had been the one that protects creditors, because that had not been the case. He emphasised that article X had included "option A" or an "opt-out option" which implied that each country could apply its own national law. Therefore, each country was fully free to decide for a more pro-debtor or pro-creditor decision. He reiterated that there would absolutely be no imposition on any country. From his personal point of view as an academic and not as the Secretary-General of UNIDROIT, Mr Tirado expressed his doubts about "option B" or "option C" being a more debtor-friendly option than "option A". He noted he would be happy to further exchange in a different fora. He defended the Secretariat's position of neutrality in the Conference and conveyed to the members of the Governing Council who had not been in Pretoria there that it had not been a difficult and contentious Conference at all.

223. To conclude, the Secretary-General recalled the high priority mandate that the Secretariat had received to implement its own instruments, be it the Rail Protocol, the Space Protocol, the MAC Protocol or the Aircraft Protocol. Mr Tirado queried whether Mr Bollweg had expressed a general reflection or if he was suggesting that the Secretariat might stop promoting Cape Town, in which case the entire Governing Council would have to express its will.

224. The *President of UNIDROIT* opened the floor for questions and comments.

225. *Mr Bollweg* clarified that the central point of his intervention had been to raise the issue concerning the influence of the industry and how they interact with governments and conferences. He reiterated the need to analyse how to proceed as far as it concerns future protocols which are already included in the Work Programme.

226. *Mr Gabriel* drew the attention of the Council to the economic assessments that had been carried out related to the MAC Protocol that highlighted its potential economic benefits. He

emphasised the need to promote the Protocols and the MAC Protocol in particular. He noted that the MAC Working Group and the industry organisations that had been involved in the development of the MAC Protocol had been very supportive. Mr Gabriel also noted that, in his opinion, the MAC Protocol would potentially be one of the most important instruments that UNIDROIT had developed in decades.

227. *Mr Moreno Rodriguez* echoed that he fully agreed with Mr Gabriel's statement, and considers that the MAC Protocol would potentially be the one of the most important instruments that UNIDROIT had developed in decades.

228. The *President of UNIDROIT* highlighted that the Secretariat would continue to promote the instruments of UNIDROIT, including the Cape Town Convention and its Protocols. Ms Malaguti noted that the Secretariat would bear the discussions held in mind. In relation to the role of industry, she noted that this issue appears recurrently also in the work of other organisations. She emphasised that the involvement of industry during negotiations had nothing to do with any organisation, because generally the States were the ones that involved the industry. She reiterated that it was a generalised issue and noted that the strength of organisations like UNIDROIT or UNCITRAL had been precisely the participation of the industry as observers to keep the process transparent. She noted that the success of the legal instruments adopted depended not only on the quality of the instrument, but also on the economic interest it generated. She emphasised the complexity of the discussion and noted that all instruments should favour multilateralism and shared opinions.

229. *The Council commended the Secretariat for the outcomes of the Diplomatic Conference and noted the update regarding the activities held after the Conference and the results of the first meeting of the Preparatory Commission.*

Item 12: International protection of cultural property: the 25th anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and Project on the Private Art collections (C.D. (99) B.15)

230. *The Secretary-General* announced the celebration of the 25th anniversary of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which had 48 contracting States in total. He noted that 4 new States had accessed the Convention in 2019. He acknowledged the efficiency and enormous work that had been undertaken by the Principal Legal Officer and Treaty Depository Ms Marina Schneider. He noted that the celebration of the Convention would occur in a "hybrid" format and reported that a publication of a book with substantial legal analysis of the most important topics would be forthcoming.

