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1. *The President of UNIDROIT, Ms Maria Chiara Malaguti, welcomed Members of the Governing Council to the second meeting of the 100th session.*¹

2. In her opening address, the President expressed her gratitude towards the Governing Council Members that had travelled to Rome to participate in the meeting in person despite the restrictions imposed by the COVID-19 pandemic. She also thanked the Governing Council Members who had connected remotely regardless of the time-zone difference. Ms Malaguti commended the Secretariat staff for the high-quality of its work and for its commitment despite the difficult circumstances. She noted that a conference to celebrate the Council's 100th anniversary would take place in Bologna (Italy) on Monday 27 September 2021, where the Secretary-General Professor Ignacio Tirado would be sharing information on the history of the Governing Council and its legacy.

3. She remarked that a new institutional agenda would be adopted in 2022, as the agenda set out by the former President Alberto Mazzoni would be completed by the end of 2021. She informed the Council that she had started contacting other international organisations to present the work of UNIDROIT and to highlight the importance of private law for international governance. She had been seeking to identify common topics of interest to establish new partnership opportunities. In addition, the President noted the efforts underway to expand the membership of the Institute and to promote the adoption of UNIDROIT's instruments. She also explained that new networks could be built through a number of new institutional activities, such as the summer school and the *Amici* of UNIDROIT.

4. Before calling upon the Council to adopt the annotated draft agenda, the President welcomed the representatives of other international organisations attending the meeting as observers.

Item 1: Adoption of the annotated draft agenda (C.D. (100) B.1 rev.)

5. *The Governing Council adopted the agenda as proposed in document C.D. (100) B.1 rev.*

Item 2: Appointments of the First and Second Vice Presidents of the Governing Council (C.D. (100) B.1 rev.)

6. *The President of UNIDROIT invited the Secretary-General, Mr Ignacio Tirado, to take the floor.*

7. *The Secretary-General, Mr Ignacio Tirado, expressed his gratitude to all Members of the Governing Council for their efforts to participate in the meeting. He emphasised the importance of the 100th session by noting the extraordinary presence of an honorary Governing Council member, Sir Roy Goode, notwithstanding the complicated context for international travel.*

8. He recalled the Rules of Procedure for appointing the First and Second Vice Presidents of the Governing Council and noted that the doyen of the Governing Council, Mr Arthur Hartkamp would be represented by Ms Carla Sieburgh at the second meeting of the 100th session, in accordance with article 6.6 of the UNIDROIT Statute.

9. *In the absence of the doyen of the Governing Council, Mr Arthur Hartkamp, the Council temporarily appointed Mr Henry Gabriel, as First Vice President, and Mr Hans Georg Bollweg, as Second Vice President, for the second part of the 100th session.*

¹ In light of the COVID-19 crisis, the Secretariat had organised the 100th session of the Governing Council in two meetings: the first meeting was held remotely in April/May 2021 via e-mail to address the most urgent matters regarding the Draft Budget 2022 and to provide a summary of action taken since September 2020 in some of the ongoing projects. The documents prepared and approved during session A of the 100th session of the Governing Council are available at:

<https://www.unidroit.org/meetings/governing-council/100th-session-a-remote-session-april-may-2021/> .

Item 3: Reports**(a) Annual Report 2020 (C.D. (100) B.2)**

10. Before presenting the Annual Report for 2020, the Secretary-General of UNIDROIT, Mr Ignacio Tirado, informed the Council that Ms Bénédicte Fauvarque-Cosson had excused herself from attending the meeting due to hearings of the *Conseil d'État* of France. He then summarised UNIDROIT's work based on document C.D. (100) B.2.

11. He recalled that 2020 had been the year of the COVID-19 pandemic and had created extraordinary difficulties for institutions and private individuals around the world, and UNIDROIT had not been an exception. However, he began his speech by highlighting a number of positive achievements obtained throughout 2020 despite the health crisis. He noted that on the 1st of September 2020, Ms Maria Chiara Malaguti had been appointed President of UNIDROIT, and had immediately filled the Institute with energy, enthusiasm and excellent ideas. He emphasised that UNIDROIT could only look forward to the future with her at the forefront of the institution.

12. Regarding institutional matters, he informed the Council that even in the hardest moments of the pandemic, UNIDROIT had not closed its doors for one day, as at least one staff member was always working in-person at the Institute, while the others worked from their homes. During 2020, UNIDROIT had not failed to convene any meeting of its institutional bodies. On the contrary, two Governing Council meetings had taken place instead of one; three Finance Committee meetings instead of two, and the General Assembly meeting had been held as scheduled. No formal international meeting or Working Group meetings that had been envisaged had been cancelled. He emphasised that UNIDROIT had achieved at least as much as it would have achieved in an ordinary year.

13. From a budgetary standpoint, the Secretary-General noted that the balance had been preserved and savings had been obtained. He expressed UNIDROIT's gratitude to the Member States that continued to make their contributions as envisaged in the Statute. He informed the Council that part of the budget saved for travels, missions and experts had been used to invest in technology and to enhance UNIDROIT's infrastructure. In addition, he noted that UNIDROIT had continued its policy of zero budget increase and had begun a process to increase the Secretariat's human resources. He explained that UNIDROIT had been able to almost duplicate the number of legal officers over a couple of years.

14. The Secretary-General, with profound sadness, recalled that 2020 had been the year of the passing of Mr Walter Rodinò, former Deputy Secretary-General *ad interim*, as well as the Director of the Library for decades. He noted that Mr Rodinò had been the face of UNIDROIT for everyone who had ever visited the Institute from anywhere in the world. He emphasised that all members of UNIDROIT would remember him very fondly, and noted he would always have a very special place in the Institute. The Secretary-General also recalled that the room in the Library where the Governing Council sessions generally took place bore Mr Rodinò's name as a tribute to his extraordinary services.

15. Regarding new instruments, the Secretary-General highlighted that, after several years of hard work, three instruments had been finalised and adopted by UNIDROIT in 2020: (i) the final draft of the Legal Guide on Agricultural Land Investment Contracts, co-written with the participation of the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) and co-published only with the latter; (ii) the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a Focus on Sales) jointly developed with the United Nations Commission on International Trade Law (UNCITRAL) and the Hague Conference on Private International Law (HCCH); and (iii) the European Rules of Civil Procedure, developed with the European Law Institute (ELI). He explained that these three

instruments had clearly exemplified how UNIDROIT can work well with its sister and partner organisations, creating synergies and saving public money as a consequence thereof.

16. As to existing instruments, the Secretary-General noted that efforts had been made in the implementation and dissemination of certain instruments, but explained that a part of UNIDROIT'S work in this chapter had inevitably been affected by the pandemic. The Secretariat had striven to maintain the momentum generated by the 2019 diplomatic conference of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction equipment (MAC Protocol). Although no missions had been allowed since March 2020, and contacts with governments had been limited, the preparatory work to implement the Protocol had continued at a very good pace, and strong support had arrived with the signature of the MAC Protocol by the United States of America. The Secretary of State, Mr Mike Pompeo had come to the Villa Aldobrandini in October 2020, and had signed the Protocol in-person. Mr Tirado informed the Council that, since then, UNIDROIT had received repeated expressions of interest to sign and ratify the Protocol as soon as possible from European Union (EU) Member States. However, he recalled that first the EU needed to sign and ratify before any of its Member States could do so.

17. Moreover, the Secretary-General noted that UNIDROIT had been able to organise a number of MAC Protocol-related meetings, among which, two sessions of the MAC preparatory commission, two meetings of the Working Group on regulations and one first meeting of the Working Group on the registry.

18. Regarding the activities undertaken in 2020 for the implementation of the Aircraft Protocol, he stated that the economic downturn caused by travel bans across the globe had led to a severe crisis in the aviation sector with many airlines, traditional borrowers in the Cape Town scheme, undergoing restructuring procedures. This situation implied a real test to the resilience and effectiveness of the Aircraft Protocol and the Cape Town system generally. He noted that the challenge had been faced and the obstacles had been overcome at least for the time being, as the endurance of the rights protected under the umbrella of the Cape Town Protocol had proven to be extraordinary.

19. The Secretary-General indicated that other UNIDROIT instruments had proved useful to deal with the pandemic such as the UNIDROIT Principles of International Commercial Contracts (UPICC), in particular its provisions on hardship and *force majeure*. He informed the Council that the Secretariat had issued a Note on the UPICC and the COVID-19 health crisis and that the Secretariat had initiated similar work regarding the Principles of Reinsurance Contract Law to showcase how it may be useful in the context of the COVID-19.

20. Regarding the new projects, Mr Tirado highlighted that the preparatory work for the projects on Best Practices for Effective Enforcement and Digital Assets and Private Law had been finalised in 2020. He noted that the development of these projects had gained extraordinary speed and momentum. Based on these two projects, the Secretary-General explained that a new methodology had been developed and applied to all projects. Beyond just having two (or exceptionally three) working group meetings, in person to the extent possible, UNIDROIT divided these projects into sub-committees which touch upon certain parts of the project and meet regularly on line. This methodology of strengthening inter-sessional work and organising meetings remotely saved costs, but especially allowed the Institute to make faster progress.

21. Furthermore, the Secretary-General recalled that in 2020 a new project to be developed together with UNCITRAL had been incorporated into UNIDROIT'S 2020-2022 Work Programme: the drafting of possibly a Model Law on Warehouse Receipts. Mr Tirado explained that UNIDROIT'S work on MAC, factoring, warehouse receipts, agriculture and enforcement are tied and linked together and, therefore, UNIDROIT'S work had been very consistent.

22. Mr Tirado concluded by pointing out that 2020 had been a difficult year but the Secretariat had worked harder than ever before. He expressed his sincere hope that the Council would appreciate the enormous effort of all employees.
23. Acknowledging the amount of work the Institute had done under difficult circumstances, *Mr Henry Gabriel* thanked the Secretary-General and all the Secretariat staff for the dedication and work.
24. *Ms Stefania Bariatti* joined Mr Gabriel in the expression of gratitude towards the UNIDROIT Secretariat. She noted how stunning it had been to observe the amount of high-quality work accomplished by the staff with such limited resources.
25. *Ms Eugenia Dacornia* noted that Mr Gabriel and Ms Bariatti's comments reflected all Governing Council Members impression and thanked the Secretariat as well.
26. *Mr Hans-Georg Bollweg* joined his colleagues in the expression of gratitude and congratulated the staff for the great job done in very difficult times. He recognised the enormous efforts in their work and in the preparation for the 100th session of the Governing Council. He expressed his respect and admiration.
27. *Mr Niklaus Meier* expressed his appreciation for the preparation of the Governing Council meeting in a hybrid format with simultaneous translation into French.
28. *The representative from the International Development Law Organization (IDLO), Mr Teimuraz Antelava* complimented the Secretariat for the work undertaken in 2020 despite the extraordinary circumstances and highlighted IDLO's interest in exploring areas of possible synergies between the two organisations.
29. 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
30. *The Council took note of the Secretary-General's report on the activities of the Institute during 2020. The Council expressed its appreciation to the Secretariat staff for its dedication and hard work in the implementation of the Institute's mandate, as shown by the numerous activities undertaken despite the difficulties caused by the COVID-19 pandemic.*

(b) Report on the UNIDROIT Foundation ([C.D. \(100\) B.3](#))

31. *The President of the UNIDROIT Foundation, Mr Jeffrey Wool*, presented the activities conducted by the Foundation in 2020. He started by congratulating the UNIDROIT Governing Council for its 100th Session, recalling that his involvement with the Institute started over 27 years ago. He noted that the Board of Governors of the Foundation had also recently celebrated its 25th anniversary in July 2021.
32. 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 noted that the Foundation's work had been grouped into three categories: (i) economic development; (ii) education and research; and (iii) cultural heritage.
33. With regard to the Foundation's two main substantive projects in 2020, he informed the Council that the work on Best Practices in the Field of Electronic Registries (BPER) had recently concluded its first product in the form of a Guide on Best Practices for Electronic Collateral Registries. This Guide identified 17 Critical Performance Factors for electronic collateral registries and had been

prepared with contributions from many international organisations with experience in setting up and operating these registries. He announced that the Guide would be launched on 24 September 2021 at an official side event to the 100th session of the Governing Council. The BPER Project, jointly developed with the University of Cambridge and with the support of Aviareto and the Aviation Working Group, would thereafter shift its focus towards an examination of electronic company registries and would probably consider electronic land registries in the future.

34. He noted that the Project on Economic Assessment of International Commercial Law Reform had also been progressing well. It had now finalised a draft framework to conduct economic assessments for any international commercial law reform instruments, with considerations being given to both, *ex ante*, and *ex post* analyses. The project group was now working on a guide that would detail how to use this framework and calculate the various variables it contained. The development of this guide and future work on this project would also look at the economic impact of the COVID-19 pandemic and how to factor-in similar incidents in measuring the value international commercial law instruments could deliver.

35. He noted that over the years the Foundation had donated more than 275,000 Euros to the UNIDROIT Internship and Research Scholarship Programme. While this funding traditionally came from the sales of the Official Commentary, in 2020, this had largely come through dedicated donations from law firms and academic organisations. Additionally, the Foundation had also launched the UNIDROIT Alumni Association which by September 2021 had over 125 members and also supported its own Alumni Association Grant funded through membership fees and donations.

36. He added that in 2020, the Foundation had facilitated an UNIDROIT COVID-19 Essay Competition. This had attracted close to 100 essays on the use of UNIDROIT instruments in light of COVID-19 and culminated with a webinar organised by UNIDROIT and the sponsor of the competition where the top five essays were presented to an international audience. The Foundation intended to continue to try to organise such competitions in the future.

37. Mr Wool concluded his remarks by noting that the Foundation would welcome support from the Members of the Governing Council in terms of adding value to projects, but also contributing or assisting with fundraising activities, particularly to connect the Foundation to contacts they may have who might be interested in supporting initiatives such as the UNIDROIT Internship and Research Scholarship Programme, or some of the Foundation's other substantive projects.

38. *Mr Meier* thanked the UNIDROIT foundation for all its work, in particular on impact assessment and best practices on electronic registries.

39. *The Council took note of the report by the President of the UNIDROIT Foundation and thanked the Foundation for its continued support, in particular for the work conducted towards the development of a methodology on economic assessments and the results achieved in the area of best practices on electronic registries.*

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

40. *The President of UNIDROIT* recalled that during its 99th session the Governing Council had approved the courses of action to determine the scope of two projects included in the 2020-2022 Work Programme regarding Bank Insolvency and Legal Structure of Agricultural Enterprises. She noted that the Secretary-General and each legal officer responsible for the respective project would present the results of the explanatory work and share an update with the Governing Council.

(a) Bank Insolvency (C.D. (100) B.4)

41. *The Secretary-General* introduced the topic, with reference to document C.D. (100) B.4. He explained that it was proposed to upgrade the status of the bank insolvency project, from medium to high priority. He highlighted several developments since the previous meeting of the Governing Council. First, considerable exploratory work had been conducted and dialogues had been established with the key international institutions in the field of bank resolution and insolvency. Second, an exploratory workshop on bank liquidation had been organised jointly with the Financial Stability Institute (FSI) of the Bank for International Settlements (BIS) in June 2021. Third, the Secretariat had carried out follow-up analysis on the basis of the exploratory workshop.

42. The Secretary-General emphasised the importance of the strong backing and partnership with the FSI, given the crucial role of the FSI and the BIS in the field of international banking law. The private law expertise of UNIDROIT would thus be complemented by the extensive regulatory expertise of the FSI. He underlined that the project would focus on liquidation procedures for smaller banks, and that no international standards exist in this area. He explained that 40 international experts and institutions had participated in the exploratory workshop and that the project had received broad and strong institutional support. The World Bank firmly backed the project, with a particular interest in developing economies. The IMF had considered the project to be a much-needed initiative to complement the existing international standards and this had been echoed by others, such as the Central Bank of Brazil. The SRB had expressed strong support for the project, as did several national supervisory and resolution authorities, including the Bank of Italy, the Hong Kong Monetary Authority and the French central bank and deposit authority agency. The German and Swiss banking supervisors as well as the Canadian and Japanese deposit insurance corporations had provided important contributions to the discussion. Importantly, the institutions that had participated to the workshop expressed their interest and willingness to be actively involved in the project. Many of the participants highlighted that the need for international standards had become even stronger in light of the expected consequences of the COVID-19 pandemic.

43. The Secretary-General explained that, first and foremost, there was a lack of international guidance on bank liquidation. Some jurisdictions had even sought international assistance for the design of their bank liquidation regimes and a comparative analysis of different models would be extremely useful. He noted that some degree of harmonisation could foster international investment in smaller banks. The Secretary-General underlined that the views of the workshop participants regarding the type of instrument had been fully in line with those previously expressed by the Governing Council to develop a soft law instrument. As for the timing, he explained that the work is expected to be conducted over the course of 4-6 sessions of a Working Group on bank insolvency. Lastly, he emphasised that the project would be fully respectful of existing international standards.

44. *Legal officer Ms Myrte Thijssen (UNIDROIT Secretariat)* continued the introductory remarks. She echoed that the aim of the UNIDROIT instrument would be to complement the existing international legal framework, by providing guidance on how to deal with the failure of banks that would not - or not fully - be resolved under the resolution framework. As for the scope of the instrument, she explained that initially the focus would be on banks only. While there had been discussions during the exploratory workshop as to whether to include also insurance companies in the scope, it was suggested to re-assess this at a later point in time.

