

UNIDROIT AND TRANSNATIONAL LAW AN INTRODUCTION



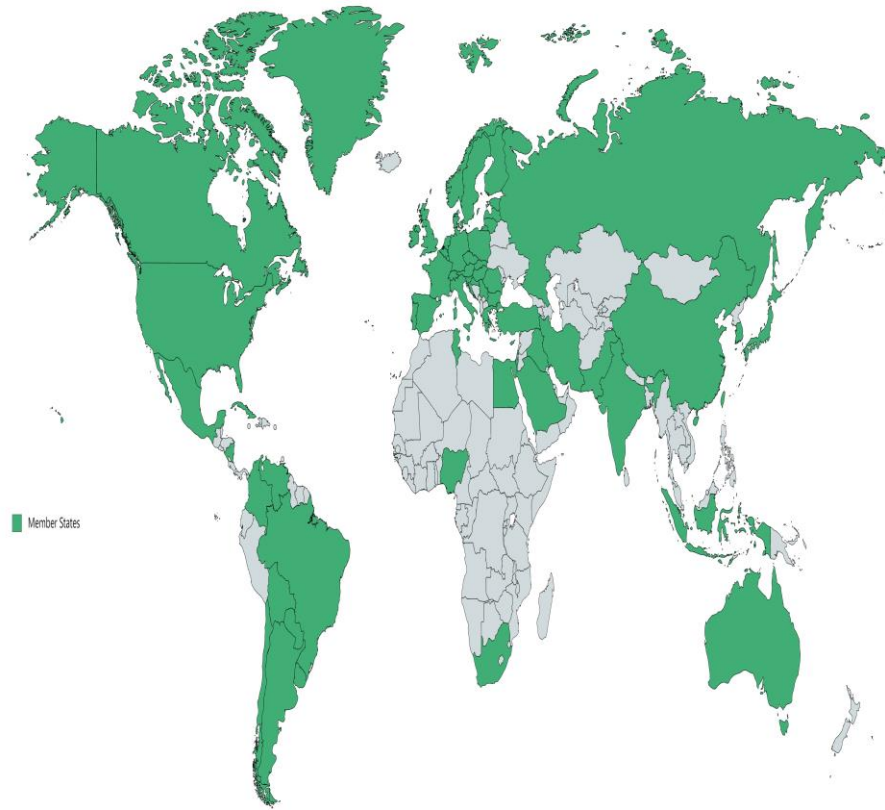
**Summer School
4 July 2022**

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UNIDROIT**

Basic Facts about UNIDROIT

- **Independent Intergovernmental Organisation**
- **Set up in 1926 as an auxiliary organ of the League of Nations**
- **Currently 63 member States**

- **World's main economies**
- **Relevant developing markets**
- **A global institution**
- **Currently 63 member States 73.6% of the nominal GDP**
- **Develops modern standards for commercial law, & where possible & necessary, internationally harmonised solutions**



The Work of UNIDROIT

- **Standard setting** legislative activity, together with UNCITRAL & HCCH, known as the “**Three Sisters**”:
 - **HCCH** does PIL, we do IPL
 - **UNCITRAL** commercial, we Private
 - **Coordination, Collaboration: 2 joint projects**
- We also work in close collaboration with other IOs:
 - The **World Bank/ IFC, FAO/IFAD, ALI/ELI**, etc.
- Work often related with **development**, also with **cutting edge best practices** in access to finance, international transactions, etc.
 - **Contract Law**
 - **Capital Markets**
 - **Secured Transactions**
 - **Law and Agriculture**



Type of Transnational Law Instruments

- Work on both **Hard Law** and **Soft Law** instruments
- The **problems** of “hard law”: (i) difficulty in negotiation; (ii) misguided protection of the “domestic” interest; (iii) giving up sovereignty; etc.
 - Consequences: widespread failure + delay of texts
 - Ought to be limited to (i) material content at least predominantly cross-border, (ii) public interest involved (procedural rules, recognition, etc.)
- Trend towards development of **soft law** guidance instruments
 - Soft law instruments are easier to approve and to amend
 - Soft law allows for adaptation to different legal, economic and social environments
 - **importance of involvement of stakeholders** both in negotiations and in implementation to ensure the usefulness and economic and social value of the legal regime