231. *Ms Marina Schneider (UNIDROIT Secretariat)* thanked the Secretary-General for the introduction and updated the Council on the progress since the last Governing Council session in 2019. She reiterated that the Convention had 48 States parties and reported that many other States had begun the ratification procedure. She noted that in July 2019 the Secretariat had had the pleasure of welcoming the Bulgarian Minister of Culture, Mr Boil Banov, who had confirmed his country's decision to accede to the 1995 UNIDROIT Convention. She noted that she had met with the Minister of Culture of Lebanon, Mr Mohammad Daoud in Beirut in June 2019, who had also shared the interest of acceding to the Convention. The Secretariat had worked in different parts of the world for the implementation and for the promotion of the Convention for more ratifications. The Ministers of Culture of the Economic Community of West African States (ECOWAS) adopted an Action Plan 2019-2023 for the restitution of cultural objects to their country of origin, calling for an early ratification of the 1995 UNIDROIT Convention. As a result, she reported that two countries, Benin and the Republic of Niger, had made progress in their ratification procedure. Ms Schneider also mentioned that the Secretariat had been working closely with other countries, such as Togo and Côte d'Ivoire, as well as with the African Union.

232. Ms Schneider noted that UNIDROIT had continued its collaboration with ICCROM (more particularly with the ICCROM Office in Sharjah, United Arab Emirates). She highlighted that some training in that region would take place on the general instruments of heritage protection and to promote UNIDROIT in particular. She announced a new collaboration with the Islamic World Educational, Scientific and Cultural Organization (ICESCO). Noting that most of the instruments developed by the EU in this field had been inspired by the UNIDROIT Convention, Ms Schneider reiterated that the Secretariat continued its work with the EU to further promote the Convention. She expressed her gratitude to UNESCO, which had supported UNIDROIT since the very beginning and with which UNIDROIT had held many training sessions in 2019 in many countries including Bangkok, Kuwait, Seychelles, Djibouti and Yemen, and training with the Carabinieri in Rome. In 2020, Ms Schneider noted that UNIDROIT had participated in a regional training seminar organised by UNESCO in Jamaica for the Caribbean countries. She reported that UNIDROIT would have participated in training sessions in Cote d'Ivoire and in the Balkans, which had been postponed due to the pandemic.

233. Ms Schneider noted the importance of political will to become a party to the Convention and in this regard she informed that a UNIDROIT Ratification Working Group existed and had already met in New York. She emphasised, therefore, that UNIDROIT had continued to expand its collaborations with new partners going beyond the usual partners. In this context, she noted the partnership with the UNIDROIT Foundation to develop a registry for transactions of cultural objects. UNIDROIT had been invited to participate and support projects undertaken by many other organisations, in particular, three projects financed by the EU.

234. She drew the Council's attention to the collaboration that UNIDROIT had with the Carabinieri for the creation of a training methodology for European Common Security and Defence Policy missions that wish to provide training on cultural objects. She also mentioned the collaboration that UNIDROIT had established within a European project for Latin America countries, the El PacCTO which is designed for magistrates. Ms Schneider shared the idea of further connecting the cultural property projects with other projects that had been included in the 2020-2022 Work Programme, such as the project regarding Best Practices of Effective Enforcement. She noted that a number of the activities had been held in the context of the Academic Project on the 1995 UNIDROIT Convention (UCAP).

235. In regard to the 25th anniversary of the UNIDROIT Convention, Ms Schneider regretted that the celebration would not take place in person but emphasised that organising the Conference on a "hybrid" format would permit a larger audience to attend. She drew the Council's attention to the challenge that the Convention had to face to achieve and maintain the balance between the protection of cultural objects and licit trade and cultural exchanges. She noted that the challenge remained and reiterated the importance of regulating the art market for legal certainty and financial security of operations to ensure the protection of cultural objects. She noted that the Conference aimed at opening the debate about where countries found themselves in this process of regulation. She outlined the programme of the Conference noting that it would, among other topics, address the importance of uniform law in this field; the interplay of different instruments; access to justice and the use of non-judicial dispute resolution mechanisms.

