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1. *The President of UNIDROIT, Ms Maria Chiara Malaguti, opened the 102nd session, welcoming all the Members of and Observers to the Governing Council and expressing appreciation for the number of participants attending in person. She acknowledged that this was the last session scheduled for the Governing Council in its current composition. She expressed thanks for the fundamental roles that many Members had played in the development of various projects, especially the three instruments presented for adoption at this session, namely the Model Law on Warehouse Receipts, the Model Law on Factoring, and the Principles on Digital Assets and Private Law. More generally, the President extended broader thanks for all the support that Members had shown across institutional activities over the past year. In addition, the President celebrated the recent accession of two new UNIDROIT Member States since the beginning of 2023: Singapore and Mongolia.*

Item 1: Adoption of the annotated draft agenda ([C.D. \(102\) 1 rev.](#))

2. *The Governing Council adopted the agenda as proposed in Document C.D. (102) 1 rev.*

Item 2: Appointment of first and second Vice-Presidents of the Governing Council ([C.D. \(102\) 1 rev.](#))

3. *The President recalled the Rules of Procedure for appointing the First and Second Vice Presidents of the Governing Council, in accordance with article 6.6 of the UNIDROIT Statute.*

4. *The Governing Council appointed Mr Arthur Hartkamp, Doyen of the Council, as First Vice President, and Mr Jorge Sánchez Cordero as Second Vice President, both of whom would serve in these positions until its 103rd session.*

Item 3: Reports

(a) Annual Report 2022 ([C.D. \(102\) 2](#))

5. *The Secretary-General of UNIDROIT, Mr Ignacio Tirado, welcomed all participants and expressed gratitude for the almost full in-person attendance of the 25 Governing Council Members. He thanked the Observers for their participation and made a special reference to UNIDROIT's two sister organisations in the area of transnational law: the Hague Conference on Private International Law (HCCH) and the United Nations Commission on International Trade Law (UNCITRAL), as well as to Sir Roy Goode, Emeritus Member of the Governing Council, who also attended the session in person. He also welcomed the representatives of Singapore and Mongolia, the two new Member States to UNIDROIT. He then summarised UNIDROIT's work in 2022, referring to the Annual Report, Document [C.D. \(102\) 2](#).*

6. *He emphasised the Institute's stability, recovering from the preceding COVID-19 pandemic years, the good progress made on existing instruments, and the steady development of ongoing legislative projects. While simultaneously making headway on existing projects, the Secretary-General indicated that promoting dissemination of and accession to previously-adopted instruments remained a primary objective.*

7. *The Secretary-General noted the increase in the number of legislative projects that the Institute was developing simultaneously. He further detailed the activities undertaken for the implementation of the Convention on International Interests in Mobile Equipment (Cape Town Convention), noting its additional States Parties (84 States and the European Union). He remarked that the effectiveness and utility of the Cape Town Convention had been enhanced given the complicated context created by the COVID-19 pandemic restrictions, especially in the aviation industry. He congratulated the Secretariat on its enormous efforts to promote the Cape Town Convention in 28 conferences across 18 countries in spite of ongoing pandemic-related restrictions.*

8. With regard to the implementation of two of the not-yet-in-force Cape Town Convention Protocols, he informed the Council about the process undertaken to change the ownership of the entity that would manage the international registry for the Luxembourg Protocol on Matters specific to Railway Rolling Stock (Rail Protocol). He informed that the Rail Protocol had attained its fourth ratification (by Spain), that there was increasing environment-related support for the Rail Protocol in other countries, and that more ratifications would be expected relatively soon. The Cape Town Convention Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) had also seen several achievements in 2022: (i) the completion of the regulations of the international registry; (ii) the finalisation of the process of requests for proposals for the international registry; and (iii) the signature of the European Union.

9. The 1995 Convention on Stolen or Illegally Exported Cultural Objects had two new ratifications: Morocco and Mexico, bringing the total to 54 States Parties. A special acknowledgment was paid to Governing Council Member Mr Jorge Sánchez Cordero for his contribution towards Mexico's ratification. Furthermore, the Secretary-General noted that UNIDROIT had been featured twice in the historic declaration adopted at the signature event of MONDIACULT Mexico 2022. He congratulated Mexico on that extraordinary success.

10. The Secretary-General further emphasised the considerable progress made on the ongoing legislative projects. A significant amount of work had been undertaken: in total, 60 project-related meetings had been organised. The Model Law on Factoring (MLF) project had organised two Working Group sessions and a global consultation, gathering strong support from the industry. The Draft MLF had been deemed ready for finalisation thanks to the Secretariat, the Working Group, and its Chair, Governing Council Member Mr Henry Gabriel. There had been a commendable effort for the conclusion of the Digital Assets and Private Law project, with the Working Group chaired by Governing Council Member Mr Hideki Kanda and the Secretariat - and the relevant experts - devoting their time to three Working Group sessions, 13 Drafting Committee sessions, two workshops and two rounds of consultations of the Steering Committee (Chaired by Governing Council Member Ms Monika Pauknerová). The Model Law on Warehouse Receipts (MLWR) project (Chaired by Governing Council Member Ms Eugenia Dacoronia), jointly developed with UNCITRAL, had also finalised the draft Model Law. Two Working Group sessions and two Drafting Committee sessions had taken place in 2022.

11. As for the development of other projects, in 2022 the Best Practices for Effective Enforcement (Chaired by Governing Council Member Ms Kathryn Sabo) had held two Working Group sessions and three workshops that covered very dense and complex issues. The Secretary-General applauded the Secretariat and the Working Group on their efforts to formulate proposals that could be agreeable to States with different approaches and traditions in a matter where national public policy is always involved. The Bank Insolvency project (Chaired by Governing Council Member Ms Stefania Bariatti) had organised two Working Group sessions, 12 meetings of subgroups, and four coordination meetings with the involvement of an array of central banks, deposit insurers, and international financial institutions. The Legal Structures of Agricultural Enterprises project (Chaired by Governing Council Member Mr Ricardo Lorenzetti) had made considerable progress with the collaboration of the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) in two Working Group sessions and three intersessional meetings. Exploratory work had also been undertaken for the development of the Private Art Collections project and the Principles of Reinsurance Contract Law.

12. The Secretary-General highlighted that it had been rewarding to receive an unprecedented number of proposals from Member States, international organisations, international financial institutions, universities and Correspondents for the new 2023-2025 Work Programme. He recalled that three projects had been approved with medium priority: (i) Private Art Collections; (ii) Corporate Sustainability Due Diligence in Global Value Chains; and (iii) Development of an Agricultural Financing Legal Guide. Several other projects had been included in the new Work Programme with low priority and for exploratory work.

13. As for UNIDROIT's international cooperation agreements and Academy, the Secretary-General informed the Council that a number of memoranda of understanding (MoU) had been signed in 2022, including with the Ministry of Commerce of the People's Republic of China (MOFCOM) and with the Government of the Hong Kong Special Administrative Region (Hong Kong SAR) of the People's Republic of China for the secondment of legal officers. He noted the MoU could serve as an example for other States who wished to establish secondment agreements. Written cooperation agreements had been established with 32 international organisations as of 2022. He also informed that, to date, over 60 agreements had been established with universities, drawing attention in particular to the agreement with the University of Cambridge and the Aviation Working Group to enhance the Cape Town Convention Academic Project (CTCAP) and the creation of the international moot court programme. The Secretary-General also stressed the importance of revamping the UNIDROIT/Queen Mary Institute of Transnational Commercial Law.

14. He underlined the importance and success of the first edition of the International Programme for Law and Development (IPLD) held in June-July 2022, previously known as the International Summer School. Thanks to the financial support of the Italian Ministry of Foreign Affairs and International Cooperation, in 2022 the IPLD had attracted 21 judges, lawyers, and legal drafters from 12 African countries, producing "ambassadors" for UNIDROIT all over Africa. Following the Programme's achievements, he informed the Council that a second edition would be held in June-July 2023, and would also involve the African continent.

15. Lastly, the Secretary-General drew the Council's attention to the great number of visiting scholars, interns and independent researchers that had been welcomed to UNIDROIT's Library in 2022: six visiting scholars, 43 interns from 25 countries, and 58 researchers from 23 countries. He pointed out the steady increase of staff members in the Secretariat (10 legal officers, five legal officers in secondment, two Chairs, and one Sir Roy Goode Scholar). He expressed his hope of increasing the extra-budgetary sources of revenue.

16. *Ms Kathryn Sabo* extended her congratulations to the Secretariat for its effectiveness and the excellent report presented by the Secretary-General.

17. *Mr Arthur Hartkamp* appreciated the impressiveness of the increase of both legal and academic activities undertaken and congratulated the Secretariat on its successes.

18. *Ms Stefania Bariatti* congratulated the Secretariat for the progress made and paid a special thank you to the dedication of the UNIDROIT staff.

19. *Mr Jorge Sánchez Cordero* congratulated the Secretariat on its comprehensive Annual Report reflecting the immense work undertaken and the improvements.

20. *Ms Shi Jingxia* also congratulated the Secretariat for producing such a rich Annual Report. She acknowledged that the Secretariat was able to produce very prolific achievements while working effectively and efficiently within the mandate of the organisation.

21. *Mr Henry Gabriel* commended the UNIDROIT staff and Secretary-General for the quality work produced with a limited budget.

22. *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 2022, expressed its satisfaction with the enormous achievements attained, and commended the Secretariat for the hard, high-quality work deployed during the year.*

(b) Report on the UNIDROIT Foundation (C.D. (102) 3)

23. *Mr Jeffrey Wool* (the President of the UNIDROIT Foundation) recalled that the UNIDROIT Foundation had been established to raise funds and facilitate ancillary research to support the work of UNIDROIT. He explained that the Foundation's two main projects concerned (i) Best Practices in the Field of Electronic Registry Design and Operations ("BPER Project") and (ii) the Economic Assessment of International Commercial Law Reform ("EA Project"). Both projects had made substantial progress in 2022.

24. He explained that for the BPER Project, which was focusing on the development of a Guide for Best Practices on Electronic Business Registries, a consultant had been hired and a workshop had taken place in 2022. The discussions had concentrated on the scope and structure of the future Guide, as well as critical performance factors for business registries. The aim of the EA Project was to develop guidance that would help assess the economic impact of transnational commercial law, which was expected to be very useful for UNIDROIT and other organisations in this field. Two workshops had been held in 2022, during which a preliminary draft of the future Guide had been discussed, along with a hypothetical case study.

25. Mr Wool indicated that the Board of Governors of the Foundation had recently approved a third project that would be supportive of the work of UNIDROIT, on the implementation of and compliance with transnational commercial law instruments. This project would draw on the experience gained through the Cape Town Convention Compliance Index and would enable UNIDROIT and other organisations, as well as users of their instruments, to gain information on how commercial law instruments worked in practice.

26. Mr Wool then turned to the Foundation's fundraising activities, noting that he was very pleased to report that in 2022 the Foundation had raised over € 235,000. The bulk of these funds came from the Dutch Foundation *Largesse* which, thanks to Foundation Board member Ms Carla Sieburgh, had agreed to donate € 200,000 in support of the UNIDROIT Library. *Ms Myrte Thijssen (Legal Officer)* added that a part of this generous donation had already been used to renovate and transform unused office quarters into new Library space. The renovation work had proceeded quickly and had now been finalised. The remaining funds would be used to purchase up-to-date legal literature and to digitalise parts of the Library's collection.

27. Mr Wool noted that funds had also been raised from Aviareto and from the Brazilian law firm *MadrugabTW*. Furthermore, thanks to the International Law Institute, an Essay Competition had been organised on "UNIDROIT and Sustainable Development". He indicated that the Foundation's Board was committed to strengthening its fundraising efforts, also in light of the ambitious new Work Programme of UNIDROIT. He added that any support from Governing Council Members in the Foundation's fundraising activities would be welcome.

28. *Mr Arthur Hartkamp* thanked Mr Wool for the update on the activities of the Foundation. He observed that the Foundation currently carried out two – and soon three – substantive projects, which led him to make some general observations about the purpose of the Foundation and its relationship with UNIDROIT. He recalled that the Foundation had been created in 1996, with the first and foremost goal of supporting UNIDROIT financially. At the time, it was not envisaged that the Foundation would conduct its own projects. He recalled that the main sources of income for the Foundation in the past had been revenue from the organisation of events and from the sale of Official Commentaries to the Cape Town Convention. He welcomed the generous donation of the Dutch *Stichting Largesse* for the UNIDROIT Library and noted that it had been the result of the remarkable efforts of one Board member of the Foundation. He encouraged the Foundation to focus on such fundraising activities, in line with the Foundation's founding purpose. He also underlined that any projects of the Foundation should be supportive of the work of UNIDROIT.

29. *The Secretary-General* agreed that the main purpose of the Foundation was to financially support UNIDROIT and that the fundraising efforts that had led to the substantial donation for the Library were the paradigmatic type of action that was expected from the Foundation's Board members. He clarified that the Foundation did not cost UNIDROIT money; to the contrary, the Foundation had provided funding to UNIDROIT whenever possible. He also explained that the work carried out by UNIDROIT staff to support the Foundation was limited, although some time and effort had gone into reviving the Foundation over the past few years. He indicated that the projects of the Foundation were funded by external parties, by way of example the Aviation Working Group and Aviareto, and were directly related to the Cape Town Convention and hence to the work of UNIDROIT. The BPER Project was also linked to the Cape Town Convention and the EA Project would enable UNIDROIT to assess the economic efficiency of its projects *ex ante* and *ex post*. The new project was also ancillary to the work of UNIDROIT, since it would allow the Institute to monitor the implementation of its instruments and report on their use in a sophisticated way. This was expected to be extremely useful for all UNIDROIT instruments.

30. *Mr Hartkamp* noted that the idea had originally been that the Foundation would provide financial support while the projects would be run by UNIDROIT.

31. *The Secretary-General* agreed that that was still the main purpose. At the same time, he noted that the traditional means of fundraising, for instance by organising events, was no longer effective. Financing had become more targeted, donors were interested in specific projects or activities, and the Foundation had to update its activities accordingly. He indicated that the complementary projects of the Foundation might in theory be carried out by UNIDROIT, but running a project through the Foundation could allow for more flexibility. He also noted that a system of monitoring was already in place since the Foundation reported annually on its activities to the UNIDROIT Governing Council.

32. *The Deputy Secretary-General of UNIDROIT, Ms Anna Veneziano*, added that, thanks to the generosity of Sir Roy Goode, the royalties from the sales of the Cape Town Convention Official Commentaries were directly granted to UNIDROIT. A Sir Roy Goode Scholarship had been established, which allowed a researcher to support the work of UNIDROIT. Furthermore, she noted that the additional revenue gained through the Foundation, for instance for the Library, allowed UNIDROIT to use as much as possible of its limited budget for its legislative projects.

33. *Sir Roy Goode* agreed with Mr Hartkamp that the Foundation had historically been established to raise funds for UNIDROIT. However, he noted that there were different ways in which support could be provided to UNIDROIT. He agreed with the Secretary-General that traditional means of fundraising had become challenging, if not impossible. He considered it appropriate for the Foundation to conduct certain projects that were useful for UNIDROIT if the Foundation had the resources for doing so and UNIDROIT did not. He supported the activities carried out by the Foundation and noted that these were in line with the original objective although the method of achieving that objective had necessarily changed over time.

34. *Ms Kathryn Sabo* agreed with the points raised by Mr Hartkamp and clarified that, in her view, this did not mean that the projects of the Foundation should cease. She considered the Foundation's projects valuable and doubted whether UNIDROIT would have the capacity to conduct them in the same manner. However, it was good to take stock of the Foundation's activities and to continue to be mindful of its purpose; she advocated some caution in expanding the work of the Foundation.

35. *Mr Wool* thanked the Council members for their helpful comments. He explained that the Council was briefed on the Foundation's activities every year and that UNIDROIT's President and Secretary-General were part of the Foundation's Board. He underlined that the structure and working

method of the Foundation had not changed over the years; the only novelty was the project on the implementation of, and compliance with, international commercial law instruments.

36. *Ms Baiba Broka* expressed gratitude to the Foundation, noting that its results were impressive. In light of the comments made by Mr Hartkamp, she suggested updating the purpose of the Foundation in its founding documents, if needed. Having said that, she considered that the Foundation played a valuable and successful role in promoting UNIDROIT and that that was what ultimately mattered.

37. *Mr Antti Leinonen* shared the point made by Mr Hartkamp about the original purpose of the Foundation. However, he appreciated the work done by the Foundation over the years. He noted that, if needed, the Council could suggest narrowing the Foundation's scope of work. He advised against that since he considered the Foundation's projects, including the new project, very valuable for UNIDROIT and beyond. Like Ms Sabo, he doubted whether the Secretariat could carry out these projects. He suggested focusing instead on new ideas for strengthening the Foundation's fundraising efforts.

38. *Mr Hartkamp* clarified that he was grateful for the work the Foundation had done and that he did not suggest restructuring the Foundation or its work. He expressed support for Mr Leinonen's suggestion that the Foundation's projects should be discussed by the Council. He considered that the work of the Foundation should be duly scrutinised and approved by UNIDROIT, which was represented in the Foundation's Board, especially if it concerned activities other than fundraising.

39. *The Secretary-General* confirmed that UNIDROIT was represented in the Board of the Foundation, which allowed it to endorse its activities. He indicated that the proposals brought forward within the Foundation had always been ancillary and instrumental to UNIDROIT's work. He then made a few final points. First, he recalled the Foundation's role in raising funds for UNIDROIT and noted that its status as a Dutch public benefit organisation was beneficial for tax purposes. Second, the Foundation retained a 10% overhead fee on its income, which was granted to UNIDROIT after deduction of costs. Third, the Foundation provided flexibility in conducting certain complementary projects that were useful for UNIDROIT. Fourth, an accountability mechanism was in place since the Foundation reported on its activities to the Governing Council. As an example, he referred to the presentation of the Guide on Best Practices for Electronic Collateral Registries to the Council in 2021. He concluded that the Secretariat had taken note of the comments made by Members and would ensure that the Council would continue to be duly informed of the Foundation's work.