45. As for the proposed content, Ms Thijssen indicated that a number of sub-topics that might merit guidance had been identified, such as: definitions; objectives; institutional set-up; operational management; preparation; triggers; hierarchy of claims; tools; funding; security rights; cross-border aspects and the group dimension. Regarding tools, she explained that in certain jurisdictions, the liquidation procedure for failing banks is the same as for any other company, while in other jurisdictions, bank-specific tools exist that allow a transfer of deposits. As regards triggers, she noted that, generally, insolvency proceedings can be opened when a company is illiquid or insolvent, but

that these factors may not be appropriate or sufficient for banks due to their special nature. Many jurisdictions had therefore introduced additional triggers. Furthermore, she noted that there were great divergences in jurisdictions around the world in the ranking of claims and that in particular depositor ranking may deserve specific attention in the project. As a last example, she referred to the legal uncertainty and coordination challenges that may arise due to the cross-border dimension of banks. As had been concluded also during the exploratory workshop, she noted that it would be extremely useful to explore all these types of issues and understand the current laws and practices in order to add clarity and provide possible solutions to existing challenges.

46. Finally, Ms Thijssen explained that the work would primarily consist in a comparative analysis of bank liquidation laws around the world. Corporate liquidation laws could be held into account on the one hand, and bank resolution regimes on the other, since the appropriate approach to the failure of small and medium-sized banks appeared to lie somewhere in between. Horizontal work would also be conducted, for instance to analyse to what extent the different business models and corporate structures of banks require specific attention.

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

48. *Ms Bariatti* expressed support for the Secretariat's proposal. She recalled that UNIDROIT was well-suited to take the lead in this project given its global constituency, and its wide expertise and experience in fostering harmonisation and in collaborating closely with other organisations. She also noted that the subject matter of the project was closely related to topics that the Institute had faced before, and indicated that it was of interest to the financial system given the need to fill existing gaps. Furthermore, she underlined the timeliness of the project. First, because banks currently face challenges due to mergers, changes in traditional business models and digitalisation. Second, because the pandemic will likely have an impact on the banking sector. Finally, she noted that the European Commission had been conducting work to strengthen EU corporate insolvency laws, and suggested that this might be taken into account during the course of the project, since elements of general corporate insolvency law may also be relevant for bank liquidations.

49. *Mr José Antonio Moreno Rodríguez* underscored the importance of the project, referring to his experience in dealing with bank failures. He agreed that there was a vacuum in the international legal framework, and that it was important to fill the gap. He expressed strong support for moving forward with the project and assigning it a high priority.

50. *Mr Alfonso-Luís Calvo Caravaca* praised the Secretariat for the work it had conducted so far and the excellent report. For the same reasons mentioned by Ms Bariatti, he strongly agreed with the proposed way forward.

51. *Mr Gabriel* thanked the Secretariat for the proposal and expressed appreciation for the need for this project. He noted that it would be important to limit the scope to small banks and requested the Secretariat to refer back to the Governing Council in case of any future proposal to broaden the scope. Mr Gabriel emphasised the need to adopt a global perspective, and to not only look at regional needs. Furthermore, he observed that the project would lead UNIDROIT to some extent into uncharted territory due to the link with regulatory law. He referred to the partnership with the FSI, and noted that UNIDROIT's expertise lied in the area of private law. In conclusion, he agreed with the project moving forward within the limits described.

52. *Mr Bollweg* indicated that he had consulted with the German Federal Ministries of Justice and Finance and recognised that there was a variety in bank insolvency regimes and agreed that the divergences deserved attention. He assumed that the project would focus on banks only, considering UNCITRAL's work in the area of corporate insolvency law. He suggested to further clarify why a bank-specific instrument was needed, and how this would relate to existing bank resolution regimes, before moving forward. He agreed with the Secretariat's proposal to exclude insurance companies from the

scope. Finally, he suggested that there may be merit in involving insolvency practitioners in the project, as well as relevant NGOs (such as INSOL International) and regulators in the field of insolvency law.

53. *Mr Jorge Sánchez Cordero Dávila* congratulated the Governing Council for its 100th session. He stated that the bank insolvency project was of utmost importance, even more so in post-pandemic times. He expressed his strong support for assigning a high priority to the project.

54. *Ms Monika Pauknerová* thanked the Secretariat, supported the proposal to assign a high priority to the project and agreed with the proposed scope and content. She underlined the need to monitor other international initiatives regarding insolvency laws, for instance at European level, and to ensure alignment.

55. *Ms Dacornia* expressed strong support for the project and agreed that it should be given a high level of priority, for the reasons described in the report and by fellow Members of the Council. She highlighted the existing lacunae in the legal framework and the importance of having an international instrument, particularly in light of the global pandemic.

56. *Ms Baiba Broka* agreed that the project was very important and expressed support for assigning it high priority status. She suggested adopting a forward-looking approach and asked whether the inclusion of mobile and digital banks (neobanks) in the scope had been considered, and to assess the link with digital assets.

57. *Mr Ricardo Lorenzetti* congratulated UNIDROIT for the work done under challenging circumstances. He expressed his strong support for the project and for its high priority status, expressing agreement with the suggested limitations in scope.

58. *Mr Patrick Kilgarriff* congratulated UNIDROIT and expressed his support for the bank insolvency project's high priority status. He agreed with limiting the scope to smaller banks and with moving forward as soon as possible. He noted the importance of the project, even more so considering the likely difficult aftermath of the global pandemic.

59. *Mr Meier* agreed with the way forward as proposed by the Secretariat, for the reasons set out in the report of the Secretariat. He noted that the project was both interesting and important, in particular as regards the cross-border aspects such as recognition and cooperation. He suggested not to be overly ambitious when it came to the harmonisation of insolvency laws.

60. *The representative of UNCITRAL, Mr José Angelo Estrella-Faria*, congratulated the Governing Council for its 100th session. He noted that UNCITRAL had conducted a lot of work in the area of insolvency law, referring to the relevant Model Laws, Legislative Guide and the Insolvency and Creditor Rights Standards. He indicated that the Model Law on Cross-Border Insolvency expressly allowed for the exclusion of banks from its scope, and that UNCITRAL had not focused on financial institutions. Nevertheless, he queried how the project would relate to the work of UNCITRAL and indicated that UNCITRAL stood ready to contribute to the project.

61. *The representative of ELI, Mr Pascal Pichonnaz*, congratulated UNIDROIT for the Council's 100th session and enquired whether the inclusion of rescue measures in the project had been considered. He noted that ELI had conducted work in this area, referring in particular to the ELI Rescue of Business in Insolvency Law Report from 2017, offering the ELI's contribution if needed.

62. *The Secretary-General* thanked the Council Members for their strong support and, after expressing reassurance of full consistency with existing international standards, responded to the questions that had been raised. In response to the representative of ELI, he indicated that rescue or restructuring measures would be covered in the project only to the extent such measures would be

part of a liquidation process, in order to avoid overlap with the existing international legal framework. Furthermore, he acknowledged the pertinence of the UNCITRAL standards on insolvency and added that the project would duly take those standards into account. As for *fintechs* and *neobanks*, the Secretary-General explained that it will be for the Working Group to decide whether to include such companies in the scope of the project. He noted there seemed to be no reason to exclude them *a priori* if they are supervised and not systemically relevant. Moreover, he clarified that no work would be conducted on insurance companies and that any potential future proposal to change the scope of the project would be brought to the attention of the Governing Council. In response to Mr Bollweg, he stated that private practitioners may indeed play a role in bank liquidation processes, depending on the applicable institutional and operational model. Representatives of specialists would be invited to provide their views and industry associations could be invited to participate as observers in the Working Group. Lastly, in response to Mr Gabriel, the Secretary-General confirmed that the project would focus on small banks, underscoring its global nature, noting that the guidance document would likely be very beneficial not only for developed economies but perhaps even more so for developing countries.

63. *The Council took note of the exploratory work conducted and the feasibility report prepared by the Secretariat since the 100th Governing Council meeting held in April/May 2021.*

64. *The Council approved the proposed scope of the project, subject to existing regulatory standards and underlining its focus on smaller banks, agreed to assign the project a high priority status, and authorised the Secretariat to establish a Working Group.*

(b) Legal Structure of Agricultural Enterprises [\(C.D. \(100\) B.5\)](#)

65. *The Secretary-General introduced the Legal Structure of Agricultural Enterprises (LSAE) project by recalling that it had been integrated in the 2020-2022 Work Programme with a medium priority status. He explained that the LSAE project would represent the third step in the joint development of instruments with FAO and IFAD, following the Legal Guide on Contract Farming and the Legal Guide on Agricultural Land Investment contracts.*

66. *The Secretary-General recalled that the Secretariat had reported back to the Governing Council at its 99th session with a feasibility study, which had suggested four objectives for the LSAE project: (i) to improve market access; (ii) to improve forms of coordination of agricultural enterprises; (iii) to ease access to critical resources and insurance; and (iv) to address unfair commercial practices. He informed the Council that the Secretariat had continued its consultations with FAO and IFAD, as well as with other organisations, and had convened an online consultation workshop in April 2021 to gather further input. He noted that document C.D. (100) B.5 contained a summary of the main identified topics. He informed the Council that the scope still had to be narrowed down further, and emphasised that setting up a Working Group to allow external experts, not only from FAO and IFAD, to contribute towards the definition of the object of analysis of the LSAE project would be useful. He concluded by inviting the Council to authorise the proposal to upgrade the status of the LSAE project, from medium to high priority, and to allow for the establishment of a Working Group.*

67. *Legal officer Ms Priscila Pereira de Andrade (UNIDROIT Secretariat) further introduced the content of document C.D. (100) B.5. She recalled the interest expressed by FAO and IFAD to work in partnership for the development of a new guidance document promoting increased collaboration among actors operating across agricultural supply chains. She explained that the potential target audience of the future legal guide could be smallholders and Micro-, Small-, and Medium-sized agriculture enterprises (MSMEs) operating in the so-called “middle segment” of agricultural supply chains. She noted that certain commercial rules and default legal frameworks may not be adapted to provide these actors the adequate level of protection and to encourage them to move beyond subsistence farming towards more formalised businesses, which would help them achieve market scale.*

68. She noted that the guidance to be developed would be in line with the United Nations' call for a "food systems approach" and a number of Sustainable Development Goals, as it would highlight the importance of establishing partnerships for more coordinated actions among agri-food actors, and would seek the empowerment of specific categories of persons, such as women and young entrepreneurs.

69. In terms of methodology, she explained that the project could start by undertaking a comparative review to identify common formalities to establish and operate agricultural enterprise; and by exploring different organisational forms, such as contractual and/or corporate arrangements which may govern the internal relations within an agricultural enterprise, as well as the external relations with other enterprises operating in networks across the value chain. She highlighted that, instead of focusing on the bilateral contractual relationships addressed in the Legal Guide on Contract Farming and in the Agricultural Land Investment Contracts, the LSAE project would possibly focus on multiparty and associative contractual arrangements established in the cases of integrated relations.

70. Finally, she noted that, in the analysis of both contractual and corporate arrangements, it would be important to consider how the balance between the different contracting parties, shareholders or members is maintained, as smallholders and agricultural MSMEs may risk losing rights when a common venture is created with a more powerful party. She also highlighted that the guidance to be developed would consider other international initiatives to avoid any overlap.

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

72. *Mr Lorenzetti* expressed support for the proposal of the Secretariat to upgrade the status of the LSAE project to high priority, noting the importance of its objectives not only for UNIDROIT, FAO, and IFAD, but also other organisations. He noted that new regulatory demands and technology scenarios emphasised the need to undertake an analysis of the contractual and corporate structures for collaboration.

73. *Mr Gabriel* expressed his concern for the broadness of the proposed scope, and questioned the usefulness of establishing a Working Group to provide further definition. He noted that each of the four objectives that had been identified could be developed as separate projects. He also noted that a number of areas identified in the document would be subject to existing domestic laws and queried to what extent the guidance to be developed would overrule or change domestic law.

74. *Mr Estrella-Faria (UNCITRAL)* thanked the Secretariat for the report and for the references to UNCITRAL's work in the area of MSMEs. He reported that UNCITRAL had approved recommendations on a limited liability organisation tailored for MSMEs and had initiated new work on access to credit. He further noted that UNCITRAL had not worked on forms of coordination of agricultural enterprises, and recalled that a suggestion had previously been made for UNCITRAL to work on contract networks however it had not developed any work in this area. He emphasised that the proposed work on contractual networks in the context of the LSAE project would be a natural complement to UNICTRAL's work and, therefore, indicated UNCITRAL's would be interested in cooperating in this area.

75. *The representative of FAO, Mr Buba Bojang*, emphasised FAO's support for the LSAE project and interest in continuing the tripartite collaboration with UNIDROIT and IFAD. He noted that the proposed project was timely and well aligned with the ongoing United Nations Decade of Family Farming, SDGs and FAO's "four betters strategy" (*better production, better nutrition, better environment and better life*). He noted that FAO welcomed that provision of guidance for a number of actors that are important for agri-food systems, going beyond the farm level to address small and medium sized food processors and traders.

76. *Ms Dacoria* supported the establishment of a working group and to upgrade the status of the project. She noted that the scope could be narrowed within the Working Group sessions.

77. *The Secretary-General* thanked the Council Members for their comments and responded to the questions raised. He noted that the project was not an ordinary one as it had been included in the Work Programme with a rather general proposal in scope. He explained that a strong interest from economists had been identified in the exchanges that had been taking place with the partner organisations and other stakeholders. Furthermore, consultations had confirmed the current lack of guidance on how the law may help address and best streamline supply chain relationships, without undermining social and environmental problems that may arise within the supply chain structure, such as *-inter alia-* the different bargaining powers between the parties. He emphasised that the contractual networks and information technology would be an important part of the future work. He highlighted that technology in the supply chain and in the agribusiness activity had been a game changer in terms of sales, production, and access to finance for smallholders. In response to Mr Gabriel, he agreed that a strong effort to narrow down the scope of the project was necessary and proposed to raise the priority of the project to permit the Secretariat to use some of the funds to organise a working group to elaborate an issues paper to further define and justify the scope in more detail.

78. *Mr Gabriel* supported the Secretary-General's proposal, and noted that it would be reasonable to raise the project's priority to permit the allocation of resources for experts to narrow the scope in a working group.

79. *Mr Moreno Rodríguez* shared his experience as Chair of a Working Group to underline the benefits of convening a Working Group so that experts could develop concrete proposals for the approval of the Governing Council. He expressed his support for assigning a high priority status to the LSAE project.

80. *The Council took note of the progress made for the definition of the scope of the Legal Structure of Agricultural Enterprises Project, decided in favour of upgrading the project to high priority, and allowed the Secretariat to establish a Working Group whose main task in the work leading to the next session of the Governing Council should focus on a more detailed definition of the project's scope.*

Item 5: Model Law on Factoring (C.D. (100) B.6)

81. *Senior Legal Officer William Brydie-Watson (UNIDROIT Secretariat)* introduced the topic, with reference to document C.D. (100) B.6. He explained that as a high priority project on the Institute's 2020-2022 Work Programme, the Model Law on Factoring (MLF) was approximately at the halfway point of its development. Mr Brydie-Watson noted that the draft instrument consisted of 40 articles and followed the structure of the UNCITRAL Model Law on Secured Transactions (MLST). As consistent with UNIDROIT's new methodology, the Working Group had formed subgroups and had held intersessional meetings to work on specific issues such as scope, conflict of laws, transition and registration.

82. Mr Brydie-Watson highlighted three specific issues for the Governing Council's attention. First, he noted that the Working Group's focus had been on trying to reconcile two competing policy interests. He explained that the Working Group was attempting to draft a complete model law that was consistent with, yet simpler and more concise than, the MLST. Second, he noted that the Working Group had been preparing a list of issues on which implementing States would require further guidance. He suggested that the Governing Council might need to consider including the preparation of an accompanying document, possibly a Guide to Enactment, as a project on the Institute's 2023-2025 Work Programme. Third, he noted that various private sector associations had been closely

involved in the development of the MLF, and that a recent survey conducted by Factors Chain International had indicated that there was strong private sector interest in the project.

83. In relation to future steps, Mr Brydie-Watson explained that the Working Group intended to provide the Governing Council with a well-developed draft of the MLF at its 101st session in 2022, and that the project was on track for completion in 2023. Finally, Mr Brydie-Watson thanked his colleagues Ms Philine Wehling and Mr Chen Miao for their assistance on the project and expressed his gratitude to Mr Hamza Hameed for taking lead responsibility for the project between October 2020 and May 2021.

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

85. In his capacity as Chair of the Model Law on Factoring Working Group, *Mr Henry Gabriel* thanked the Secretariat for its work on the project. He noted that utilising intersessional meetings and subgroups to develop the instrument had proven to be an intensive and effective process. In illustrating the point, he noted that the subgroups on registration and transition had scheduled 18 hours of meetings over the next six weeks. Mr Gabriel concurred with the Secretariat that the project was on schedule for conclusion in 2023.

86. *Mr Estrella-Faria (UNCITRAL)* noted that UNCITRAL had been closely following the progress of the Working Group in developing the MLF. He stated that UNCITRAL was pleased that the MLST and the United Nations Convention on the Assignment of Receivables in International Trade were being used as the primary materials in developing the MLF. He concluded that UNCITRAL was looking forward to participating in the upcoming fourth Working Group session in December.

87. *The Council took note of the progress made by the Working Group on developing a Model Law on Factoring.*

Item 6: Model Law on Warehouse Receipts ([C.D. \(100\) B.7](#))

88. *Legal Officer Ms Philine Wehling (UNIDROIT Secretariat)* reported on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project, summarising the progress that had been made since the Council's 99th session in 2020 and presented a proposal to extend the project for the Council's consideration.

89. Ms Wehling noted that, following the Council's recommendation, the General Assembly had adopted, at its 79th session in December 2020, the inclusion of this project as an item with high-priority status in the 2020-2022 Work Programme. Likewise, the UNCITRAL's Commission had adopted the joint project with a parallel mandate, which was to develop a model law that would cover all private law aspects of a warehouse receipt system embracing both electronic and paper warehouse receipts. Whenever reference was made to a "Model Law", Ms Wehling further pointed out that this was the most useful outcome in the view of the Secretariats of both UNCITRAL and UNIDROIT, but that it was UNCITRAL's practice to defer the final decision on the form of any instrument to its Member States.