The Justification of Transnational Law

- But firstly, **why do we exist at all?** 3 Global standard setting bodies (“three sisters”), working towards harmonising law, creating Transnational law
- Some could say harmonization is an unnecessary process: jurisdictions should compete, markets decides...**regulatory competition**
 - Examples: Delaware, Forum Shopping EU...race to the bottom (internally)/national vanities (externally)
- Best way to avoid negative hazards of Reg Comp is properly conducted transactional law texts
- But...will transnational law/harmonised systems end Forum shopping? Experience says NO



Shop will continue: it is **the institutional element that counts**



Soft Law and Judicial Action

- **How can Transnational Soft Law affect the work of Judges?**
- Firstly, we must differentiate: (i) **best practices text**/(ii) **Legal Guide** (types **A** and **B**)/(iii) **Model Law**: (i) and (ii.A) are mere discussions, while (ii.B) and (iii) include **normative content**
- For sake of discussion, consider only **LG type B and Model Laws**
 - Not binding, but: if properly drafted, codifies “state of the art” in discipline...
 - Why? Because ... (i) Respond to **identified need** and **feasibility**, and (ii) **type** of drafting (public + private sector, global approach)
 - Trends: not directly applicable, but deferred:
 - **Legislation** incorporated domestically
 - **Private incorporation**: contracts, uses

Soft Law and Judicial Action (II)

- Assume a **domestic law influence by Soft Law** Transnational text



- **Judicial Interpretation**



What is the value of the LG/Practice Guide/Guide to Enactment?

What is the value of the working materials of international law texts?

Is there an interpretative value to **the tenets and principles** of the Transnational Law Instruments? (ie, notice-based registry, access to finance, protection in inso)

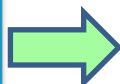
- Theological interpretation would seem to lead to YES
 - Systematic interpretation would seem to lead to YES
- Naturally, all if no express rejection in domestic Law

INTERNATIONAL
COMMERCIAL
CONTRACTS



- UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (UPICC - 1994; 2004; 2010; 2016)
 - Model Clauses for the application of the UPICC (2013)
 - Principles of Reinsurance Contracts (PRICL) I Part 2019
 - *Non legislative guidance document on uniform law on international sales (in cooperation with HCCH and UNCITRAL)- 2020*

INTERNATIONAL
FINANCIAL DEVICES



- UNIDROIT Conventions on International Financial Leasing and International Factoring (Ottawa, 1988)
- UNIDROIT Model Law on Leasing (2008)
- CAPE TOWN CONVENTION SYSTEM:
 - Convention on International Interests in Mobile Equipment (2001),
 - Aircraft Protocol (2001)
 - Luxembourg Rail Protocol (2007)
 - Space Protocol (2012)
 - Pretoria Mining, Agricultural and Construction Equipment Protocol (MAC) (2019)
- NEW WORK PROGRAMME 2020-2022:
 - *Model Law on Factoring*
 - *UNCITRAL-UNIDROIT Guide on Warehouse Receipts*

CAPITAL MARKETS
PRIVATE LAW
REGULATION



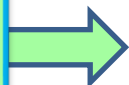
- GENEVA Convention on Substantive Rules for Intermediated Securities (2009)
- UNIDROIT Principles on the Netting of Financial Instruments (2013)
- UNIDROIT Legal Guide on Intermediated Securities (2017)

INTERNATIONAL
PROTECTION OF
CULTURAL PROPERTY



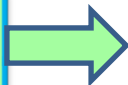
- **UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS (ROME, 1995)**
- **UNESCO-UNIDROIT Model Legislative Provisions on State ownership of undiscovered cultural objects (2011)**

PRIVATE LAW AND
DEVELOPMENT IN
AGRICULTURE



- **UNIDROIT-FAO-IFAD LEGAL GUIDE ON CONTRACT FARMING (2015)**
- ***UNIDROIT-FAO-IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC) (finalisation expected September 2020)***
- **NEW WORK PROGRAMME 2020-2022:**
 - ***UNIDROIT-FAO-IFAD instrument on the legal structure of agricultural enterprises***

TRANSNATIONAL CIVIL
PROCEDURE



- **ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)**
- ***ELI/UNIDROIT Rules on European Civil Procedure (finalisation expected September 2020)***
- **NEW WORK PROGRAMME 2020-2022:**
 - ***Best practices of effective enforcement***

ARTIFICIAL INTELLIGENCE
AND DIGITAL ASSETS



- **NEW WORK PROGRAMME 2020-2022:**
 - ***UNCITRAL-UNIDROIT work on a taxonomy in the field of AI and Digital Assets***
 - ***Project on Digital Assets***