40. *Mr Henry Gabriel* expressed appreciation for the work of the Foundation. He considered the ancillary projects important and was in favour of continuing them. He clarified that the Council received updates on the Foundation's activities on an annual basis but had never approved Foundation projects in advance.

41. *The Secretary-General* confirmed that the Foundation's projects were not presented to the Council for approval in advance. However, instruments were presented to the Governing Council once finalised.

42. *The President* thanked the Members of the Council for their interventions. She agreed with the Secretary-General that the Foundation allowed ancillary work to be conducted in a flexible and effective way. She suggested asking the Secretariat to prepare for the Council at its 103rd session, in addition to the Foundation's Annual Report, a document that would elaborate on the issues that had been discussed during this meeting. Such document could also contain suggestions on how to strengthen fundraising activities in light of the upcoming 100th anniversary of the Institute.

43. *The Governing Council took note of the report by the President of the UNIDROIT Foundation, thanked the Foundation for its continued support and asked to remain duly informed of the Foundation's activities.*

Item 4: Adoption of Draft UNIDROIT instruments:

(a) Model Law on Warehouse Receipts ([C.D. \(102\) 4 rev.](#))

44. *The Secretary-General introduced the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project. He recalled that the project started one year into the 2020-2022 Work Programme and highlighted that the joint work with the Secretariat of UNCITRAL to develop the Model Law text had been a positive and insightful experience. He expressed his satisfaction with the successful collaboration between both Secretariats.*

45. Noting the inherent difficulty of the project in accommodating the coexistence of two significant alternative systems of warehouse receipts already successfully used by different jurisdictions – namely, the Geneva model and the US model – the Secretary-General stressed that the Model Law had to be agreeable to both models. Furthermore, while electronic warehouse receipts were important, the instrument had to cover warehouse receipts more generally and, whenever necessary, include specific rules for electronic format. He outlined the future steps for the project, explaining that the Model Law would next be submitted to UNCITRAL for State negotiations at a Working Group, while UNIDROIT would simultaneously continue work on drafting the mandated Guide to Enactment.

46. Lastly, the Secretary-General expressed his gratitude to the UNCITRAL Secretariat, especially Mr José Angelo Estrella-Faria, to Ms Eugenia Dacoronia as the Chair of the Working Group, to the Drafting Committee, to the members of the Working Group, and to Ms Philine Wehling as the lead legal officer on the project, for all their work on the Model Law.

47. *Ms Philine Wehling (Legal Officer) reported on the details of the work undertaken on the Model Law on Warehouse Receipts Project during the previous year, referring the Governing Council to Document [C.D. \(102\) 4 rev.](#) She first summarised the progress that had been made on the project since the last Governing Council session: two Working Group sessions and two in-person Drafting Committee meetings had taken place, and in addition the Drafting Committee had met online on a near-monthly basis. The complete text of the draft Model Law had been shared twice for written consultation with members and observers of the Working Group, as well as with selected industry representatives with whom the Secretariat had been closely collaborating. The Model Law had not yet been shared for broader public consultation, given that it was still treated as a draft text to be next considered by an UNCITRAL Working Group.*

48. Ms Wehling next provided an overview of the draft Model Law text, drawing the participants' attention to the Annexe to Document C.D. (102) 4 rev.

49. She highlighted that the draft was framed in jurisdiction-neutral language and compatible with both civil and common law systems. It was also consistent with the relevant international legal framework, with special reference to the relevant UNCITRAL instruments. The Model Law was organised into six chapters comprising a total of 38 articles, focusing on the financing function of warehouse receipts.

50. Starting with Chapter I, Ms Wehling explained that it set out the scope and general provisions of the law. Article 1 stated that the law applied to warehouse receipts and that these might take the form of either electronic records or paper documents. The article incorporated the decision made by the Working Group to cover both electronic and paper-based warehouse receipts on equal footing. This decision acknowledged that, on the one hand, the trend of legislative reform was to regulate

electronic receipts, and on the other hand, warehouse receipts were still mostly issued in paper form and for many jurisdictions a model for implementing a sound legal framework on paper receipts would be an important first step. While the option of addressing electronic and paper records separately had been discussed by the Working Group, this was decided against. This was due to the conception of the Model Law as a parliamentary-level law once implemented at the domestic level, setting out general principles largely applicable to both electronic and paper receipts. Further regarding the scope, the Model Law was not limited in its application to warehouse receipts issued for specific kinds of goods, but its usual application in practice would be for agricultural commodities. Moving on to Article 3, Ms Wehling noted that it described the concept of “control” of an electronic warehouse receipt in accordance with Article 11, paragraph 1 of the UNCITRAL Model Law on Electronic Transferable Records, yet avoided considering control as a functional equivalent to possession.

51. She noted that Chapter II addressed the issue and content of a warehouse receipt, as well as its alteration and replacement. She outlined several key provisions in the Chapter, beginning with Article 6, which established the obligation of a warehouse operator to issue a receipt if requested by the depositor. Article 9 set out the mandatory terms to be included in a warehouse receipt, while Article 10 suggested a few additional optional terms to promote good practices.

52. Chapter III contained provisions on transfers and other dealings in negotiable warehouse receipts, including the rights of a protected holder. It contained one article specifically on security rights, namely Article 19, on the third-party effectiveness of a security right in a negotiable warehouse receipt. The Working Group had discussed the extent to which provisions on security rights should be included in the Model Law and decided to leave other related matters to fall under the broader secured transaction legislation of an enacting State.

53. Chapter IV contained the most important rights and obligations of the warehouse operator, including the duty of care, the duty to keep goods separate, and the warehouse operator’s lien on stored goods and on any proceeds. The aim of this chapter was to balance the Model Law’s inclusion of rights and obligations that had been externally legislated upon, in an effort to preclude any legal inconsistencies, while providing the jurisdictions lacking this legislative background with the minimum standards for warehouse operators.

54. Regarding Chapter V, Ms Wehling noted that it was included as an optional chapter on pledge bonds for States that wished to implement or reform a dual warehouse receipt system. It implemented the Working Group’s decision for the Model Law to encompass both the single and the dual system, with approximately half the jurisdictions with warehouse receipt legislation in place adhering to one system and half to the other. She then briefly explained the differences between the single and dual systems. Conceptually, the Model Law sought to treat the pledge bond as an annexe to the warehouse receipt.

55. Finally, Chapter VI contained the usual provisions related to the application of the law.

56. Regarding the future work on the Guide to Enactment, the Secretariat envisaged two Working Group sessions to prepare the instrument, containing a limited number of experts, to finalise work in early 2024. She reported that the Secretariat had proposed a draft structure for this Guide, organising it into four parts. Part I would set out the purpose of the Guide, Part II would introduce the Model Law, Part III would contain a detailed article-by-article commentary of the Model Law, and Part IV would provide guidance to States on the implementing subsidiary legislation that was required for the Model Law at the domestic level. Ms Wehling acknowledged the concerns raised at the last session by the Council regarding the coordination of UNIDROIT’s work on the Guide with the parallel work on the Model Law at UNCITRAL and ensured their ongoing close collaboration.

57. In conclusion, Ms Wehling recalled that the Model Law had been drafted in English and French, yet noted that the Council was asked to authorise the Secretariat to finalise the review of the French language version.

58. *Ms Eugenia Dacornia*, in her capacity as Chair of the Working Group, took the floor and congratulated the Working Group, the Drafting Committee, and the Secretariat for their work on the project. She referenced the composition of the Working Group as attended by experts in the subject matter participating in a personal capacity and representing various legal systems and geographical regions. She noted the progress made by the Group between 2020 and 2022, attended as it was by many interested parties – international and regional, private and public. She highlighted the development of the Model Law’s optional chapter on dual receipt systems as well as the important promotion of electronic warehouse receipts in the Model Law, on equal footing with paper receipts. Further, she underlined the significance of the terminology used, noting the need to balance general language with terms recognised by the industry in an effort to avoid terminology that might obfuscate domestic implementation.

59. *Ms Anna Joubin-Bret* (Secretary of UNCITRAL) noted that UNCITRAL had followed the work on this project very closely, as it had been identified by the UNCITRAL Commission as a project on which UNIDROIT and UNCITRAL would cooperate in sequence. She reported that the Secretariat of UNCITRAL had ensured that Working Group I would become available to assume work on the draft Model Law and the ongoing work on the Guide to Enactment, concurring with the Secretary-General that the most appropriate approach to the preparation of the Guide to Enactment still had to be identified. She expected that the work at UNCITRAL would take place swiftly and require one or two sessions, depending on the time the delegates of the Working Group would need to examine and deliberate on it, and expected the adoption of the Guide at the Commission’s 57th session in 2024. The UNCITRAL Secretariat was looking forward to receipt by the Commission of the Model Law text, as adopted by the Governing Council, so that the Commission could subsequently task Working Group I with the project. Ms Joubin-Bret expressed gratitude to UNIDROIT’s Working Group for its work on balancing the good practices of single and dual receipt systems in civil and common law jurisdictions, noting that this was particularly relevant for UNCITRAL Member States from developing countries in Africa that had civil law regimes and could be expected among the first users of this Model Law. She emphasised the success of the Model Law in balancing the regime for paper and electronic receipt versions, and seconded Ms Wehling’s statement that dematerialised documents of title, whilst strongly advocated for by the UNCITRAL texts, were still a work in progress in many parts of the world. She noted that this project was an example of successful cooperation between UNCITRAL and UNIDROIT and would produce a highly useful instrument with many concrete applications. She concurred with the Secretary-General’s remark that there was a lot to learn from this pilot project, and reiterated the need to act patiently once the text had been adopted by UNCITRAL to hold a discussion about common findings. They were looking forward to welcoming Ms Wehling to the forthcoming session of UNCITRAL’s Working Group I to introduce the work of UNIDROIT.

60. *The President* then opened the floor to interventions.

61. *Mr José Antonio Moreno Rodriguez* congratulated UNIDROIT on the success of the project and expressed the support of the Organization of American States (OAS) for the endeavour. He referred to the pioneering role of the Inter-American Juridical Committee, which he currently presided, in producing a report on the topic of electronic warehouse receipts in 2016. He advised that the Juridical Committee was eventually expected to consider endorsing the results of this joint project.

62. *Mr Henry Gabriel* congratulated Ms Dacornia for the work done, highlighting the difficulty in uniting two competing and strongly supported positions in this area of law. He fully supported the adoption of the draft Model Law and its transfer to UNCITRAL. He further supported the instrument’s connection to the UNCITRAL Model Law on Electronic Transferable Records, expressing the excellence of this work and its ability to guide the draft Model Law concerning electronic receipts. Noting the

importance of Article 3, he expressed concern as to the circularity of the definition of “control”, assuming that the project would develop this definition further as it moved forward. Concluding, he underlined that he was very pleased with this project and looking forward to the work at UNCITRAL.

63. *Mr Pierre Beaudoin* (as the representative of Governing Council Member Ms Bénédicte Fauvarque-Cosson), stated that the results of this project were impressive and that the current draft was decisive for the continuation of the work on the Model Law. He reported that he had exchanged with Mr Jean-François Riffard, a member of the Working Group, who had noted that the Group’s discussions had been very productive and of high quality. He was looking forward to following the work on this project at UNCITRAL. Concerning the French version, he expressed support to dedicate the time necessary to finalise the review, in order to ensure that it would be of the best possible quality, noting the importance of different language versions for the interpretation of the final text.

64. *Ms Monika Pauknerová* thanked the Secretariat and Ms Dacornia for all the excellent work done on the project and welcomed the finalisation of the draft Model Law. She expressed her appreciation for the coherence of the draft Model Law, UNIDROIT’s successful cooperation with UNCITRAL, and the capacity of this document on electronic warehouse receipts to inspire domestic legislation where such concepts were missing, including the Czech Republic.

65. *Mr Antti Leinonen* thanked the Secretariat and the Working Group for the difficult work carried out so far. While acknowledging his initial lack of enthusiasm for the project, he expressed his current support for the nature of the joint project with UNCITRAL and looked forward to the future collaboration and coordination between the two organisations. He supported the adoption of the draft Model Law for submission to UNCITRAL and the authorisation of the Secretariat to finalise the French version, as requested.

66. *Ms Kathryn Sabo* thanked the Secretariat, Ms Dacornia and the Working Group, and expressed her support for the collaboration with UNCITRAL. She concurred with the adoption of the draft Model Law and emphasised the need to take the time necessary to produce a suitable French version. Ms Sabo noted the challenges in simultaneously working on the Guide to Enactment while the draft Model Law was under discussion at UNCITRAL, and appreciated the emphasis the report placed on noting that UNIDROIT would be present in the negotiations. She hoped that the governments represented at UNIDROIT might additionally participate with the relevant national experts at UNCITRAL, emphasising the benefits that overlapping participation would have for the final product. Ms Sabo highlighted that as a model for electronic transferable records already existed, UNCITRAL needed to consider how their work would fit in with the discussions of Working Group VI on negotiable documents of title, as well as the relevant provisions of the Rotterdam Rules. She raised a further concern about consistency in the definition of the holder of the electronic warehouse receipt, as opposed to holders of other types of negotiable electronic documents, highlighting the changing circumstances surrounding the project and their relevance to UNIDROIT’s interaction with UNCITRAL. She expressed her belief in the Secretariat’s capabilities to address this challenge and develop a successful Guide to Enactment.

67. *Ms Jingxia Shi* congratulated the Secretariat on the progress made on the draft Model Law and supported all actions to be taken proposed by the Secretariat. She considered the current draft Model Law of a generally high quality yet expressed a desire for further clarification on several articles. She first turned to the provision with respect to the rights conferred on the holder of a warehouse receipt, specifically to the rights in goods or the representation of the goods involved. Her concern referred to the differences between common and civil law systems’ representation of property rights. She noted that the previous version of the draft Model Law stipulated that the warehouse receipt represented a title to the goods, whereas the current draft replaced the term “title” with “ownership”. She acknowledged the intended effect of this change was to enhance the clarity of the provision; however, she highlighted that this might lead to confusion as to whether the rights to the goods, as represented by the holder of the warehouse receipt, could be defined as

ownership. She referenced the civil law system of the People's Republic of China, where the warehouse receipt represented a certificate of property rights. Her understanding was that this project did not concern the ownership of goods, nor the concept of property rights. She was also concerned that the use of the word "ownership" might not reflect the needs of commercial practice. For example, the goods might be distributed by the owner to others for possession or other reasons, and it might be against the original intention of the owner to store the goods and obtain the warehouse receipt during this process. This situation might arise where others store the goods and obtain the warehouse receipts, which might cause the original owner to lose ownership. Ms Shi's primary concern was that the current Model Law draft might restrict the freedom of the owner to dispose of the goods – a situation not conducive to the flexible development of commercial activities. She queried whether the draft could borrow from the instrument UNCITRAL was currently developing on negotiable multimodal transport documents, specifically referring to that instrument's Article 9, concerning the final extent of the rights of the holder under a negotiable cargo document. Ms Shi's understanding was that the methodology used in this article was to specify which rights the holder could have, and she was uncertain as to whether this same methodology could be used instead of using the term "ownership" to reflect the rights of the holder of the warehouse receipt.

68. Ms Shi noted further opacity concerning the relationship between warehouse receipts and storage contracts in the draft Model Law. She questioned whether Article 8 of the draft, stipulating that the warehouse receipt shall be deemed to include all terms of the storage contract that were not inconsistent with the express terms of the receipt, was necessary. She explained that not all the clauses in warehousing or storage contracts were related to the holder of the warehouse receipt, and that the holder needed only to exercise its rights according to the receipt. Therefore, the scope of application of Part IV of the draft Model Law, on the rights and obligations of the warehouse operator, in particular Article 23, should be clarified. If the warehouse receipt stipulated an obligation on the warehouse operator, it should be clarified whether this provision was invalid if it were in conflict with the storage contract.

69. Ms Shi also raised concern regarding Article 13, which provided that in the event of the loss of a warehouse receipt, the original holder was entitled to apply for the issuance of a new receipt after providing a guarantee to the warehouse operator. She would prefer an amendment to the final paragraph of the article in order to better protect the interests of third parties and to clarify the priorities between the original and replacement receipt. Referring to examples of fraudulent cases in the People's Republic of China concerning lost and reissued receipts, she suggested including procedural details concerning replacement receipts in Article 13 to protect third parties.

70. *The Secretary-General*, in responding to the interventions collectively, stated that UNIDROIT could send not only the text of the draft Model Law, but also a report of the present session to UNCITRAL, to be shared with government negotiators, in order to ensure the comments made by the Governing Council were properly considered.

71. Responding to the comment on the French translation, the Secretary-General reported that the French version had been produced by Mr Jean-François Riffard, a member of the Working Group, together with the Secretariat.

72. As to the definition of "control", the Secretary-General conceded that it was indeed circular, and attributed this problem to the fact that the UNCITRAL Model Law on Electronic Transferable Records did not define control, so any definition UNIDROIT included might be contradictory. The decision to adopt the current definition was in the interests of paving the way for discussions regarding work on future UNCITRAL instruments.

73. Concerning Ms Sabo's comment on the need for the Guide to Enactment to be fully consistent with other UNCITRAL instruments, the Secretary-General acknowledged the difficulty of achieving this with respect to instruments that were still in progress. While he clarified that the process of

completing the Guide to Enactment in parallel with UNCITRAL would be challenging, he noted that not all sections in the Model Law would likely be controversial, nor subject to thorough discussion. He explained that the Working Group would develop the Guide, setting aside the work on the more controversial issues until a decision by UNCITRAL had been adopted.