90. A Working Group was created once the project had been approved, and was composed of 11 expert members chaired by Governing Council member Professor Eugenia Dacoronia. Over the course of the first project year, the Working Group had held three sessions. While the first and second sessions had been held remotely, the third session had taken place in a hybrid format. All sessions were attended by over 30 participants, including international organisations active in the field as well as private and public sector stakeholders. The fourth Working Group session was scheduled to take place on 28 February – 2 March 2022.

91. Ms Wehling explained that a Drafting Committee and a subgroup on technological aspects had been established in order to structure the intersessional work. The Drafting Committee had met remotely five times during the first year of the project and had prepared, three draft chapters for the consideration of the Working Group: Chapter I, "Scope and general provisions"; Chapter II, "Issuance of a warehouse receipt"; and Chapter IV, "Transfer of warehouse receipts". The preliminary drafting suggestions for these Chapters as well as all documents related to the project were available on the UNIDROIT homepage.

92. As to the subgroup on technological aspects, Ms Wehling reported that the group had met four times and had prepared an analysis of electronic warehouse receipts and possible legislative approaches to address both electronic and paper receipts in the Model Law provisions. Among others, the subgroup had compiled a survey of technological models deployed for the issuance and transfer of electronic warehouse receipts across several jurisdictions. She further highlighted the synergies with the Digital Assets and Private Law Project in this respect.

93. Turning lastly to the proposed extension of the project duration, Ms Wehling recalled that this project had been undertaken jointly with UNCITRAL, and that the work plan provided for two phases: one for the UNIDROIT Working Group to prepare a comprehensive Model Law text, and a second for that text to be submitted to intergovernmental negotiations through an UNCITRAL Working Group. The work plan for the first phase provided that the Working Group was to submit a comprehensive draft Model Law text to the Governing Council by May 2022, however Ms Wehling reported that the Working Group's discussions had revealed important structural differences between legal families concerning key aspects to be addressed in the Model Law. With the additional delays caused by the restriction of in-person meetings, she stated that, in view of this situation, the Council was invited to authorise the extension of the project duration for one more calendar in order to allow the Working Group enough time to deliver a high-quality product, meaning that a comprehensive Model Law text would be submitted to the Governing Council at its 102nd session in May 2023.

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

95. *Mr Estrella-Faria (UNCITRAL)* thanked the Secretariat and the Working Group with words of praise for the professional and meticulous manner in which the extensive work had been done. He reported that the UNCITRAL Secretariat had submitted the proposed adjustment to the work plan to UNCITRAL's Commission, and that the plenary session of UNCITRAL had taken note of that and expressed the view that the Working Group should have ample time to address the outstanding issues that had been mentioned.

96. Mr Estrella-Faria then highlighted three main points that would benefit from further consideration. Firstly, there was the protection of the holder of a warehouse receipt and the exact nature of the rights that the holder of a receipt acquires – a matter on which legal families converged in the end albeit in different ways. In this respect, he highlighted that arriving at a solution that was sufficiently neutral to withstand the test of intergovernmental negotiations at UNCITRAL would deserve more time. Second, the relationship between the negotiable instrument as such and the underlying contract of bailment had raised many questions and arguments about addressing the contract in the Model Law, which also related to regulatory aspects, such as insurance and bonding requirements. Thirdly, electronic aspects also involved technical aspects. The Commission had been briefed about these points and had also been informed that the work was proceeding well. Lastly, Mr Estrella-Faria emphasised UNCITRAL's appreciation of the significant improvement of the drafting suggestions that had been presented at the third Working Group session.

97. In her capacity as Chair of the Working Group on a Model Law on Warehouse Receipts, *Ms Dacoronia* expressed her thanks to the Drafting Committee, the members of the technology subgroup, the members of the Working Group and Ms Wehling for the excellent work done. She stated that it had been a very successful and fruitful first year for the project, and that the

cooperation with UNICTRAL had been excellent. Furthermore, Ms Dacronia highlighted that the project had garnered vivid interest from experts, and that several members and observers had joined over the first year. In view of the structural differences between legal traditions as well as the complexity and technicality of the subject matter, she deemed it was very beneficial for the Working Group to be granted one additional year in order to complete the work on the Model Law text.

98. *The Secretary-General* drew the Council's attention to the additional theoretical complexity of the project. He explained that this complexity stemmed from the fact that the project concerned classic areas of the law where there was a very strong construction in both the common law approach and the civil law approach. Both systems would work well in this area, and there were ways in which one could reach the same solution equally effectively. One difficulty here was to find a neutral solution that bridged the gap between the approaches, and the members of the Working Group were well placed to address this issue. Moreover, the Secretary-General stated that, once a Model Law text was approved, there would be a number of issues to be explained for its users, either in form of a comprehensive commentary or guide to enactment. It would be a rich document and could build upon the recordings and information collected during the project. He noted that, how to develop that additional product would need to be discussed at a later date.

99. *Ms Pauknerová* thanked the Secretariat for the presented information. She noted that the Czech Republic had a law on warehouse receipts, but it did not have warehouse receipts in an electronic format. The work on electronic warehouse receipts would, at least theoretically, be very interesting for the domestic law of the Czech Republic. She expressed her support for the proposed extension of the project for one calendar year.

100. *Mr Gabriel* congratulated the Ms Dacronia as the Chair of the Working Group on the excellent work done. He emphasised that there was clearly a need for this important project and that UNCITRAL was the right partner for it. Concluding, Mr Gabriel expressed his full support for the extension of the project duration.

101. *The Council took note of the progress made since its 99th session by the Working Group on developing a joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts. The Council authorised the proposed extension of the project for one calendar year, with the presentation of the first complete draft at its 102nd session, in May/June 2023.*

Item 7: Best Practices for Effective Enforcement ([C.D. \(100\) B.8](#))

102. *The Deputy Secretary-General of UNIDROIT, Ms Anna Veneziano*, updated the Council on the status of the project on Best Practices for Effective Enforcement and on the related activities.

103. The Deputy Secretary-General pointed out that Document C.D. (100) B.8 contained, in its first part, a summary of the history of the project, which had originated in a proposal of the World Bank and had been included in the 2020-2022 Work Programme by the General Assembly at its 78th session upon recommendation of the Governing Council, pending further refinement of its scope. She referred the Council to the written document for additional information, and noted that she would focus the presentation on the developments of the project after the second meeting of the 99th session of the Governing Council, where the Council had discussed the Secretariat's updated report based on the outcome of the consultation procedure involving experts and international organisations that had been held in Spring/Summer 2020. She recalled that at that meeting, the Council had approved the proposed guidelines regarding the scope of the project, confirmed the high priority status assigned to the project, and authorised the establishment of a Working Group.

104. Ms Veneziano noted that, following the Council's decision, a Working Group had been established, chaired by Governing Council member Ms Kathryn Sabo and composed of internationally recognised experts representing different jurisdictions and areas of expertise, as well as observers

from intergovernmental and international organisations, the complete list of which was provided in the document.

105. The Deputy Secretary-General highlighted that the Working Group had already met remotely for two full sessions, one in November/December 2020 and the second one in April 2021. Moreover, the Chair and several members of the Working Group had participated in intense intersessional work through remote meetings and exchange of documents. She expressed her sincere gratitude to the Chair, to the focal points and to all participants in the subgroups, which included members and observer organisations, for their dedication to the project and their excellent cooperation.

106. Ms Veneziano explained that at its first session in November/December 2020, the Working Group had devoted its attention almost exclusively to the more precise determination of the scope of the project, on the basis of the Issues Paper prepared by the Secretariat, as well as on methodology and organisational issues. It was agreed that the goal of the project would be to draft a set of non-binding best practices, accompanied by explanatory comments and designed to improve the effectiveness of enforcement against excessive length, complexity, costs, and lack of transparency, while at the same time ensuring a sufficient protection of all parties involved. It was also agreed that such best practices should consider the impact of modern technology on enforcement, both as an enabler of suitable solutions and as a potential source of additional challenges to be addressed. To this end, the Working Group had discussed a Preliminary Report on the impact of technology on enforcement, prepared by a Working Group member, which gave examples of existing procedures and mechanisms, including the emergence of new technologies and automation, set forth the potential policy issues to be addressed and made a proposal for a taxonomy.

107. In relation to the scope of the project, there had been unanimous support for the idea to cover both post-adjudication enforcement as well as situations where the creditor is entitled to proceed to enforcement without first obtaining a court decision. The Working Group had also clarified that the project would address both the concrete mechanisms of the enforcement as well as aspects of its governance and organisation. There had moreover been unanimous support for the idea of covering enforcement of both secured and unsecured claims. The Working Group had further agreed to prioritise contractual claims as opposed to claims deriving from other sources, with the caveat that distinguishing between types of claims would not appear to be wholly justified for enforcement of adjudicated claims. Finally, the Working Group had agreed not to exclude, but to proceed with caution, at a later stage of the work, on the two matters of consumer debtors or creditors (with the caveat that because of technology, there would be a need to include peer-to-peer contracts) and enforcement in insolvency. The need to proceed in close cooperation and agreement with UNCITRAL and the WBG had been emphasised on this latter point.

108. The Deputy Secretary-General further noted that, the Working Group, following an example used in other UNIDROIT projects, had created three sub-groups at its first session to advance the work on the project during the intersessional period: Subgroup 1 on “post-adjudication” enforcement; Subgroup 2 on enforcement of secured claims (collateral); Subgroup 3 on the impact of technology on enforcement. The Chair and most Working Group members and observers had been involved in an intense working schedule set up by the focal points of each sub-group and supported by the Secretariat.

109. Ms Veneziano went on to illustrate the intersessional work conducted by the Secretariat, in cooperation with the European Bank for Reconstruction and Development (EBRD), through consultations with experts in diverse jurisdictions and additional research. She explained that while this was still work-in-progress, the outcome had been put together in two supporting documents, on General Enforcement and Technology and Enforcement respectively.

110. The Deputy Secretary-General then referred to the second session of the Working Group that had taken place remotely on 20–22 April 2021, with a focus on the Reports prepared by the three aforementioned sub-groups. In particular, Sub-group 1 had prepared a detailed roadmap of the key issues to be addressed with some initial recommendations that were discussed at the session (including coverage of the documents recognised by national law which give creditors the right to enforce in the project; the main challenges in the enforcement of claims for payment on tangible assets, regarding third-party debt orders or garnishment proceedings; proportionality of enforcement of claims for payment and incentives for the debtor to cooperate in the enforcement; exemptions; disclosure of the debtor's assets; creditor's, debtor's and third party's remedies; post-adjudication settlement; organisational aspects). She further highlighted that the focal points of Sub-group 1 (post-adjudication enforcement) and Sub-group 3 (Impact of Technology in Enforcement) had coordinated their input in advance. For this reason, the Report of Sub-group 3 had been organised in such a way as to follow the structure of the Report of Sub-group 1, and the related parts of the former Report had been discussed in connection with the corresponding issues in the latter. The Working Group had focused its attention on the use of platforms to conduct auctions and create secondary markets and on the use of technology to enhance notifications and communications.

111. Finally, Ms Veneziano illustrated the Report prepared by Sub-group 2 on enforcement of security rights, which focused, in this first stage, on the enforcement of security rights on movables, and contained draft recommendations of best practices in the form of answers to a list of practical questions allocated to different teams among Sub-group members. As a general working method, the Sub-group had started from the assumption that while the Working Group would be free to develop the most appropriate best practices in this field, the rules on enforcement that had already been developed in instruments that had achieved consensus through intergovernmental negotiations at a global level should be treated as presumptively valid when addressing issues within the scope of the project. The Working Group had discussed in particular the recommended best practices for obtaining possession of tangible collateral, for realising without judicial process, and for the variation of the rules governing realisation.

112. The Deputy Secretary-General concluded by noting that the Sub-groups had already resumed their interim work in view of the third session of the Working Group to be held at the end of November/beginning of December 2021. She highlighted the need for general informal coordination meetings to ensure consistency of the output of the sub-groups, as well as the importance of coordinating this project and the UNIDROIT project on Digital Assets and Private Law for the issues concerning enforcement on digital assets. She further indicated that in relation to technology, the Secretariat and Sub-groups were specifically addressing, among other topics, the role and impact of automation in enforcement proceedings.

113. *The President of UNIDROIT* queried whether Ms Sabo, the Chair of the Working Group, wished to make any additional remarks.

114. *Ms Sabo* stated that the Deputy Secretary-General had provided a very thorough report and commended the Secretariat for the dedication with which it was pushing the project forward. She noted with appreciation that the Working Group had invested a great number of formal and informal meeting hours in the development of the project, which covered a large, challenging, but also very important area of the law. She highlighted the knowledge, commitment, and enthusiasm of the Working Group, which had been proceeding in a logical and methodical way, focusing on the objectives of the project. Ms Sabo concluded by stating that, while the project would not be finished in time for approval at the next spring session of the Council and would have to be carried over to the next Triennial Work Programme, it was worth doing it right to achieve a useful final instrument.

115. *The representative of the HCCH, Secretary-General Mr Christophe Bernasconi*, intervened expressing his pleasure at being present at the 100th momentous session of the UNIDROIT Governing Council. He formally stated his appreciation of the excellent work done by the UNIDROIT Secretariat

in conducting on-line institutional and project meetings, which had been inspirational during the difficult period of the pandemics. In relation to the project on Best Practices for Effective Enforcement, he thanked the Working Group Chair and members for the very useful work that the HCCH was following with great interest through its representatives Senior Legal Officer Ms Ning Zhao and First Secretary Mr João Ribeiro-Bidaoui. He was confident that the UNIDROIT project would not overlap with HCCH's instruments and would provide a useful complementary set of best practices. He concluded by reiterating the HCCH interest in continuing to take part under the Chair's effective guidance.

116. *The Council took note of the progress of the project on Best Practices for Effective Enforcement since the Governing Council's 99th session held in September 2020.*

Item 8: Digital Assets and Private Law ([C.D. \(100\) B.9](#))

117. *Senior Legal Officer Mr Carlo Di Nicola (UNIDROIT Secretariat)* introduced the topic, with reference to document C.D. (100) B.9. He recalled that the UNIDROIT Governing Council had approved the preparation of a legal instrument containing Principles and Legislative Guidance in the area of Digital Assets and Private Law (DAPL) for the 2020-2022 Triennial Work Programme in September 2020 with a high priority status. He explained that work on the project had progressed swiftly over the previous twelve months, noting that the Working Group had been advancing in the preparation of a set of Principles and accompanying commentary on issues relating to digital assets and private law. Mr Di Nicola further explained that the Working Group had formed four subgroups and held intersessional meetings to work on specific issues such as custody, control, secured transactions, private international law, and taxonomy.

118. Mr Di Nicola noted that in addition to the Working Group, a Steering Committee – chaired by Professor Monika Pauknerová – had been established and was comprised of experts from different fields (both technical and legal) acting in a consultative capacity to allow for wider participation, to ensure that all sensitivities and domestic realities were considered and to provide invaluable context-specific feedback to the Working Group. As of 22 September 2021, 36 experts had been nominated by 25 countries, plus the European Commission.

119. Regarding future steps, Mr Di Nicola explained that the Working Group would endeavour to provide a revised version of the draft Principles and Legislative Guidance to the Governing Council at its 101st session in 2022, and that it was envisaged that broad consultations would be undertaken throughout 2022 before the instrument was finalised and proposed for adoption by the Governing Council in 2023. Finally, Mr Di Nicola thanked his colleagues Mr Hamza Hameed and Mr Chen Miao for their assistance with the project and expressed his gratitude to the Working Group experts and observers, with special thanks to the Subgroups' Co-Chairs.

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

121. In his capacity as Chair of the DAPL Working Group, *Mr Hideki Kanda* thanked the Secretariat and the Working Group experts and observers for all their work on the project. He emphasised that the objective of the project was to reduce legal uncertainty with respect to private law rules concerning digital assets, as well as to carry out work on a taxonomy, in cooperation with UNCITRAL. Regarding the substance, he provided an overview of the kinds of private law issues being considered by the DAPL Working Group, including questions surrounding transfer of a proprietary right in a digital asset, the importance of the question of control and exclusivity of control over digital assets, and the various issues surrounding custody of digital assets. He further highlighted three additional issues under consideration by the Working Group, namely, the question of the project's scope (e.g., which kinds of digital assets would be covered by the Principles), the issues raised by digital assets linked or tethered to real-world assets (e.g., the transfer of the digital asset does not necessarily

entail the automatic transfer of the other, linked asset, unless certain conditions were met), and autonomous process (e.g., how to deal with digital assets which are subject to the transfer and control of a computer programme). With regard to the latter, in particular autonomous enforcement, Mr Kanda noted that the DAPL Working Group would coordinate with the UNIDROIT Project on Best Practices for Effective Enforcement.

122. *Ms Pauknerová* thanked the Secretariat and the Chair of the Working Group, Mr Kanda, for all their work on the DAPL Project. She expressed her satisfaction with the efficient progress of the Project. In particular, she noted the importance of the taxonomy workstream and its cross-cutting impact on other aspects of the Project. She also highlighted the importance of ensuring close coordination between the DAPL Project and other key international initiatives aiming at legal harmonisation, including ongoing projects undertaken by UNCITRAL and the European Union. Finally, she noted that she was honoured to serve as the Chair of the Steering Committee which would work to increase transparency and awareness of the Project's work and provide for additional expert input.

