



**EN**

**GOVERNING COUNCIL**  
**100<sup>th</sup> session (A)**  
**Remote session April/May 2021**

UNIDROIT 2021  
C.D. (100) A.2  
Original: English  
April 2021

**Item No. 2 on the Agenda: Update on ongoing activities**

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Summary of main activities and progress of ongoing projects since the 99<sup>th</sup> session of the Governing Council, pending full update in session B which will be held in September 2021</i>
<i>Action to be taken</i>	<i>None</i>
<i>Related documents</i>	<i>linked within text</i>

**INTRODUCTION**

1. The Work Programme of UNIDROIT for the 2020-2022 triennium covers a number of topics originally recommended by the Governing Council for inclusion in the Work Programme at its 98<sup>th</sup> session (Rome, 8-10 May 2019) and approved by the General Assembly at its 78<sup>th</sup> session (Rome, 12 December 2019) (see document [UNIDROIT 2019 – A.G. \(78\) 12, paras. 38-51](#)).
2. After the approval by the General Assembly, the Secretariat received a proposal to include the topic of Warehouse Receipts in the Work Programme, which would consist in the drafting of a Model Law on Warehouse Receipts, and would be conducted jointly with UNCITRAL. The proposal was presented and discussed at the 99<sup>th</sup> session of the Governing Council (see [UNIDROIT 2020 C.D. \(99\) A.8](#)), which unanimously agreed to recommend that this new item be included in the Work Programme by the General Assembly at its 79<sup>th</sup> session (see [UNIDROIT 2020 A.G. \(79\) 3](#)). Until its approval by the General Assembly, work on the matter had been purely preparatory in nature, demanding little to no resources of the Institute. Upon the General Assembly's approval, the new item was placed under letter (d) of item 1. Secured Transactions.
3. Pending a full discussion of the entire Working Programme during the second part of the 100<sup>th</sup> session of the Governing Council, planned for September 2021, this document provides a summary indication of action taken since last September 2020 in some of the ongoing activities.

## 1. Secured transactions

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

#### Rail Protocol

4. Following the 99<sup>th</sup> session of the Governing Council held on 23 – 25 September 2020, the Secretariat has continued its activity of promoting the entry into force of the Luxembourg Rail Protocol of the Cape Town Convention, in cooperation with the Intergovernmental Organisation for International Carriage by Rail (OTIF), the Rail Working Group and the Ratification Task Force.

5. On 8 April 2021, OTIF and UNIDROIT jointly held the 9th session of the Rail Preparatory Commission, hosted by the OTIF Secretariat. The remote session was attended by 28 State delegations, as well as by the European Commission, the UN Economic Commission for Africa (UN ECA), the United Nations Economic Commission for Europe (UN ECE), and the African Union. Several declarations from participating States were submitted, including an announcement, by the representative of South Africa, of the country's imminent fourth signature, pending only clearance for the Ministry of Transport to travel to Rome when the pandemic subsides. For the documents of the session see [http://otif.org/en/?page\\_id=1117](http://otif.org/en/?page_id=1117).

6. Following the Rail Preparatory Commission session, the Rail Working Group organised a panel entitled "[Building Back Greener: The role of the Luxembourg Rail Protocol in the Post-Covid Economy](#)". The event, hosted by OTIF, featured a statement by a representative of DG Move (European Commission), and a panel featuring the Community of European Railway and Infrastructure Companies, Crédit Agricole Corporate and Investment Bank, and the African Rail Industry Association.

7. The UNIDROIT Secretariat continues to participate in the [Group of Experts established by the UN ECE for the Permanent Identification of Railway Rolling Stock \(PIRRS\)](#), for the practical implementation of the Unique Rail Vehicle Identification System (URVIS). The second meeting of the Working Group was held on 14-15 December 2020, while the next one is scheduled for 5-6 May 2021.

#### Space Protocol

8. The Secretariat has continued to promote the Space Protocol of the Cape Town Convention in order to facilitate building the international infrastructure necessary for its entry into force, as well as to encourage States and industry participants to recognise the benefits of asset-based financing for the space sector. The Sub-Group of the Space Preparatory Commission to Reassess Industry Participation to Reassess Industry Participation and Development of the Space Protocol organised a questionnaire for space financiers to understand the impact of COVID-19 on the industry, and the possible benefits of the Space Protocol in a post-COVID-19 space economy. The findings of this questionnaire were presented at a [webinar](#) co-sponsored by UNIDROIT and BHO Legal in March 2021. Additionally, the Space Protocol was also presented at various international conferences and at several universities as part of the Secretariat's outreach work.

