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Item No. 10 on the agenda: Promotion strategy for UNIDROIT instruments

(prepared by the Secretariat)

<i>Summary</i>	<i>Strategy proposal for the promotion of some UNIDROIT instruments</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the promotion strategy and future activities proposed</i>
<i>Mandate</i>	<i>Work Programme 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	UNIDROIT 2019 C.D. (98) 10 ; UNIDROIT 2022 C.D. (101) 4 rev.

I. INTRODUCTION

1. The promotion of UNIDROIT instruments is an indispensable, high-priority activity of the Institute that remains unchanged from triennium to triennium. Therefore, while the specificities of the activities proposed for the promotion of UNIDROIT instruments were not discussed during the last session of the Governing Council, the document that proposed the new Work Programme recommended maintaining a high priority level for these activities during the triennial period 2023-2025 ([C.D. \(101\) 4 rev.](#)). Both the Governing Council, at its 101st session, and the General Assembly, at its 81st session, approved this recommendation. In accordance with said decisions, the promotion of all UNIDROIT instruments should be regarded as indispensable and, as such, should have both human and financial resources devoted to it. This is also applicable to the Conventions for which UNIDROIT has been designated as Depositary. While the Secretariat should ideally cover all the instruments prepared and adopted by the Institute, it is compelled, due to lack of resources, to establish priorities in its promotional activities, sometimes based on positive momentum, and resort to partnerships with other interested organisations as much as possible.

2. Specific information on the strategy for the promotion of UNIDROIT's conventions, in particular the Cape Town Convention and its Protocols and the 1995 UNIDROIT Convention, is provided in other documents for this Governing Council session. The present document provides a promotion strategy with a particular focus on the following two instruments:

- the UNIDROIT Principles of International Commercial Contracts; and
- the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming.

II. UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

A. Raising awareness on the UNIDROIT Principles of International Commercial Contracts

3. The Secretariat continues to promote the UNIDROIT Principles 2016 (UPICC) as a high-priority activity. One of the main goals is to raise awareness about the UPICC and the potential advantages of their use, both in international commercial trade and for legislative reform. To this end, the Secretariat not only gratefully relies on the initiative of academic correspondents and other experts, including Governing Council members, but also engages directly by building upon existing cooperation initiatives with academic and professional circles, as well as other organisations, particularly those conducting capacity building and continuing legal training and education. It also actively looks for new avenues of cooperation and dissemination. The following are examples of the numerous initiatives co-sponsored by UNIDROIT and/or with the participation of UNIDROIT Secretariat in 2022 and 2023 (many of which are recurring activities in the framework of specific agreements):

- Co-sponsoring of and participation in conferences and seminars with particular focus on the involvement of legal professionals, such as judges, arbitrators, in-house counsellors, and practicing lawyers (e.g. ICC Conference on Force Majeure and Hardship Clauses; dedicated panels at the International Academy of Comparative Law (IACL) Congress in Asunción, Paraguay, with participation of national judges and lawyers; presentation at the Workshop on ASEAN Online Dispute Resolution, as one of UNIDROIT's instruments strengthening contractual enforcement in the context of the 2022 Hong Kong Legal Week; dedicated panels at the 13th annual TCL conference, which was hosted in Rome in October 2022; presentation to a visiting Mongolian delegation of public officials, judges and lawyers);
- Building on the UNCITRAL-HCCH-UNIDROIT Tripartite Cooperation and synergy with other uniform law instruments concerning contracts (e.g. joint lecture on the UNCITRAL/HCCH/UNIDROIT Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales, hosted by the *Centro de Estudios de Derecho, Economía y Política* (CEDEP) in Paraguay);
- Co-sponsoring and/or participation in capacity-building programmes (e.g. Master of Laws in International Trade Law at the ITC ILO and lectures in the UNIDROIT International Programme for Law and Development [Summer School]);
- Lectures in the framework of cooperation agreements with academic institutions (e.g. Master in International Law at LUISS; Partner Fair at the Shanghai University of Political Science and Law (SHUPL); co-organised section on UNIDROIT instruments for the Master in International Business Law at the University La Sapienza in Rome – 2023 edition); and
- Co-sponsoring of moot courts that promote knowledge and application of the UPICC (e.g. the Intercollegiate Negotiation Competition in Japan, entirely based on the application of the UPICC, and the William C. Vis International Commercial Arbitration Moot which routinely involves application of the UPICC).

4. Moreover, the Secretariat is involved in a joint project with the University of Roma Tre on Contractual Change of Circumstances in the framework of its cooperation agreement with UNIDROIT and the activities of the UNIDROIT Academy. The project aims at producing a non-legislative document focusing on the law and practice of specific types of contracts in selected jurisdictions and subsequent comparison with the UPICC. The University will fully support the project financially and administratively, incurring no burden on the Institute's resources.

B. The UNIDROIT Principles as background general contract law for specific types of contracts

5. In the past few years, the UPICC have been expressly used and referred to as a starting point and background general contract law for UNIDROIT projects dedicated to specific types of (international) contracts, in various ways, corresponding to the manifold potential practical applications of the Principles:

- as a point of reference to develop legislative and contractual guidance;
- as a model for contractual clauses; and
- as potential applicable law, as the case may be, in conjunction with an applicable domestic or international legal framework for the specific contract envisaged by the project.

6. Examples of adopted instruments include the 2015 Legal Guide on Contract Farming and the 2020 Legal Guide on Agricultural Land Investment Contracts. An even stronger role is being played by the UPICC in the development of the Principles on Reinsurance Contract Law (PRICL – for more information, see C.D. (102) 11). This strategy has also been adopted in relation to the projects inserted in most recent Work Programme, particularly for:

- The high-priority project on UNIDROIT Principles of International Commercial Law and Investment Contracts, and
- The medium-priority project on Corporate Sustainability Due Diligence in Global Value Chains.