74. In responding to the interventions, *Ms Wehling* acknowledged the circularity of the definition of control in Article 3 as identified by Mr Gabriel, noting that this issue had been discussed by the Working Group, which had ultimately been satisfied with the additional defining element provided in the description, namely the “exclusivity” of the control.

75. Concerning Ms Sabo’s intervention on the consistency of the Model Law with existing UNCITRAL texts, she recalled that the Working Group had prepared a comprehensive review of any relevant international instruments, including the Rotterdam Rules, in order to ensure consistency between the Model Law and the existing instruments, and reassured that it would always be possible to consult this documentation as the work moved forward.

76. On the substantive comments made by Ms Shi, concerning the modification of some articles since the previous Working Group meeting, Ms Wehling corroborated that the decision to change the term “title” to “ownership” had been made in the interest of legal clarity and to avoid any contradiction with regard to the pledge bond, explaining that some articles applied equally to warehouse receipts and pledge bonds. Pertaining to the comment on Article 8, she reported that the Working Group had considered whether to include provisions referring to the storage agreement at all relevant instances, but had decided that this made the text more convoluted. The Group found it more appropriate to include this article upfront, allowing its application when relevant. With regard to Article 23, she referred to the future Guide to Enactment which would explain the provisions further. Moving to Article 13, and the question of whether its paragraph 4 provided sufficient detail concerning the relevant procedural aspects, she explained that this question had also been discussed and the Group had decided not to provide more procedural details in the Model Law text but rather rely on the background legal framework in this regard. She reassured that, in any case, all of the substantive comments made by the Council members could be shared with UNCITRAL and would be taken into consideration as the work moved forward.

77. *Mr Gabriel* cautioned against the consideration of transport documents and warehouse receipts as analogous legal documents, illustrating their distinct functions. He recommended preventing the connection of warehouse receipts with all existing transport documents as the project moved forward.

78. *Ms Shi* thanked Ms Wehling for the clarification. She referred to a shared concern she had with a Chinese member of the Working Group, regarding the use of the term “ownership”. She acknowledged its clearer meaning and her understanding of the need for its use, but she explained that in some civil law countries, including the People’s Republic of China, “ownership” did not encompass the broad concept of the document of title. Acknowledging the purpose of legal clarity, Ms Shi suggested to explain the issue and the different understanding between common and civil law systems with regard to property rights in the Guide to Enactment.

79. Responding to Ms Shi’s concerns, *the Secretary-General* confirmed that a discussion of the terms “title” and “ownership” would be included in the Guide to Enactment, and that it could also, of course, be raised again in the UNCITRAL Working Group. He then agreed with Ms Sabo’s suggestion that, to the extent possible, the countries that participated in the UNIDROIT Working Group could send the same experts to the Working Group at UNCITRAL, which would facilitate the negotiations. He further noted the general agreement among the Council as to Mr Gabriel’s comments on the need to identify the slight difference between warehouse receipts and transport documents.

80. *The Governing Council took note of the progress made on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project since its 101st session, as well as of the proposed next steps concerning the drafting of the Guide to Enactment. The Council unanimously adopted the final version of the draft Model Law on Warehouse Receipts, as presented in the Annexe to Document C.D. (102) 4 rev., agreeing that it was ready for submission to UNCITRAL for state negotiations and completion. Furthermore, the Council authorised the Secretariat to finalise the review of the French language version of the draft Model Law.*

(b) Model Law on Factoring (C.D. (102) 5)

81. *The Secretary-General reminded the Governing Council that the Model Law on Factoring (MLF) project had been adopted as part of UNIDROIT's 2020-2022 triennial Work Programme as a high-priority project, on the basis of a proposal received from the World Bank Group. He explained that the World Bank had identified a need for such an instrument to assist States that were not yet in a position to undertake comprehensive secured transactions reform but wanted to improve their domestic legal framework for factoring and supply chain finance. He noted that the existing need for the instrument was so pressing that several countries had already begun to undertake reforms based on draft versions of the MLF, which were publicly available as Working Group documents. He noted that the Working Group tasked with the preparation of the MLF had worked efficiently and effectively under the outstanding chairmanship of Mr Henry Gabriel. He explained that the Working Group members had all been selected for their deep understanding of both factoring practice and the existing international secured transactions framework, as most Working Group members had also participated in UNCITRAL Working Group VI on Secured Transactions. He concluded that the project had been completed on time and that it was intended for the Working Group to be renewed to begin work on a Guide to Enactment for the MLF.*

82. *Mr William Brydie-Watson (Senior Legal Officer) introduced the draft MLF for the Council's consideration and adoption, with reference to Document [C.D. \(102\) 5](#). In introducing the draft instrument, he highlighted three reasons why the instrument was fit for adoption: (i) it had been developed through an open, inclusive and robust negotiation process; (ii) the instrument was well drafted, had a clear scope, and was appropriately adapted for achieving its specific purpose; and (iii) the instrument was well-positioned to enjoy rapid adoption in the near future as a key tool for States looking to increase access to finance in an increasingly difficult international economic environment.*

83. *In relation to the negotiation process, Mr Brydie-Watson noted that the Working Group had been composed of ten international experts from five different continents. He explained that throughout the negotiation process there had been sustained participation of key stakeholders from both international partner organisations and the private sector. There had been 30-40 participants in each of the six Working Group sessions, including regular participation from UNCITRAL, the World Bank Group, the European Bank for Reconstruction and Development (EBRD), the International Law Institute and the International Chamber of Commerce. Just as important had been the sustained engagement of industry stakeholders, led by Factor Chain International (FCI). Mr Brydie-Watson explained that the involvement of key stakeholders in the negotiation process ensured that the organisations that would be responsible for implementing the instrument domestically and parties that would actually utilise its operation were very supportive of the instrument's content.*

84. *Mr Brydie-Watson also highlighted the public consultation process, which had involved (i) the launch of a dedicated webpage; (ii) the broad distribution of the draft instrument through governments, partner organisations, the UNIDROIT Correspondents Network and the private sector; and (iii) the organisation of an online consultation event and the promotion of the instrument at three regional events in partnership with the FCI. The comprehensive consultation strategy had resulted in UNIDROIT receiving almost 200 comments on the draft MLF from stakeholders in 20 countries. He noted that the Secretariat was particularly pleased that almost half of the comments had been submitted from stakeholders in the Global South, including Africa, Asia-Pacific and Latin*

America. He explained that the comments received on the draft MLF had been overwhelmingly positive but had also resulted in a few important changes to the MLF at the Working Group's sixth and final session.

85. Turning to the draft instrument itself, Mr Brydie-Watson explained that the draft MLF had 54 Articles and 25 Registry clauses. Mr Brydie-Watson highlighted several important features of the MLF. First, he noted the instrument had a balanced and well-defined scope, as achieved by Article 1 and the definitions of "receivable", "transfer", "security transfer" and "proceeds" in Article 2. Second, he noted that the draft MLF provided for an electronic registry for notices of transfers, as consistent with international best practice instruments for secured transactions. He explained that the centrality of the registry was an essential element of the MLF as it ensured that the MLF could perform its role as a transitional instrument for countries that were not yet ready for a comprehensive reform based on the UNCITRAL Model Law on Secured Transactions (MLST). Third, Mr Brydie-Watson noted that one of the only significant deviations from previous international instruments was in relation to the treatment of anti-assignment clauses. He further explained that the draft MLF provided for a full override of anti-assignment clauses, whereas previous instruments retained the right of the debtor to sue a transferor for breach of the underlying contract. During negotiations, the private sector noted that jurisdictions that had implemented reforms that retained the right for a debtor to sue for breach of contract had resulted in a significant chilling effect on factoring transactions, with many parties unwilling to assign their receivables. The complete override of anti-assignment clauses ensured that the new legal framework would facilitate and encourage factoring transactions. Finally, Mr Brydie-Watson noted that by adopting a strict scope, the draft MLF had been able to omit complex asset-specific rules in relation to immovable property, movable property, intermediated securities and other financial receivables. The draft MLF also appropriately deferred many other matters to the domestic law of the enacting state, including regulatory matters, definitions of "intellectual property", "data" and "digital assets", substantive insolvency law, electronic signature and writing requirements. He explained that these matters were not appropriate for regulation in a model law on factoring. By omitting specific rules on these matters, the draft MLF was a relatively streamlined instrument, 65% shorter than the MLST. In this regard, the Secretariat suggested that the MLF was a relatively concise legal instrument that still provided a complete legal framework for factoring and receivables finance.

86. In relation to implementation, Mr Brydie-Watson agreed with the Secretary-General that the timing of the adoption of the draft MLF was near perfect, as many countries were currently working to adopt receivables finance reforms to facilitate access to credit for MSMEs in an increasingly difficult global economic environment. He further noted that the draft MLF had already been used as the basis of reform efforts in at least seven countries. He explained that the MLF had also already been recognised as a core instrument facilitating supply chain finance in both an EBRD report on "new finance", as well as in the World Trade Board's April 2023 "Financial Inclusion in Trade" Roadmap. He noted that the Secretariat has included an implementation strategy in paragraphs 27-28 of [C.D. \(102\) 5](#), which set out a variety of activities that the Secretariat intended to undertake in the coming months. He concluded that the Secretariat would also begin work on the Guide to Enactment, which would provide a concise guide for implementing States to assist them in better understanding the MLF, which could be negotiated within the current 2023-2025 triennial Work Programme.

87. In concluding his report, Mr Brydie-Watson thanked his Secretariat colleagues who had supported the preparation of the MLF over the preceding three years, including Ms Audrey Chaunac, who had been the principal Secretary for the entire project; Ms Marina Schneider, who had been responsible for the French translation; Mr Chen Miao, who had been the junior officer supporting the project for two years; and Mr Hamza Hameed and Ms Philine Wehling, who had taken on lead responsibility for managing the Working Group at various points, as well as the many scholars and interns who had also worked on the MLF project.

88. In his capacity as the Chair of the MLF Working Group, *Mr Henry Gabriel* noted that the draft MLF was ready for the Council to consider for adoption. He noted that the instrument was being

submitted on time, despite having been developed during the COVID global pandemic, which had often required the Working Group and its Subgroups to meet remotely across several different time zones. He thanked the Working Group for its outstanding work and the UNIDROIT Secretariat for exhibiting the highest work ethic as international civil servants. He explained that the MLF would play a key role in facilitating access to credit to support economic growth in developing countries. He emphasised that the instrument would truly help people around the world and was pleased to note that it was already being adopted in several countries. He concluded that it had been a pleasure to chair the Working Group and submitted the instrument to the Council with a strong recommendation that it was ready to be adopted.

89. *Mr Peter Mulroy (Secretary General of FCI)* thanked UNIDROIT for its work in preparing the draft MLF. He referred to the initial rationale for the project as provided by the World Bank Group in 2019, namely (i) the importance of factoring as a mechanism to increase finance for MSMEs, (ii) ongoing constraints in access to credit in developing countries, and (iii) the existing gap in the international legal framework in relation to factoring. He noted that FCI had been a strong supporter of the initiative since it had first been proposed in 2019 and had been an active participant in the Working Group. He noted that the MLF represented the newest chapter in a series of international instruments that had created an international legal framework for receivables finance, including the 1964 Shield Agreement, the 1988 UNIDROIT Convention on International Factoring, the 2001 United Nations Assignment of Receivables Convention and the 2016 UNCITRAL Model Law on Secured Transactions (MLST). Mr Mulroy noted that many countries still did not have proper legal frameworks for factoring, which impeded financiers from investing in this important asset class. He explained that one study estimated that receivables often represented 40% of a company's total assets, which lay dormant on its balance sheets if the receivables could not be utilised to access credit. He noted that the adoption of the MLF was of paramount importance for the factoring industry, as it would promote easier and greater access to credit, provide predictability and confidence in investing, substantially reduce legal risks and due diligence costs, and increase economic growth. He noted that the MLF supported different types of factoring, including both recourse and non-recourse factoring, as well as reverse factoring. Mr Mulroy emphasised the important link between factoring legal reform and the growth of factoring transactions in the relevant market. He cited data from India, Egypt and Chile which indicated that the annual compound growth of factoring in a State that had undertaken a recent reform was often 25%, as compared with the annual global rate of 6%. He noted that should the MLF be widely implemented, it was expected that the global factoring market would grow from \$4 trillion in 2022 to \$8 trillion in 2030. Mr Mulroy thanked the Working Group and its Chair, the Secretary-General and the Secretariat for their work in developing the draft MLF.

90. *Ms Anna Joubin-Bret (Secretary of UNCITRAL)* noted that UNCITRAL had followed the MLF project closely and congratulated UNIDROIT for its successful preparation of the instrument. She noted that UNCITRAL had generally been very satisfied with how the MLST had been taken into account in the preparation of the draft MLF. She fully concurred with the Secretariat and the Chair that the MLF had been carefully designed to fulfil a specific purpose within the international framework. She agreed that the cautious approach in determining the instrument's scope would make it easy for States to use the MLF as an initial stepping stone to broader reform and noted that the MLF and the MLST dovetailed nicely together. She noted that UNCITRAL considered the two main divergences from the MLST in the MLF to be acceptable. She explained that the policy decision for the MLF not to preserve the right of a debtor to claim for damages for the breach of an anti-assignment clause was not deemed a problem. She further explained that the inclusion of contractual rights to payment of a monetary sum arising from "the provision or processing of data" in the definition of "receivable" in Article 2(g)(iii) was also acceptable, as it would not have an impact on the possible characterisation of data as a good, service or intellectual property, and was consistent with the work being undertaken on data provision contracts by UNCITRAL Working Group IV. She noted that UNCITRAL looked forward to the inclusion of the MLF in the work of the Joint Network for Coordinating and Supporting Secured Transactions Reforms and expressed her support for the preparation of a Guide to Enactment

for the MLF. She once again expressed her congratulations to the Chair of the Working Group and the Secretariat for its successful conclusion of the MLF.

91. *The Governing Council adopted the UNIDROIT Model Law on Factoring, requesting that the Secretariat undertake final proofing in order for both English and French language versions of the instrument to be published within 2023. The excellent quality of the instrument was highly commended. Furthermore, the Governing Council mandated the Secretariat to design and execute a promotion and implementation campaign for the UNIDROIT Model Law on Factoring. The Council also requested that the Model Law on Factoring Working Group begin work on the UNIDROIT Model Law on Factoring Guide to Enactment.*

(c) Principles on Digital Assets and Private Law (C.D. (102) 6)

92. *The Secretary-General introduced the UNIDROIT project on Digital Assets and Private Law (DAPL), recalling that it had initially been proposed by the Ministry of Justice of Hungary in 2015 and the Ministry of Industry and Trade of the Czech Republic in 2016 and 2018, and that after some exploratory work, it had been incorporated into the Institute's 2020-2022 Work Programme with high priority. It was noted that there was no existing transnational legislative guidance in the area of digital assets and private law, and that the UNIDROIT Principles had been drafted to develop the most appropriate best practices in this field.*

93. *The Secretary-General emphasised the excellent cooperation in this project between legislative bodies, which included the Uniform Law Commission of the United States of America and the Law Commission of England and Wales. It was noted that the Principles had been developed with a functionally- and technologically-neutral approach for States to effectively implement the legislative framework at the regional or national level. The Secretary-General expressed his gratitude to the Working Group Chair, Mr Hideki Kanda; the Drafting Committee Chair, Ms Louise Gullifer; the Steering Committee Chair, Ms Monika Pauknerová; Mr Hamza Hameed (Legal Consultant); Mr Carlo di Nicola (former Senior Legal Officer at UNIDROIT); as well as all experts and observers involved in the project.*

94. *Mr Hameed summarised the work which had been undertaken by the Working Group between the Council's 101st and 102nd sessions, with reference to Document C.D. (102) 6. It was recalled that the DAPL Working Group consisted of 15 members from a variety of common law, civil law, and mixed jurisdictions; 22 observers from prominent international, regional, and non-governmental organisations in this area; and 22 individual observers. In total, the Working Group had met nine times. A Steering Committee for the Project was consulted twice as part of the process of preparing the Principles. The Working Group also organised four ad hoc workshops on specific topics to further develop the Principles. Finally, an online public consultation had been organised in order to solicit feedback on the Principles. The drafting of the Principles had been led by a Drafting Committee, which had met 25 times between December 2021 and April 2023. With regard to the public consultation, it was noted that 341 individual comments and a position paper from the European Association of Private International Law (EAPIL) had been received.*

95. *Mr Hameed noted that the DAPL Principles had been refined since the last Council session and consisted of seven parts, preceded by an Introduction. The Principles comprised sections on Scope and Definitions, Private International Law, Control and Transfer, Custody, Secured Transactions, Procedural Law including Enforcement, and Insolvency. It was explained that the policy goal of the Principles was to reduce legal uncertainty by providing clear rules for transactions in certain types of digital assets commonly used in commerce. This was done by having the Principles clearly establish that digital assets could be subject to proprietary rights. The Principles gave significant effect to party autonomy in determining the applicable law for digital assets and provided other connecting factors in particular circumstances. Additionally, the Principles established rules for transfers and security rights involving digital assets, with a focus on the notion of "control". The*

Principles had been based upon a definition which made them applicable to digital assets which took the form of electronic records that were subject to control. The notion of control here was used in a factual sense and was the functional equivalent to that of “possession” of movables. It was noted that the Principles also addressed issues of custodianship of digital assets and third-party effectiveness of security rights, among other things. Mr Hameed expressed the Secretariat’s gratitude to the members and observers of the Working Group, the Drafting Committee (with special emphasis to its Chair, Ms Gullifer), the Steering Committee, and all the Members of the UNIDROIT Secretariat who had been involved in this project.

