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**GOVERNING COUNCIL
101st session
Rome, 8-10 June 2022**

UNIDROIT 2022
C.D. (101) Misc. 2
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SUMMARY CONCLUSIONS

Note of the Secretariat: This summary of conclusions follows the order of items as included in the original agenda. It does not follow the order of the oral discussion, which was altered to adapt to the time schedule.

Item 1 on the agenda: Adoption of the annotated draft agenda ([C.D. \(101\) 1 rev. 4](#))

1. The Governing Council adopted the agenda as proposed in document C.D. (101) 1 rev. 4.

Item 2 on the agenda: Appointment of first and second Vice-Presidents of the Governing Council ([C.D. \(101\) 1 rev. 4](#))

2. The Governing Council appointed Mr Arthur Hartkamp, Doyen of the Council, as First Vice-President, and Mr Antti Leinonen as Second Vice-President, both of whom would serve in these positions until the 102nd session of the Governing Council.

Item 3 on the agenda: Reports

(a) Annual Report 2021 ([C.D. \(101\) 2](#))

The Governing Council took note of the Secretary-General's report on the main features of the legislative and non-legislative work of the Institute during 2021 and expressed its satisfaction with the achievements attained. Further, the Council expressly conveyed its gratitude to the Secretariat for the hard work in very difficult circumstances and for the transparency deployed in the conduct of its activities.

(b) Report on the UNIDROIT Foundation ([C.D. \(101\) 3](#))

The Governing Council took note of the report of the UNIDROIT Foundation, showed appreciation for its good work and commended the Foundation's successful fundraising activities.

Item 4 on the agenda: Proposals for the New Work Programme for the triennial period 2023-2025 ([C.D. \(101\) 4 rev](#))

The Governing Council took note of the proposals received for inclusion in the Work Programme for the 2023-2025 Triennium, and agreed with the Secretary-General's assessment that six constituted the maximum number of projects the Institute could manage simultaneously with its current resources. Any new initiative would either start once one of the existing projects concluded or when

new resources became available. The Council expressed its general appreciation for the quality and quantity of the proposals received by the Secretariat for potential work during the 2023-2025 Triennium. In particular, the Members of the Council greatly appreciated the Secretariat's efforts to connect with international organisations which had no previous history of working with UNIDROIT, as this generated greater interest in the work of the Institute.

The Governing Council approved the Secretariat's request for more flexibility with regard to introducing new proposals during the upcoming Triennium. The Council discussed proposal-by-proposal and agreed to recommend the level of priorities indicated below for the approval of the General Assembly. For the complete list of ongoing legislative activities carried over from the 2020-2022 Work Programme, and the New proposals for 2023-2025, see Annexe I.

(a) Legal nature of Voluntary Carbon Credits

The Governing Council recommended the inclusion of a project to analyse the private law aspects and determine the legal nature of voluntary carbon credits in the 2023-2025 Work Programme, with high priority. While the Council recognised the similarities and linkages of this work to the current UNIDROIT Project on Digital Assets and Private Law, it identified sufficient individual features to recommend that a separate Working Group be established for this new project. This separate Working Group ought to include experts that already form part of the Digital Assets Working Group, as well as experts in the areas of carbon credit trading and environmental law.

(b) Private Law and Contemporary Health Research: Intellectual Property issues in the field of Personalised Medicine

3. The Governing Council expressed interest in the topic of personalised medicine and invited the Secretariat to conduct exploratory research together with the World Intellectual Property Organization (WIPO) to further demarcate the scope of possible joint work in the period leading to the next session of the Council.

(c) UNIDROIT Principles of International Commercial Contracts and investment contracts

4. The Governing Council agreed on the importance of the topic and its direct linkage with previous work of the Institute, welcomed the partnership with the International Chamber of Commerce's Institute of World Business Law, and expressed its appreciation for the Workshop on Transnational Law and Investment Contracts that had been organised as a side event to the 101st session of the Governing Council (held on 7 June 2022).