123. *Mr Attila Menyhárd* expressed his gratitude to the Secretariat for all its hard work on the DAPL Project over the past year and a half. Despite the inherent difficulties in a project of this nature, he noted that the work was well focused, and he expressed keen interest in continuing to follow the Project's evolution.

124. *Ms Broka* expressed her gratitude to everyone involved in the DAPL Project for all their hard work and highlighted the importance of the work being carried out by the Working Group, noting its relevance to several emerging market trends such as transfers of digital assets, central bank digital currencies (CBDCs), and decentralised finance more broadly. She noted that all governments would need to address the growing importance of digital assets and she congratulated the DAPL Working Group for its pioneering work in this area.

125. *Mr Bernasconi (HCCH)* congratulated UNIDROIT and the Chair of the DAPL Working Group for all the important work they have carried out so far under this Project. He noted that the HCCH was represented on the DAPL Working Group and was following the Project's progress with keen interest. He further noted that the HCCH had recently commenced their own work in the area of digital economy and private international law in the form of a study conducted by the Permanent Bureau. He highlighted that HCCH was organising a conference on commercial and financial law and private international law in the digital economy, planned for September 2022, which would address a number of questions, including those relating to applicable law generally, the role of party autonomy with respect to digital assets, smart contracts, and third-party effects of digital assets. Finally, he noted the importance of close coordination between the sister organisations in their respective work in this field.

126. *Mr Pichonnaz (ELI)* congratulated the Secretariat for its important work in this area and noted several areas of potential cross-fertilisation between the DAPL Project and the recently published ALI-ELI Principles for a Data Economy.

127. *The Governing Council took note of the progress made by the Digital Assets and Private Law Working Group.*

Item 9: International Interests in Mobile Equipment

128. *The Secretary-General* noted that the pandemic crisis had heavily affected the Cape Town Convention (CTC) system. He recalled the capacity of the Convention to provide legal certainty and adequate protection to creditors, and reiterated the importance of the Convention and its Protocols to lower the cost of credit and to enhance the ability of debtors to access the possibility to lease and to have access to high-value equipment of different sectors.

(a) Extraordinary activities regarding the Cape Town Convention and the Aircraft Protocol (oral presentation)

129. Focusing on the aircraft and aviation sector, *the Secretary-General* recalled a number of restrictions that had been adopted because of the COVID-19 pandemic, such as limitations on flights, travel in general, and transportation of merchandise and goods. The aviation industry had been impacted heavily, and a number of airlines had been put either in insolvency or had been undergoing hybrid restructuring proceedings based on a situation of financial distress. He noted that the CTC and the Aircraft Protocol had been put to the test on several occasions as there had been attempts to soften the application of Convention in some jurisdictions.

130. He informed the Council that the Convention and Aircraft Protocol had proven to be very resilient, and recalled that if a country contended that a CTC rule would not apply because of national law that would constitute a breach of an international obligation of the country.

131. *The representative of the Aviation Working Group (AWG), Mr Jeffrey Wool*, complemented the Secretary-General's remarks by underlining that the Convention sets out firm rules that are not modified by force majeure concepts and national emergency concepts. He informed the Council that the Aviation Working Group (AWG) had worked with 26 countries that had sought to change their national laws in a manner that would be inconsistent with the express terms of the treaty. The AWG had intervened in a variety of insolvency proceedings in 15 countries to encourage the strict compliance with the treaty. He emphasised the importance of legal stability, rule of law and reliance on the Convention and on the party autonomy provisions.

132. In addition, Mr Wool illustrated a range of issues that had been raised by countries and measures that had been adopted, such as restrictions on the ability to file for bankruptcy. Overall, Mr Wool noted that countries had taken their international obligations very seriously, recalling that the AWG had a CTC compliance index to assess every judicial and administrative action taken by contracting States against the Convention's terms. He noted that the AWG had also consulted with governments on a regular basis and that it had been helpful and constructive during the difficult context of the pandemic. To conclude, he emphasised that increasingly, with a lot of attention and action, the framework of the treaty had been respected and had been a positive instrument in facing the difficulties of the COVID-19.

133. Finally, *the Secretary-General* noted that, as the treaty had resisted such difficult circumstances, it could only potentially grow in terms of legal certainty and become an essential and reliable tool for recovery.

134. *The Governing Council took note of the extraordinary activities undertaken regarding the Cape Town Convention and the Aircraft Protocol in the context of the COVID-19 pandemic.*

(b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol ([C.D. \(100\) B.10](#))

135. *The Deputy Secretary-General* updated the Council on the developments regarding the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg Rail Protocol).

136. Ms Veneziano noted that, since the Governing Council 99th session in September 2020, the Secretariat had continued its efforts to promote the implementation and entry into force of the Luxembourg Rail Protocol. She highlighted the excellent cooperation with the co-sponsoring agency, the Intergovernmental Organisation for International Carriage by Rail (OTIF), as well as the Co-Chairs of the Preparatory Commission and the Rail Working Group.

137. Ms Veneziano emphasised that, while the status of the Protocol had remained the same since the September 2020 Governing Council session, there had been very positive developments despite the impact of the pandemics on the legislative priorities of many governments, particularly in two States. South Africa for one had announced the release of the Presidential statement authorising the Minister of Transport to sign the Luxembourg Rail Protocol, which was the first formal step towards ratification. Secondly, in Spain, the Council of Ministers had authorised the signature of the Luxembourg Rail Protocol, and work towards ratification was well underway. She further reported that the Secretariat had been informed that the Protocol was under consideration also in other jurisdictions and expressed the hope that the fourth ratification would be reached in the near future.

138. In relation to the conferences, seminars and meetings regarding the Luxembourg Rail Protocol held in 2020 and 2021, Ms Veneziano referred to the Annual Report 2020 and to the document C.D. (100) B.10 which had been presented to the Governing Council. In particular, she highlighted the 9th Session of the Preparatory Commission for the establishment of a registry under the Protocol, organised remotely in April 2021 by OTIF, the main outcome of which had been the approval of the revised Rail Registry Regulations. She noted the continued interest of the UN Economic Commission for Africa in raising awareness on the Protocol. She also highlighted the activity of the Working Group on the Permanent Identification of Railway Rolling Stock set up within the UN Economic Commission for Europe, with participation of OTIF, UNIDROIT, the RWG, as well as governmental and industry representatives, concerning the practical implementation of the Rail Protocol URVIS number. Ms Veneziano explained that the Group had already met for four sessions, with a fifth one planned for November 2021, and that the expected outcome would be set of non-binding model rules for use in the rail industry. She finally emphasised the strong documented interest of the European Commission in the Protocol, and the fact that the Protocol fit very well, more generally, into the sustainable development agendas of various organisations and States.

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

140. *The Secretary-General of OTIF Mr Wolfgang Küpper* expressed his pleasure in participating in the 100th session of UNIDROIT's Governing Council and congratulated UNIDROIT on its long and successful history. He emphasised the excellent cooperation between OTIF and UNIDROIT in the implementation of the Luxembourg Rail Protocol. Mr Küpper recalled OTIF's crucial role in providing an enabling legal and technical framework for the operation of railways in Europe, Asia and Africa, with a particular attention to the international aspects and to the legal and technical interoperability. He also noted that international political conditions had never been so favourable for rail transportation as today, considering in particular widely shared sustainability goals and the prevailing trends in urbanisation, digitalisation and demographic growth. The Luxembourg Rail Protocol would represent a key factor in facilitating financing for railway rolling stock, thereby strengthening the rail sector and related policies. Mr Küpper concluded by confirming OTIF's commitment in supporting the early entry into force and subsequent implementation of the Luxembourg Rail Protocol, in its role as Secretariat of the Supervisory Authority of the Rail International Registry.

141. *The Secretary-General* emphasised that as opposed to previous years, when the Secretariat had received expressions of interest to sign and ratify on the part of various States, this year official authorisations to sign the instrument from the relevant authorities had been released. In particular as regards Spain, he explained that the Council of Ministers had authorised signature and deferred the accession or ratification of the instrument to the Parliament, given that a parliamentary act was required for this purpose. A draft legislative act had already been prepared and parliamentary action was expected in the near future.

142. *Mr Caravaca* confirmed that the ratification of the Protocol was at the stage of being adopted by the Spanish Parliament. Both *the President* and *the Secretary-General* welcomed this information and expressed the hope that the formal instruments of the fourth ratification would reach UNIDROIT soon.

143. *Mr Bollweg* expressed his gratitude to the two Secretary-Generals of UNIDROIT and OTIF for the promotional activities undertaken in the last year, and his satisfaction that such efforts had finally borne fruit, with a fourth ratification expected in the immediate future and, hopefully, a fifth ratification in the pipeline. He recalled that both the Registry and the Supervisory Authority would need to be in place in order for the Protocol to be properly implemented. For the Rail Protocol, a Conference of Contracting States would fulfil the role of Supervisory Authority, with participation not only of contracting States but also States nominated by the two Secretariats. Mr Bollweg indicated that, to his knowledge, OTIF had already undertaken some efforts in selecting suitable candidates and queried whether UNIDROIT had done the same.

144. *The Deputy Secretary-General* explained that UNIDROIT and OTIF had agreed on a coordinated procedure on the composition of the Supervisory Authority. At that time, UNIDROIT had already reached out to contacts in South Africa and Spain, since they were the most likely candidate States that had not yet either signed or ratified the instrument. She noted that in view of the imminent ratification of at least one of them, UNIDROIT would proceed with the selection of other candidates, bearing in mind two factors. On the one hand, the entry into force of the Protocol would need a fourth ratification together with the issuance by the Supervisory Authority of a certificate confirming that the International Registry is fully operational, and UNIDROIT was taking steps to ensure this result. On the other hand, UNIDROIT would necessarily liaise with OTIF to ensure geographical diversity in the composition of the Supervisory Authority.

145. *The President of UNIDROIT* thanked all participants and moved onto the second part of document C.D. (100) B.10 concerning the implementation of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (Space Protocol).

146. *Legal consultant Mr Hamza Hameed (UNIDROIT Secretariat)* provided updates to the Council on the implementation and status of the Space Protocol of the Cape Town Convention. He recalled that the Space Protocol had been adopted at a Diplomatic Conference in Berlin in March 2012, and since then, the UNIDROIT Secretariat had continued to work towards setting up the international infrastructure necessary for its entry into force, as well as towards attracting support from industry, governments, and international organisations to further promote the use of asset-based financing and leasing in the space sector.

147. In this regard, UNIDROIT's work had largely been led by a sub-group of the Space Preparatory Commission to reassess industry participation and promotion of the Space Protocol. In 2020, this sub-group had continued to be active and deliver on its mandate. It was noted that, similar to many others, the COVID-19 pandemic had impacted the space industry and made financiers rethink their portfolios and investments. In this regard, the Sub-Group had conducted a survey of space financiers to analyse the usefulness of asset-based financing in a post-covid space economy. This had showcased a good appetite for added securities in the space sector to continue to ensure that financing flowed into space businesses. The results of this survey had been presented during an online panel discussion in March 2021 and would be published as part of an academic paper in the near future.

148. The Secretariat had also continued to promote the Space Protocol through its own efforts. The Protocol had been presented at various conferences and events in different parts of the world, most of which were online, with some others being in person. Details of all of these could be found in Paragraph 18 of document C.D. (100) B.10. Members of the Secretariat had also continued to teach the Space Protocol at various universities.

149. It was noted that the Secretariat had also made an active effort in expanding the support the Space Protocol had amongst the international community. This had been done by means of the Secretariat participating in international working groups, such as the Courts of Space Working Group managed by the Dubai International Financial Centre Courts; and also by increasing UNIDROIT's

collaboration with the United Nations Committee on the Peaceful Uses of Outer Space, under the purview of the United Nations Office for Outer Space Affairs. In this regard, it was reported that UNIDROIT had recently been appointed as a Permanent Observer at the Committee on the Peaceful Uses of Outer Space, and had also formally concluded a Memorandum of Understanding with the United Nations Office for Outer Space Affairs.

150. Mr Hameed added that the Secretariat had also conducted work during the German Presidency of the Council of the European Union to ensure that the importance of international instruments for promoting asset-based financing in the space sector was duly recognised as part of a document outlining key principles for the global space economy. While there had been limits to the results that were achieved in this regard, the deliberations pointed in the direction of recognising the usefulness of an instrument such as the Space Protocol.

151. Mr Hameed concluded by noting that that interest in the Space Protocol was growing. As more States became involved in the global space economy and space commerce became mainstream, the relevance of asset-financing and leasing of space assets was becoming more recognised. The UNIDROIT Secretariat had recently received several requests from States to better understand how the Space Protocol could add value to their domestic space economies. Moreover, international organisations and partners were also actively recognising the benefits the Space Protocol could bring to boost space sustainability.

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

153. *Mr Gabriel* commended the efforts of the Secretariat and thanked them for the updates relating to the Luxembourg Rail Protocol, and the Space Protocol of the Cape Town Convention.

154. *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.*

(c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) ([C.D. \(100\) B.11](#))

155. *Mr Brydie-Watson* introduced the topic, with reference to document C.D. (100) B.11. He explained that the 16 States comprising the MAC Protocol Preparatory Commission were focused on four specific matters: i) the appointment of a Supervisory Authority, ii) the appointment of a Registrar, iii) the adoption of Registry Regulations and iv) implementation and promotion of the MAC Protocol.

156. In relation to the appointment of a Registrar, Mr Brydie-Watson noted that the Registrar Working Group established by the Preparatory Commission had invited participating States to nominate additional procurement, registry and information technology experts to assist the Working Group in preparing the Request for Proposals, and an Evaluation Plan and detailed Evaluation Criteria for assessing proposals. He noted that the application window for proposals was scheduled to open in February 2022, once the documents were considered and approved by the Preparatory Commission at its fourth session. Regarding the development of the first edition of the Registry Regulations, he noted that the Preparatory Commission had approved the draft submitted by the Regulations Working Group at its third session in June 2021. He explained that the Regulations Working Group had scheduled an additional meeting in the final quarter of 2021 to address the remaining outstanding issues, with an intention to submit an updated draft for consideration by the Preparatory Commission at its fourth session.

157. Mr Brydie-Watson noted that, notwithstanding the implementation challenges posed by the COVID-19 pandemic, the momentum behind the MAC Protocol had not stalled. He explained that the European Union was working towards the signature of the MAC Protocol under the Slovenian Presidency of the European Council (July – December 2021) and that the Secretariat was working with EU Member States to encourage them to support the process. He further explained that over the past 12 months, the Secretariat had organised promotional events with Embassies in Rome and with Latin American States, and had undertaken consultations with Government representatives in Mauritius, Korea and Uzbekistan and private sector associations in Kenya. The Secretariat also continued to coordinate with the private sector through the MAC Working Group as it worked to formalise its structure and funding. Finally, Mr Brydie-Watson thanked his colleague Mr Hamza Hameed for taking lead responsibility for the MAC Protocol project between October 2020 and May 2021 and for his continued work on the Registrar Working Group and the Regulations Working Group.

158. *The Secretary-General* expressed his gratitude to Mr Hamza Hameed for his outstanding work on the MAC Protocol during Mr Brydie-Watson's absence. He emphasised the importance of the European Union signing the MAC Protocol, as Spain and several other European States had expressed a willingness to sign the Protocol once the European Union had done so. He noted that the European Union signing the MAC Protocol should not be a contentious matter as it had already adopted the Cape Town Convention, the Aircraft Protocol and the Luxembourg Rail Protocol. He encouraged Governing Council Members from European Union Member States to ask their governments to support the European Commission's proposal to sign the MAC Protocol.

159. *The Governing Council took note of the progress made by the Preparatory Commission and the Secretariat on the implementation of the MAC Protocol.*

(d) UNIDROIT candidacy for the role of Supervisory Authority of the MAC International Registry to be established under the MAC Protocol ([C.D. \(100\) B.12](#))

160. *Mr Brydie-Watson* introduced the topic, with reference to document C.D. (100) B.12. He highlighted three issues: (i) the purpose and functions of the Supervisory Authority, (ii) the process for the appointment of a Supervisory Authority, and (iii) some preliminary considerations regarding the suitability of UNIDROIT for the role.

161. First, Mr Brydie-Watson explained that Article 17(2) set out the responsibilities of the Supervisory Authority, which could be categorised as either *formal*, *general* or *administrative* functions. He emphasised that the role of the Supervisory Authority was limited to supervision of the establishment and operation of the registry itself and did not have a wider responsibility for the interpretation or functioning of the Cape Town Convention and MAC Protocol. Further, the Supervisory Authority would not be responsible for adjudicating matters related to particular registrations.

162. Second, Mr Brydie-Watson explained that the Secretariat had engaged in an exhaustive four-year process to identify an appropriate existing organisation to undertake the role of Supervisory Authority. He noted that identifying a Supervisory Authority for the MAC Protocol had been particularly difficult due to its application to security interests over equipment used in three diverse sectors (agriculture, mining and construction). He noted that the World Bank Group, the World Trade Organisation, the Multilateral Investment Guarantee Agency, the Organisation for Economic Cooperation and Development, the World Customs Organisation and the International Fund for Agricultural Development had all been considered as potential candidates, however none of these organisations were in a position to undertake the role. As such, the Preparatory Commission had invited UNIDROIT to consider undertaking the role as an option of last resort. He explained that the Preparatory Commission had also briefly discussed the creation of a new international body to

undertake the role, as consistent with the approach adopted under the Luxembourg Rail Protocol, however the Commission had decided that all existing organisations should be evaluated before considering whether a new entity should be created to undertake the role.

163. Third, Mr Brydie-Watson noted that the Secretariat was of the view that (i) UNIDROIT had the expertise and experience to undertake the role, (ii) undertaking the role would not create any legal liabilities for the Institute and (iii) UNIDROIT would be compensated for all costs associated with performing the role. In relation to these matters, Mr Brydie-Watson concluded that UNIDROIT appeared well positioned to undertake the role.