236. To conclude, Ms Schneider updated the Council on the Private Art Collections project, noting that it had been in the Work Programme for some years with a low priority. She reported that the Secretariat had raised awareness among art collectors for ethical acquisitions, noting for example that UNIDROIT had participated in a Conference organised in Gdansk by a partner of the Academic Project. She announced that UNIDROIT, the Fondation Gandur pour l'Art and the Geneva UNESCO Chair in the International Law of the Protection of Cultural Heritage would organise a colloquium in February 2021 on the subject of "Orphan Works", noting that the idea would be to identify legal issues that could be examined in a second seminar that could eventually be held in Rome at the end of 2021. Ms Schneider noted that the topic of private art collections would also be presented at the 25th Anniversary Conference.

237. The *President of UNIDROIT* opened the floor for questions and comments.

238. *Ms Sabo* expressed her gratitude and congratulated *Ms Schneider* for her report and for the work that she had undertaken in 2019. Noting that the Institute had several commercial law related topics in the Work Programme, she drew the Council's attention to the importance of the work in the field of cultural property protection and emphasised that it should not be underestimated. Regarding the Conference for the 25th anniversary of the Convention she echoed the positive aspect of holding it on a "hybrid" format, since it would broaden the participation.

239. *Ms Pauknerová* noted that the Czech Republic was still in the process of acceding to the Convention and noted the Minister of Culture had submitted a proposal of a Special Implementation Act for more administrative cooperation. She recalled the discussion that had been held during the Governing Council session regarding the interplay between public and private law in UNIDROIT activities, to emphasise that this challenge also applied to the return of illegally exported or stolen cultural objects.

240. *The representative of UNCITRAL, Mr Estrella Faria*, underlined the remark that had been made by *Ms Sabo* on the importance for UNIDROIT to have line of work not purely related to commercial law. Apart from the issues of dispute settlement, which had been object of a proposal in the past but that had not been followed up on, *Mr Estrella Faria* noted that the issue of the law applicable to the sale contracts of art objects would potentially be a point of convergence between UNIDROIT and UNCITRAL to be further considered in the future. He explained that this had not been expressly excluded from the UN Convention on Contracts for the International Sale of Goods (CISG). The CISG did exclude goods bought by auction; intellectual property and objects bought for personal purposes, but he reiterated there had been no legal argument to sustain that the international sale of a cultural object would not be covered by the CISG. He drew the Council's attention to contracts that had been agreed on the internet to note the interesting issues that arise regarding warranties of authenticity, of quality of the restoration, warranties as to the legality of the sale, and related to its provenance. He, therefore, emphasised that this could be a possible subject for future research by UNIDROIT and UNCITRAL would be interested in cooperating. He, finally, congratulated UNIDROIT for the celebration of the 25th anniversary of the Convention, noting that it had been a successful instrument not only in terms of the number of ratifications but also for its practical impact on legislations around the world.

241. *The Secretary-General* thanked the representative of UNCITRAL for his proposal and noted that both Secretariats could liaise to further define the scope of the proposal and eventually share it with their respective Governing Bodies.

242. *The President of UNIDROIT* expressed her gratitude to the Secretariat for all the work undertaken.

243. *The Governing Council congratulated UNIDROIT for the 25th anniversary of the 1995 Convention on Stolen or Illegally Exported Cultural Objects and took note with appreciation of the activities undertaken and partnerships developed for its promotion.*

244. *The Council took note of the further work to be done on private art collections to examine the subject and to raise awareness among private collectors about ethical acquisition.*

Item 13: Q&A on documents that will not be presented orally at the Governing Council

245. *The President of UNIDROIT* noted that the Council had concluded the issues included in the agenda for detailed discussion. *Ms Malaguti* explained that the Secretariat had also carried out several other activities but because of the time restraint imposed by the "hybrid" format of the session those activities had not been included in the agenda for discussion. She noted, however, that the Council

members could ask the Secretariat for clarifications if they deemed necessary. Otherwise, she proposed the Secretariat to briefly present the remaining topics.