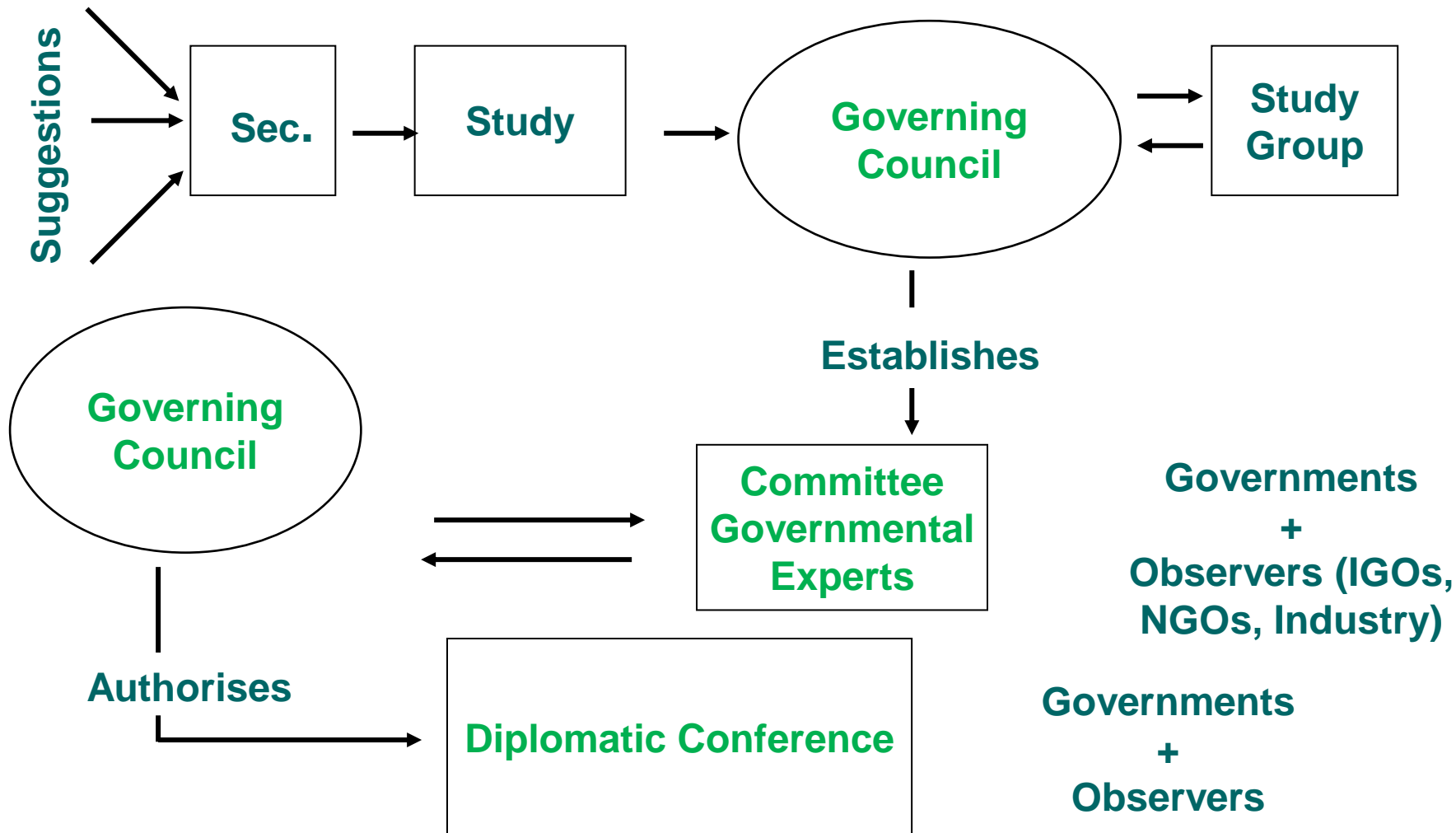


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The Future Work of UNIDROIT

- **New Projects for the Triennium 2020-2022:**
 - **Model Law on Factoring, Reverse Factoring and Supply Chain Financing**
 - **Model Law on Warehouse Receipts (perhaps with UNICTRAL)**
 - **Best Practices on Enforcement**
 - **Legal Guide/other on Digital Assets (UNICTRAL)**
 - **Investment Vehicles in Land for Agricultural Use (FAO/IFAD)**
 - **Best Practices on Bank Liquidation (with BIS)**

UNIDROIT Working Methods: Preparation of Conventions





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Thank you