164. *The Secretary-General* noted that the MAC Protocol was a treaty that UNIDROIT had invested 14 years of work in developing, and had massive potential for facilitating economic growth around the world. He then turned to three specific matters: (i) the relationship between the role of UNIDROIT as Treaty Depository and its potential role as Supervisory Authority, (ii) different options for how UNIDROIT's institutional structure could accommodate the role, and (iii) whether the Institute's Statute would need to be amended to undertake the role.

165. In relation to UNIDROIT's role as Depository, the Secretary-General noted that while the MAC Protocol had been designed to have separate entities undertake the roles of Depository and Supervisory Authority, there would be no conflict in duties if UNIDROIT were to undertake both roles. Generally, the MAC Protocol contemplated dialogue between the Supervisory Authority and Depository. He explained that as both the Depository and Supervisory Authority were only permitted to recover actual costs incurred in performing their respective roles from registry fees, there was no conflict created by the Supervisory Authority having the power to set fees, as UNIDROIT could not profit as either Depository or Supervisory Authority from the setting of higher fees.

166. The Secretary-General noted that due to UNIDROIT's relatively flexible governance structure, there were several different options for how UNIDROIT's different organs could discharge the Supervisory Authority functions. He explained that all administrative functions could be undertaken by the Secretariat, whereas document B.12 set out different options as to how the formal functions and general functions could be undertaken by a combination of the Governing Council, General Assembly or subcommittees created by either body. He noted that the Secretariat considered Option 1C to provide the best structure, under which the Governing Council would undertake the general functions but refer recommendations on the formal functions to a subcommittee of the General Assembly.

167. Finally, the Secretary-General suggested that if the Governing Council was supportive of UNIDROIT accepting the role of Supervisory Authority, the Council might wish to consider whether UNIDROIT's Statute would need to be amended. He noted that amending the Statute would be a complex undertaking and that it might be reasonable for UNIDROIT to undertake the function of Supervisory Authority without amending Article 1 of the Statute, on the basis that over the preceding decades the Institute had engaged in a number of other activities associated with its general mandate but not specifically provided for in its Statute. He concluded by noting that both the Governing Council and the General Assembly would need to approve UNIDROIT accepting the role of Supervisory Authority before any formal steps were undertaken.

168. *The President* noted that as a matter of public international law, the purpose of an international body could be changed through practice and without the need for statute amendment, as long as there was general understanding and agreement on the change and the new functions were not expressly prohibited. She indicated that her firm position was that the Statute would not need to be amended for UNIDROIT to undertake the role. She further noted that, as a practical matter, opening a Statute for amendment could create institutional risks opening the text to potentially undesirable further amendment proposals.

169. *Mr Gabriel* noted that the MAC Protocol had the potential to have the largest beneficial economic impact of any of UNIDROIT's instruments. He explained that as a participant in the Preparatory Commission, he believed that the process to appoint a Registrar was making good progress and that it was important that a Supervisory Authority be appointed quickly to avoid delaying the entry into force of the Protocol. He suggested that as UNIDROIT was the only remaining existing organisation that could accept the function, the Governing Council should approve UNIDROIT accepting the role of Supervisory Authority. He expressed a preference for Option 1C as the preferential structure for discharging the Supervisory Authority functions and suggested that there would be no need to amend the Statute in order for UNIDROIT to accept the role.

170. *Mr Meier* raised some queries and doubts regarding the suitability of UNIDROIT to undertake the role of Supervisory Authority. He suggested that the challenge in appointing a Supervisory Authority under the MAC Protocol was not dissimilar to the situations under the Luxembourg Rail Protocol and the Space Protocol. He noted that his federal office in Switzerland was responsible for supervising several electronic registries and that he had some understanding of the issues involved. He queried whether UNIDROIT would have sufficient independence to both supervise the operation of the registry as Supervisory Authority and separately promote the implementation of the MAC Protocol. He further queried whether the Governing Council would have the material competency and expertise to fulfil the functions of the Supervisory Authority, even with advice from a Commission of Experts. He noted that Article 17 of the Convention did not provide much information on the specific operation of the Supervisory Authority and that further detail would be useful. He suggested that the Governing Council should also consider the possibility of the establishment of a new international entity to perform the role of Supervisory Authority, as consistent with the Luxembourg Rail Protocol as an alternative option to UNIDROIT undertaking the role. Mr Meier concluded that there was no need for the Governing Council to rush its consideration of this important matter and that further consideration of the various issues was required.

171. *Mr Kilgarrieff* expressed his support for UNIDROIT undertaking the role of Supervisory Authority. He noted that he had consulted with the Chair of the MAC Preparatory Commission Mr Mark Smith and concurred with the Secretariat's assessment that UNIDROIT becoming the Supervisory Authority was the option of last resort and should now be considered. He noted that Mr Meier had raised important points, suggesting however that all the concerns could be addressed. Mr Kilgarrieff indicated a preference for Option 1C as the preferential structure. Finally, he concluded that it was natural and within the bounds of public international law for organisations to have some degree of competence and concurred with the President that the Statute would not need to be amended for UNIDROIT to undertake the role.

172. *Ms Bariatti* suggested that it was within UNIDROIT's existing powers to undertake the role of Supervisory Authority. She noted that, as a matter of public international law, international organisations lived and evolved through their Statute. She noted that the International Court of Justice had found that the General Assembly of the United Nations had the implied power to establish an administrative tribunal under its general power to regulate staff relations, even though this power was not specifically provided for under the General Assembly's statute, suggesting an analogy with the situation under the UNIDROIT Statute. She further noted that a decision to the contrary would imply that the Institute's work on implementation of its instruments over the previous decades had been inconsistent with its statutory powers. She agreed with Mr Meier that certain issues required further consideration, but emphasised that time was of the essence and that given the Governing Council did not meet often, it was important to address this matter as quickly as possible. Ms Bariatti indicated a preference for Option 1C as the preferable structure for UNIDROIT to perform the Supervisory Authority functions as it would both respect the powers of Member States and properly reflect the relationship between the Governing Council and the General Assembly.

173. *Mr Bollweg* noted that he had responsibility within the German Government for the Cape Town Convention and its Protocols, that he had been involved with the Cape Town Convention system for 22 years, and was convinced of the value of the instrument in increasing access to finance around the world. He suggested that challenges in identifying an existing organisation to undertake the role of Supervisory Authority was not a new issue solely related to the MAC Protocol, as the same issue had arisen under the Luxembourg Rail Protocol and the Space Protocol. He noted that while UNIDROIT candidacy for the role of Supervisory Authority was a potential solution for this issue, it had not been adopted as a solution in relation to the previous Protocols.

174. *Mr Bollweg* raised a number of concerns. First, he emphasised that there was no need for an urgent decision on this matter. He noted that in the almost two years since its adoption in November 2019, there had been no ratifications of the MAC Protocol. He noted that the Rail Protocol required only four Contracting States to enter into force and had still not achieved this in the 14 years since its adoption in 2007. He suggested that the MAC Registry would not be operational by January 2024. Second, he expressed doubt that it would be possible to finance the estimated annual costs of the Supervisory Authority (118,000 euro) through voluntary contributions from States or the private sector. He queried whether any parties had yet committed to the provision of such funds. Third, he suggested that none of UNIDROIT's bodies would be in a position to perform the Supervisory Authority functions as they did not have the required experience, and were already busy working on other matters. Fourth, on the basis of advice received from the German Foreign Office, he suggested that the Statute would need to be amended to allow UNIDROIT to undertake the role of Supervisory Authority. *Mr Bollweg* concluded that there was no need to rush this important matter and suggested that the option of establishing a new international body to perform the role of Supervisory Authority required further examination.

175. *Ms Dacoronia* expressed hesitation towards the proposal of having UNIDROIT undertake the functions of the Supervisory Authority. She agreed with some of the concerns raised by *Mr Meier* and *Mr Bollweg*. She acknowledged that UNIDROIT's power to perform the Depositary function and undertake promotional work could be inferred from Article 1 of the Statute, however she emphasised that UNIDROIT might not undertake the Supervisory Authority role without amending the Statute. She recalled that the role of the Supervisory Authority would entail the obligation to appoint and dismiss Registrars and to decide upon fees among other things, it could therefore require amending the Statute, which was a challenging enterprise. She concluded that it might be preferable to instead establish a new international body to perform the role of Supervisory Authority.

176. *Mr Moreno Rodriguez* supported UNIDROIT undertaking the role of the Supervisory Authority and agreed with the views expressed by *Mr Gabriel*. He suggested that the relationship between the appointment of Supervisory Authority and ratification was a 'chicken and egg' scenario. He noted that Paraguay was a signatory of the MAC Protocol but the main reason that it was not acting on ratification was because a Supervisory Authority had not been appointed. He concluded that the appointment of a Supervisory Authority should not wait for years and that it was reasonable for UNIDROIT to perform the role.

177. *Ms Carla Seiburgh, representing Mr Artur Hartkamp*, expressed doubts over whether UNIDROIT should perform the role of Supervisory Authority. She queried why UNIDROIT should perform the role if no other international body was willing to do so. She further queried why further information had not been provided on the possibility of establishing a new international body.

178. *Ms Sabo* noted that it was premature to consider UNIDROIT performing the role as the only remaining option. She suggested that the possibility of establishing a new international entity to perform the role required further consideration, as consistent with what had occurred under the Luxembourg Rail Protocol. She further noted that she had not yet reached a conclusion on whether the Statute would need to be changed if UNIDROIT were to undertake the role and agreed with the President that attempting to amend the Statute might cause other problems.

179. *Mr Antti Leinonen* noted that while he was not opposed to further considering UNIDROIT performing the role of Supervisory Authority, it was necessary to also consider establishing a new international organisation. He queried whether UNIDROIT would perform the role of Secretariat for any new such entity. He suggested that while there was no need to rush a decision on this matter, a solution should be found quickly. He concluded that while he had not reached a final decision, he tended to agree with those colleagues that did not believe the Statute would need to be amended in order for UNIDROIT to undertake the role of Supervisory Authority.

180. *The Secretary-General* thanked the Governing Council Members for their fruitful interventions. He responded to a number of issues raised. First, he noted that it was important to try to find a solution to the Supervisory Authority issue quickly, as the MAC Protocol could perform a valuable role in improving access to finance and increasing international trade following the economic downturn caused by the COVID19 pandemic. He stated that there were States that were actively interested in ratifying the Protocol, as Spain had publicly expressed its will to ratify the Protocol but was unable to until the European Union had done so. He explained that the Secretariat had worked hard to advance the process to appoint a Registrar as quickly as possible. He noted that several entities had informally expressed an interest in the role of Registrar and that it would be possible to have the Registry operational by 2024. Second, in relation to costs, he noted that the Secretariat had adopted an austere budget estimate for undertaking the Supervisory Authority role that was less than half of what was requested by ICAO under the Aircraft Protocol. He stressed that he would not support UNIDROIT performing the role without being fully financially compensated. Third, in relation to competency, he noted that there would be no expectation for UNIDROIT bodies to have specific expertise on the operation of electronic registries. He emphasised that regardless of the structural option adopted, UNIDROIT would be advised by a Commission of Experts which would provide guidance on technical matters. Fourth, he suggested that creating a new international entity to undertake the role of Supervisory Authority would not provide a better solution to many of the issues raised. He noted that a new international entity would still likely lack the technical expertise to undertake the role without advice from a Commission of Experts and UNIDROIT would still need to undertake the majority of the work as the Secretariat of the new body but with an increased administrative burden and possibly without compensation. Fifth, he noted that the Depositary function was an implementation function, not a promotion function. He suggested that it would be difficult to legally conclude that the Statute as currently drafted gave UNIDROIT the power to perform the role of Depositary but not the role of Supervisory Authority. He concluded that there was no need for the Governing Council to adopt a final decision on this matter at its current session.

181. *The Deputy Secretary-General* noted that the Supervisory Authority situation under the Luxembourg Rail Protocol was somewhat different to the current situation under the MAC Protocol. She explained that under the Rail Protocol, an existing intergovernmental organisation with responsibility for the Rail Sector (the Intergovernmental Organisation for International Carriage by Rail, OTIF) was sponsoring the Protocol and was willing to perform the role of Secretariat to the Supervisory Authority. She noted that no such organisation existed for the mining, agriculture and construction sectors, which meant that UNIDROIT would likely have to perform the role of Secretariat if a new entity were created to perform the role of Supervisory Authority under the MAC Protocol.

182. *Mr Brydie-Watson* noted that the Preparatory Commission had the ultimate power to appoint a Supervisory Authority. He explained that the Preparatory Commission had decided that it wanted to exhaust any possibility of an existing organisation undertaking the role before considering whether to create a new entity. He further noted that the Preparatory Commission had instructed the Secretariat to raise the matter of UNIDROIT performing the role of Supervisory Authority with UNIDROIT's relevant organs, which is why document B.12 concentrated on this matter and did not analyse the creation of a new international entity as an alternative option.

183. *Mr Bollweg* emphasised that while he certainly hoped that the process under the MAC Protocol would be faster than under previous Protocols, there was no need to unnecessarily rush a decision

regarding the Supervisory Authority. He noted that the current process underway at the European Commission only related to signing the MAC Protocol and that the European Union would still need to ratify the Protocol before it could be ratified by any European Union Member States. He suggested that the creation of a new international entity to perform the function would avoid many of the concerns raised in relation to UNIDROIT undertaking the function.

184. *Mr Gabriel* conceded that it was reasonable for UNIDROIT to request that all other options be explored before being considered for the role. He noted that the matter before the Governing Council was whether UNIDROIT would have the competency to perform the function as opposed to approving this course of action.

185. *The President* asked the Secretary-General to advise on next steps. *The Secretary-General* noted that there was no consensus as to whether UNIDROIT should perform the role of Supervisory Authority. He explained that the Secretariat would report this outcome back to the Preparatory Commission at its fourth session in January 2022. He suggested that if the Preparatory Commission asked UNIDROIT to continue to consider the matter then the Secretariat would prepare further information to assist the Governing Council, including an analysis on the advantages and disadvantages of establishing a new international entity to perform the function as an alternative.

186. *The Governing Council discussed (i) the suitability of UNIDROIT undertaking the role of Supervisory Authority of the International Registry to be established under the MAC Protocol, and, to a limited extent, (ii) how the Supervisory Authority functions could be incorporated into UNIDROIT's governance structure. No consensus was reached on these matters. The Governing Council requested that the Secretariat prepare further detailed information on the specific tasks that would be required from the Governing Council, should UNIDROIT be appointed as Supervisory Authority, and an analysis of a dual system, with a new international entity created to perform the role of Supervisory Authority and UNIDROIT as secretary to the said entity.*

Item 10: Principles of Reinsurance Contracts ([C.D. \(100\) B.13](#))

187. *The Deputy Secretary-General, Ms Anna Veneziano*, updated the Governing Council on the developments concerning the project on Principles of Reinsurance Contract Law (PRICL).

188. Ms Veneziano noted that the 8th Workshop of the project, which had not taken place in 2020 as a consequence of the insurgence of the COVID-19 pandemic, had been held remotely on 18 January 2021. The Workshop had featured, inter alia, a presentation by the UNIDROIT Secretary-General and Deputy Secretary-General on the Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 Health Crisis, which had been followed by a discussion on the possibility to develop an analogous Note on PRICL and COVID-19. She deferred this specific point to the presentation of doc C.D. (100) B.17.

189. Ms Veneziano further drew the Council's attention to doc C.D. (100) B.13, page 2, for the list of seminars or other activities regarding the PRICL with participation of the Secretary-General and Deputy Secretary-General undertaken since the September session of the Governing Council, as well as to an article that had been written by Governing Council member Luc Schuermans and PRICL Working Group member Professor Herman Cousy on the subject. She finally noted that the list of activities was a good indication of the practical value of the instrument for the reinsurance sector.

190. *The Council took note of the Secretariat's report on the status and development of the project on the Principles for Reinsurance Contracts (PRICL).*

Item 11: Update on the publication of the Legal Guide on Agricultural Land Investment Contracts (ALIC Legal Guide) (C.D. (100) B.14)

191. *The Secretary-General* recalled that the Council had approved the final draft of the Legal Guide on Agricultural Land Investment Contracts during its 99th session in September 2020. He informed the Council that the ALIC Legal Guide would be co-published with IFAD and launched on the last day of the 100th session of the Governing Council.

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

193. In his capacity of Chair of the ALIC Working Group, *Mr José Antonio Moreno Rodriguez* thanked the Secretariat and the Working Group experts and observers for all their work on the project.

194. *Mr Gabriel* recalled that he had followed the development of the ALIC Legal Guide from the beginning and congratulated Mr Moreno Rodriguez for his great chairmanship and the Secretariat for the useful instrument produced.

195. *Ms Sabo* joined Mr Gabriel and commended the Secretariat for the work undertaken.

196. *Mr Leinonen* noted the usefulness of the cooperation with other international organisations and supported the continuation of the collaboration with IFAD and FAO.

197. *The Secretary-General* emphasised FAO's participation throughout the process of development of the ALIC Guide and noted that its participation had been reflected in the Guide. Regarding the future of the tripartite partnership with FAO and IFAD, he informed the Council that the collaboration would continue for the development of the third project on Legal Structure of Agriculture Enterprises. In addition, he noted FAO's collaboration in other projects such as the project on a Model Law on Warehouse Receipts.

198. *The President* noted UNIDROIT's interest in continuing the collaboration with FAO and IFAD in particular because of the synergies in the agenda of the three organisations regarding sustainable development.

199. *The Deputy Secretary-General* noted that FAO and IFAD had confirmed their interest and engagement in continuing the partnership in the new project on Legal Structure of Agricultural Enterprises.