(a) Update on the publication of the Principles of Reinsurance Contracts and future work ([C.D. \(99\) B.16](#))

246. *The Deputy Secretary-General, Ms Anna Veneziano*, announced that the first part of the Project had ended in 2019 with the publication of the instrument. She recalled that the members of the PRICL Working Group had undertaken further actions, in particular to provide for translations. She, however, underlined that all the work related to the second part of the Project had been suspended because of the current Covid-19 pandemic reporting that the second part of the Project would be presented in March 2021.

247. The Council took note of the progress of the work of the PRICL Working Group following the publication of the Principles of Reinsurance Contract Law and welcomed the information regarding the process of future translations of the text.

(b) UNIDROIT Library and research activities ([C.D. \(99\) B.17](#))

248. *Ms Bettina Maxion (UNIDROIT Secretariat)* reported that the work of the Library had progressed on the digitisation project of library materials. In 2019, 664 monographs had been digitalised, including 389 titles of the Gorla collection, 275 titles from, in particular, the 'Chiomenti collection' and various other titles regarding comparative law and unification of laws. She noted that these numbers would have been higher if 2020 had been taken into consideration. She underlined that special attention had been given to the preservation of the Gorla collection, one of the rarest and most valuable collections of the Library. She noted that the Library had also continued to follow the strategy of "scan on demand", as agreed at the Governing Council session in 2018. Accordingly, she explained that the digitisation of less sought-after materials could be postponed.

249. Ms Bettina Maxion noted that, besides the digitisation project, the library had undertaken measures to preserve the Gorla collection to protect it from sunlight and humidity, with the purchase of more adequate shelves to preserve the volumes.

250. The list of law reviews to which the library subscribed had been completely revised. Regarding the collaborations with academic institutions, new Memorandums of Understanding had been signed with the International Institute for Air and Space Law at Leiden University (the Netherlands), the University of Nottingham School of Law (United Kingdom), Shanghai University of Political Science and Law (SHUPL) (P.R. China), Université Clermont Auvergne (France), the International Training Centre of the International Labour Organization (Italy), the International Bar Association (IBA), and the Comité Americano de Derecho Agrario (Costa Rica).

251. Additionally, she underscored that a Memorandum of Understanding had been signed between UNIDROIT and the Ministry of Commerce of the People's Republic of China (MOFCOM) regarding the sponsoring of China-funded Junior Professional Officers (JPOs) at the UNIDROIT Secretariat. Under this agreement, a JPO would be sponsored by MOFCOM to work as a Legal Officer at the UNIDROIT Secretariat for a period of 2 years.

252. Regarding the activities of the Library, she noted that in 2019 the library had received 1135 visitors and hosted 68 scholars and researchers from 32 different countries. Most of the scholars and researchers had often been funded by their university, or under cooperation schemes with academic institutions. In 2019, ten scholars had been awarded a grant under the Scholarship Programme thanks to contributions from MOFCOM, the UNIDROIT Foundation, as well as from members of the UNIDROIT Governing Council. She drew the Council's attention to the 2019 Annual Report ([C.D. \(99\) B.2](#)) which contained a full presentation of the Scholarship Programme and its beneficiaries in 2019.

On behalf of the Secretariat, she expressed her gratitude to all the donors and hoped for the renewal of their financial commitment.

253. In 2019, the Secretariat had organised a series of lectures and presentations on topics related to the Scholars' areas of research, which had been attended by members of UNIDROIT Secretariat, guests that had been in the Library, as well as by interested experts which had been expressly invited to participate. She mentioned two of these lectures: Professor Guo Yu (Law School, Beijing University, PRC), had delivered a lecture entitled "The electronic delivery in international trade: the recently adopted UNCITRAL Model Law on Electronic Transferable Record (MLETR)" and Professor Lionel D. Smith (Faculty of Law, McGill University, Canada) had delivered a guest lecture entitled "Acting for Others in Law".

254. Finally, she noted that UNIDROIT's internship programme hosts a number of interns each year to participate in the work of the Secretariat and, in 2019, 25 researchers had been welcomed as interns.