96. In his capacity as Chair of the DAPL Working Group, *Mr Kanda* expressed his gratitude to the Working Group, the Drafting Committee, the Secretariat, and the Steering Committee. He summarised the Principles for the Council, noting that there were 19 Principles across seven sections, as well as an Introduction. Principles 1 and 2 defined the scope and definitions of the instrument and provided that the Principles be implemented into the law of States; Principle 3 provided a set of general notions delineating where the Principles applied; Principle 4 addressed situations that involved linked digital assets; Principle 5 provided a conflict-of-law rule; Principle 6 defined “control” and “change of control” in a factual sense; Principle 7 prescribed a procedural provision for the operation of Principle 6; Principle 8 provided for the application of the Principles to innocent acquirers; Principle 9 provided for the *nemo dat* rule and the shelter principle; Principle 10 to Principle 13 provided private law principles relevant to custody of digital assets; Principle 14 to Principle 17 covered enforcement of security rights in digital assets; Principle 18 clarified how the law of the State applied to any procedural matters for enforcement; and Principle 19 covered proprietary rights in digital assets in insolvency proceedings.

97. In her capacity as Chair of the Steering Committee, *Ms Pauknerová* noted that the project had an inherently global and interdisciplinary nature, which resulted in the establishment of the Steering Committee, comprised of experts from both technical and legal backgrounds. The Steering Committee included 27 Member States and 1 regional economic integration organisation, which had provided written comments and amendment proposals. The Steering Committee had been consulted twice over the course of the project. The first round was in March and April 2022, and the second round was in November and December 2022. Ms Pauknerová expressed her gratitude to the Steering Committee, the Secretariat, and the Working Group for their efforts in finalising the Principles. She concluded by noting her satisfaction with the Principles and recognising that the Working Group had made a positive effort to incorporate all the comments provided by the Steering Committee.

98. *Ms Baiba Broka* noted that the DAPL Principles had been produced in a very timely manner and would be welcomed by the industry, given recent developments in the digital assets market. She recognised that the Principles would provide guidance to States regarding proprietary rights, custody, and insolvency-related issues in digital assets, and expressed her firm support for the adoption of the instrument.

99. *Ms Kathryn Sabo* noted that the DAPL Principles would be important and useful for legislators who were presently looking to reform their domestic rules with regard to digital assets. She noted that the instrument used a definition for “insolvency-related proceedings” which was broader than the general definition of “insolvency proceedings” found in the UNCITRAL Legislative Guide on Insolvency Law and queried how it would integrate with existing legislation. *Ms Jingxia Shi* also queried the use of the term “insolvency-related proceedings” and expressed concern over the confusion the same could create with the UNCITRAL term of “insolvency proceedings” found in various instruments. *Mr Niklaus Meier* also noted the potential for confusion between the two terms.

100. *The Secretary-General* explained that the DAPL Principles’ definition of “insolvency-related proceedings” was not intended to provide a definition that would substitute, modernise, or replace the general definition of “insolvency proceedings” as found and referenced in UNCITRAL instruments. It was added that the term had in fact been changed to “insolvency-related proceedings” from

“insolvency proceedings” at a late stage in the project, specifically to avoid this issue. It was further noted that the definition of “insolvency-related proceedings” was only intended to apply to the DAPL Principles and not to be extended elsewhere, and this limited scope was expressly mentioned in the instrument, with an express reference to UNCITRAL’s instruments for those seeking a general definition. *Mr Henry Gabriel* noted that the Commentary clearly explained the use of the definition and that it was meant to be limited to the DAPL Principles. Additionally, as the Principles were a soft-law instrument, States could adopt them into their domestic law however they saw fit.

101. *Mr Antti Leinonen* recognised the difficulties in applying fundamental property law to digital assets and commended the project on its achievement. Mr Leinonen agreed with Mr Gabriel that the commentary adequately explained the distinction between the terms. He noted that UNCITRAL’s concerns were considered and accommodated during Working Group discussions, which showcased strong collaboration between the organisations. He expressed support for the structure of a Steering Committee in this project and recommended that this methodology be employed for other projects. *The Secretary-General* noted that this structure would be considered for other projects.

102. *Mr Christophe Bernasconi (Secretary General of HCCH)* congratulated UNIDROIT on the finalisation of the DAPL Principles. It was noted that digital assets formed an important part of economic discourse in the modern era, and that these Principles would provide useful guidance and certainty to all stakeholders involved. It was noted that the level of collaboration displayed in this project among international organisations, industry, and legal experts was commendable and a useful foundation for additional work in the area of the digital economy. It was added that additional joint work had been proposed to the Council for the Joint HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens, and that this would be discussed as part of Agenda Item 6.

103. *Ms Anna Joubin-Bret (Secretary of UNCITRAL)* congratulated UNIDROIT on the work undertaken by the DAPL Working Group. It was noted that from UNCITRAL’s perspective, three sensitive areas had been identified in the Principles: secured transactions, insolvency and electronic commerce. On all of these, the UNCITRAL Secretariat, together with its relevant working organs, provided feedback to the UNIDROIT Working Group with regard to particular amendments which could be introduced to ensure greater consistency between the work of the two organisations. It was noted that the changes had largely been incorporated and that such cooperation and collaboration between the two organisations was commendable. It was noted that the Principles were a soft-law instrument and as such would in any case be adjusted when adopted in any jurisdiction. It was added that while the Principles did not promote the UNCITRAL Model Law on Electronic Transferable Records, this was a policy choice and that the two instruments had different objectives. *An Observer from the United States of America* noted that the resolution of the “insolvency-related proceeding” issue had been professional and served as an example of how the three sisters collaborated on overlapping issues.

104. *All Governing Council Members and Observers* who took the floor expressed gratitude to the Chair of the Working Group, its members and observers, the Steering Committee, the Chair of the Drafting Committee and all its members, and the Secretariat for their work on this project.

105. *The Secretary-General* invited all Members of the Governing Council to attend the side event on 12 May entitled “Workshop on the Principles on Digital Assets and Private Law”.

106. *The Governing Council approved the UNIDROIT Principles on Digital Assets and Private Law. Special appreciation was expressed towards all members and observers of the Working Group, as well as to the Steering Committee established for the development of the Project. Following approval, the Council mandated the Secretariat to work towards the final publication of the instrument, to commence the process of preparing the instrument in French, and to promote the instrument in different jurisdictions to facilitate its implementation.*

Item 5: Ongoing legislative activities carried over from the 2020-2022 Work Programme**(a) Best Practices for Effective Enforcement ([C.D. \(102\) 7](#))**

107. *The Deputy Secretary-General* briefly presented Document [C.D. \(102\) 7](#) on the project on Best Practices for Effective Enforcement (BPEE). Focusing on developments since the 101st session of the Governing Council in May 2022, she reported on the progress made on the project.

108. It was highlighted that the Working Group had held two plenary sessions: the fifth session in November 2022 and the sixth session in March 2023. The sessions had been accompanied by intense intersessional work with participation of the Chair as well as several Working Group members and observers (including meetings within and across Subgroups, and coordination meetings with representatives from the Working Group on Digital Assets and Private Law, DAPL). It was also noted that a BPEE Drafting Committee, comprised of the Chair, the Secretariat, the focal points for the three Subgroups, and the Coordinating Expert, Ms Geneviève Saumier, had been established and had commenced its work.

109. A brief recapitulation of the key issues being addressed in the ongoing work was provided. First, the Working Group had thoroughly discussed the document prepared by the Subgroup responsible for the general part on enforcement by way of authority, which had had done substantive work on, among other topics, requirements for enforceable instruments, disclosure of information relating to debtors' assets and centralised electronic registers.

110. A second Subgroup focusing on extra-judicial enforcement of security rights had produced a comprehensive series of first drafts of best practices and comments, with particularly advanced work having been done on extra-judicial repossession of tangible collateral after default and realisation on collateral. In this area, the Working Group had further focused on a first draft document for an expedited procedure for the resolution of disputes in extra-judicial enforcement of security rights, which was currently under consideration with particular regard to the relationship of such a special procedure with existing enforcement measures.

111. Third, the Working Group addressed issues connected to the impact of technology on enforcement, concentrating its efforts on a set of best practices and comments concerning enforcement against digital assets. It was noted that whilst this was a relatively limited part of the BPEE, it was nonetheless a high-profile and developing area of law meriting specific focus. The ongoing work on this document had benefited tremendously from intersessional workshops and from coordination meetings with the DAPL project.

112. Also regarding the impact of technology, the Deputy Secretary-General then referred to the topic of online auctions in the context of enforcement and highlighted the presentation made by the representative of the Expert Group for the European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) concerning a set of upcoming pan-European guidelines on electronic auctions.

113. In summary, it was re-emphasised that the BPEE were intended to be a set of practical best practices and not a comprehensive model law or code. As such, different best practices might have varying degrees of detail, scope and tone depending on the topic concerned (i.e., more prescriptive or more discursive). Further, in line with the nature of the instrument, it would contain (and in certain sections already contained) accompanying commentary and explanations, as well as illustrations of the potential application of the relevant best practice.

114. In this regard, the important contribution of the Drafting Committee was flagged, which was responsible for reviewing differences in style and tone across the work product of different Subgroups

and generally improving the drafting language and structure of the instrument. It was noted that two excerpts of advanced work-in-progress reviewed by the Drafting Committee (i.e., information on debtor's assets and obtaining possession of tangible collateral) had been shared on a confidential basis with the Council for information purposes (confidential Annexes 1 and 2).

115. Finally, the next steps for the BPEE were discussed. The seventh session of the Working Group had been scheduled for late autumn 2023, while an eighth (potentially conclusive) session had been planned for spring 2024. Together with ongoing intersessional work and the continued support of the Secretariat (including that of Legal Officer Mr Kevin Lau, who as secondee had focused his work on the BPEE), it was hoped that the Working Group would be able to present a completed English draft of the BPEE to the Council by its next session in May 2024.

116. *The President* then handed the floor to Ms Kathryn Sabo, the Chair of the Working Group.

117. *Ms Sabo* thanked the Deputy Secretary-General and the members of the Secretariat who had offered sustained support for the BPEE, and also the members of the Working Group for their tremendous enthusiasm and work.

118. She recalled that, when the BPEE had been initially floated as a proposal before the Council, objections had been made that the project was too broad and that enforcement concerned procedural law, which historically had been considered too difficult to harmonise. However, she also highlighted that the approach of focusing on best practices, instead of attempting to produce a model code, had allowed the Working Group to overcome many of the inevitable difficulties. Ms Sabo noted with approval that the current approach of the BPEE was to concentrate on making practical recommendations which would be useful for legislators, judges, and enforcement officers. She commended the Working Group for the meticulous discussions throughout its work on the very broad range of topics as to which issues could be addressed in this instrument and which ought to be left to domestic law.

119. In concluding, Ms Sabo once again highlighted the underlying goals of the BPEE, which was to produce best practices that, first, balanced the interests of creditors and debtors; second, were coherent with domestic law from both the common law and civil law traditions; and third, took advantage of and referred to recent relevant technological developments. She expressed her confidence that the draft to be produced by the Working Group would be able to achieve such objectives.

120. *The President* thanked the Deputy Secretary-General and Ms Sabo for their presentations and expressed her anticipation at seeing the draft BPEE at the next Council session.

121. *Mr Christophe Bernasconi (Secretary General of HCCH)* commended the UNIDROIT Secretariat for its ongoing work on the BPEE, which HCCH was following in an observer capacity, and wished to underscore the complementarity between the BPEE and various instruments of the HCCH, including the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, due to enter into force 1 September 2023.

122. *The Governing Council took note of the important progress made by the Working Group on Best Practices for Effective Enforcement since the Governing Council's 101st session.*

(b) Bank Insolvency (C.D. (102) 8)

123. *The Secretary-General* introduced the item, noting that the interest in the Bank Insolvency Project had continued to grow, with a large number of banking supervisors, resolution authorities and deposit insurance agencies participating in the Working Group as observers. He indicated that several recent bank failures had again underlined the importance of the project.

124. Ms Myrte Thijssen (*Legal Officer*) recalled that the Working Group on Bank Insolvency had been established at the end of 2021. Since the 101st session of the Council in June 2022, several additional observers had joined the Working Group, which had led to a total of thirty-nine institutional observers, in addition to the ten members of the Working Group. Since the last Council session, the Working Group had met twice, for its third and fourth sessions.

125. The third Working Group session took place in October 2022 and was hosted by the Single Resolution Board in Brussels. The discussions during the third session focused on reports that had been prepared by the three Subgroups that had been established after the first Working Group session. Each Subgroup report provided an in-depth analysis of issues and possible solutions for four subtopics. In order to prepare these reports, six Subgroup meetings had been organised, as well as four meetings of drafting teams and a coordination meeting among the Subgroup Co-Chairs. Moreover, a survey had been conducted within the Working Group to collect information on bank liquidation laws worldwide.

126. During its third session, the Working Group had decided that the future instrument should take the form of a Legislative Guide, which would allow a detailed discussion of possible solutions to issues, while at the same time providing concrete legislative guidance, in the form of recommendations, where possible. After the third session, a Drafting Committee had been established, consisting of 10 experts and representatives of the IMF and the World Bank as reviewers, to prepare a first draft of the Guide.

127. The fourth Working Group session took place in March 2023 and was hosted by the Bank of International Settlements' Financial Stability Institute in Basel. The main object of deliberations during the fourth session was the preliminary draft Legislative Guide that had been prepared by the Drafting Committee. In addition, the Working Group had received a report with the principal results of the survey, which had been prepared by the three Subgroups.

128. Ms Thijssen explained that the draft Guide currently consisted of ten chapters: (i) Chapter 1, which contained an introduction and described the objectives of bank liquidation frameworks; (ii) Chapter 2 on Institutional Arrangements, which recommended strong involvement of relevant administrative authorities in the liquidation process; (iii) Chapter 3 on Procedural and Operational Aspects of the Liquidation Procedure; (iv) Chapter 4 on Preparation for Bank Liquidation Proceedings; (v) Chapter 5 on Grounds for Opening Bank Liquidation Proceedings; (vi) Chapter 6 on Tools; (vii) Chapter 7 on Funding; (viii) Chapter 8 on Creditor Hierarchy; (ix) Chapter 9 on Banking Groups; and (x) Chapter 10 on Cross-border Aspects, which addressed matters such as international cooperation and the recognition of foreign judgments and administrative decisions.

129. Ms Thijssen indicated that the fifth Working Group session was scheduled to take place in October 2023 at the seat of UNIDROIT. In the meantime, the Drafting Committee would further develop the draft Legislative Guide and Subgroup meetings could be organised to discuss specific aspects.

130. Ms Thijssen noted that the Secretariat had originally envisaged to develop the output for this project over five Working Group sessions. She indicated that the Working Group had made significant progress during the last year, especially considering the number and complexity of the issues being addressed and the size of the Working Group. However, it was not expected that the Legislative Guide would be finalised during the fifth session in October. There were a number of issues on which the Working Group had not yet reached consensus and further work was needed, also to cover additional topics. It was anticipated that at least one additional session would need to be held, which could be followed by a consultation. While the Working Group would continue its work at the same pace, she indicated the Legislative Guide might need to be submitted for adoption to the Council in 2025 instead of 2024. The Council was therefore asked to provide the Secretariat with flexibility on the timeline for finalising the Guide.

131. In her capacity as Chair of the Working Group on Bank Insolvency, *Ms Stefania Bariatti* thanked the Secretariat for the update and indicated that it was a privilege for her to Chair the Working Group on Bank Insolvency, given the deep knowledge and extensive practical experience of the participants. She referred to several recent bank failures in the United States and Switzerland, and a recent proposal of the European Commission to reform the European Union's bank crisis management and deposit insurance framework. All these events underlined that the project was timely and important for all regions of the world. She noted that the members and observers of the Working Group were actively participating in the work and that the project was proceeding well. At the same time, she noted that the project was challenging, given the wide range of complex and sensitive issues and the need to find solutions that would be acceptable to all. This explained why the Secretariat asked for flexibility on the timeline.

132. *The Secretary-General* added that, apart from reaching consensus on a number of sensitive topics, further work was needed to produce a lean instrument that would effectively fill the current gap in the international architecture for bank failure management.

133. *Mr Henry Gabriel* thanked Ms Bariatti and the Secretariat for the excellent progress made in this important project. He fully supported giving the Secretariat the necessary flexibility and time to finalise the project correctly.

134. *The Governing Council* took note of the impressive progress made by the Working Group on Bank Insolvency since the Governing Council's 101st session and agreed to provide the Secretariat with flexibility to continue the project for an additional year, if needed, to finalise the Legislative Guide.

(c) Legal Structure of Agricultural Enterprises (C.D. (102) 9)

135. *The Secretary-General* introduced the Legal Structure of Agricultural Enterprises (LSAE) project, recalling that it was the third legal guide jointly developed with FAO and IFAD in the field of private law and agricultural development. He noted the LSAE project's complementarity with the two previously adopted legal guides, as it considered the entire value chain rather than just bilateral contractual relations (e.g., contract farming). Despite its complexity, he emphasised that progress had been made and thanked the partner organisations and Working Group experts for their continued support.

136. *Ms Priscila Pereira de Andrade (Legal Officer)* recalled that the development of the LSAE project had been extended to the new 2023-2025 Work Programme at high-priority level. She noted the increasing interest this project had created and presented the main achievements since the 101st session of the Council, namely that three Working Group meetings and three intersessional meetings had been carried out.

137. With regard to the substance and target audience of the project, she briefly noted its main purpose of developing guidance on "collaborative legal forms" that supported smallholders and agri-MSMES to enhance sustainable agricultural development and contribute to the transformation of agri-food systems by, among other things, (i) increasing efficiency, (ii) exploring innovation opportunities offered by digitalisation, and (iii) addressing power imbalances and unfair commercial practices. Ms Andrade further explained that mainly three categories of collaborative legal forms would be considered: (i) multiparty contracts, (ii) cooperatives, and (iii) corporations. The challenges faced by agri-food supply chain leaders would be considered, but the framing of the project would mainly reflect the challenges faced by actors operating in the midstream segment of the agri-food supply chain, beyond the production stage and in low- and middle-income countries.