200. *Mr Menyhárd* thanked the Secretariat for the information presented and supported the ongoing cooperation with FAO and IFAD.

201. *Ms Bariatti* also noted the interest in maintaining the tripartite cooperation.

202. *The Governing Council* took note of the information provided by the Secretary-General regarding the publication of the ALIC Legal Guide and congratulated UNIDROIT and IFAD for the jointly developed instrument.

Item 12: International protection of cultural property ([C.D. \(100\) B.15](#))

203. *Principal Legal Officer and Treaty Depositary, Ms Marina Schneider (UNIDROIT Secretariat)* presented the activities carried out by UNIDROIT since the previous session of the Governing Council, recalling that the information relating to 2020 was contained in the Annual Report (C.D. (100) B.2). She indicated the three institutional highlights, namely the international conference organised in hybrid format on 8 and 9 October 2020 to celebrate the 25th anniversary of the 1995 UNIDROIT

Convention on Stolen or Illegally Exported Cultural Objects which had been a great success; the fact that three new States had ratified or acceded to the Convention since the 99th session of the Council (Côte d'Ivoire, Benin and Togo) bringing the total number of Contracting States to 51; and the Declaration of the G20 Ministers of Culture meeting in Rome in July 2021 which called on "the international community to take strong and effective measures, including: (a) the ratification of relevant international agreements and conventions and progress in the development and better implementation of international standards, in close cooperation with relevant international organisations, including UNESCO, ICCROM, ICOM, ICOMOS and UNIDROIT".

204. Ms Schneider highlighted the activities that had been carried out with partners in recent months, including the various events organised to mark the 50th anniversary of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention. Regional conferences had been held at which the importance of the complementarity between the 1970 and 1995 Conventions had been stressed and several States had indicated that the procedure for ratification of or accession to the UNIDROIT Convention was underway. In the field of awareness-raising and capacity-building, UNIDROIT had continued to prepare online courses with the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) in particular with the ICCROM Office in Sharjah, United Arab Emirates starting in early 2022 and with the African Heritage School (June 2021 and December 2021), as well as participating in webinars, in particular with EL PAaCTO (the judicial co-operation component of the programme), for the benefit of judges.

205. UNIDROIT had also continued its cooperation and its efforts to raise awareness and provide support to African States, in particular within the framework of the African Union, which was celebrating the "2021 Year of Arts, Culture and Heritage: Levers for Building the Africa We Want". UNIDROIT had participated in capacity-building seminars, in particular for the countries of Southern Africa, Djibouti, the Comoros and Somalia, and in the framework of its collaboration with the Economic Community of West African States (ECOWAS) for the implementation of the 2019-2023 Action Plan for the return of African cultural property to its countries of origin; UNIDROIT had participated in various institutional meetings (meeting of the Directors of Heritage of the member States and first meeting of the Follow-up Committee of the Action Plan) and technical meetings (Gambia, Guinea-Bissau, Liberia and Togo) concomitant with the political advocacy undertaken by the ECOWAS Commissioner for Culture to the member States for the ratification of the 1995 Convention.

206. With regard to the Model Provisions defining State ownership of undiscovered cultural property, Ms Schneider indicated that the Congress of Peru had adopted, on 19 July 2021, a revision of the Constitution amending its Article 21, taking the UNESCO-UNIDROIT Model Provisions as the basis for the reform.

207. Ms Schneider then highlighted the activities carried out or planned in the framework of the Academic Project on the 1995 UNIDROIT Convention (UCAP). New partners had joined UCAP (universities and student associations in particular) with proposals for joint work (conferences, moot court competitions, etc.); a UCAP partner had won 4th place in the UNIDROIT Competition and COVID-19 organised by the UNIDROIT Foundation with an article entitled "The Global Pandemic as an Opportunity: Towards a Cutting-Edge Legal 'App' for Online Art Trade" which he had presented, together with the other prize-winners, at a webinar organised by UNIDROIT on 8 March 2021; UNIDROIT was to participate in a continuing education certificate programme in international cultural heritage law with the Law Faculty of the University of Geneva; finally, a number of interns had collaborated with UNIDROIT, both face-to-face and remotely, on the subject of the international protection of cultural property.

208. On the subject of private art collections, Ms Schneider highlighted the organisation, together with the University of Geneva and the Gandur Foundation for Art, of a symposium in Geneva on 4 and 5 February 2021 entitled "What future for 'orphan works'? Reflections on cultural goods without

provenance". This conference had provided an opportunity for collectors, gallery owners, lawyers, historians, archaeologists, academics and museums to come together virtually and share their ideas and perspectives on the ever-growing debate around orphaned property and in particular on the way in which the law deals with such property. The next step would be the publication of the Proceedings of the Geneva Conference, followed by a meeting of some experts and finally another conference in the first quarter of 2022.

209. Ms Schneider concluded by indicating that, in the coming months, UNIDROIT would continue to accompany States in the ratification/accession and implementation procedures of the Convention, strengthen the involvement of the partners of the UCAP Academic Project, and try to develop links with other topics on the Work Programme such as digital assets or civil procedure. The Secretariat would also work on proposals to be submitted to the Council concerning projects for the next Work Programme of the Institute, recalling the suggestion made by UNCITRAL at the previous session of the Council to work on the law applicable to the contract of sale of cultural goods.

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

211. *Mr Estrella-Faria (UNCITRAL)* thanked the Secretariat for the presentation and the reminder of the suggestion that had been made by UNCITRAL in conjunction with the 40th anniversary of the United Nations Convention on Contracts for the International Sale of Goods (CISG). He indicated that UNIDROIT could work on the substantive law that applied to the contract beyond the mere aspects of restitution, for example the warranty of merchantability. The question would be whether the sale of a cultural object without proper provenance and due diligence would be a sale voidable for lack of merchantability. He also suggested working on the notion of stolen property, and determining which law defined what was stolen, as this notion was not clear in either the 1970 UNESCO or the 1995 UNIDROIT Convention. The question of the applicability of the CISG to works of art also arose. Mr Estrella-Faria indicated that these issues could usefully be discussed at a colloquium and that UNIDROIT could also consider a model law for the incorporation of the 1995 Convention. He reiterated UNCITRAL's interest in co-operation.

212. *The Governing Council* took note with appreciation of the activities undertaken and partnerships developed for the promotion of the UNIDROIT instruments in this field.

213. *The Council* also took note of the further work on private art collections.

Item 13: UNIDROIT instruments in the COVID-19 pandemic ([C.D. \(100\) B.16](#))

214. The *Deputy Secretary-General* introduced the Secretariat's work related to the UNIDROIT instruments in the COVID-19 Pandemic.

215. She recalled that the Secretariat had initiated the preparation of guidance instruments regarding the impact of COVID-19 on the application of UNIDROIT instruments, with the aim to identify how the instruments would be of interest to a wide array of actors in this particular situation as well as its aftermath.

216. Ms Veneziano recalled that in July 2020, the Secretariat had published a note on the UNIDROIT Principles of International Commercial Contracts (UPICC) and the COVID-19 Health Crisis. This note had been very well received and the object of various discussions towards the end of 2020 and in 2021, for example with participation of the International Bar Association (IBA) and the International Chamber of Commerce (ICC) Italy. It had also been presented at lectures given at the International Trade Law Centre of the International Labour Organisation (ILO). She referred to page four of the document G.C. (100) B.16 for further details.

217. Moreover, Ms Veneziano explained that the Secretariat was preparing a second guidance document on how the Principles of Reinsurance Contract Law (the PRICL) could be used and applied in the case of a disruption of contractual performance in the specific area of insurance and reinsurance. At the beginning of the year, the Secretariat had participated in a workshop organised with the Working Group of the PRICL for discussion of this document. The aim was to look at the impact of the PRICL in the pandemic and post-pandemic situation also in light of the relationship between general contract law, in particular the UPICC, and the specific regime of insurance and reinsurance contracts. A first draft for the guidance document had been prepared and was being subject to ongoing consultations.

218. Ms Wehling introduced the next item, with reference to document G.C. (100) B.16, section 4, providing an update on the Secretariat's initiative to prepare a guidance document on the legal implications of the COVID-19 pandemic on contract farming. In terms of background, she noted that this work had been initiated together with FAO and IFAD based on the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming in 2020.

219. Ms Wehling reported that, in a first phase, the organisations had gathered information to better understand how the pandemic affected contract performance in practice, through questionnaires and interviews with field offices and stakeholders. Regarding the feedback received, she highlighted three main points: Firstly, the pandemic and governmental containment measures could hinder contractual performance by the parties of contract farming arrangements; an example reported from several African countries was that agricultural markets were closed and transport between regions within the country restricted. Second, performance under other contractual relationships along the food supply chain had been much more severely affected compared to under contract farming arrangements. For example, stakeholders from the Black Sea Region had reported that governments adopted quota for the export of grain. Thirdly, stakeholders noted similarities with other disastrous events, such as droughts, which led to similar governmental measures, highlighting that additional guidance on the legal implications also of those events on contract farming would be extremely useful. In this same sense, FAO had expressed an interest in extending the analysis beyond pandemics to consider also other *force majeure* situations, such as natural disasters.

220. Ms Wehling explained that based on the feedback received, the partner organisations had decided to broaden the scope of this initiative in two respects: firstly, to include not only contract farming but the entire food supply chain, and secondly also to include disastrous events other than pandemics. ICC Italy had joined the initiative at this juncture, and the organisations had sent out a modified questionnaire contacting a broader variety of stakeholders, including agricultural producers, producer organisations, certifiers, multinational companies, and insurance providers. The questionnaire had been framed towards identifying how the pandemic and similar disastrous events impacted on supply chain contracts and how issues in performance were addressed.

221. In terms of next steps, Ms Wehling noted that they were currently analysing the feedback they had received, and were planning to organise a webinar to present and discuss the results. In accordance with the enlarged scope, the aim of the final document would be to provide guidance to contracting parties and legislators on how contractual arrangements could be designed or adapted to accommodate for pandemics and similar disastrous events, harmonise the approach along the food supply chain, and promote a fair balance of risks between all parties involved.

222. *The Governing Council took note of the progress made in the Secretariat's initiatives and work in preparing a series of guidance documents aimed at providing broader awareness of UNIDROIT's instruments, such as the UPICC and the PRICL, and the important role they can play in facilitating the economic recovery from the COVID-19 pandemic.*

223. *The Council also acknowledged the progress made by the Secretariat, in partnership with FAO, ICC Italy and IFAD, on the development of a guidance document providing best practices and*

lessons learned from the COVID-19 pandemic and similar disastrous events, drawn from national legal frameworks and practice, in order to strengthen the legal framework underpinning contract farming and food supply chain governance in general.

Item 14: Promotion of UNIDROIT instruments ([C.D. \(100\) B.17](#))

224. The *Deputy Secretary-General* recalled that the promotion of UNIDROIT instruments was a high priority activity in the Work Programme, which the Secretariat undertook to the maximum possible extent of its limited resources. She highlighted that while the situation created by the COVID-19 pandemic had impacted the effectiveness of the promotion of legislative instruments, it had also provided new outreach opportunities through remote events attended by a larger number of participants from various parts of the world, who would not have been able to attend such events in person. She finally noted that the document on promotion focused only on those instruments that had not been the object of a separate Secretariat's document (UPICC; Cape Town Convention and Aircraft Protocol; UNIDROIT/FAO/IFAD Legal Guide on Contract Farming; UNIDROIT's instruments on capital markets; ELI-UNIDROIT European Model Rules of Civil Procedure; International Wills Convention), and on the activities that had been undertaken since January 2021, referring to the Annual Report 2020 for previous events.

225. Mindful of the limited time available, Ms Veneziano invited the Governing Council to take note of the list of lectures, conferences, seminars, publications, and other activities included in the written report and expressly highlighted three points.

226. Firstly, she was pleased to announce that the UNIDROIT Principles 2016 (UPICC 2016) had been endorsed by UNCITRAL at its 54th Commission Session in July 2021. The Commission, noting that it had already endorsed the UPICC 2010 in 2012 and that general support had been expressed for recognising that the fourth edition of the UNIDROIT Principles set forth a comprehensive set of rules for international commercial contracts complementing a number of international trade law instruments, including the United Nations Sales Convention and that the amendments made in the UNIDROIT Principles 2016 were useful in facilitating international trade, had endorsed the UPICC 2016 commending their use, as appropriate, for their intended purposes. Ms Veneziano took the opportunity to thank the representative of UNCITRAL for enabling such a positive outcome.

227. Secondly, in relation to the Cape Town Convention and its Aircraft Protocol, she announced that the 10th Cape Town Convention Academic Project Conference would be held the following week in Cambridge, and drew the Governing Council's attention to the presence in the room of Professor Louise Gullifer, one of the Academic Directors, who would be hosting the event.

228. Finally, concerning the ELI-UNIDROIT Model European Rules of Civil Procedure, the Deputy Secretary-General expressed the Institute's satisfaction on the final publication by Oxford University Press (OUP) of the hard copy of the volume containing the Rules and Comments in English (which are available, in addition, in open access) and on the growing number of requests for translations also in non-European languages, which was an indication of the widespread interest raised by the instrument.

229. *The representative of the Cape Town Convention Academic Project, Professor Louise Gullifer*, took the floor to introduce the 10th Conference that was scheduled to take place in Cambridge on 30-31 September 2021 in hybrid format. She explained that the Conference would be a unique opportunity for academics, government officials, practitioners, and industry to meet and discuss topical issues related to the Cape Town Convention and its Protocols. She specifically noted that on its first day, the 20th Anniversary of the adoption of the Convention itself and its first Protocol would be celebrated through a keynote speech by Prof Sir Roy Goode, with other presentations looking back to the Convention's history and looking forward to its future, including future areas of research,

its impact on a post-pandemic world and the role of economic assessments. An in-depth discussion of insolvency-related themes was envisaged to take place on the second day. She concluded by inviting interested Governing Council Members to consider attending, in person or remotely.

230. *Mr Estrella-Faria*, expressed UNCITRAL's satisfaction on the outcome of the request for endorsement of the UPICC 2016, which had gone very smoothly also in light of the newly published UNCITRAL/HCCH/UNIDROIT (Tripartite) Legal Guide providing guidance on the application of uniform contract law instruments of the three organisations.

231. *Mr Pichonnaz* emphasised his organisation's satisfaction on the conclusion of the ELI- UNIDROIT project on Model European Rules of Civil Procedure and their publication, and thanked UNIDROIT for the very fruitful cooperation in this regard. He welcomed future initiatives for the cooperation between ELI and UNIDROIT also on other matters of common interest.

232. *The President* thanked all participants in the discussion and commended the efforts of translating UNIDROIT's instruments in languages other than English and French, as an effective promotion strategy in different jurisdictions.

233. *The Council took note of the Secretariat's report on the numerous activities undertaken to promote UNIDROIT's instruments since the Governing Council's 99th session held in September 2020.*

Item 15: UNIDROIT Library and research activities ([C.D. \(100\) B.18](#))

234. *Ms Bettina Maxion (UNIDROIT Secretariat)* informed the Council that the extraordinary circumstances imposed by the global pandemic had forced researchers and libraries to find ways to adapt. She noted that the UNIDROIT Library found new ways to serve and continue supporting researchers — often at a distance. She mentioned the application of security measures to access the Library, such as granting access exclusively upon request, applying the recommended social distancing measures and the various disinfection procedures in order to guarantee the safety of staff and guests.

235. She noted that throughout the pandemic, the UNIDROIT Library's role as a digital and virtual document provider had broadened, confirming also the importance of interlibrary collaborative network, and that the UNIDROIT Library had been able to satisfy most requests from researchers who had been unable to visit the Library in person due to travel restrictions, even between regions in Italy by sending scanned copies via email or other means of communication.

236. Regarding the UNIDROIT's Research Scholarship and Internship Programmes, Ms Maxion reported that 23 scholars had been invited to undertake research at the Institute, as well as 21 interns. She mentioned that several interns and scholars had deferred their visits to 2021, and that the Library had welcomed a higher number of independent researchers from Italy. Despite the serious difficulties, the Library had hosted a total of 683 visitors and researchers from 25 different countries. On behalf of the Secretariat, she expressed her gratitude to all the donors and hoped for the renewal of their financial commitment.

237. Ms Maxion mentioned that 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 the UNIDROIT Secretariat, guests that had been in the Library, as well as by interested experts which had been expressly invited to participate. She remarked that this initiative

unfortunately had been interrupted in 2020 by the outbreak of the COVID-19 pandemic, but that it had been reinstated in May 2021, allowing four lectures to take place between then and June 2021.²

238. Ms Maxion also noted the Library's cooperation strategy with other Roman and foreign libraries. She mentioned first steps that had been taken to create a future collaboration with the Library of the *Organizzazione Internazionale Italo-Latinoamericana* (IILA).

239. She informed the Council that the Library collection had been adapted to the new topics of the Work Programme 2020-2022 and needs of the professional staff, invited scholars and interns. The necessary books had been therefore purchased, in particular books on digital assets, blockchain contracts, enforcement proceedings and agricultural investment contracts.

240. Ms Maxion announced the donation of a very precious collection in June 2021 by Prof. Achille de Nitto of about 700 publications, mostly in the form of brochures, excerpts from various Italian reviews, in particular law reviews, and by collective works, between the last decades of the nineteenth century and the thirties of the twentieth century. The publications had previously belonged to the Vittorio Scialoja library at the Institute of Roman law. She noted that many copies contained an autographed dedications to Prof. Scialoja by the authors. Other publications had been dedicated or directed to Pietro Francisci. The names of Vittorio Scialoja, as well as Pietro Francisci, had been linked to UNIDROIT since its foundation. On behalf of the Secretariat, she expressed her gratitude.