255. *The Governing Council took note of developments regarding the Library, the internship and scholarships programmes, and supported the activities undertaken for the digitisation of the library's collections.*

(c) UNIDROIT information resources and policy (C.D. (99) B.18)

256. Introducing this item on the agenda, Ms Lena Peters (UNIDROIT Secretariat) explained that the statistical data contained in the document, particularly regarding the website, had not included information relating to the period between 16 February 2020 and the date of the mailing of the document to Council members. She noted that the reason had been to permit a comparison of the data year-by-year, to analyse how, for example, consultation of the website and its various pages had developed.

257. She remarked that information regarding publications and information on the circulation of the *Uniform Law Review* in 2019 had been included in the document. She noted that the consultation of the Review pages on the Oxford University Press (OUP) website had been fairly stable and increases in subscription had been done mainly through the collection subscriptions. She noted that unfortunately it had not been possible to see which of the reviews in those collections had been consulted, how often and for how long. She reported that the Review had, however, received more and more articles sent spontaneously by authors from African countries, both in English and in French, especially the latter.

258. Up until the date of the Council, no publications had been printed in 2020 and this had been partly due to the COVID-19 lockdown, which had lasted from early March to mid-May. She informed the Council that the printer used by the Institute had still been active and, once the restraints on travel had been lifted, the booklets distributed at conferences during duty-travel meetings would be re-printed and the printing plans for 2021 prepared.

259. On the first edition of Professor Goode's Official Commentary on the MAC Protocol to the Cape Town Convention, Ms Peters noted that the draft had been sent out for comments, and the third edition of the Official Commentary on the Luxembourg Rail Protocol to the Cape Town Convention would be printed hopefully on time for the next session of the Governing Council. She noted that the ALIC Guide would be printed under an arrangement similar to that agreed upon with the FAO and IFAD for the Contract Farming Guide, and that the ELI/UNIDROIT Rules were due to be published by OUP, with which the ELI had a contract. The possibility of publishing these instruments in electronic format on the UNIDROIT website would be negotiated with the partner organisations.

260. Ms Peters indicated that, in principle, the Secretariat had been favourable to electronic publishing and the selling of the electronic versions of UNIDROIT publications, and hence was

considering a re-launch the some publications in such manner. She recalled that this had been how both the third and the fourth editions of the Official Commentary on the Cape Town Convention and Aircraft Protocol had been prepared for Aviareto, the company running the International Registry. The linked third edition had been well received. Another candidate for such a treatment had been the Principles of International Commercial Contracts, which potentially would have very many links. Consultation of the Principles by the lawyers using them would be greatly facilitated.

261. Ms Peters reported that the Secretary-General had launched the idea of re-vamping the website, making it more attractive and modern-looking. She noted that some time would be necessary to reconcile content with aesthetic attractiveness. In addition, she noted that the Secretariat had been in the process of scanning the documents of the studies carried out by the Institute in the course of its 94-year history. The new projects had been fully accessible on the website, but many of the other studies, and also administrative documents (Governing Council or General Assembly), had still been accessible only on paper.

262. Lastly, Ms Peters recalled that document [C.D. \(99\) B.18](#) listed the translation of the Principles into Latvian, Portuguese and Russian that were underway and asked the Council members responsible for those translations if they had any information on their status.

263. Replying to Ms Peters' question, Ms Broka informed the Council that the translation of the UNIDROIT Principles into Latvian was almost complete and its publication would be expected within the following two months.