### (b) Implementation of the MAC Protocol to the Cape Town Convention

9. Since September 2020, the Mining, Agricultural and Construction Equipment (MAC) [Preparatory Commission](#) has continued its work towards establishing the MAC International Registry, as well as for the appointment of a Supervisory Authority. The Commission met for its second session on 10-11 December 2020. Under the mandate given to the Secretariat by the Commission, the Secretariat has engaged with various international organisations to enable them to consider playing

the role of Supervisory Authority for the MAC Protocol. The Commission will give this matter further consideration at its next session on 3 – 4 June 2021.

10. Additionally, the Commission has established two Working Groups to address specific issues relating to the MAC Registry Regulations, and the appointment of a Registrar. The Commission's Regulations Working Group will have met four times by June 2021, and will present an updated draft of the MAC Registry Regulations for consideration and approval by the Commission at its upcoming session. Concurrently, the Commission's Registrar Working Group will also have met four times by June 2021. This Group has prepared a draft Request for Proposals to be considered by the Commission at its next session. Once approved, this Request for Proposals will be published and will invite bids from entities who are interested in establishing and managing the International Registry for MAC equipment.

11. Furthermore, in October 2020, the United States of America signed the MAC Protocol at a signing ceremony held at the UNIDROIT Headquarters in Rome, bringing the total number of signatories to 5. The Secretariat has been informed that the European Union will move towards signature in the third quarter of this year. The Secretariat has continued to promote the MAC Protocol at various intergovernmental, regional, and domestic forums in order to encourage signatures, ratifications, and support from governments and industry.

### **(c) Model Law on Warehouse Receipts**

12. Following the 99<sup>th</sup> session of Governing Council, the Secretariat established the UNIDROIT Working Group on a Model Law on Warehouse Receipts. The Working Group is composed of 10 expert members from different legal systems and geographical regions, as well as 6 international organisations and 11 public and private sector stakeholders participating in the project as observers. It is chaired by Professor Eugenia Dacornia, Member of the UNIDROIT Governing Council. The Working Group held its first session on 2 – 4 December 2020 in a hybrid format. The Group's discussions during this session were guided by an Issues Paper which had been prepared by the Secretariat, in collaboration with several Working Group members, and analysed the key elements that should be covered by the Model Law. These elements included the following: definitions; legal status and format of warehouse receipts; receipt details and form; transfer of warehouse receipts and their registration; execution and priority of security rights and liens; and rights and obligations of the warehouse operator. Furthermore, the Issues Paper provided a brief overview of the relevant international instruments that the Working Group should take into consideration for the preparation of the Model Law.

13. Following that first session, the Secretariat set up a Drafting Committee which prepared two suggested draft chapters for the future Model Law, namely Chapter II "Issue of a warehouse receipt", which also included draft provisions on the form and content requirements for a warehouse receipt, and Chapter IV "Transfer of warehouse receipts. Protected holders and other transferees. Warranties. Miscellaneous provisions regarding transfer". In addition, an informal subgroup on selected technological aspects was created, which collected information on the transfer of electronic warehouse receipts and, more broadly, on possible legislative approaches to addressing both paper and electronic receipts in the Model Law provisions. The two suggested draft chapters and the technology-specific information, together with an Issues Paper prepared by the Secretariat providing further background information on those topics, were presented to the Working Group at its second session held on 10 – 12 March 2021. The third session of the Working Group is scheduled for 1– 3 September 2021.

## **2. Private Law and Agricultural Development**

### **(a) Preparation of an international guidance document on agricultural land investment contracts**

14. After its approval by the UNIDROIT Governing Council, at its 99<sup>th</sup> session in September 2020, the ALIC Guide was approved by the International Fund for Agricultural Development (IFAD). The clearance process of the Food and Agriculture Organization of the United Nations (FAO) is still underway.

### **(b) Legal structure of agricultural enterprises**

15. At its last session the UNIDROIT Governing Council authorised the organisation of a colloquium in 2021 to discuss and specify the potential scope and content of the new project developed in cooperation with FAO and IFAD on Legal Structure of Agricultural Enterprises. The Consultation Webinar was held online on 15 and 16 April and served as a brainstorming session to inform the drafting of an annotated list of possible topics to be addressed in a prospective future instrument.