The Governing Council agreed to recommend the inclusion of this project in the 2023-2025 Work Programme to the General Assembly with high priority.

(d) Corporate Sustainability Due Diligence in Global Value Chains

With regard to the proposal by the International Development Law Organisation (IDLO) and the European Bank for Reconstruction and Development (EBRD) in the area of Corporate Sustainability Due Diligence in Global Value Chains, the Governing Council expressed its appreciation for the topic and for the project in general, highlighting its practical importance, topicality, and direct relationship with the Sustainable Development Goals.

The Governing Council agreed to recommend the inclusion of the proposed project in the 2023-2025 Work Programme with medium priority and invited the Secretariat to conduct exploratory work on the topic.

(e) Development of an Agricultural Financing Legal Guide

The proposal of the Government of the United States to include a project on the drafting of an Agricultural Financing Legal Guide was well received by Governing Council Members. The Council recognised the value of a comprehensive Legal Guide on Agricultural Financing for stakeholders in the agricultural sector and noted that this project could encourage the use of other UNIDROIT instruments, such as the Model Laws on Factoring and on Warehouse Receipts, as well as other instruments of the Institute concerning private law and agriculture.

The Governing Council decided to recommend the inclusion of the project on agricultural financing in the 2023-2025 Work Programme with medium priority. There was agreement that work should commence after the finalisation of the ongoing project on Legal Structure of Agricultural Enterprises, and could take place in collaboration with UNCITRAL, the World Bank Group, FAO, and IFAD.

(f) Global Value Chains: Governance issues and Digital challenges

5. The Governing Council recommended the inclusion of a project on Global Value Chains: Governance issues and Digital challenges in the 2023-2025 Work Programme with low priority, and with the possibility of conducting exploratory work, jointly with the European Law Institute (ELI), to further define the scope of the project.

(g) Standard-essential patents (SEPs)

6. The Governing Council agreed with the proposed course of action, allowing the Secretariat to explore, together with WIPO and with limited resources, potential work in the SEPs area in the period leading to the next session of the Council.

(h) Digital transformation, data governance and artificial intelligence

7. With regard to the project on Digital transformation, data governance and artificial intelligence proposed by the European University of Rome, the Governing Council agreed to exploratory work taking place in the period leading to the next session of the Council.

(i) Access to Justice in Environmental Matters

8. With regard to the proposal submitted by the University of Macerata (Italy) on Access to Justice in Environmental Matters, it was agreed that exploratory work could be conducted in the period leading to the next session of the Council.

(j) Preparation of other Protocols to the Cape Town Convention: Renewable Energy equipment

The Governing Council decided to retain the Renewable Energy Protocol project on the Institute's 2023-2025 triennial Work Programme as a low priority project.

Item 5 on the agenda: Ongoing legislative activities**(a) Model Law on Factoring ([C.D. \(101\) 5](#))**

9. The Governing Council took note of the full draft Model Law on Factoring and commended the Chair of the Working Group and the Secretariat for the excellent work done. The Governing Council asked the Secretariat to undertake public consultations on the draft instrument, with a view to its adoption at the Council's 102nd session in 2023.

10. The Governing Council decided to recommend retaining the Model Law on Factoring as a high priority project in the Institute's 2023-2025 Work Programme, in order to allow for (i) the finalisation and adoption of the Model Law itself, and (ii) the preparation of a Guide to Enactment for the Model Law.

(b) Best Practices for Effective Enforcement ([C.D. \(101\) 6](#))

11. The Governing Council took note of the progress made by the Working Group on Best Practices for Effective Enforcement since the Governing Council's 100th session held in September 2021.

12. The Governing Council recommended retaining the project in the 2023-2025 Work Programme as a high priority activity until its completion, expected in 2024.

(c) Digital Assets and Private Law ([C.D. \(101\) 7](#))

13. The Governing Council took note of the progress made by the Digital Assets and Private Law Working Group at its fourth and fifth sessions, as well as of the intersessional work carried out by the sub-groups and the Drafting Committee, culminating in a draft of the Master Copy of the Principles and Legislative Guidance.