264. *The Council took note of the development of the information resources policy, including the plans for future publications, the modernising of the website and the initiation of electronic publishing.*

(d) Measures taken by the UNIDROIT Secretariat in relation to the COVID-19 Pandemic ([C.D. \(99\) B.19](#))

265. *The Council took note of the actions taken by the Secretariat during the COVID-19 pandemic and its impact on the activities of the Secretariat.*

(e) Report of the Secretary-General on the implementation of the new compensation and social security scheme applicable to UNIDROIT staff ([C.D. \(99\) B.20](#))

266. *The Council took note of the update regarding the implementation of the new compensation and social security scheme applicable to UNIDROIT staff and approved the proposal made in the Report of the International Service for Remunerations and Pensions (ISRPP) – CAF (Committee for the Administration of Funds).*

Item 14: Date and venue of the 100th session of the Governing Council ([C.D. \(99\) B.1 rev](#))

267. *The Council agreed that the 100th session of the Governing Council should be held from 19 – 21 May 2021, at the seat of UNIDROIT in Rome.*

ANNEXE I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS**(Rome, 23 – 25 September 2020 / *Rome, 23 – 25 septembre 2020*)**MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

Ms Maria Chiara MALAGUTI	President of UNIDROIT / <i>Présidente d'UNIDROIT</i>
Mr Hans-Georg BOLLWEG <i>(remotely)</i>	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 <i>(remotely)</i>	Professor of Law İbn Haldun University School of Law İstanbul (Turkey)
Mr Alfonso-Luís CALVO CARAVACA <i>(remotely)</i>	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 <i>(remotely)</i>	Conseiller d'Etat Professeur de droit Université Panthéon-Assas Paris II Paris (France)
Mr Eesa Allie FREDERICKS <i>(remotely)</i>	Academic Deputy Director Research Centre for PIL in Emerging Countries University of Johannesburg Johannesburg (South Africa)
Mr Henry D. GABRIEL <i>(remotely)</i>	Professor of Law School of Law Elon University North Carolina (United States of America)
Mr Arthur Severijn HARTKAMP <i>(remotely)</i>	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 (<i>remotely</i>)	Professor of Law School of Law Ewha Womans University Seoul (Republic of Korea)
Mr Hideki KANDA (<i>remotely</i>)	Professor Law School Gakushuin University Tokyo (Japan)
Mr Patrick KILGARRIFF (<i>remotely</i>)	Legal Director Department for Business, Energy and Industrial Strategy London (United Kingdom)
Mr Alexander S. KOMAROV (<i>remotely</i>)	Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation)
Mr Antti T. LEINONEN (<i>remotely</i>)	Director General Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland)
Mr Ricardo L. LORENZETTI (<i>remotely</i>)	Chief Justice Supreme Court of Justice Presidente de la Corte Suprema de Justicia de la Nación Buenos Aires (Argentina)
M. Niklaus D. MEIER (<i>remotely</i>)	co-chef de l'Unité de droit international privé Office fédéral de la Justice Bern (Suisse)
Mr Attila MENYHÁRD (<i>remotely</i>)	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 (<i>remotely</i>)	Professor of Law Attorney Asunción (Paraguay)
Ms Monika PAUKNEROVÁ (<i>remotely</i>)	Professor of Private International Law and International Department of Commercial Law Charles University, Faculty of Law

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Ms Kathryn SABO (remotely)	General Counsel Constitutional, Administrative and International Law Section Department of Justice Canada Ottawa, Ontario (Canada)
Mr Jorge SÁNCHEZ CORDERO (remotely)	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)
Mr Luc SCHUERMANS (remotely)	Professor Emeritus Universiteit Antwerpen Law School Antwerpen (Belgium)
Ms SHI Jingxia (remotely)	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 (remotely)	Professor of Law Doctoral Supervisor - International Trade Law "Alexandru Ioan Cuza" University Iasi (Romania)
Ms Francesca VILLATA (remotely)	Full Professor Department of International, Legal, Historical and Political Studies Università degli Studi di Milano Milan (Italy)
	<i>Representing Ms Stefania Bariatti</i>

OBSERVERS / OBSERVATEURS

BANK OF ITALY / <i>BANQUE D'ITALIE</i> (remotely)	Mr Marino Ottavio PERASSI General Counsel Rome (Italy)
EUROPEAN BANKING INSTITUTE (remotely)	Mr Marco Lamandini Academic Vice Chair Frankfurt am Main (Germany)
EUROPEAN LAW INSTITUTE (ELI)	Ms Christiane WENDEHORST President Vienna (Austria)