7. The Secretariat believes that capitalising on the role of the UPICC as general background contract law is a winning strategy for their wider promotion and dissemination in practice in various business circles around the world.

C. Application of the UNIDROIT Principles in specific regions

8. Another avenue pursued by the Secretariat is to consider the impact of the UPICC in relation to specific regional areas that present a similarity in their general contract laws. To this end, the Secretariat is now focusing on the MENA region with various initiatives (cooperation with correspondents, participation in conferences, research, etc.).

D. Strategic planning for future promotion and dissemination of the UNIDROIT Principles

9. The Secretariat encourages reflecting on the most effective ways of keeping the UPICC “alive”, as one of the most relevant flagship instruments developed by UNIDROIT to date. It is suggested that the approaching 30th anniversary of their first edition, which will be celebrated in 2024, be used as the appropriate forum to discuss the future of the UPICC in the context of UNIDROIT’s activities. The Secretariat would kindly request input and suggestions from Governing Council members in achieving this goal.

III. UNIDROIT/FAO/IFAD LEGAL GUIDE ON CONTRACT FARMING

10. Over the years, UNIDROIT has continued to seek opportunities to promote the [Legal Guide on Contract Farming](#), jointly developed with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD). The Secretariat relies on the collaboration of different stakeholders and former Working Group members for the dissemination of

this instrument. The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (LGCF) was presented at a number of seminars, conferences, and lectures to relevant academic institutions during the course of 2022, the following being representative examples (see Annual Report 2022, C.D. (102) 2, for the complete description):

- Workshop on Responsible Contract Farming organised by the International Institute for Sustainable Development (IISD), Liberia's Ministry of Agriculture, the MAP Liberia Land Platform, and the William N. Tolbert College of Agriculture and Forestry of the University of Liberia;
- Conference on "Making the Supply Chain Work – Drafting Effective International Contracts" held in Vienna and organised by the International Association of Lawyers (UIA), with the support of the Vienna Bar Council and the Austrian Bar Association;
- UNIDROIT Summer School, with participation of UNIDROIT and FAO representatives, including Governing Council Member Prof. Henry Gabriel; and
- Dedicated panel co-organised by the International Academy of Comparative Law (IACL) and UNIDROIT during the XXI IACL Congress.

11. The LGCF is also being promoted on the ground in certain countries by the partner organisations, in particular FAO. This document suggests a new and more strategic approach to the promotion of the instrument in specific jurisdictions.

12. It should be recalled that UNIDROIT's proposal to set up a pilot project for fostering good practices for agricultural contracts in specific jurisdictions was awarded the United Rule of Law Appeal (UROLA) prize in 2019 ([C.D. \(99\) B.2](#)). UROLA is a non-governmental organisation (NGO) managed by the International Law Institute and other NGOs focused on the rule of law. The purpose of the [2019 UROLA competition](#) was to identify the best and most effective ways to promote the rule of law. Naturally, due to the particular circumstances created by the COVID-19 pandemic during 2020 and 2021, the implementation of the pilot project was not possible.

13. The Secretariat envisages starting this initiative during the 2023-2025 Work Programme based on the approach, activities, and expected deliverables proposed below.

14. For the practical implementation of the pilot project, it is proposed that the Secretariat will further explore the possibility of partnering with local (and non-local) associations, universities, and other intergovernmental organisations that undertake technical assistance work in different parts of the world and that have field experience in implementing development projects on the ground. To this end, UNIDROIT could consider establishing, for example, an MoU with the International Development Law Organization (IDLO) which, in response to the call for submissions for UNIDROIT's triennial Work Programme 2023-2025, expressed its interest to further explore opportunities for collaboration in the field of contract farming in Africa.

15. Partner organisations would, among other things, help organise, manage, and deliver multi-stakeholder consultations to identify challenges and needs for legal support. One or two countries may be selected by UNIDROIT and the partner organisations based on their potential for contract farming. The narrative and all references to concepts such as "applicable law" and "legal system" will be transposed into the context of the relevant country's legal system, attributing all due consideration to local specificities and providing complete information on contractual practices and legal sources. The country-specific legal guides would follow the structure of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, mirroring the corresponding discussion by chapters, sections, and topics.

16. Through this type of legal support, the country-specific legal guides on contract farming would be developed in accordance with several Sustainable Development Goals (SDGs), namely economic growth (SDG1), social stability (SDG2 and SDG8), and inclusiveness (SDG5 and SDG10), as well as environmental protection (SDG15), in rural economies. The country-specific LGCF would offer a contextualised discussion of the practical and legal issues involved in contracts for the production and marketing of agricultural commodities.

17. To begin, the pilot project would involve the following activities:

- (i) desk review of existing legal frameworks, policies, and practices related to contract farming in the selected countries;
- (ii) preparation of a country-specific assessment of the legal framework, jurisprudence, and contractual practices applicable to contract farming—using the Legal Guide on Contract Farming as a benchmark and repository of best practices; and
- (iii) organisation of legal awareness- and capacity-building workshops for smallholder farmers, agribusinesses, and other stakeholders on contract farming and the use of the country-specific legal guide.

18. Regarding the expected timeline and budget, it is proposed that each pilot project be implemented over a period of 18 months. In addition to the amount received by UROLA, the Institute will seek other sources of funding for the implementation of this strategy to promote the LGCF in specific countries, when feasible and appropriate through the support of interested intergovernmental organisations focusing on technical assistance and other interested academic and institutional partners.

IV. ACTION TO BE TAKEN

19. *The Governing Council is invited to take note of the promotion strategies proposed for the UNIDROIT Principles of International Commercial Contracts and the Legal Guide on Contract Farming.*