241. Regarding the progress of the Digitisation project of Library materials, which had been agreed upon on the occasion of the Governing Council's 97th session in 2018, Ms Maxion pointed out that special attention had been paid to the digitisation of the historical Gorla Collection in order to preserve one of the Library's rarest and most valuable historical collections, from the 17th to the early part of the 19th Century. She reported that the digitisation of the Gorla collection would be completed approximately by the end of September 2021. Furthermore, she mentioned the work on the Library's catalogue enrichment, and the upgrade of the Library's list of law reviews.

242. *Mr Hameed* further updated the Governing Council with regard to the UNIDROIT Research Scholarship and Internship Programme. He noted that in order to cope with COVID-19 circumstances, in 2020, the Secretariat had enabled students and young professionals to conduct externships, which had added good value to research activities.

243. He noted that the demand for interns and research assistants at UNIDROIT had been growing in light of the highly ambitious 2020-2022 Work Programme. In this regard, the Institute expected to welcome over 50 interns in 2022. With regard to funding, Mr Hameed recalled that the Research Scholarship and Internship Programmes had been entirely funded by voluntary contributions, relying on the benevolence and generosity of its sponsors, which included, among others, the Ministry of Commerce of the People's Republic of China (MOFCOM), the Members of the Governing Council, the UNIDROIT Alumni Association, the UNIDROIT Foundation, the Feldens Madruga law firm, and the Transnational Law and Business University (TLBU). The long-term goal of the Scholarship and Internship Programmes was to provide funding to all accepted applicants, however, due to budget

² The lectures were held by: Mr José Manuel Canelas Schütt (Professor at the Universidad Católica Boliviana, Santa Cruz, Bolivia – UNIDROIT Scholar) presented his research on the "Legal Guide on Agricultural Land Investment Contracts and Party Autonomy"; Ms TianShu Liu (Master, University of International Business and Economics, Beijing – MOFCOM Scholar), presented her research on the "Application of Distributed Ledger Technology in Factoring Transactions"; Ms Theodora Kostoula (Ph.D Candidate, European University Institute – Sir Roy Goode UNIDROIT Scholar) presented her research on "Cryptoassets, Security Rights and Insolvency" and Ms Gabriella Boger Prado (Ph.D Candidate, Université Paris II Panthéon-Assas – Feldens Madruga Scholar) presented her research on "Applicable Law to International Commercial Contracts in Latin America".

restrictions, only some of the applicants currently received research scholarships or internship stipends.

244. Mr Hameed noted that in 2020, the Institute had inaugurated the Sir Roy Goode Scholarship. This Scholarship provided one outstanding post-graduate (doctoral) law student, lawyer, academic or government official the opportunity to research in the UNIDROIT Library and work with the Secretariat for a period of six to nine months on a topic related to one of the high priority legislative projects or existing instruments. Ms Theodora Kostoula (Ph.D. candidate at the European University Institute) had been selected as the first Sir Roy Goode Scholar to undertake research on information technology, digital assets and insolvency.

245. Furthermore, he noted that in 2020 the UNIDROIT Alumni Association had been launched with the support of the UNIDROIT Foundation. By September 2021, the Association had successfully garnered over 125 Members. The Alumni Association had provided an Annual Alumni Association Grant to one individual to conduct an internship at UNIDROIT and had also enabled other opportunities for research. Finally, Mr Hameed highlighted that, since the last meeting of the Council, collaboration agreements relating to research had been signed with the University of Hong Kong; the Law Schools Global League; the University of Navarra; and Fordham University.

246. The *President* emphasised the relevance of having so many trainees in the Institute working on the projects. Ms Malaguti noted that the Secretariat had been working hard on ways to obtain systematic funding for internships.

247. *The Council took note of developments in the Library under unprecedented circumstances imposed by the global pandemic, and expressed its appreciation for its promotion of research through the Research Scholarship and Internship Programme.*

Item 16: UNIDROIT information resources and policy ([C.D. \(100\) B.19](#))

248. *Principal Legal Officer Ms Lena Peters (UNIDROIT Secretariat)* recalled that, with the exception of the Uniform Law Review, UNIDROIT publications either printed the products of the Institute (such as the Principles of International Commercial Contracts or the Guides) or those closely connected to them (e.g. the Official Commentaries on the Cape Town Convention and its Protocols or Acts and Proceedings of diplomatic conferences). She reported that the consequences of the COVID-19 pandemic were still being felt in 2021. Problems with lockdown had resulted in very few sales of publications as compared to earlier years, as could be seen in the Annex to document C.D. (100) B.19, which contained a table of the sales of the publications year by year between 2013 and 2020. As regarded the Uniform Law Review, its publication had unfortunately been to some extent erratic, resulting in only the first issue of 2020 being published in 2020. Ms Peters noted that the reasons for such a delay had only been revealed late in 2020 when OUP had disclosed that the location of the production team was in India, which had been particularly severely hit by the pandemic.

249. Ms Peters drew the attention of the Council to the data in document C.D. (100) B.19, which indicated that subscriptions to online copies of the Review had increased, the greatest increase being to collection subscriptions, i.e. subscriptions through the OUP collection of journals available online. The total number of subscriptions in 2020 had been 2,068, an increase from the 1,781 of 2019. The OUP also had a special arrangement for developing countries, which offered online subscriptions to journals at lower rates and, in some cases, for free. Unfortunately, it was not possible to have information on which articles were consulted in these arrangements and how often. Data was instead available when the articles were consulted directly, not through a collection of journals, and document 19 gave a list of the articles most viewed. The visits to the Uniform Law Review pages on the OUP site had increased steadily. The average monthly visits had increased from 1,044 in 2017 to 3,902 the first months of 2021. The geographical breakdown of the visits indicated that the

majority of the visitors came from Europe, followed by North America and East and South-East Asia. Most users had accessed the site from Google, followed by direct access. The Accounts presented by OUP for 2020, showed that the Uniform Law Review had made a profit of € 74,926, the royalties due to UNIDROIT being € 8,909. Ms Peters added that OUP had been persuaded not to increase subscription rates for 2021, to partly compensate for the delays suffered by subscribers.

250. The Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Mining, Agricultural and Construction Equipment had been published at the end of April 2021. The draft fifth edition of the Official Commentary on the Convention and Aircraft Protocol had been sent to States for comments, the deadline for the submission of comments being the 15th of December. An electronic version of the fourth edition of the Official Commentary and Aircraft Protocol containing links, both internal to the volume and to outside websites, had been prepared for Aviareto, the Registry, in 2020.

251. Turning to the UNIDROIT Principles 2016, Ms Peters stated that in 2020 they had been published in languages not official languages of the Institute, namely Japanese, Russian and Turkish. An agreement had also been made permitting the translation of all the documents published during the preparation of the Principles into Chinese, the first time such an agreement had been concluded. The English version of the ELI/UNIDROIT Model European Rules of Civil Procedure had been published by OUP on 24 August. The Rules were already being translated into other languages: Chinese and Ukrainian in addition to Spanish and German.

252. The legislative texts of the instruments adopted by UNIDROIT were freely reproduced. The Institute was rarely contacted for permission to reproduce the text of an international convention or model law, barring some exceptions. Document 19 gave a list of publications in which the different editions of the Principles of International Commercial Contracts had been published, typically, the black-letter rules, but occasionally also select sections of the comments. The Institute did not charge for permission to reproduce its instruments or parts thereof, instead, it asked for copies of the publications in which they would appear for the library.

253. Ms Peters concluded by drawing attention to the new website that had been prepared and had just been launched. She reminded Council Members that the data in document C.D. (100) B.19 related to the old website, which had operated between 10 January 2014 and 17 September 2021.

254. *Mr Hameed* reported to the Council on progress made with regard to the Institute's social media channels, including, Facebook, Twitter, LinkedIn, and YouTube. He noted that the purpose of UNIDROIT's social media presence was five-fold: (i) raise UNIDROIT's public profile and online awareness of its current projects; (ii) promote upcoming events and encourage participation from relevant stakeholders; (iii) allow researchers, visiting professionals, interns, and other stakeholders to connect with each other and maintain a connection with UNIDROIT; (iv) serve as a dynamic channel to communicate with the global community interested in UNIDROIT's work; and (v) allow UNIDROIT to widely advertise vacancies, internship and scholarship opportunities.

255. It was noted that the UNIDROIT social media programme had been launched in 2016 as part of the 90th Anniversary celebrations of the Institute, with Twitter being launched in 2018, and YouTube being revamped in 2019. The Institute had managed its social media channels on the basis of a Social Media Strategy, which had last been updated in October 2020. This strategy had focussed on producing more engaging content and posting more often on the Institute's social media channels. It had also emphasised the use of hashtags (which had now become searchable) and tagging partner organisations as part of posts to further boost engagement and UNIDROIT's social media outreach.

256. *Mr Hameed* noted that, besides search engines and direct visits, social media served as the biggest driver of traffic to the UNIDROIT website. Additionally, UNIDROIT's social media presence was comparable to that of other organisations involved in international private law, such as UNCITRAL

and HCCH. As of 2 June 2021, the Institute had 15,925 followers on LinkedIn, 4,497 followers on Facebook, 1,247 followers on Twitter, and 219 subscribers on YouTube, who received several weekly updates on UNIDROIT activities. These figures represented an annual growth rate of 81% for LinkedIn followers, 31% for Facebook followers, and 87% for Twitter followers. Furthermore, the UNIDROIT Twitter account had recently received the 'verified' badge from Twitter, which resulted in greater credibility for its tweets.

257. In relation to the Institute's "reach" on social media, over the past twelve months UNIDROIT content had been delivered 183,815 times to people on Facebook, while it was displayed on news feeds 535,500 times on LinkedIn, and around 172,400 times on Twitter. It was noted that moving forward, the social media accounts would focus more on producing video content, as this had been found to be most engaging for users and easier to display in various places. Furthermore, specific campaigns for items such as the 100th Anniversary of the Governing Council, and the Internship and Research Scholarship Programme had also been organised, and had delivered very positive results. As such, additional future campaigns would also be given consideration.

258. Mr Hameed noted that UNIDROIT also participated regularly in a social media roundtable organised by the US Mission to the UN Agencies in Rome which brought together the social media officers of the largest Rome-based international agencies to share knowledge and coordinate promotional campaigns. This had allowed UNIDROIT to benefit from the expertise and experience of larger organisations which have entire teams dedicated to digital communication.

259. Finally, Mr Hameed reminded the Council that the Social Media Programme did not have any budgetary implications, as all social media outreach was conducted without purchasing ads. As such, all the aforementioned growth had been purely organic.

260. *The Council took note of developments in the information resources and policy of the Institute, including paper-based and electronic publications in the Uniform Law Review, social media and the website.*

Item 17: Proposal by the Secretary-General of new appointment procedure for Correspondents (2022-2025) (C.D. (100) B.20)

261. The *Secretary-General* recalled that UNIDROIT had received a mandate to revise the system of correspondents, which had been created in 1947 following a suggestion by Professor Ernst Rabel to obtain information on legal development in certain countries which were not members of the Institute. Apart from being an important information channel, he noted that the system of correspondents was also an excellent opportunity to promote the work of UNIDROIT and to increase membership or create other positive outcomes.

262. He noted that there had been a time when UNIDROIT counted on over 175 correspondents. He drew the Council's attention to points II and III of document C.D. (100) B.20 reporting that, as of September 2021, the network of Correspondents of the Institute consisted of only 30 active Correspondents and two institutional Correspondents. He emphasised however that the current list was mostly composed of international experts who already had a very active collaboration with the Institute either in ongoing projects of the current Work Programme or in the dissemination and implementation of the UNIDROIT's instruments.

263. In light of the unsatisfactory situation of the programme and the need to increase the number of correspondents and their involvement, the Secretary-General informed the Council that the Secretariat had looked into the legislative history to try to understand the reasons for this unfortunate development. He highlighted that the main reason may have been that UNIDROIT had not established a permanent internal infrastructure allowing the Secretariat to follow up periodically with the correspondents, leading to a lack of continued communication and its consequences.

264. The Secretary-General then presented the proposal to revamp the system of correspondents. He noted that the identification of new correspondents would not be easy and would require time, but proposed to set a target of achieving 100 correspondents by the 100th anniversary of UNIDROIT in 2026. He explained the main functions that would be expected to be performed by the correspondents, such as the provision of information requested by the UNIDROIT Secretariat on matters related to the Institute's instruments and projects included in the Work Programme concerning the Correspondent's jurisdiction, as well as assistance on-site to the Secretariat in the preparation of missions to their country, including, but not limited to, the identification of additional local experts for meetings and events. He noted that all the functions had been listed in document C.D. (100) B.20 and invited Governing Council Members to inform the Secretariat if they had any other suggestions.

265. He noted that the requirements already in place to appoint a person as a Correspondent seemed adequate and noted that, apart from the reputational component of the appointment, a number of rights would be offered, such as the possibility of becoming members or observers of working groups; prioritised participation as local experts in events in their countries; or the priority to be involved in the translation of UNIDROIT instruments.

266. He noted the importance of identifying correspondents in other countries than those of Governing Council Members, as well as in non-member States. Mr Tirado illustrated a set of measures that would be adopted for Correspondents, such as the creation of an office for correspondents within the UNIDROIT Secretariat. He explained that a Legal Officer would be assigned as the "Liaison Officer" and would be responsible for correspondents from each of the four regions of UNIDROIT. In addition, a separate section for Correspondents would be created in the Institute's website and a Permanent Committee for Correspondents would be created within the Governing Council. This would be an informal sub-committee, composed of one member for each region and a Chair. Members would rotate every three years.

267. In addition, the Secretary-General updated the Council on the institutional Correspondents and presented the proposal to broaden the scope to establish Associated Partners which would create stable links with other organisations.

268. In terms of next steps, to kick-start the revision of the programme, the Secretary-General informed that the Secretariat would draft a first list with possible candidates. The Liaison Officers would individually contact each member of the Governing Council to consult and identify possible candidates from their own jurisdictions and regions, which would be included in the list. The list would then be presented to the Permanent Committee for Correspondents for their comments. The list would be presented to the Permanent Committee for Correspondents for their comments and recommendations. Following informal contacts with candidates, the revised list would be presented to the Governing Council at its next session in 2022.

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

270. *Mr Gabriel* thanked the Secretary-General for the report and the excellent suggestions he had made. He noted that Governing Council Members should not be Correspondents at the same time. He suggested a flexible approach to the list of benefits to be offered to the Correspondents, which were included in paragraph 17 of document C.D. (100) B.20 and agreed with the proposal to establish a Permanent Committee for Correspondent within the Governing Council. He however noted his preference for a five-year term for the purposes of continuity.

271. *Mr Bollweg* agreed with the usefulness of the institution of Correspondents and with the Secretariat's proposal. He appreciated that the list of Correspondents had been shortened to 30 persons. He supported Mr Gabriel's recommendation to adopt a five-year mandate to ensure

continuity. Finally, he encouraged the reflection of another suitable expression to replace the term Correspondents.

272. *Ms Sabo* highlighted that the challenge of engagement could be related to the Correspondent's passive role. She agreed with the plan proposed but expressed concern regarding the allocation of resources and time of the Secretariat. She noted that the creation of a specific section on the website for the Correspondents would require some creativity in terms of material. Regarding the term Correspondents she noted she liked it and had no other suggestion.

273. The *Secretary-General* clarified that the website section for Correspondents would include a list of names, mainly for visibility. He noted that eventually it would contain links to presentations regarding UNIDROIT's instruments that had been done by a Correspondent. He also added that the institution of Correspondents would likely work more efficiently in developing countries and middle-income countries, since it would be beneficial to the Correspondents to be in contact with an International Organisation. He guaranteed that the Legal Officers would not dedicate much of their time to this.

274. *Mr Moreno Rodriguez* queried whether the term Correspondents could be replaced by national experts.

275. *Mr Kilgarriff* expressed support for maintaining the term Correspondents.

276. The *President* recalled that UNIDROIT had also been working on the development of similar structured collaboration systems, such as the "Amici of UNIDROIT" initiative to involve law firms and companies in the implementation of UNIDROIT instruments, and the "UNIDROIT Academy".

277. *Mr Estrella-Faria* noted that UNCITRAL also had a similar system called Correspondents, but highlighted that they were required to be active and send case-law for publication.

278. *The Council approved the plan proposed by the Secretary-General for the new appointment procedure for Correspondents.*

Item 18: Whistle-blower and anti-retaliation policy ([C.D. \(100\) B.21](#))

279. The *Secretary-General* indicated that the document C.D. (100) B.21 was an attempt at formally aligning UNIDROIT policy with international standards of compliance. The Institute would continue to identify any vacuum on that front in order to meet the standards of international organisations. He stressed that the document was concise and needed to be completed with the UNIDROIT Regulations concerning the definition of the disciplinary aspects of the policy, reminding Governing Council Members that a more general review of the Regulations was underway.

280. He recalled the basic structure of the document, and that the policy would apply not only to UNIDROIT staff but also to any person visiting the Institute such as researchers, chairs, or interns. The mechanism provided that, once misconduct had been identified, it had to be reported – channelled through the whistle-blower Officer – shielding the whistle-blower from any negative consequences. It also contained basic rules on the decision to accept a case or not, the compulsory seizure of the Permanent Committee as second instance, and who would conduct the case (internally or with the assistance of an external auditor/adviser). The *Secretary-General* finally noted that this policy would apply immediately even before the finalisation of the revision of the Regulations, and invited the Members of the Governing Council to comment on the policy and language.

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

282. *Ms Sabo* expressed the view that such a policy was a good idea and had the merit of being simple. She nevertheless conveyed some concern as to a forthwith application of such policy in the absence of the supplemental provisions in the Regulations. She also indicated that she would welcome the possibility to revisit the wording once the Regulations had been updated to ensure correspondence of language and, finally, queried if the policy should form part of the Regulations.