138. She further explained the main outcomes of the second session of the Working Group held on 2-4 November 2022 and of the third session held on 8-9 May 2023. Three thematic Subgroups had been established: the first one on multiparty contracts, the second on cooperatives, and the

third on corporations. The Co-Chairs of the Subgroups had been invited to consider the appropriateness of the 11 topics proposed for the analysis of multiparty contracts, as listed in paragraph 19 of Document [C.D. \(102\) 9](#), to analyse cooperatives and corporations. The Working Group had agreed to adopt a functional approach to conduct the comparative analysis of the different legal structures, such as contracts and legal entities. She noted that the Working Group was still in the process of identifying “functionally equivalent categories” to be considered for each legal form (such as taxonomy, formation, governance, exit, and dissolution).

139. Ms Andrade informed the Council that, following the third session of the Working Group, the working definition of the notion of “collaboration” had been slightly adapted and that, moving forward, collaboration would be understood as “a form of interaction among two or more parties with common objectives, needs and interests that may be limited to exchanges of goods and services or imply an engagement in projects with or without shared resources”. She noted that the Working Group had also discussed the possibility of adopting a new working title for the project, as the current title did not reflect the content that was actually being developed. Subject to the approval of the Council, the new working title could be “UNIDROIT/FAO/IFAD Legal Guide on Collaborative Legal Structures for Agricultural Enterprises”.

140. In terms of next steps, Ms Andrade noted that the fourth session of the Working Group had been scheduled for 8-10 November 2023 and that, until then, the Subgroups would continue their intersessional activity and would prepare draft chapters for discussion. The tentative date for the completion of the LSAE Project would be in 2025, following six sessions of the Working Group and a consultation period. To conclude, she expressed her gratitude to Mr Ricardo Lorenzetti for his Chairmanship in this project and also thanked the representatives of FAO and IFAD for their continuous collaboration, as well as Mr Keni Kariuki, the UNIDROIT/MAECI Chair Holder, for his research assistance.

141. In his capacity as Chair of the LSAE Working Group, *Mr Ricardo Lorenzetti* thanked the Secretariat, FAO, IFAD and Mr Fabrizio Cafaggi for all the intense work undertaken. He noted that the Working Group had successively defined the scope of the project and agreed upon a framework and methodology for the analysis of the three collaborative legal forms. He informed that the Working Group would draft the prospective guide in an accessible manner to reach the target audience in developing countries, including non-legal professionals. Further, he drew the Council’s attention to the progress made in the discussions regarding cooperatives, corporations and multiparty contracts, noting that an extensive document had already been drafted for the latter.

142. Mr Lorenzetti also highlighted the fact that the Working Group was acutely considering issues of formality and informality in agri-businesses. Finally, he recalled that the “exogenous factors” that had an impact on the forms of collaboration, were being considered, such as access to finance, sustainability and digitalisation. He emphasised the relevance of the systemic approach to further consider the linkages that these exogenous factors might have on the choice of the collaborative legal form.

143. *Ms Annick Vanhoutte (Deputy Legal Counsel of FAO)* welcomed the continued partnership with UNIDROIT and IFAD and congratulated the Secretariat and the Working Group for the progress made. She noted the strong interconnection between the LSAE project, the strategic framework of FAO and the United Nations SDGs, in particular the overall goal of transforming agri-food systems. She informed the Council that FAO looked forward to continuing its support and to practically use the guidance developed in its projects, as previously done with the other joint UNIDROIT/FAO/IFAD instruments.

144. *Mr Ebrima Ceesay (Legal Counsel for IFAD)* emphasised the very satisfying results of this tripartite partnership and the comprehensiveness of the legal tools it was developing. He noted that the instruments had become a reference for policy design, legal research and capacity building. He

highlighted the strong engagement of representatives of IFAD's Office of the General Counsel together with the Strategy and Knowledge Management Department in the Working Group, sharing their extensive expertise in the agricultural sector. Finally, he reiterated IFAD's support and noted that IFAD looked forward to creating new legal tools and disseminating knowledge to enterprises operating in developing countries.

145. *Mr Henry Gabriel* expressed his appreciation for the excellent work and progress made. He supported the new title proposed and emphasised the practical relevance of the projects developed with FAO and IFAD for agricultural development and food security.

146. *Ms Kathryn Sabo* also endorsed the change in the working title of the project.

147. *The Governing Council* took note of the developments relating to the joint UNIDROIT/FAO/IFAD project for the preparation of a Guide on the Legal Structure of Agricultural Enterprises, and agreed with the proposal to change its working title to "Collaborative Legal Structures for Agricultural Enterprises", to reflect the content that was actually being developed.

(d) Private Art Collections (C.D. (102) 10)

148. The *Secretary-General* recalled that this project had been upgraded in the last iteration of the Work Programme, with a focus on orphan objects. Even though it was meant to be started in 2023, some preparatory work had been conducted beforehand, so as to commence at full speed as soon as possible during the new triennium. The Secretary-General also indicated that UNIDROIT valued the work and the partnership with the University of Geneva and the *Fondation Gandur pour l'Art*.

149. *Ms Marina Schneider (Principal Legal Officer and Treaty Depositary)* reiterated that the General Assembly, at its 2022 session, had elevated the priority of this project to medium, following the recommendation of the Governing Council, focusing on "orphan objects", i.e. objects with no provenance or incomplete provenance. She recalled how important the question of provenance had become since the adoption of the 1995 UNIDROIT Convention on Illegally Exported Cultural Objects. An object that had no provenance today would find it difficult not only to be traded but also simply to be exhibited. These objects risked going back underground. Ms Schneider recalled that as the medium priority was attributed subject to finding the necessary resources, UNIDROIT had signed a Memorandum of Understanding with the *Fondation Gandur pour l'Art* and the Art-Law Centre of the University of Geneva and she also thanked these partners for their support.

150. The work had started in September 2022 with the first meeting of the Exploratory Expert Group in Geneva with the aim of crystallising the issues to be addressed, in particular the scope of the project, definitions, questions of proof, and databases. The question of the form of the final work product was also briefly discussed. Following this meeting, three Subgroups were created, focusing on problems faced by museums, collectors and the art market. The Subgroup on definitions met in Rome in early March 2023 and worked on the basis of proposals made by the Secretariat and its partners and by the art market, which enabled direct understanding of the different objectives at play. On 29 and 30 March, the Exploratory Expert Group held its second meeting in Rome to discuss the results of the Subgroup on definitions and feedback from interviews with collectors who had shared their concerns.

151. Ms Schneider explained that the next stage would be to set up the Working Group. Due to the enormous interest in participating, the difficulty would be to have a group that was both limited (because this project had only medium priority and was therefore limited for budgetary reasons), but at the same time inclusive, with a large number of observers (from international organisations and academia). Ms Schneider concluded by thanking the participants who attended the meetings at their own expense.

152. *Mr Jorge Sánchez Cordero* recalled that, in 1995, the UNIDROIT Convention was the first instrument in international law that introduced the notion that private collections had the legitimacy to claim in court the restitution of stolen cultural objects. He indicated that the project on private art collections had given rise to much expectation in the international cultural community – *i.e.*, museums and private collectors, across the world, namely China, Japan, the United States, Canada, and Europe, as well as the Islamic world. He also stressed that the issue of private art collections was very sensitive in the art market, and almost everybody expected UNIDROIT to more or less create a legal framework. As Chair of the Exploratory Expert Group, he recalled that a first meeting had been organised in September 2022 to discuss the scope of the project. Finally, he expressed his gratitude to Mr Ignacio Tirado and UNIDROIT, and to the partners, the University of Geneva and the *Fondation Gandur pour l'Art*, for their invaluable help.

153. *Mr Marc-André Renold (Director of the Art-Law Centre of the University of Geneva)* recalled that the University of Geneva was one of the partners of the project, and that he had recently spent several months at UNIDROIT during his sabbatical, for which he was very grateful. He indicated that a meeting of a Subgroup of the Exploratory Expert Group had met in Rome in March 2023 to work on the definition of an orphan object and that the result was the following: “an orphan object is a movable cultural object as defined in Article 2 of the 1995 UNIDROIT Convention which has totally or partially no documented and/or identifiable provenance (for example, no available or reliable archives or publications)”, with an addition indicating that “the place or country of origin whether known or not is not a criterion to determine whether an object is orphaned”. Such a definition was then further discussed with representatives of the art market in late March in Rome, who did not necessarily agree. Further work would be devoted to the definition, but it was clear that a cultural object was orphaned when it lacked (in whole or in part) an identifiable provenance, and that this raised issues connected to the ownership of the object, as well as its possible transfer, exhibition, or publication.

154. He explained that the goal of the project was to enhance legal certainty in the market. By defining the concept of orphan objects and also by defining - to the extent possible - their legal regime, in particular in connection with the diligence of the owner (*i.e.*, the provenance research that was to be made), the project could contribute to creating security in a field where it was much needed, as agreed by the community of experts in the field.

155. *Ms Isabelle Tassignon (Fondation Gandur pour l'Art)* thanked UNIDROIT for the invitation to say a few words about the involvement of the *Fondation* in this innovative reflection on orphan cultural objects. As a curator and archaeologist working in the field, she explained that she was regularly confronted with these issues, and due to her privileged position she sometimes came across truly extraordinary archaeological objects in private collections which the *Fondation* did not really know how to handle. Her position also led her to meet other collectors who expressed their anxieties and disappointment when confronted with the complexity of the law, their fear of sanctions and the risk of seizure, quite simply because the works they owned had no “documents”, which made them still prefer clandestinity and secrecy. She added that, as a researcher and as a historian, scientific publications of objects from archaeological collections were sometimes refused because the objects were considered to be orphan objects, which was a detrimental solution, both for the works themselves and for what they could bring to history in terms of novelty. She concluded by stressing that her aim was to defend the visibility of these works in collections (although of course not those that were orphaned as the result of illicit trafficking). Appropriate solutions needed to be found for all these situations, and the *Fondation* hoped to find, together with the eminent members associated with the project, practical solutions to bring these works out of hiding and thus contribute to greater accessibility and visibility for private collections.

156. *Ms Kathryn Sabo* congratulated the Secretariat and the partners for the progress on this project. She conveyed a comment she received from the Government of Canada, which continued to support this project, that, as the work progressed, it was hoped that there would be room for more reflection on the specificity of indigenous cultural objects, a perspective that was a little different

from the current perspective of the project, which focused on antiquities and the European market. For issues of indigenous cultural property, the perspective was rather on objects that had been removed from a cultural community, geo-cultural, and other considerations.

157. *Ms Schneider* thanked Ms Sabo for the comment and noted that the Exploratory Expert Group could count on the expertise of representatives of the Canadian Museum of History from the specific Indigenous Portfolio and also of other identified experts. She also recalled that the 1995 Convention was one of the first instruments to include specific provisions for objects from indigenous communities and that the emphasis was not on the importance of the property in terms of its economic value, but rather on its value in terms of use by the communities.

158. *Ms Eugenia Dacoronia* congratulated the Secretariat on the work done so far, which also showed the great interest in the subject as well as the difficulties UNIDROIT was going to face with the different approaches between museums and collectors; however, she was confident that the result would be very good and was looking forward to the continuation of such work.

159. *Mr Alfonso-Luís Calvo Caravaca* thanked the Secretariat for its work on this difficult but interesting subject for several reasons. One reason was that the boundary between private and public property was not always clear, and he gave the example of the museum of the Thyssen-Bornemisza Foundation, which was originally a private estate of Baron Thyssen, but over time the entire collection had been sold to the Spanish State. Mr Calvo Caravaca noted that, in his opinion, the art world was today divided. In the Anglo-Saxon world, but above all in the the United States of America, the courts had jurisdiction over any dispute, no matter where the art object was located, and this was difficult to reconcile with the idea of the art world, which was not looking for justice but for legal certainty, and therefore wanted to bar the owner's civil action for restitution against the possessor after a few years.

160. *The Governing Council took note with satisfaction of the progress made since the upgrading of the project on Private Art Collections with a focus on orphan objects to medium priority. It welcomed the Memorandum of Understanding signed with the Fondation Gandur pour l'Art and the Art-Law Centre of the University of Geneva, and endorsed the preparatory work done.*

(e) Principles of Reinsurance Contracts (C.D. (102) 11)

161. At the outset of the report of the Secretariat's activities related to the Principles of Reinsurance Contracts (PRICL) project, *the Secretary-General* expressed UNIDROIT's regrets at the recent passing of Mr Jürgen Basedow, a key member of the Working Group on the Principles of Reinsurance Contracts (PRICL). The Secretary-General paid tribute to Mr Basedow for his longstanding association with UNIDROIT's work as a very appreciated personality, a most congenial colleague, and a formidable professor of comparative law, whose presence would be sorely missed by the Working Group and more broadly by everyone at UNIDROIT.

162. *The Deputy Secretary-General*, after briefly referring to the history of the project and to the economic relevance of reinsurance contracts in international commercial law, recalled that the first part of the PRICL instrument had been published in 2019 following the endorsement of the Governing Council and the approval of the General Assembly. Thereafter, pursuant to a mandate granted by the General Assembly, the Secretariat had continued to participate in the second part of the project, which involved topics such as back-to-back cover, termination and recapture, and limitation periods, with the aim of providing information on, and ensuring consistency with, the UNIDROIT Principles of International Commercial Contracts.

163. She then provided an update of the work done since the 101st session of the Council. Two in-person Working Group sessions with the participation of international experts and representatives of the relevant industries had been successfully held: the 10th session in Bad Homburg (Germany) in

July 2022 and the 11th session at the seat of UNIDROIT in January 2023. With particular regard to the 11th session, the Deputy Secretary-General reported that the Working Group had reviewed and discussed drafts on the rule on retention, the back-to-back clause, and special termination.

164. The 11th session of the Working Group had been preceded by a dissemination seminar, also held at the seat of UNIDROIT, forming part of the ATILA lecture series organised by the European Law Institute. This dissemination seminar had been attended by over 100 practitioners and scholars and had provided a valuable opportunity to receive feedback on the PRICL from users from different sectors.

165. After the session, on 8 February 2023, UNIDROIT and the PRICL Working Group had released a Note discussing the potential response to the COVID-19 health crisis exclusively by reinsurance contracts governed by the PRICL.

166. In closing, the Deputy Secretary-General observed that the next and last Working Group session was planned to be held in July 2023 and would be devoted to the finalisation of part II of the PRICL. Publication was scheduled for 2024, and a dissemination and promotion strategy were also expected to be discussed at the upcoming 12th session of the Working Group.

167. *The Governing Council took note of the Secretariat's report on the status of the project on the Principles for Reinsurance Contracts and the good progress made to date, nearing finalisation.*

Item 6: Proposal for Joint Work: HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens ([C.D. \(102\) 12](#))

168. *The Secretary-General* introduced the item with reference to Document C.D. (102) 12. He recalled that the private international law rule (Principle 5) in the DAPL Principles included a good amount of guidance on issues of applicable law with regard to digital assets. However, experts related to the HCCH, as part of its CODIFI Conference, had noted that additional work in this area would be useful for stakeholders involved in the digital asset economy; similarly, experts of UNIDROIT's DAPL project considered that work beyond Principle 5 could be a useful contribution to transnational law in this field. Following this, UNIDROIT's Secretariat and the Permanent Bureau of HCCH agreed to make a proposal to HCCH's Council of General Affairs and Policy (CGAP) to conduct exploratory work regarding a possible Joint HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens. This would build upon Principle 5 and look at additional issues, including additional connecting factors, different types of transactions, linked assets, and, generally, provide a more holistic approach to issues of applicable law with regard to digital assets. The CGAP agreed to give HCCH's Permanent Bureau the mandate to conduct exploratory work together with UNIDROIT's Secretariat, subject to the Governing Council's concurrent decision. In light of this, the Council was invited to consider mandating the Secretariat to conduct preparatory and exploratory work with HCCH in this area. Should this be approved, the results of such work would be presented to the HCCH Permanent Bureau and the UNIDROIT Governing Council during their respective forthcoming sessions.

169. *Mr Christophe Bernasconi (Secretary General of HCCH)* congratulated UNIDROIT on the adoption of the DAPL Principles, noting that the instrument would have a substantial impact on best practices in commercial law matters and the digital economy. He affirmed that the Principles would work in conjunction with the HCCH 2005 Choice of Court Convention and HCCH 2019 Judgments Convention. He referred to Document [C.D. \(102\) 12](#) for an overview of the proposed Joint HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens, which had been developed as a result of the findings of the CODIFI Conference, which concluded that additional work needed to be conducted in the area of applicable law and digital assets. He noted that the Permanent Bureau had already approved preparatory and exploratory work

in this area. He affirmed that the new project would aim to build on the work of the DAPL Principles, particularly Principle 5.

170. *Mr Bernasconi* added that the joint project would include an examination of cross-border holdings and transfers of digital assets and tokens, relying on the DAPL Principles as the foundation. The project would also leverage HCCH's working methodology and private international law expertise. Some interests included whether the applicable law would be affected by new classes of assets and linked digital assets. He noted that this first collaboration between UNIDROIT and HCCH would improve the harmonisation of private international law. He confirmed that 30 experts had already been identified by HCCH, alongside five more experts identified by relevant institutions. He concluded by recommending the joint project to the Council and expressing eager anticipation for the joint exploratory work on behalf of the Permanent Bureau. It was noted that a kick-off event for this joint project would be proposed for 12 June 2023, to take place in the Hague and online.

171. *The Secretary-General* thanked the kind and collegial words of Secretary General Bernasconi and showed gratitude towards Ms Gérardine Goh Escolar (Deputy Secretary General of HCCH) for her excellent work in the preparation of the project document. Mr Tirado noted the potential importance of this joint undertaking, which would constitute a unique opportunity to explore the blending of the institutional methodologies of both organisations, hopefully leading UNIDROIT and HCCH to achieve efficient and effective results.