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Ms Patrizia DE LUCA
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Mr Christophe BERNASCONI
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OTHERS / AUTRES

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Mr Hamza HAMEED	Consultant

ANNEXE II**EN**

GOVERNING COUNCIL
99th session (B)
Rome, 23-25 September 2020

UNIDROIT 2020
C.D. (99) B.1 rev.
Original: English
August 2020

ANNOTATED AGENDA

Adoption of the annotated draft agenda (C.D. (99) B.1)

Appointment of First and Second Vice-Presidents of the Governing Council (C.D. (99) B.1)

Reports

Annual Report 2019 (C.D. (99) B.2)

Report on the UNIDROIT Foundation

Update and determination of scope of certain projects on the 2020-2022 Work Programme:

- (a) Best Practices of Effective Enforcement (C.D. (99) B.3)
- (b) Work on Artificial Intelligence, Smart Contracts and DLT (C.D. (99) B.4)
- (c) Legal Structure of Agricultural Enterprises (C.D. (99) B.5)
- (d) Bank Insolvency (C.D. (99) B.6)

Model Law on Warehouse Receipts (C.D. (99) B.7)

Development of a Model Law on Factoring (C.D. (99) B.8)

UNIDROIT instruments in the COVID-19 pandemic (C.D. (99) B.9)

Transnational civil procedure: Adoption of ELI-UNIDROIT regional rules (C.D. (99) B.10)

International Sales Law: Adoption of Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) (C.D. (99) B.11)

Private Law and Agricultural Development: Adoption of a Legal Guide on Agricultural Land Investment Contracts (C.D. (99) B.12)

International Interests in Mobile Equipment

- (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (99) B.13)
- (b) Implementation and status of the MAC Protocol (C.D. (99) B.14)

International protection of cultural property: the 25th anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and Project on the Private Art collections (C.D. (99) B.15)

Q&A on documents that will not be presented orally at the Governing Council:

- (a) Update on the publication of the Principles of Reinsurance Contracts and future work (C.D. (99) B.16)
- (b) UNIDROIT Library and research activities (C.D. (99) B.17)
- (c) UNIDROIT information resources and policy (C.D. (99) B.18)
- (d) Measures taken by the UNIDROIT Secretariat in relation to the COVID 19 Pandemic (C.D. (99) B.19)
- (e) Report of the Secretary-General on the implementation of the new compensation and social security scheme applicable to UNIDROIT staff (C.D. (99) B.20)

Date and venue of the 100th session of the Governing Council (C.D. (99) B.1)

Any other business

Workshop on the ELI-UNIDROIT Model European Rules of Civil Procedure

ANNOTATIONS

1. The second meeting of the 99th session of the Governing Council will be held at the seat of UNIDROIT, with the possibility of participating via video conference, on 23-25 September 2020. In order to accommodate participation across as many time zones as possible, meeting hours shall be from 1 p.m. to 5 p.m. CET. A conference and webinar on the ELI- UNIDROIT Model European Rules of Civil Procedure will be held as a closing event.

Item No. 2 – Appointment of First and Second Vice-Presidents of the Governing Council

At its annual sessions since 1977, the Governing Council has elected a First and a Second Vice-President who, in accordance with Article 11 of the Regulations of the Institute, will hold office until the following ordinary session, which is convened once a year. At present, the post of First Vice-President is occupied by the *doyen* of the Council and that of Second Vice-President by one of the most senior Council members, the latter on the basis of the criterion of rotation since 1994.

Rules of Procedure governing the first meeting of the 99th session appointed Mr. Arthur Hartkamp as First Vice President, and Mr. Alexander Komarov as Second Vice President. The Secretariat would propose the same composition for the second part of the session.

Item No. 13 – Date and venue of the 100th session of the Governing Council

The Governing Council may wish to consider holding its 100th session on 12 to 14, 19 to 21 or 26 to 28 May 2021.