16. The Consultation included five different sessions respectively focusing on (i) regulatory demands and new technology scenarios, (ii) contractual structures for collaboration, (iii) remedies and dispute settlement mechanisms, (iv) corporate structures for the organisation of farmers, and (v) challenges for agricultural finance. Moreover, the Webinar explored the nature of the contribution to be made by UNIDROIT, FAO and IFAD in light of their respective mandates and expertise. Focusing on the legal and business aspects of agricultural enterprises, the Webinar brought together 80 participants and 35 speakers from a wide diversity of backgrounds including the Member of the Governing Council Justice Ricardo Lorenzetti and academics from Belgium, Brazil, Chile, India, Italy, United Kingdom, United States of America and the Philippines; representatives of international organisations (FAO, IFAD, UNCITRAL, World Bank, WFP); as well as representatives of the private sector, NGOs and think tanks. Drawing from the conclusions of the discussion, from the Secretariat's own research, and considering exchanges with FAO and IFAD, a full document with the proposed scope of the project and a request to convene a working group will be presented at the September meeting of the Governing Council.

## **3. Transnational civil procedure – Best Practices of Effective Enforcement**

17. The first meeting of the Working Group on Best Practices for Effective Enforcement was held in Rome and on Zoom on 30 November – 2 December 2020, under the chairmanship of Governing Council Member Ms Kathryn Sabo. The Working Group focused, for the most part, on the more precise determination scope of the project, as well as on methodology and organisational issues, and discussed the impact of technology in enforcement. For more information see the documents ([Study LXXVIB – W.G.1 – Doc. 1 rev.](#); [Study LXXVIB – W.G.1 – Doc. 2](#)) and the [Report](#) of the first Working Group session.

18. During the intersessional period, Working Group members and observers were involved in an intense working schedule through the activity of three subgroups, supported by the Secretariat: Subgroup 1 on “post-adjudication” enforcement; Subgroup 2 on enforcement of secured claims (collateral); Subgroup 3 on the impact of technology on enforcement.

19. The second meeting of the Working Group took place on Zoom on 20 – 22 April 2021 and discussed the Reports prepared by the three Subgroups.

#### **4. International Commercial Contracts – Principles of Reinsurance Contract Law**

20. The 8<sup>th</sup> Workshop of the project for the elaboration of Principles of Reinsurance Contract Law (PRICL) was held remotely on 18<sup>th</sup> January 2021. The Workshop discussed preliminary documents related to the second part of the PRICL project, and featured a presentation by the Secretary-General and the Deputy Secretary-General on the [Note](#) on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis, which was followed by a discussion on the PRICL and COVID-19 (for more information on this topic see below, under 9. (B)). The Secretariat participated in several events to discuss the use of UPICC to deal with contract interference due to COVID-generated situations.

#### **5. International protection of cultural property**

21. The Secretariat has continued to promote the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects. In particular the Secretariat organised a conference to celebrate the 25<sup>th</sup> anniversary of the Convention. It was an opportunity to take stock of the implementation of the Convention, the interaction and interdependence of cultural rules and instruments and to reflect on the future. Despite the pandemic, the hybrid format of the Conference allowed for approximately 300 participants from around the world, as well as a series of prominent speakers, including from the art market, and statements from many States Parties and non-States Parties to the Convention.

22. The Secretariat also continued its work on private collections with a first conference on Orphan objects organised with the University of Geneva and the Fondation Gandur pour l'Art. Finally UNIDROIT was invited to participate in the session on illicit trafficking in cultural objects in the framework of the G20 Culture Meeting organised on 9 April in Rome. Additionally, the 1995 UNIDROIT Convention was presented at various international conferences and at several universities as part of the Secretariat's outreach work.

#### **6. Leasing and Factoring – Model Law on Factoring**

23. The Working Group to prepare a [Model Law on Factoring](#) has continued its work and met for its second session in December 2020. Under the Chairmanship of Governing Council Member Professor Henry Gabriel, the Group established a subgroup to address issues relating to Conflicts of Law, which met several times leading up to this meeting. At its second session, alongside discussing the structure of the Factoring Model Law, the Working Group particularly discussed issues relating to the effects of a transfer of a receivable between parties; registration relating to the rights of a factor; rights and obligations of a debtor of a receivable; enforcement of the rights of factors; as well as the work done by the Conflicts of Law subgroup.

24. Additionally, the Working Group continued its examination of other international instruments such as the UNCITRAL Model Law on Secured Transactions, the United Nations Convention on the Assignment of Receivables, and the 1988 UNIDROIT Convention on International Factoring to ensure the Model Law will complement existing instruments to the greatest extent possible. It has also started working towards producing a Model Law, which recognises and addresses the needs of a modern factoring industry, while also allowing States to implement a conceptually strong domestic regime for factoring, reverse factoring, and supply chain financing.