172. *Mr José Antonio Moreno Rodríguez* complimented the proposal and extended his support to the joint project between the two organisations. *Mr Antti Leinonen* also supported the proposed mandate for exploratory and preparatory work to be done in this area. He further noted that the cooperation between international legal organisations was of high importance. *Mr Jorge Sánchez Cordero* also supported the project and congratulated UNIDROIT and HCCH for their attempt to define a new methodology and collaborate in this area.

173. *Ms Baiba Broka* expressed support for the joint project. She recalled the extensive discussions on Principle 5 during the sessions of the DAPL Working Group and recognised that the combined organisational work would be beneficial insofar as providing additional clarity in this area. She queried the type of instrument which would be produced under the project. *The Secretary-General* noted that this would be considered at a later stage of the development of the project.

174. *Ms Stefania Bariatti* manifested her support for the project. She reflected on her past as a delegate to HCCH and expressed contentment with this collaboration, especially on projects that fell within new areas of law. She noted the project would be highly beneficial and believed both organisations would assemble the best experts for the work. *Mr Pierre Beaudoin* (as the representative of Ms Bénédicte Fauvarque-Cosson), expressed support for the project and noted that it signified strong collaboration between the two organisations. It was stated that international commercial law was essential to digital assets and the continuation of the project was welcomed. *Ms Monika Pauknerová* also expressed support for the project while noting that it should be ensured that the new work was consistent with the DAPL Principles. She recommended that the precise limitations of both future instruments should be observed. *The Secretary-General* recognised these points and noted that they would be observed.

175. *Ms Jingxia Shi* expressed support for the project and recognised its importance. She recommended that the project include a diverse selection of experts to generate more widespread impact. *Mr Niklaus Meier* also expressed his support for the project and noted that it would need to find appropriate rules for specific situations in the area of digital assets. *Ms Kathryn Sabo* expressed support for the project and recognised that the initial exploratory work would also consider the feasibility of the project. She joined Mr Meier in encouraging the project to apply existing applicable rules of private international law to the greatest extent, similar to the Best Practices of Effective

Enforcement project. *The Secretary-General* recognised these points and noted that they would be observed.

176. *Mr Hideki Kanda* expressed support for the project. He noted that private international law issues often arose in the area of digital assets and stated that the project was of high importance. He questioned whether the issue of jurisdiction would be considered in the exploratory work. *The Secretary-General* noted that issues of jurisdiction were currently not included in the project but could be reconsidered in the future.

177. *Mr Bernasconi* thanked the Governing Council for their support and noted that all the comments raised would be considered. He agreed with the Secretary-General and his further explanations, noting that the current mandate only dealt with applicable law. However, the project would not exclude the possibility of including jurisdiction. He expressed enthusiasm for the joint project to find solutions for many complex issues arising in the digital assets field.

178. *The Governing Council welcomed the proposal to conduct joint work with HCCH on a project related to the Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens. The Council approved the commencement of joint preparatory and exploratory work in this area, in the form that is necessary to present - if determined as feasible and desirable - a full proposal at the next session of the Governing Council.*

Item 7: Update on certain high-priority projects on the 2023-2025 Work Programme

(a) UNIDROIT Principles of International Commercial Contracts and Investment Contracts ([C.D. \(102\) 13](#))

179. *The President* recalled that the project on the UPICC and Investment Contracts stemmed from a collaboration with the International Chamber of Commerce's Institute of World Business Law (ICC-IWBL) and had been approved by the Council at its 101st session as part of the 2023-2025 Work Programme with high priority. The President illustrated the preparatory stages of the projects in general terms, noting that there had been two informal meetings generating a great deal of interest and stressing the strategic cooperation with an entity of a different nature, such as the ICC-IWBL, which required commitment to a common and separate methodology. She noted in this regard that it was paramount to ensure that all voices were heard, including, evidently, those of States. The President further described the strategic approach that would be employed to access the ICC-IWBL database under strict confidentiality guidelines to extrapolate the necessary information from arbitral awards, and she highlighted the great value attached to this opportunity for UNIDROIT to receive reliable data as to the actual use of the UPICC. The President thanked Mr José Antonio Moreno Rodríguez, who had played a fundamental role in the connection between UNIDROIT and ICC-IWBL and, therefore, stimulated the Institute to open a new channel of interest for this project. She gave the floor to Ms Myrte Thijssen and Mr Rocco Palma, Legal Officers, to provide further details on the organisation and substance of the work.

180. *Ms Myrte Thijssen (Legal Officer)* recalled that this project had been proposed by the ICC-IWBL with the aim to develop guidance on how international investment contracts could be modernised and standardised against developments in investment law over recent decades, with a specific focus on the examination of the UPICC as a means to address the specific needs of investment contracts. The Secretariat had met twice with the ICC-IWBL (in February and April 2023) to prepare for this new project. The focus of the first preparatory meeting had been on the composition of the Working Group – ensuring it was balanced in terms of geographical provenance, gender, and expertise – and the methodology to move forward. It was discussed that the Working Group should be composed of a maximum of 20 experts. At the second preparatory meeting, the Secretariat and ICC-IWBL discussed a draft Issues Paper. Furthermore, it was discussed that the ICC-IWBL would

appoint a researcher to select relevant arbitral awards, subject to confidentiality requirements. This would allow the Working Group to get a better understanding, on an anonymised basis, of the extent to which the UPICC were used in arbitration proceedings. Additionally, it was expected to provide insights into contract language and common or diverging interpretations concerning international investment contracts. As for the type of instrument to be developed, Ms Thijssen recalled that there were several options, including a guide to the use of the UPICC in Investment Contracts or a set of principles with commentary, supplemented by model clauses. This choice would be subject to discussions within the Working Group.

181. *Mr Rocco Palma (Legal Officer)* informed the Council that, as per established practice, an Issues Paper had been drafted and was now awaiting finalisation. He noted that it had been decided to opt for a well-articulated document with a view to frame the discussion and provide directions to the Working Group so as to speed up the process and facilitate the work from its early stages. Mr Palma underlined that the Issues Paper was divided into three sections. The first was dedicated to preliminary issues and expanded on how the project was conceived as a response to the crisis of international investment law, on the role and prominence to be given to the UPICC in this context as a uniform solution to govern investment contracts, on the interplay of the UPICC with special principles of international investment law, and on how the future instrument should strike a balance between public policy demands stemming from second- and third-generation bilateral investment treaties (BITs) and investors' interests. The second section was dedicated to the general scope of the instrument and requested experts to investigate whether a definition of investment contracts was necessary. The third section was dedicated to the content of the future instrument and therefore examined in greater detail possible issues for discussion, such as precontractual responsibility and gross disparity, hardship and *force majeure* (in relation to renegotiation clauses), as well as the relationship between treaty standards and investment contracts. Mr Palma further recalled that, on occasion of the preparatory meetings, the Secretariat and the ICC-IWBL had agreed that an essentially private approach underpinned the project and that public international law standards should be considered only insofar as they had an impact on contract rules. The Institute and the ICC-IWBL also agreed that the project should look at the UPICC as the applicable law with a view to "internationalise" investment contracts, to find a compromise between the law of the host State and transnational standards.

182. *The representative of the International Chamber of Commerce Institute of World Business Law (ICC-IWBL)* apologised on behalf of the Chair of the ICC-IWBL, who was unable to join the Council, but underlined the utmost importance of the project for the institution. She expressed appreciation for the summary covering the different aspects of the project. She reiterated that the ICC-IWBL was looking forward to collaborating with UNIDROIT in a field which drew interest from several private industries, and that the goal of the project was to provide an instrument which would facilitate a common ground between States and investors for the governance of international investment contracts, including with a strong focus on sustainability and security, environmental, and social factors. She thanked UNIDROIT and its Secretariat for its joint work and expressed the certainty that the final instrument would be to the satisfaction of public and private entities.

183. *The President* declared that a steering committee would be formed to keep States involved and that the Secretariat was planning to hold the first official session of the Working Group in October 2023. Invitations and the Issues Paper would be sent out before September to members and observers of the Working Group for written comments ahead of the session.

184. *Ms Eugenia Dacoronia* congratulated UNIDROIT on the collaboration with the ICC-IWBL. She further enquired whether 20 members of the Working Group were really needed. Ms Dacoronia suggested that perhaps fewer experts were required, to forego unnecessary expenses.

185. *Mr Henry Gabriel* expressed his appreciation for the unique opportunity to access ICC arbitral awards and inquired whether the Council could have access to statistics on the use of the UPICC.

186. *Mr Arthur Hartkamp* declared that he was entirely confident this would be a very interesting project. He suggested that, if it were indeed the intention to link the project to the existing UPICC, a self-standing document containing model clauses would be an appropriate instrument.

187. *Ms Monika Pauknerová* expressed strong support for this new project, particularly in the context of the recent termination of intra-EU investment contracts between EU Member States. A model international investment contract would be very effective and might provide future opportunities to exchange information with experts in this forum. Ms Pauknerová expressed her belief that a steering committee involving States would facilitate broader participation.

188. *Ms Jingxia Shi* expressed her understanding of the importance of this project, particularly now that China had become the second-largest country for inbound and outbound investment. Ms Shi raised a question as to what extent this project touched upon the public law of international investment contracts.

189. *Ms Anna Joubin-Bret (Secretary of UNCITRAL)* thanked the Secretariat for the update on this interesting project that had generated great interest. Ms Joubin-Bret supported the view that it was important to coordinate closely with the work of UNCITRAL in this area and suggested that UNCITRAL could participate as an observer in the Working Group, offering support even in terms of human resources. Ms Joubin-Bret also noted that there were several United Nation bodies that could benefit from their involvement.

190. *The representative of the United States of America* noted that while the project seemed to significantly overlap with public international law, the benefit of this project could be derived from channelling the operators into the use of the UPICC amid a notable movement out of the treaty space. She cautioned that attempting to broaden the project to areas traditionally within the purview of States could be problematic and that even a steering committee might not be able to redirect that.

191. *Mr Antti Leinonen* considered that, as to the organisation of the project, a steering committee might exercise better oversight over the project, but it would have a farther-reaching role in leading the work than a mere consultative body. Therefore, a consultative body would likely provide more benefit to the Working Group to work effectively.

192. *Mr José Antonio Moreno Rodríguez* declared that he heard the same concerns and discussions with the agricultural land investment contracts (ALIC) project. He stated he was confident that this project would have a remarkable outcome.

193. *The President* addressed the concerns raised by the Governing Council, reiterating that this project was firmly rooted in contract law and its focus would take account of the trend towards investment treaty reform, and examining whether there might be a uniform solution at contractual level. The project's intention was purely based on contracts and the objective was to examine the most relevant issues under contractual reasoning criteria. The instrument could serve as a benchmark to transnationalise these issues under contract law. The President also agreed with Ms Joubin-Bret that UN bodies should participate as observers and confirmed that they had been included in the tentative list. She reiterated that UNCITRAL's work proceeded in parallel with this project's objectives and that it was fundamental to maintain connections with UNCITRAL and other UN bodies working on the topic. As to the composition of the Working Group, she reiterated that the number of experts identified so far reflected the necessity for different qualifications (both in contract law and investment law) and from different regions of the globe. She confirmed that the Institute remained in any case conscious of the budgetary impact and was considering possible measures to be taken.

194. *The Secretary-General* agreed with Mr Leinonen as to modifying the name of the steering body to reflect its consultative duties vis-à-vis the Working Group.

195. *The representative of the ICC-IWBL clarified, as to the research into arbitral awards, that the goal was to extrapolate from the awards any information possible related to the disputed clauses and to the reliance on the UPICC in investment contracts. As to the number of experts, she underlined that the 10 experts appointed by the ICC (out of the 20 total experts) would be of no cost to UNIDROIT.*

196. *The Deputy Secretary-General stated that the Institute internally considered this project as a form of promotion of the UNIDROIT Principles, to express their value as general contract law and promote their adaptation to the specific needs of international investment contracts. There had been a discussion at the preliminary stage about the instrument's possible form, which would be left to the Working Group to decide. However, the structure of the Principles might be a suitable fit because of the special characteristics of international investment contracts.*

197. *The Governing Council took note of the preparatory work undertaken by the Secretariat in cooperation with the International Chamber of Commerce's Institute of World Business Law for the project on the UNIDROIT Principles of International Commercial Contracts and International Investment Contracts. The Council authorised the Secretariat to establish a Working Group and granted it flexibility to establish a consultative committee (similar to the one set up, as Steering Committee, in the Digital Assets project) if deemed convenient.*

(b) Legal nature of Voluntary Carbon Credits (C.D. (102) 14)

198. *The President introduced the project on the Legal Nature of Voluntary Carbon Credits, which was on the Institute's 2023-2025 Work Programme with high priority. The Secretary-General drew the attention of the Council to Document [C.D. \(102\) 14](#) and recalled the history of the project, which had been proposed by the International Swaps and Derivatives Association (ISDA) and supported by the Government of Paraguay, and had been included into the 2023-2025 Work Programme following the 101st session of the Council. Accordingly, the Secretariat had begun to carry out preparatory work, which consisted of identifying relevant stakeholders and researching the scope of the project. In this regard, the Secretariat had organised a consultative exploratory workshop in collaboration with the World Bank Group, and with the assistance of ISDA, at the ISDA Headquarters in London on 27 March 2023, with the objective of brainstorming on the content of the project and the possible instrument to be developed, as well as of identifying relevant institutions and experts. A summary of the work of the consultative workshop could be found in Document 14.*

199. *The Secretary-General also noted that the workshop had explored several topics which were considered important according to the pattern of issues that had emerged in the DAPL project, since in many cases, VCCs existed in the form of digital assets. The participants in the consultative workshop were mainly experts in carbon credits from law firms, international organisations, and leading universities. The workshop had concluded that it was necessary to develop guidance on the legal nature of VCCs due to a lack of common understanding of terms amongst the various VCC markets. This was a cause of growing uncertainty and inefficiency in VCC trading, especially with respect to proprietary rights and related issues, since there was heightened interest in trading and using VCCs by States and private companies to fulfil requirements under the Paris agreement. It was agreed that the UNIDROIT DAPL Principles should be the starting point to address many of the issues that arose (such as securities or custodians). The workshop participants had also expressed the urgency of clarifying the definition of VCCs and providing guidance on how to create an appropriate legal and institutional infrastructure to attract investment and benefit from carbon projects, especially for the benefit of the Global South. Regarding the next steps, the preliminary idea would be to organise a first Working Group meeting before the end of the summer, and possibly another working group before the end of the year.*

200. *An Observer from the World Bank Group, who addressed the Governing Council by video message, expressed the World Bank's support for the project, as well as the organisation's willingness to work with UNIDROIT on this issue. The importance of voluntary carbon markets to support*

developing countries in their decarbonisation path was highlighted. In particular, it was noted that determining the legal nature of VCCs would contribute towards building strong and transparent carbon markets. *The Secretary-General* specified that in addition to the World Bank Group and ISDA, other organisations had also expressed their support for this project, such as the Asian Development Bank, the Inter-American Development Bank, and relevant institutions in the area of carbon credits.

201. *Mr Henry Gabriel* expressed his support for the project and sought clarification on its timeline. *The Secretary-General* noted that, given its high priority, the Secretariat had started work on it immediately following the availability of human resources after the completion of the DAPL project. It was recalled that work had to take place with a certain sense of urgency, given the needs of the industry.

202. *Ms Kathryn Sabo* noted that a similar project had been proposed to UNCITRAL, which had also considered undertaking work on it. It was noted that this was an opportunity for UNCITRAL and UNIDROIT to collaborate, and she suggested that the next project meeting be held after the next session of the UNCITRAL Commission in July 2023 to take its conclusions into account and decide how best to proceed accordingly, with a cooperative and collaborative spirit.

203. *Mr Jorge Sánchez Cordero* encouraged the Secretariat to continue its work and commended the progress already made on this important project. He noted that the mandate given by the Council was very clear and that the importance of this issue in the international field was crucial, as evidenced by the support of the World Bank. *Mr Alfonso-Luís Calvo Caravaca* agreed with the opinion of Mr Jorge Sánchez Cordero and agreed that the project should be carried out by UNIDROIT.

204. *Mr Niklaus Meier* congratulated the Secretariat for its work and expressed his support. At the same time, he agreed with Kathryn Sabo and asked for flexibility in terms of time in order to better coordinate the continuation of the work with UNCITRAL and to make use of the respective advantages of each organisation.

205. *Mr José Antonio Moreno Rodríguez* recalled the mandate which the Governing Council and the General Assembly had given to the UNIDROIT Secretariat, noting that this had already emphasised collaboration and cooperation with other organisations. He agreed with Mr Sánchez Cordero and his proposal to move forward with the VCC project.

206. *Ms Baiba Broka* supported the project proposal and noted UNIDROIT's suitability for it given its experience with the DAPL project. She suggested that a flexible approach be taken in the preparation of this instrument, given the urgency and need by the industry, and through the involvement of stakeholders and partner organisations.

207. *Ms Stefania Bariatti* emphasised the importance of this project and commended the work which had already been done. She recommended the Secretariat continue with its activities in fulfilling the mandate already assigned. *Mr Antti Leinonen* supported the project and noted UNIDROIT's suitability for it. He supported Ms Sabo and Mr Meier in noting that coordination efforts with UNCITRAL should be made.

208. *Mr Ricardo Lorenzetti* voiced support for the project. As a member of the UNEP Advisory Committee, he confirmed that meeting the standards of the Paris Agreement was a crucial issue worldwide and that financial instruments were extremely important in this context.