283. *The Secretary-General* replied that the policy would probably be an Annex to the Regulations. As to the immediate application of the policy, he stated that it could be considered as a code of conduct while updating the Regulations, which would be better than having nothing at all.

284. *The Governing Council* took note of the draft *Whistle-blower and Anti-retaliation Policy* prepared by the Secretariat and stated it had no objection to its immediate application, if necessary, pending final completion of certain matters in the forthcoming revision of the Regulations.

Item 19: UNIDROIT Academy ([C.D. \(100\) B.22](#))

285. *The Secretary-General* referred to document C.D. (100) B.22 to introduce the proposed structure of the UNIDROIT Academy.

286. He began by reminding the Council of the academic vein that had belonged to the soul of Institute from its very onset. At the Institute's birth, in fact, the types of documents that were produced were actual studies, originating from study groups that would meet and discuss comparative law.

287. The very high academic profiles of the first appointments in the Institute's governing bodies had been another distinctive trait of the Institute from the very beginning throughout the history of UNIDROIT, too many to enumerate, but exemplified by Professor Sir Roy Goode who was in the room, as well as the Members of the current Governing Council.

288. The academic trait, although a key aspect of UNIDROIT's nature, was however not the mandate of the Institute, which was a transnational law intergovernmental institution with a mandate to produce best practice documents and treaties. Having said that, this unique characteristic deserved to be singled out and identified.

289. The Secretary-General went on to precise that the activities contemplated in the Academy did not entail any further cost to the Institute, merely representing a reorganisation of the presentation of the activities that were already being carried out, as illustrated under page 3 of document 22. The intention was to group the activities under a separate profile and logo, which would perhaps allow it to access funds that were only available to academic institutions. This would enhance UNIDROIT's ability to access funds rather than constituting another financial burden.

290. Firstly, the Secretary-General mentioned the Summer School, which had been launched recently and would be presented by the President later on. The Academy would also encompass the Bank of Italy Chair, thanks to a mid-career professor had been able to join the Institute and work on parts of the UNIDROIT Work Programme that were of mutual interest on separate funding. Similar initiatives could be pursued with universities, chosen among the many that UNIDROIT had existing agreements with. Thirdly, an Academic Institute had already existed for several years, the Queen Mary UNIDROIT Institute of Transnational Law. Two Academic Projects, including the Cape Town Convention Academic Project and the Cultural Property Academic Project. A fourth aspect to highlight would be the internship and scholarship programmes, including the Roy Goode scholarship.

291. In summary, the Secretary-General concluded that the many existing academic activities warranted a more systematic presentation and showcase to the community, essentially a rebranding

exercise of the many legs of the academic vocations of the Institute, with no intention to detract from UNIDROIT's main mandate, budget or resources.

292. *The President*, in commenting the many agreements in place with universities, specified the finality of also promoting UNIDROIT instruments by incorporating them into the syllabuses of the network partners.

293. Moving onto the Summer School, the President referred to Mr Marco Nicoli, who had coordinated the application for funding for several aspects of the Institute's work. Specifically, they had discussed and designed a course of a few weeks to be delivered at the Seat of the Institute, addressed mainly to developing countries and countries that were not yet members of UNIDROIT.

294. The purpose of the course would be to train the participants on UNIDROIT instruments and how they could be implemented domestically, and it was specifically aimed at judges and the people inside the administration who worked on implementation of international instruments at a technical level. This would fulfil the role of technical assistance, as well as raise awareness and garner future additions to the membership of the Institute.

295. As far as funding was concerned, UNIDROIT had been fortunate as, following bilateral meetings the President had held with the Director for International Cooperation of the Italian Ministry of Foreign Affairs, the DG had immediately agreed to provide considerable funds towards the first edition of the School in 2022, provided that it could be directed mainly towards African countries.

296. The funding of future editions was in consideration and would depend on the success of the first edition, which would be held in English in 2022 for a population of 20-25 candidates, with a view to hold the course in different languages or multiple languages in other editions depending on resources.

297. The syllabus would be focussed on the implementation of UNIDROIT instruments, to be delivered by Members of the Governing Council, international experts on UNIDROIT instruments and faculty members of partner universities. The involvement of law firms would also be contemplated to illustrate practical cases. The selected candidates would have preparatory courses online on the working methods, and then come to the Institute to focus on implementation.

298. The multiple facets of the potential outcomes and products of the Summer School were so many as to make the name of the Summer School seem almost inadequate, given the vast network it would involve and develop as it grew. The exchange could be enriched with the participation of judges or people working general counsel offices or legislative branches, departments in the various ministries, they will exchange views and perspectives.

299. The School had been launched on 8 September at the Institute, with the participation of the Ministry of Foreign Affairs and the undersigning of an Agreement, in front of the ambassadors or delegates from over 30 member and non-member states alike. The concept had been very well received, so much so that she was fearful the numbers might be too limiting.

300. *Mr Gabriel* thanked the President for her excellent proposal, expressing his enthusiasm for the project. He noted that the programme was primarily geared toward jurists and governmental officers, but queried if it might be expanded to academics from particularly developing countries in the future. He underscored the importance of exposing academics to UNIDROIT's work, to then have them pass on that knowledge at a local academic level.

301. *The President* replied that the project would be a tool to expand membership and raise awareness. On the other hand, academia would be the focus of the other programmes such as the UNIDROIT Chairs, who would already serve that role as UNIDROIT Professors within their Universities.

The creation of synergies was a clear objective of the Summer School, and, thanks to the considerable amount of funding the Institute had been able to obtain from a single donor, she deemed that this goal had strong potential in this regard.

302. *Mr Moreno Rodriguez* remarked that he had lectured at The Hague Academy and a colleague had encouraged him to introduce UNIDROIT for the main programme, which reinforced his personal support for the project.

303. *Ms Sabo* took the floor to express her support for the ideas, which in her opinion it would be useful to think about in terms of impact and to be inserted in the context of a broader strategy of the Institute. Referring to the President's mention of the potential of attracting more Member States, she remarked that another objective was to encourage better participation in the instruments of the Institute. Despite the fact that it was not a Summer School in the traditional sense of the term she was supportive of its potential in terms of outreach.

304. *Ms Sabo* expressed her main concern on the allocation of human as opposed to economic resources, as the administration of applications, attendance and schedules to organise the syllabus were very time-consuming tasks. She also remarked that application for funding was most effective when it was grounded in the Secretariat's overall strategy and objectives. She concluded that the Summer School was a very strong idea and that in two years' time the Council would be able to take stock of the results and assess the way forward.

305. *The Secretary-General*, addressing the concern on human resources, stated that the Summer School would have a Director, so that the work would not fall on the Legal Officers. In terms of the Institute's strategy, there were two guiding principles: one of increasing the constituency, and another of increasing the implementation of the instruments. Increasing the membership of the Institute was important to sustain the new compensation and social security scheme of the UNIDROIT Staff, which would lead to a progressive increase in the budget allocated to personnel. Without an increase in contributions, the system would not be sustainable unless the Institute put a stop to new hires after other members of staff retired.

306. Before returning the floor, the Secretary-General acknowledged the entrance of Mr Herbert Kronke, UNIDROIT former Secretary-General, remarking that for the first time in many decades, the Council was being held in the presence of three Secretaries General of UNIDROIT.

307. *Ms Sabo* remarked that international organisations could not rely on the fact that increasing membership would increase their budgets, referring to past experience in other organisations, while she was not opposed to increasing membership for different reasons.

308. *The President* summarised the different objectives of the Summer School and the Academy, and on the particular issue of funds remarked how they would help realise projects that would otherwise not be possible. The recent donation of the Scialoja collection Ms Maxion had mentioned earlier was an example. Since the beginning of her Presidency, she noted how she had been constant in activating relationships with potential donors, much in the spirit of what Walter Rodinò had started.

309. *The Governing Council welcomed the proposal to create the UNIDROIT Academy with appreciation and endorsed the initiative.*

Item 20: New UNIDROIT website ([C.D. \(100\) B.23](#))

310. *The Secretary-General* introduced the item and recalled that the new UNIDROIT website had been something the Secretariat had wanted to address for some time. While the former website had its merits, there were various issues we needed to address and most importantly the programming

language, which was more complex to update. The new website was in Wordpress and could be updated more easily by staff members had other these functionalities.

311. He emphasised that the website was still very much a work in progress, and that the transition may entail some inconveniences at first until all the information and documentation had been uploaded. He nevertheless expressed his enthusiasm and certainty that it would be a very useful and user-friendly tool.

312. *Ms Valentina Viganò (UNIDROIT Secretariat)* took the floor and shared the screen of the Website to present the background of the project. Technology had been evolving very rapidly since the first year the previous website was published. The longer the project of revamping the website had been postponed, the wider the technological gap that needed to be bridged became. She recalled how UNIDROIT's social media accounts had been inaugurated in 2016, and how already then it had become apparent how the website really had the potential to do more than provide links for the Institute's social media updates.

313. The advent of the pandemic had enabled the Secretariat to save financial resources that would have otherwise been allocated to meetings of groups of experts, sustaining their travel expenses, as well as the missions of UNIDROIT staff.

314. The Secretariat had therefore found itself in a position to issue a call for proposals, which identified the main needs the new website would have to address. Among those illustrated document 23, the website was to form an easily searchable document repository for the more seasoned users on the one hand, whereas it needed to create more engagement from our new users that were being guided to the site via social media on the other. The website also needed to cater *to* users accessing the site from all types of devices such as mobile phones and tablets.

315. For newcomers to the website, as well as a new design new logo and colour palette, the intention was for UNIDROIT's new virtual window onto the world to be a user-friendly interface where people could find the information that they needed within a relatively short amount of time. The challenge of realising these objectives, with the added goal of launching it for the 100th session of the Governing Council, was not without difficulties, but the result was very positive.

316. Referring the Council to the document for further details on the call for proposals, Ms Viganò went onto report on how several solutions had been explored to support the new user in the daunting task of navigating the over 70 Studies of the Institute and numerous instruments. The solution on how to structure the site had originated from an exchange with the developers, when she and Mr Hameed had conducted a mapping exercise to show them how the various parts of the website were interrelated. As the ideal new users, the web developers based their design on this map.

317. This is how the idea of the macro categories presented on the home page had come about. The new dynamic homepage presented general categories in which the items currently on the work programme could be classified, and could change according to the evolution of the Work Programme. The top menus could lead a user straight to the current project or study, however an inexperienced user would also be guided to the instruments of interest in each of the thematic areas.

318. Each macro category now led the user to a page where all the information on that category could be accessed, from the former studies of the Institute, to the Work in Progress, to the News items and the future events that were scheduled to take place.

319. Furthermore, the thematic approach also addressed the issues of overlap, which allowed the user to access the current work on Warehouse Receipts both in the Agriculture and the Secured Transactions categories. The content would be available both in English and in French from all pages of the website.

320. Lastly, Ms Viganò informed the Council on the impact that the web design had had on the internal processes and allocation of human resources. Until recently, the entire team of Legal Officers had had to rely on only one member of staff to update the multiple aspects of the former website. With this new, more user-friendly technology the entire team of legal officers and secretarial staff had already started to receive some preliminary training with a view to actually eventually allow each project leader to administer his own project updates, quite independently. The IT officer as administrator would always be relied upon for the more structural changes such as reflecting the changes in the work program and creation of pages, however, the day-to-day burden, was to be shared among the legal offices and secretaries, leaving the administrator with more time to address the less visible, but much more infrastructure related aspects of the network.

321. *Mr Hameed* presented the new practical features that could be updated by each member of staff. Taking the example of a news item he had prepared concerning a development that had occurred in the promotion of the Space Protocol, he illustrated how he had been able to prepare the text, photographs and upon approval by the Deputy Secretary-General. In real time and as he was speaking, he published the news item and presented how it had very rapidly been added both to the home page. Having had the text translated prior to publication, he noted how the French version of the page would also be published at the same time. The news item had also been categorised so as to be shown on the Secured Transactions page.

322. Mr Hameed then went on to illustrate how he had created an event, which now presented all the information relating to that event in the same place, including links to registration, media content and documents. He noted how the events could also be categorised so that they would be shown on the relevant thematic page.

323. Another key feature of the new website was how it allowed staff members to upload and easily display different types of dynamic content that users would enjoy such as new video content, which he illustrated on the page dedicated to the Cape Town Convention. The video provided a more dynamic explanation of the instrument, which was more easily found and could be played dynamically on the relevant page

324. As all the legal officers received more extensive training on WordPress, they would continue to receive training in order for them to easily be able to update the website and be responsible for all of their own content. The use of WordPress also allowed the website to interact better with the other partner projects such as the Cape Town Convention academic project or the website of the Foundation. As a final point, Mr Hameed noted how the transition to the new server had provided the website with better cybersecurity, and an improvement in search engine optimisation.

325. In conclusion the website had brought UNIDROIT in line with the times and up to the standards of the websites of other comparable international organisations and ensured that people who engaged with the site did not have to spend a lot of their time looking for information. While the website was presently in its early phases, and some issues that had been pointed out by our experts had been addressed, there were still errors to correct, and therefore the Council was invited to reach out to both himself and Ms Viganò to point them out.

326. The Secretary-General took the floor to acknowledge the essential contribution of Mr Stefano Muscatello, the lead IT officer, who had been instrumental in the transition and would be taking on the work on the new site.

327. *The Governing Council expressed its appreciation and congratulations to the Secretariat for the newly launched UNIDROIT website, its new features and the new hosting service.*

Item 21: Date and venue of the 101st session of the Governing Council

328. *The Secretary-General began by acknowledging that September was not an ideal time to hold the Governing Council sessions, and had been selected for reasons related to the evolution of the pandemic. For the next year he proposed that the Council be held in late May as per custom.*

329. *The Council agreed that the 101st session of the Governing Council should be held from 25 – 27 May 2022, at the seat of UNIDROIT in Rome.*

330. *Prompted by the President’s remark that the next session would address the new Work Programme, the Secretary-General invited all Governing Members to make suggestions or ensure that the relevant organisations or governments made proposals.*

331. *The Secretary-General drew the Council’s attention to the fact that many of the projects on the current Work Programme had taken some time to reach the full definition of scope so that most if not all of the new projects would continue into 2023. However, it was also true that most would end before the end of the Triennium and therefore new proposals in the pipeline would be useful.*

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

(Rome, 22 – 24 September 2021 / *Rome, 22 – 24 septembre 2021*)

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

Ms Maria Chiara MALAGUTI	President of UNIDROIT / <i>Présidente d'UNIDROIT</i>
Ms Stefania BARIATTI	Professor of International Law School of Law Università degli Studi di Milano Milan (Italy)
Mr Hans-Georg BOLLWEG <i>(remotely)</i>	Head of Division Federal Ministry of Justice Berlin (Germany)
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ANNEXE II**ANNOTATED AGENDA**

1. Adoption of the annotated draft agenda (C.D. (100) B.1 rev.)
2. Appointment of first and second Vice Presidents of the Governing Council (C.D. (100) B.1)
3. Reports
 - (a) Annual Report 2020 (C.D. (100) B.2)
 - (b) Report on the UNIDROIT Foundation (C.D. (100) B.3)
4. Update and determination of scope of certain projects on the 2020-2022 Work Programme:
 - (a) Bank Insolvency (C.D. (100) B.4)
 - (b) Legal Structure of Agricultural Enterprises (C.D. (100) B.5)
5. Model Law on Factoring (C.D. (100) B.6)
6. Model Law on Warehouse Receipts (C.D. (100) B.7)
7. Best Practices for Effective Enforcement (C.D. (100) B.8)
8. Digital Assets and Private Law (C.D. (100) B.9)
9. International Interests in Mobile Equipment:
 - (a) Extraordinary activities regarding the Cape Town Convention and the Aircraft Protocol (oral presentation)
 - (b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (100) B.10)
 - (c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) (C.D. (100) B.11)
 - (d) UNIDROIT candidacy for the role of Supervisory Authority of the MAC International Registry to be established under the MAC Protocol (C.D. (100) B.12)
10. Principles of Reinsurance Contracts (C.D. (100) B.13)
11. Update on the publication of the Legal Guide on Agricultural Land Investment Contracts (ALIC Guide) (C.D. (100) B.14) (restricted to Governing Council members only)
12. International protection of cultural property (C.D. (100) B.15)
13. UNIDROIT instruments in the COVID-19 pandemic (C.D. (100) B.16)
14. Promotion of UNIDROIT instruments (C.D. (100) B.17)
15. UNIDROIT Library and research activities (C.D. (100) B.18)
16. UNIDROIT information resources and policy (C.D. (100) B.19)

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17. Proposal by the Secretary-General of new appointment procedure for Correspondents (2022-2025) (C.D. (100) B.20)
 18. Whistle-blower and anti-retaliation policy (C.D. (100) B.21)
 19. UNIDROIT Academy (C.D. (100) B.22)
 20. UNIDROIT new website (C.D. (100) B.23)
 21. Date and venue of the 101st session of the Governing Council
 22. Closing events on Friday, 24 September
 - Launch of the Guide on Best Practices for Electronic Collateral Registries (BPER)
 - Launch of the Guide on Agricultural Land Investment Contract (ALIC)

ANNOTATIONS

1. The 100th session of the Governing Council will be held at the seat of UNIDROIT, with the possibility of participating via video conference, on 22-24 September 2021. In order to accommodate participation across as many time zones as possible, meeting hours shall be from 11 a.m. to 5 p.m. CEST.
2. To mark the occasion of the Governing Council's 100th anniversary, a series of events and a celebratory conference will be held for the exclusive benefit of Governing Council members from 25 to 27 September 2021.

Item No. 2 – Appointment of first and second Vice Presidents of the Governing Council

3. 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.

Item No. 16 – Date and venue of the 101st session of the Governing Council

4. The Governing Council may wish to consider holding its 101st session on May 2022.