#### **7. Insolvency law – Harmonisation of national insolvency laws for the liquidation of banks and rules of cooperation and coordination in cross border cases**

25. The Bank of Italy has officially awarded the Institute with the funds related to the Joint UNIDROIT-Bank of Italy Chair, which, in its first year, is to focus on "The Harmonization of rules for

the compulsory liquidation of failing financial institutions”. A Chair Holder has been recruited and will begin working on this project on a consultancy basis in April, at a minimal cost to the Secretariat.

26. Furthermore, with the support of the BIS Financial Stability Institute, UNIDROIT will be hosting a joint Workshop on Bank Liquidation on 7 and 8 June 2021, in which selected experts will be called upon to: (i) assess the need of an international instrument in the area of liquidation of banks; (ii) determine the most suitable form of such an instrument (possibly in the form of a set of principles or a legislative guide, which analyses different models and identifies best practices); and (iii) determine the scope of the project. The exploratory workshop has attracted extraordinary interest from both the official sector and academics. The event will count on the participation, at the highest level of representation, of the International Monetary Fund, the Financial Stability Board, The European Commission, the European Banking Authority, the Single Resolution Board, The International Association of Deposit Insurers, the Federal Deposit Insurance Corporation (USA), the Deposit Insurance Corporation of Japan, the Hong Kong Monetary Authority and several national central banks.

27. The conclusions of the Workshop shall be reported to the Governing Council at the 100<sup>th</sup> session in September.

## **8. Digital Assets and Private Law**

28. At its 99<sup>th</sup> session the UNIDROIT Governing Council approved the “Digital Assets and Private Law” project at a high priority. Under the guidance of its Chair Professor Hideki Kanda, member of the UNIDROIT Governing Council, the Working Group held its first session (17 – 19 November 2020) and second session (16 – 18 March 2021). A further two sessions of the Working Group will be held in 2021, with the third session scheduled for 30 June – 2 July, and the fourth to be held at some point in November.

29. As part of intersessional work conducted between the Working Group’s sessions, four Sub-Groups have also been set up: Sub-Group 1 is dealing with control and custody and has met four times so far; Sub-Group 2 is dealing with control and transfer and has met three times so far; Sub-Group 3 is dealing with secured transactions and has met three times so far, and Sub-Group 4 which has two separate workstreams dealing with taxonomy and with private international law related matters, respectively, and has met twice so far.

30. The Governing Council also decided in favour of an “enhanced” structure for the project which would entail the setting up of a Steering Committee on Digital Assets and Private Law in addition to the establishment of a Working Group ([C.D. \(99\) B Misc. 2](#), paras. 7 and 8). It is envisaged that the Steering Committee will be comprised of experts from different fields (both technical and legal) and is expected to act in a consultative capacity, to allow for wider participation, ensuring all sensitivities and domestic realities are considered, increase transparency, and provide invaluable context-specific feedback to the Working Group. The Steering Committee will be chaired by Professor Monika Pauknerová, member of the UNIDROIT Governing Council. UNIDROIT has so far invited its Member States to nominate an expert(s) to the Steering Committee and it will be expected to start its activity once the Working Group has made sufficient progress so as to allow for a preliminary review of its work.

## **9. UNIDROIT Instruments and Covid-19**

### **(a) Convention providing a uniform law on the form of an international will**

31. Following the preliminary research presented to the Governing Council at its 99<sup>th</sup> session ([C.D. \(99\) B.9, paras. 25-38](#)) the Secretariat has conducted further research to better gauge the effectiveness and usefulness of the Convention in the world of practice. The results of this additional research will be presented to the Governing Council in the form of a document providing a more

detailed overview of the status, the implementation of, and future prospects for the Convention, as well as how the Convention can assist in overcoming the difficulties generated by the COVID-19 context.

**(b) Reinsurance Contracts**

32. The Secretariat is cooperating with the members of the Working Group on the PRICL to draft a Note on the PRICL and the Covid-19 Health Crisis. The Note will look at the impact of the PRICL in the pandemic and post-pandemic situation, also in the light of the relationship between general contract law (and particularly the UPICC) and the specific legal regime and practice of reinsurance and insurance contracts. A webinar to discuss the Note will be held on 27 May 2021, in the framework of the ELI Special Interest Group on Insurance Law and the ATILA Transatlantic Lectures in insurance law.

**ACTION TO BE TAKEN**

33. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress of UNIDROIT's ongoing projects.*