209. *Ms Anna Joubin-Bret (Secretary of UNCITRAL)* recalled that at the 101st session of the Governing Council, UNCITRAL had noted that the UNCITRAL Commission had discussed a working proposal on carbon trading as a means to contribute to the broader UN mission to fight climate change and mitigate its effects. She noted that UNCITRAL had also been approached by ISDA about the need for a unified instrument, and a preliminary document had already been developed by

UNCITRAL, which had not yet been published. In the spirit of cooperation, UNCITRAL had invited the UNIDROIT Secretariat to participate in the forthcoming UNCITRAL colloquium on Climate Change and International Trade Law, which would be held during the Commission's session, on 12 and 13 July 2023, and during which future work and joint work could be better and more closely outlined. The colloquium would discuss the United Nations Framework Convention on Climate Change and the legal infrastructure needed to implement Articles 6 and 21 of the Paris Agreement, and it would be attended by representatives of UNEP, OECD, the International Chamber of Commerce, the EBRD, the ADB, the World Bank Group, and by private market regulators and overseers. She encouraged greater cooperation and collaboration between UNIDROIT and UNCITRAL in this area.

210. *An Observer from the United States of America* confirmed her support for the project and encouraged cooperation between different organisations in this area. She sought clarification as to whether the World Bank Group was the only organisation with which UNIDROIT intended to cooperate for the future of the project.

211. *Mr Christophe Bernasconi (Secretary General of HCCH)* noted that ISDA had also proposed this project to HCCH several years ago, bearing in mind some similarities between the way carbon credits and intermediated securities were held and traded, and referencing HCCH's instruments in this area. He also noted that the issue of applicable law was part of the project at UNIDROIT and therefore offered HCCH's assistance in that particular discussion. It was noted that HCCH would be keen to contribute to the relevant parts of this project, and that cooperation and collaboration between UNIDROIT, UNCITRAL, and HCCH would be welcomed.

212. *The President* noted that UNIDROIT would coordinate with other international organisations in this area, and especially with UNCITRAL and HCCH. She encouraged the three Secretariats to develop methodology for this accordingly. The *Secretary-General* welcomed the input provided by the Council. He reassured the Council that working on this project in an expedient manner would not impact UNIDROIT's working methodology or the quality of the outcome. It was also noted that UNIDROIT would collaborate with international organisations and development banks from all parts of the world which were involved in the VCC market, and especially those that would be providing advice to governments in the Global South, where this project would likely have the greatest impact. Regarding collaboration with UNCITRAL, it was noted that the invitation received for UNCITRAL's colloquium regarded a completely different matter, and that participation concerning VCCs would indeed be welcomed. It was confirmed that collaboration with UNCITRAL was considered very important for UNIDROIT, as confirmed by the Secretariat's prior statement at previous sessions of the Governing Council. It was noted that UNIDROIT already had a mandate to work on this topic, and would proceed accordingly, with an open invitation to UNCITRAL to collaborate. Furthermore, UNIDROIT would also seek the input of HCCH, should the project move towards discussing issues related to applicable law.

213. *Ms Sabo* encouraged the two Secretariats to communicate their respective efforts in this area in a more effective manner. She emphasised the importance for both organisations to look at this topic more broadly and consider how the work could move forward in both organisations in a complementary manner, as well as the need to share information in advance to ensure that projects were developed in a coordinated way. *Ms Joubin-Bret* seconded Ms Sabo's remarks and recalled that Ms Sabo would be the next Chair of the UNCITRAL Commission, and that her dual role in both organisations could facilitate further coordination. She renewed UNCITRAL's invitation to the UNIDROIT Secretariat to attend the UNCITRAL colloquium.

214. *The Governing Council welcomed the update from the Secretariat regarding the preparatory work as well as the exploratory, consultative workshop organised in collaboration with the World Bank Group and the International Swaps and Derivatives Association (ISDA) on the topic. The urgency with which this issue needed to be addressed, as expressed by the World Bank and generally by participants in the workshop, was noted and underscored, and the establishment of a Working Group to examine*

the Legal Nature of Voluntary Carbon Credits was welcomed. The Council also regarded positively and encouraged the coordination in this area with other international organisations.

Item 8: International Interests in Mobile Equipment

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

215. *The Secretary-General* informed the Governing Council that although the aviation sector had been facing the ongoing, overlapping crises of the Covid-19 pandemic, inflation in the price of petroleum, and international armed conflicts and concomitant sanctions, the Cape Town Convention had proven to be resilient in protecting access to credit and providing increased legal certainty while not undermining airline viability, and for this reason the Convention and the Aircraft Protocol continued to attract more States Parties.

216. *The Governing Council took note of the 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. \(102\) 15](#))

217. *The Deputy Secretary-General* presented the first part of Document [C.D. \(102\) 15](#), concerning the promising developments over the past year regarding the implementation of the Luxembourg (Rail) Protocol to the Cape Town Convention.

218. It was reported that, with the ratification of Spain in early 2023, the threshold number of ratifying States required for the Protocol to come into force had been reached. The remaining conditions for the Protocol's entry into force were the setting up of the Supervisory Authority and the deposit with UNIDROIT by the Intergovernmental Organisation for International Carriage by Rail (OTIF), in its role as Secretariat of the future Supervisory Authority, of a certificate confirming that the International Registry under the Rail Protocol was fully operational.

219. The Deputy Secretary-General reported that work to satisfy the remaining conditions was well underway, following the change in the control of the Registrar-designate Regulis SA, which was completed in December 2022.

220. In this regard, she recalled that in 2020, the Co-Chairs of the Rail Preparatory Commission had been informed that the sole owner of the Registrar-designate, SITA BV, had entered into preliminary negotiations with the Canadian quoted company Information Services Corporation (ISC) in relation to a proposed change of control of the Registrar-designate, which was permitted under the 2014 Registry Agreements. In response thereto, the Preparatory Commission had convened a Negotiating Team to conduct negotiations in relation to the change of control process. Throughout 2022, the Secretariat participated in the intense work of the Negotiating Team, which included monthly plenary meetings and additional *ad hoc* meetings as needed. The Negotiating Team's scope of work included not only ascertaining the suitability of the proposed new Registry owner to set up, operate and market the International Registry, but also more broadly considering the need for amendments to the existing contractual agreements governing the establishment and operation of the International Registry. These amendments were proposed in the spirit of keeping revisions to a minimum while recognising that some changes were required, bearing in mind the passage of time since the original contracts had been stipulated, the evolution of the operation and business needs of the rail sector, and the development of technology, particularly in relation to software, security systems, and cloud-based technology.

221. It was reported that after reviewing the Final Report from the Negotiating Team, the Preparatory Commission, at its 11th session in November 2022, had approved the proposed change of control, the assignment of the relevant contractual positions in the Registrar-designate from SITA to the new entities, and the proposed amendments to the 2014 contractual agreements. Accordingly, in December 2022, the change of Registrar was effected, and the amended and restated agreements for the operation of the International Registry were executed.

222. It was further reported that, after the change of Registrar, a meeting of the Ratification Task Force (RTF) involving the new Registrar had been held in January 2023, where institutional, technical and policy steps related to the implementation of the Protocol and its imminent entry into force had been discussed. These included an institutional timeline for the setting up of the Supervisory Authority (including the updating of its draft statutes and procedures), the development of an updated version of the Regulations of the Registry, ratification priorities, and strategies to promote further adhesions to the Protocol. The RTF also agreed on a timeline for the designation of the member States of the Supervisory Authority by OTIF and UNIDROIT, and on an enlargement of the RTF membership with participation of South Africa, Spain, the EU, and interested organisations.

223. As a follow-up to the RTF meeting, an intense schedule of virtual workshops to discuss the Rail Registry Regulations was agreed upon. Moreover, periodic meetings reporting on the development of the Registry, as well as of the Regulations, were being held, with participation of a larger group of interested parties.

224. In conclusion, it was anticipated that the Luxembourg Rail Protocol would enter into force in the fourth quarter of 2023, with the last Preparatory Commission session and first Supervisory Authority session to be held back-to-back.

225. The Deputy Secretary-General further reported on the Secretariat's participation in the preparation of Model Rules on Permanent Identification of Railway Rolling Stock. It was recalled that UNIDROIT had been invited to be a member of the Group of Experts established under the auspices of the UN Economic Commission for Europe (UNECE) Inland Transport Committee to prepare the Model Rules. These Model Rules governed the permanent and unique identification of railway rolling stock, which was crucial for the functioning of the International Registry under the Rail Protocol. The UNIDROIT Secretariat had actively participated in the drafting exercise undertaken by the Group of Experts, and the Deputy Secretary-General reported that the draft Model Rules had been adopted in February 2023 by the UN authorities and would become binding on the Registrar upon approval by the Supervisory Authority.

226. *Mr Wolfgang Küpper (Secretary General of OTIF)* welcomed the ratification of Spain and confirmed that OTIF would continue to assess and ensure the operability of the International Registry. He also stressed that the Rail Protocol was coming into force at an opportune time and would help drive the ongoing international discussion concerning sustainability through rail transportation. He concluded by expressing his hopes that, upon the Rail Protocol coming into force, the Cape Town discount for aircraft would also apply to rail rolling stock and reduce its price, thus contributing to the development of the rail sector.

227. *Mr Howard Rosen (Chair of the Rail Working Group)* took the floor next, noting that the Working Group was facing two important issues. First was the practical implementation of the "Cape Town discount" in relation to rail rolling stock. It was noted that this discount, which was applied by export credit agencies in relation to the Aircraft Protocol to the Cape Town Convention, had in practice reduced the price of acquisition and use of equipment in the aviation sector. The Working Group had observed that the coming into force of the Rail Protocol needed to be promoted to the export credit agencies to ensure sufficient awareness of its benefits. The second issue was the prospect of the impending changes to the Basel III rules applicable to banks. The Working Group had noted with concern that the rules did not appear to sufficiently take into account the credit value of security

over movables, including railway rolling stock. On this basis, the cost of credit might be detrimentally affected. Mr Rosen reported that the Rail Working Group had impressed upon policymakers that reconsideration in this area was required, and would continue to do so.

228. Mr Rosen also commended the progress made in implementing the Luxembourg Rail Protocol, noting in particular the updated contractual agreements governing the establishment and operation of the International Registry and the successful collaborative process leading to the adoption of the Model Rules.

229. *The President* thanked the Deputy Secretary-General, Mr Küpper, and Mr Rosen for their presentations and directed the attention of the Working Group to the second part of Document [C.D. \(102\) 15](#), concerning the Space Protocol.

230. With regard to the Space Protocol, *Mr Hamza Hameed (Legal Consultant)* noted that several positive developments had taken place since the last Council session. This included greater involvement by UNIDROIT with the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), whereby the UNIDROIT Secretariat presented the Space Protocol at the UN/Chile Conference on Space Law and Policy in May 2022, as well as at the 2022 and 2023 Plenary Sessions of the Committee on the Peaceful Uses of Outer Space, and at the meeting of the Legal Subcommittee of COPUOS in March 2023. Additionally, UNIDROIT had concluded two MoUs, one with the Space Court Foundation and one with the Space Economy Evolution Lab of the SDA Bocconi School of Management, to further promote the study of the benefits of the Space Protocol for the New Space Economy. The Secretariat also continued to teach the Space Protocol as part of various academic programmes, including at the National University of Singapore, Leiden University in the Netherlands, the Institute of Space Technology in Islamabad in Pakistan, and the University of Michigan School of Law, as well as within the IPLD. It was added that countries continued to look at the Space Protocol as an option for increasing access to credit for their domestic space sectors, and that UNIDROIT was advising them on this accordingly.

231. *The Governing Council* noted the updates provided by the Secretariat as to the recent activities undertaken to implement the Luxembourg Rail Protocol and the Space Protocol, in particular welcoming the Secretariat's report that the Luxembourg Rail Protocol was expected to come into force in late 2023.

(c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) ([C.D. \(102\) 16](#))

232. *Mr William Brydie-Watson (Senior Legal Officer)* reported on the implementation of the Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol). With reference to Article 25 of the MAC Protocol, he explained that there were three requirements for the treaty to enter into force: (i) appointment of a Supervisory Authority, (ii) establishment of the International Registry, and (iii) five Contracting States.

233. With reference to paragraphs 7-11 of Document [C.D. \(102\) 16](#), *Mr Hamza Hameed (Legal Consultant)* gave an update on the process to appoint a Registrar to establish and operate the International Registry. He provided an overview of the work that had been undertaken by the Registrar Working Group in preparing the Request for Proposals (RFP) and the work undertaken by the Evaluation Committee in assessing the four proposals that had been received. He noted that the Preparatory Commission had considered and approved the ranking of the four bidders at its fifth session in November 2022 and had established a negotiation team to commence formal negotiations with the preferred bidder. He concluded by stating that the negotiation team intended to begin formal negotiations with the preferred bidder in the coming weeks and that the International Registry was expected to become operational in early 2025.

234. *Mr Brydie-Watson* resumed by providing an update on ratifications. First, he highlighted the signing of the MAC Protocol by the European Union in October 2022 and emphasised that UNIDROIT was working with the European Union and UNIDROIT Member States toward ratification. He also noted the reinvigoration of the MAC Working Group as a collective enterprise between major international manufacturing associations. Finally, he explained that several States considering ratification had indicated that they would not ratify the MAC Protocol until a Supervisory Authority had been elected and the International Registry established. Accordingly, he indicated that it was important for the Secretariat to continue to progress on these matters alongside supporting States in their ratification processes. He concluded by urging Council Members to promote ratification of the MAC protocol domestically.

235. *Mr Henry Gabriel* expressed his gratitude to the Secretariat for its work on the various matters required for the MAC Protocol to enter into force.

236. *Mr Arthur Hartkamp* further expressed his gratitude to the Secretariat for its work.

237. *The Governing Council noted the progress towards the implementation of the MAC Protocol to the Cape Town Convention.*

(d) Appointment of a Supervisory Authority for the MAC Protocol registry
([C.D. \(102\) 17](#))

238. *The Secretary-General* introduced the topic, with reference to Document [C.D. \(102\) 17](#). He reminded the Governing Council that the Preparatory Commission had undertaken a lengthy process to identify existing institutions that could perform the Supervisory Authority role, which had ultimately been unsuccessful. He recalled that the two options that remained were either (i) UNIDROIT undertaking the role of Supervisory Authority itself (Option A), or (ii) creating a new international entity to undertake the role, with UNIDROIT as secretariat of the said newly-founded entity (Option B). He noted that the Secretariat had prepared a comparative analysis of the two models for the Council's consideration at its 101st Session in June 2022; however, the session had failed to reach a consensus on the matter. He further recalled that the Council had decided to create an Ad Hoc Committee to resolve the public international law issues raised by Council Members at the 101st session. Finally, he introduced Mr Orfeas Chasapis Tassinis, an international law expert commissioned by UNIDROIT to prepare independent legal advice on the unresolved public international law matters.

239. The Secretary-General concluded with two final remarks. First, he encouraged the Council to adopt a decision regarding the preferable option, in order for progress to be made in appointing a Supervisory Authority. Secondly, he emphasised that the Secretariat could not perform any role under either of the two options without additional extra-budgetary funding. He noted that the extra-budgetary funding would need to be temporarily provided by the private sector and/or interested States, but would eventually be covered by Registry fees once the treaty was operational.

240. *Mr William Brydie-Watson (Senior Legal Officer)* summarised the work undertaken by the Ad Hoc Committee over its four sessions. He asked Mr Chasapis Tassinis to provide an overview of his legal advice, as contained in Annexe I to Document [C.D. \(102\) 17](#).

241. *Mr Chasapis Tassinis* gave a summary of his findings. He emphasised his two key findings: (i) both Option A and Option B were legally viable, and (ii) neither option required UNIDROIT to amend its Statute. However, he highlighted that there was a difference in legal complexity between the two.

242. Mr Chasapis Tassinis noted that he had been asked to provide legal advice in response to five questions regarding Option A. First, he explained there was no conflict between UNIDROIT acting as both Supervisory Authority and Depository under the MAC Protocol, as agreed unanimously by the Ad Hoc Committee. Secondly and thirdly, he stated UNIDROIT and its officials would maintain

existing immunities and protections if it assumed the role of Supervisory Authority, as agreed unanimously by the Ad Hoc Committee. Fourthly, he found there were no internal limitations imposed by the Institute's Statute regarding how UNIDROIT might implement its role as Supervisory Authority, as agreed unanimously by the Ad Hoc Committee. Fifthly, he explained that UNIDROIT acting as Supervisory Authority would be consistent with its Statute, considering its terms and UNIDROIT's purpose and practice. Accordingly, the Statute would not need to be amended in order for UNIDROIT to perform the role of Supervisory Authority. This final finding was supported by nine members of the Ad Hoc Committee, including all four public international law experts, but had not been agreed to by two members, which had meant that the Committee had adopted a decision on the matter by majority vote.

243. Mr Chasapis Tassinis noted that he had been asked to provide legal advice in response to three questions regarding Option B. First, he found that the MAC Protocol would allow for the establishment of a new international organisation, as agreed unanimously by the Ad Hoc Committee. He further elaborated on whether States would need to separately consent to become members of this new organisation, finding the MAC Protocol did not require States to become members of the new organisation and the new organisation could function without all MAC Protocol States Parties also being members. Secondly, he explained that the new organisation would not enjoy UNIDROIT's immunities and might need to conclude a new headquarters agreement with the Italian Government regarding immunities, as agreed unanimously by the Ad Hoc Committee. Thirdly, he noted that UNIDROIT acting as Secretariat for the new organisation was within the scope of UNIDROIT's Statute, which had also been unanimously agreed by the Ad Hoc Committee.

244. Mr Chasapis Tassinis reiterated that, whilst both options were legally viable, there was a slight difference in legal risk and complexity. He explained that Option B would require five additional actions: (i) drafting a constitution/charter for the new organisation; (ii) adopting an agreement between the new organisation and UNIDROIT; (iii) concluding an agreement between the new organisation and the Host State regarding the immunities of the new organisation; (iv) clarifying whether UNIDROIT officials and personnel acting for the new organisation would continue to enjoy their existing immunities; and (v) requiring some States to become members of the new organisation. However, he emphasised that, whilst more complex, Option B remained viable.