14. The Governing Council also took note of the update on the progress of the Steering Committee on Digital Assets and Private Law provided by its Chair, Professor Monika Pauknerová.

15. The Governing Council recommended retaining the drafting of an instrument on Digital Assets and Private Law in the 2023-2025 Work Programme as a high priority activity until its final completion, expected in 2023.

(d) Model Law on Warehouse Receipts ([C.D. \(101\) 8](#))

16. The Governing Council took note of the progress made since its 100th 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 an additional calendar year in order to prepare a Guide to Enactment of the Model Law. It was agreed that, in light of the joint nature of the project, the drafts of both the Model Law and the Guide to Enactment would be taken to UNCITRAL for intergovernmental negotiation and approval at the Commission.

17. The Governing Council recommended retaining the formulation of a Model Law on Warehouse Receipts in the 2023-2025 Work Programme as a high priority activity until its final completion, expected in 2023, for the text of the Model Law, and 2024, for the Guide to Enactment.

(e) Bank Insolvency ([C.D. \(101\) 9](#))

18. The Governing Council took note of the excellent progress made by the Working Group on Bank Insolvency since the Governing Council's 100th session and recommended maintaining its high priority level during the 2023-2025 Work Programme.

(f) Legal Structure of Agricultural Enterprises ([C.D. \(101\) 10](#))

19. The Governing Council took note of the developments relating to the joint UNIDROIT/FAO/IFAD project on the Legal Structure of Agricultural Enterprises (LSAE), in particular regarding the composition of the Working Group and the progress made for the definition of the scope and content of the prospective guidance document.

20. The Governing Council agreed to recommend maintaining the high priority level of the LSAE project in the 2023-2025 Work Programme, until its final completion, expected in 2024.

(g) Principles of Reinsurance Contracts ([C.D. \(101\) 11](#))

21. The Governing Council took note of the Secretariat's report on the status of the project on the Principles for Reinsurance Contracts (PRICL) and recommended retaining it at the current low level of priority and authorising the participation of the Secretariat in the project under the same conditions as before, to ensure its completion during the course of the 2023-2025 Triennium.

(h) Private Art Collections ([C.D. \(101\) 12](#))

22. The Governing Council unanimously supported the Secretariat's request to upgrade the priority of the project on Private Art Collections and recommended it to be made a high priority project, with several Governing Council Members recognising the importance of this topic. It was agreed that the work would focus on orphan objects, and that only a limited amount of resources would be allocated to the project for the establishment and the activities of the Working Group. It was noted that the project would be supported by the Fondation Gandur pour l'Art and the Art-Law Centre of the University of Geneva.

Item 6 on the agenda: International Interests in Mobile Equipment

(a) Implementation and status of Cape Town Convention and the Aircraft Protocol

23. The Governing Council took note of the extraordinary activities undertaken regarding the Cape Town Convention and the Aircraft Protocol.

(b) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol ([C.D. \(101\) 13](#))

The Council welcomed the information provided by the Secretariat on the Institute's depositary functions and on the activities undertaken to promote the implementation of both the Luxembourg Rail Protocol and the Space Protocol.

The Governing Council recommended maintaining the implementation of the Rail and Space Protocols in the 2023-2025 Work Programme at its current high priority level.

(c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) ([C.D. \(101\) 14](#))

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

(d) Appointment of a Supervisory Authority for the MAC Protocol registry ([C.D. \(101\) 15](#))

25. As a follow up from its previous session in September 2022, the Governing Council discussed the legal implications of UNIDROIT accepting the role of Supervisory Authority of the future MAC Registry, as compared to its alternative consisting in the creation of a separate international entity to undertake the role with UNIDROIT as its Secretariat, similar to the approach taken in the case of the Luxembourg Rail Protocol. No consensus was reached on these matters. The Governing Council decided to create an *ad hoc* committee, composed of interested Governing Council Members and public international and treaty law experts, who would be appointed with the assistance of Member

States, to discuss the unresolved public international law matters. The conclusions of the committee would feed into the document to be presented in the next session of the Governing Council.

Item 7 on the agenda: *International Protection of Cultural Property: implementation and status of the 1995 Convention* ([C.D. \(101\) 16](#))

26. The Governing Council congratulated the Secretariat for the growing number of States Parties to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and took note of the activities undertaken and partnerships developed for its promotion with appreciation.

Item 8 on the agenda: *UNIDROIT Correspondents* ([C.D. \(101\) 17 rev. 2](#))

27. The Governing Council took note of the Secretariat's report on the steps undertaken to identify potential candidates for the role of UNIDROIT Correspondents and commended the Secretariat for the work done. The Council agreed to renew a number of active Correspondents and to appoint new Correspondents for the period June 2022 to May 2025, as recommended by the Permanent Committee for Correspondents.

Item 9 on the agenda: *UNIDROIT Academy* ([C.D. \(101\) 18](#))

28. The Governing Council took note of developments in all the activities of the Academy, including the Academic Projects, Academic Institutes, UNIDROIT International Summer School, UNIDROIT Chair Programmes, UNIDROIT Library and research activities, Cooperation with academic institutions, and UNIDROIT Publications, and expressed its support for the Secretariat's initiatives in these fields.

Item 10 on the agenda: *Communications strategy and social media outreach* ([C.D. \(101\) 19](#))

29. The Governing Council took note of the activities of the Secretariat and commended the Communications and Outreach Strategy. The Council provided feedback on aspects in which the website could be improved, based on their user experiences.

Item 11 on the agenda: *Administrative matters: Preparation of the draft Budget for the 2023 financial year* ([C.D. \(101\) 20](#))

30. The Governing Council considered the draft Budget for the 2023 financial year, agreed to deem it drafted by the Council, and authorised the Secretariat to transmit it to Member States without amendments.

Item 12 on the agenda: *Date and venue of the 102nd session of the Governing Council* ([C.D. \(101\) 1 rev. 4](#))

31. The Governing Council agreed that the 102nd session of the Governing Council should be held either on May 10-12 or May 24-26, 2023, with an expressed preference for May 10-12, 2023, subject to the Secretariat's confirmation.

Item 13 on the agenda: Any other business

32. The Council expressed its gratitude to Professor Anna Veneziano and unanimously recommended her reappointment as Deputy Secretary-General.

ANNEXE I**DRAFT STRUCTURE OF THE NEW WORK PROGRAMME 2023-2025****A. Legislative activities**High priority***Projects carried over from the 2020-2022 Work Programme***

- Preparation of a Model Law on Factoring
- Best Practices for Effective Enforcement
- Digital Assets and Private Law
- Model Law on Warehouse Receipts
- Bank Insolvency
- Legal Structure of Agricultural Enterprises
- Rail and Space Protocols to the Cape Town Convention
- Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment

New project proposals

- Private Art Collections
- Legal nature of Voluntary Carbon Credits
- UNIDROIT Principles of International Commercial Contracts and investment contracts

Medium priority***New project proposals***

- Corporate Sustainability Due Diligence in Global Value Chains
- Development of an Agricultural Financing Legal Guide

Low priority***Projects carried over from the 2020-2022 Work Programme***

- Formulation of Principles of Reinsurance Contracts
- Preparation of other Protocols to the Cape Town Convention
 - a. Renewable Energy equipment
 - b. Ships and maritime transport equipment
- Guide to enactment of the UNIDROIT Model Law on Leasing
- International Civil Procedure in Latin America

Exploratory work***New project proposals***

- Private Law and Contemporary Health Research: Intellectual Property issues in the field of Personalised Medicine
- Global Value Chains: Governance issues and Digital challenges
- Standard-essential patents
- Digital transformation, data governance and artificial intelligence
- Access to Justice in Environmental Matters