245. *Mr Brydie-Watson* expressed gratitude to Mr Chasapis Tassinis for his work. He explained the comparative assessment of Option A and Option B prepared by the Secretariat as contained in paragraphs 14-20 of [C.D. \(102\) 17](#). He summarised the legal considerations (which favoured Option A), practical considerations (which favoured Option A) and policy considerations (which favoured Option B) contained in the comparative assessment. He noted that the Secretariat considered Option A to be slightly preferable to Option B, primarily on the basis of the legal conclusions reached by the Ad Hoc Committee. However, he emphasised that the decision on the preferable option was a matter solely for the Governing Council and General Assembly, and that each Member should form a view based on his or her own assessment and weighing of the different legal, practical and policy considerations. Finally, he reminded the Council that the Council's recommendation regarding the preferable option would still need to be considered and approved by the General Assembly at its 82nd session in December 2023, and then by the MAC Preparatory Commission.

246. *Mr Arthur Hartkamp* reminded the Council that he had indicated support for Option A at the Council's previous session on the basis that Option A had fewer financial implications and was quicker and easier to implement. He affirmed that he now had a strengthened preference for Option A, based on the opinions of Mr Chasapis Tassinis and the Ad Hoc Committee.

247. *Mr Niklaus Meier* expressed his gratitude to the Secretariat and Mr Chasapis Tassinis. He noted it would be useful to provide the General Assembly with a summary of the discussions of the Council to guide their decision-making. He noted his agreement that both options were viable, and expressed his support for Option B. He explained that he remained apprehensive regarding the

potential for perceived conflicts of interests arising from UNIDROIT acting as both Supervisory Authority and Depository under the MAC Protocol. He further expressed his concern that Council Members did not possess sufficient technical knowledge to make decisions related to the Supervisory Authority's functions and suggested a separate entity would possess better expert knowledge. He indicated that the creation of a distinct Supervisory Authority for the MAC Protocol would have the additional benefit of having the capacity to perform the role of Supervisory Authority under future Protocols to the Cape Town Convention. Finally, he noted that whilst Mr Chasapis Tassinis had found that UNIDROIT's Statute would not need to be modified, some Council Members and Member States might nonetheless desire amendments to the Statute in order to provide clarity and certainty. He concluded by expressing confidence that the Secretariat would be capable of resolving any complex legal issues that could arise from pursuing Option B.

248. *The Secretary-General* clarified some of the queries raised by Mr Meier. He explained that the Council was being asked to provide a consensus or majority opinion on the preferable model, which would then be transmitted to the UNIDROIT General Assembly for a decision. He also assured the Governing Council that a summary of their discussion would be provided to the General Assembly. He reiterated that it was the view of Mr Chasapis Tassinis, the Ad Hoc Committee, and the Secretariat that there was no conflict between UNIDROIT performing the role of both Supervisory Authority and Depository under the MAC Protocol. He recognised Mr Meier's concern regarding the Council acting as decision-makers for technical matters beyond their expertise. He reassured the Council that the same situation had been handled capably by the International Civil Aviation Organization (ICAO) under the Aircraft Protocol by creating a body of experts to advise ICAO in exercising its functions as Supervisory Authority. He also reminded the Council that the matter of how to structure the Supervisory Authority functions within UNIDROIT's organisational structure did not need to be decided immediately and could be discussed further by the Council at a future session once a decision had been reached on the preferable option.

249. *Mr Patrick Kilgarriff* complimented the work of the Secretariat. He stated his preference for Option A, as consistent with the view he had previously expressed at the 101st Governing Council Session in June 2022.

250. *Ms Kathryn Sabo* expressed her gratitude to the Secretariat, the Council Members on the Ad Hoc Committee, the public international law experts, and Mr Chasapis Tassinis. She noted that the work to resolve the legal questions had been robust. She explained that the Ad Hoc Committee's work provided additional clarity regarding the various public international law matters, although it would be impossible to achieve complete legal certainty on some matters. She expressed her support for Option B. She suggested that the Council should consider matters on a long-term basis and agreed with Mr Meier that there would be benefit in creating a new independent body that could act as a Supervisory Authority for future protocols. She recognised that while there was no identified actual risk of conflict of interest for UNIDROIT performing both the role of Supervisory Authority and Depository under the MAC Protocol, she noted her concern that there could be the *appearance* of a conflict of interest. She stated that while Option A might be simpler than Option B, it might not be the better choice for UNIDROIT. In relation to organisational structure if Option A were to be retained, Ms Sabo indicated a strong preference for the General Assembly performing the Supervisory Authority functions. She explained that she shared Mr Meier's concerns regarding the lack of expertise within the Governing Council and believed decision-making responsibility should be closely linked to State membership. She concluded by reaffirming her preference for Option B and stated that regardless of the outcome, the Council had performed its due diligence on this matter through both its extensive deliberations and the creation of the Ad Hoc Committee.

251. *The Secretary-General* asked Ms Sabo whether she believed the General Assembly should decide on both administrative matters alongside substantive content if UNIDROIT was appointed as Supervisory Authority. *Ms Sabo* responded that ultimate responsibility should remain with the

General Assembly, although the General Assembly could choose to exercise this by delegating some functions and decisions.

252. *Ms Stefania Bariatti* agreed with Ms Sabo that decision-making power should remain with the General Assembly. She suggested that there was no conflict of interest between UNIDROIT's role as Depository and, potentially, as Supervisory Authority, and trusted the Secretariat to utilise information barriers if needed. She noted that if Option B were pursued, it would require establishing an organisation and the conclusion of a treaty with Italy, which could delay the implementation of the MAC Protocol. She queried whether the General Assembly should ask the Italian Government for their opinion on whether and on what timescale such a treaty could be concluded to establish immunities for a new organisation. She concluded by stating her support for Option A, whilst recognising the ultimate decision was in the hands of the General Assembly.

253. *Mr Antti Leinonen* expressed his gratitude to the members of the Ad Hoc Committee, the Secretariat, and Mr Chasapis Tassinis for their work. He reminded the Council of his support for Option A at the last Council session. He expressed his satisfaction with the legal research conducted following the last Governing Council session. He explained that from a pragmatic viewpoint he was pleased that there were no legal obstacles for either option. He affirmed his support for Option A. He noted that establishing the Supervisory Authority would take time and agreed with Ms Bariatti that Option B would take more time than Option A. He acknowledged it might be useful to have an independent Supervisory Authority for later protocols, as expressed by Ms Sabo. However, he noted this separate entity could be established in connection with another protocol and the responsibilities of Supervisory Authority for the MAC Protocol could be transferred at a later stage. He declined to comment on how responsibilities under Option A should be divided between the General Assembly and Governing Council. However, he agreed with Ms Sabo that the ultimate power to decide upon such matters lay with the General Assembly. However, he noted the General Assembly could not be tasked with managing everyday business decisions. He concluded by restating his preference for Option A and his hope that a consensus decision could be reached by the Council at the current session.

254. *Ms Carmen Tamara Ungureanu* expressed her support for Option A on the basis that it was the more practical option.

255. *Mr José Antonio Moreno Rodríguez* agreed with Ms Ungureanu that Option A was the more practical option. He agreed that both options should be provided to the General Assembly, with a Governing Council recommendation as to which option would be preferable. He thanked the Secretariat for its work and reaffirmed his preference for Option A.

256. *Mr Hideki Kanda* expressed his gratitude to the Ad Hoc Committee, the public international law experts, and the Secretariat for preparing the documents for the Council. He indicated that he had no strong preference between the two options and noted that while Option B had a higher cost and would take longer to implement, Option A could create a perceived conflict of interest, which was an important consideration. Nevertheless, he recognised perceived conflicts of interest could be managed by enhanced transparency and the usage of information barriers, among other safeguards. He expressed his support for Option A, and recommended that the Secretariat consider safeguards to address concerns regarding real or apparent conflicts of interest.

257. *The Deputy Secretary-General* clarified that the Supervisory Authority only supervised the work of the International Registry and not the overall functioning of the MAC Protocol. She explained that, in corporate terms, one could see the Secretariat and Registrar as two separate entities and that it would be difficult to foresee how a conflict of interest situation could practically arise. However, she recognised that an apparent conflict of interest could seem to appear to external actors who did not fully understand the nuances of the system.

258. *Ms Jingxia Shi* expressed her support for Option A, on the basis of the practical considerations and the Secretariat's analysis. She queried whether a decision regarding the structural organisation of the Supervisory Authority functions could be reverted to the Governing Council after the General Assembly had made a decision regarding the preferable option. *The Secretary-General* agreed that after the General Assembly had decided between Option A and Option B at its upcoming session in December 2023, structural and implementation matters could be discussed by the Council at its 103rd Session in 2024.

259. *Mr Henry Gabriel* noted that there were positives and drawbacks for both options. He indicated his support for Option A on the basis that it was simpler than Option B and raised fewer potential legal risks.

260. *Ms Monika Pauknerová* expressed her support for Option A on the basis that the Ad Hoc Committee had found it to be legally permissible under the UNIDROIT Statute.

261. *Mr Lars Entelmann* (as the representative of Mr Hans-Georg Bollweg), expressed his gratitude to the Ad Hoc Committee and Mr Chasapis Tassinis. He noted his and Mr Bollweg's continued preference for Option B. He indicated that he agreed with the reasoning of Mr Meier and Ms Sabo. He suggested that whether Option A or Option B would be preferable depended on whether the Council took a short- or long-term view. He indicated that it would be preferable in the long-term to have two separate bodies in order to maintain UNIDROIT's core mission separately from the role of Supervisory Authority. He thanked the Secretary-General for his clarification that the extra-budgetary support would be necessary for UNIDROIT to perform any function under Option A or Option B. He concluded by reiterating his support for Option B.

262. *Mr Alfonso-Luís Calvo Caravaca* expressed his support for Option A on the basis that it was simpler and that the Supervisory Authority role was consistent with UNIDROIT's functions.

263. *Ms Baiba Broka* stated her support for Option A on the basis of the practical considerations and her desire to move forward quickly with implementation of the MAC Protocol.

264. *Ms Eugenia Dacoronia* recognised the concerns expressed by Mr Meier and Mr Kanda. However, she noted her support for Option A as the preferable model. She explained that it was more practical, supported by the findings of Mr Chasapis Tassinis and the Ad Hoc Committee, and in line with the opinion of the majority of Council Members. Nevertheless, she indicated she continued to have a concern regarding the need to amend the UNIDROIT Statute.

265. *Mr Attila Menyhárd* expressed his preference for Option A, noting that he agreed with arguments that had already been expressed.

266. *Mr Eesa Allie Fredericks* also expressed his preference for Option A. He noted that he agreed with arguments made by others and the decisive factors were the Ad Hoc Committee report and the Secretariat's analysis.

267. *Mr Yusuf Çalışkan* stated his preference for Option A on the basis that it provided greater legal certainty.

268. *The Secretary-General* thanked Council Members for expressing their views. He drew the Council's attention to paragraph 20 of Document [C.D. \(102\) 17](#), and clarified that the Secretariat considered both options as viable and had no fundamental interest in either option, maintaining only a slight preference for Option A.

269. *The President* summarised the discussion. She stated that while the large majority of Council Members had expressed a preference for Option A, several Council members had alternatively

expressed a preference for Option B. She explained that the General Assembly would be informed of both Options A and B, as well as the Governing Council's majority recommendation that Option A would be the preferable approach. However, the General Assembly would also be informed of the reasoning expressed by the minority of Council Members who continued to favour Option B. She suggested that the Secretariat should quickly begin discussions with the interested representatives of the General Assembly, so that they would be prepared to make a decision on the matter at its next session in December.

270. *Ms Sabo* thanked the Council Members for the productive discussion. She queried whether the Governing Council might also be in a position to provide a recommendation in relation to the preferable structure of the Supervisory Authority functions within UNIDROIT's existing organisational structure, noting her preference for the General Assembly having primary responsibility. *The Secretary-General* responded that it appeared that the Council was not yet in a position to make such a recommendation and that this matter could be discussed at the next Council session in 2024, once the UNIDROIT General Assembly had made its decision regarding the preferable option.

271. *While both options were deemed legally possible, the majority of the Governing Council agreed that it would be preferable for UNIDROIT to undertake the role of Supervisory Authority of the international registry to be established under the MAC Protocol, rather than establish a new international entity to undertake the Supervisory Authority role with UNIDROIT as its Secretariat, and requested that the matter be transmitted to the UNIDROIT General Assembly for consideration at its 82nd session in December 2023, with a recommendation from the Governing Council that UNIDROIT undertake the role of Supervisory Authority, but with sufficient explanation of the pros and cons of both alternatives.*

Item 9: International Protection of Cultural Property: Implementation and status of the 1995 Convention ([C.D. \(102\) 18](#))

272. *Ms Marina Schneider (Principal Legal Officer and Treaty Depositary)* started the presentation of the status of the 1995 UNIDROIT Convention and its implementation by indicating that, since the previous session of the Governing Council, the Convention had a new State Party, Morocco, which acceded on 1 February 2023, bringing the total to 54 States Parties, with other States in the final stages of their ratification or accession procedures.

273. She also highlighted the adoption of various declarations which anchored culture at the heart of public policy and international cooperation, on the one hand by recognising its intrinsic value for sustainable development, and, on the other, by underscoring that strengthening global development required reliance on the pillars of culture, trade, connectivity and collaboration. She noted in particular the historic MONDIACULT Declaration for Culture, adopted at the end of that major conference, where UNIDROIT was heavily involved both in the preparatory phase (through regional preparatory webinars) and in the conference itself, which brought together more than 135 ministers of culture and 2,600 delegates. The Secretary-General was a speaker at a ministerial session, and Ms Schneider moderated another ministerial session, which gave UNIDROIT great visibility, and the final Declaration cited the 1995 UNIDROIT Convention twice.

274. Ms Schneider also noted that, recognising the synergies between culture and other policy areas and considering the impact of culture and heritage on the economic, social and environmental dimensions of development, culture had been integrated into the G20 agenda in the form of a Culture Working Group since 2021 under the presidency of Saudi Arabia. In 2022, Italy had held the G20 presidency and there had been a Declaration calling on the States to ratify the relevant international treaties, among which the 1995 UNIDROIT Convention. In 2023, the G20 was under the Indian presidency, and one of the four pillars of the Culture Working Group was currently "prevention and

restitution". UNIDROIT had the great honour of being invited by the Indian government to take part in the meetings of the Culture Working Group.

275. Alongside MONDIACULT and the G20, UNIDROIT had continued its collaboration with ECOWAS and with the African Union, particularly in the implementation of ECOWAS's Action Plan for the restitution of cultural property. In March 2023, UNIDROIT participated in a symposium on restitution organised by ECOWAS in Dakar, and had also been involved in capacity-building activities for UNESCO's Priority Africa strategy, with regional training courses in Central and East Africa. Ms Schneider indicated that UNIDROIT was continuing to conduct awareness-raising and training events in other parts of the world where there was growing interest, particularly in Asia and the Middle East, with special regard to the Arabian Peninsula, with partners such as the ICCROM Centre in Sharjah in the United Arab Emirates, as well as the Qatar National Library.

276. Ms Schneider concluded her presentation by indicating that UNIDROIT was also working with a number of universities, as well as with the International Law Association, whose 150th anniversary was being celebrated this year. In particular a White Paper on cultural heritage, for which UNIDROIT had been consulted, had been prepared with numerous references to UNIDROIT and the importance of the 1995 Convention.

277. *Mr Jorge Sánchez Cordero* underlined that MONDIACULT, Mexico, 2022 had been a major cultural event organised by UNESCO and hosted by the Mexican government. UNIDROIT had been invited by UNESCO as a special guest and its performance had been outstanding, the result of which being the approval by unanimity of the Declaration which included two important mentions of the 1995 UNIDROIT Convention, and which was intended to be on UNESCO's programme of action for the long-term future. He noted that the conference expressed the recognition of UNIDROIT's work in the drafting of uniform rules to bring certainty to the art market, and he expressed gratitude and congratulations to UNIDROIT and encouraged UNIDROIT to continue its important task. Finally, Mr Sánchez Cordero recalled that Mexico had acceded to the 1995 UNIDROIT Convention and that the region of Latin America was almost completely covered by this important Convention.

278. *Ms Kathryn Sabo* noted that the Council should do more than taking note of the developments and needed to congratulate the Secretariat for all the work it had done, as in previous years, in the promotion of this important instrument, with energy and creativity brought to the promotion and the development and maintenance of partnerships that were really essential. With Mexico's ratification and the possibility of further development, she expressed hope of seeing a greater number of States Parties.

279. *Ms Monika Pauknerová* thanked the Secretariat for providing an update on the developments regarding the 1995 UNIDROIT Convention and expressed appreciation for all the work done. She added that, according to her information, the Czech Republic was slowly finalising its preparatory work for accession to the Convention in the not-so-distant future, although no concrete date could yet be predicted. Ms Pauknerová indicated that she had recently published a detailed paper supporting the 1995 UNIDROIT Convention, which was the first paper published in the Czech Republic on this topic.

280. *The Secretary-General* concluded by highlighting the excellent results at MONDIACULT. He wished to thank and congratulate Mr Jorge Sánchez Cordero, Ms Marina Schneider, and the group of world-renowned experts who had so actively contributed to the promotion of the Convention.

281. *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 10: Promotion Strategy for UNIDROIT Instruments (C.D. (102) 19)

282. *The Deputy Secretary-General* introduced Document [C.D. \(102\) 19](#) on a promotion strategy for UNIDROIT instruments, reiterating its high priority for the Secretariat. She explained that this document focused on the promotion strategy for two UNIDROIT instruments, namely the UNIDROIT Principles of International Commercial Contracts (UPICC) and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (LGCF). She noted that promotional steps taken for other UNIDROIT instruments could be found in the 2022 Annual Report, as well as in the specific reports submitted to the Council.

283. She highlighted that this document served two purposes: first, to present the Secretariat's existing promotion strategies and, second, to invite input and feedback from the Council, as well as ideas for further promotional activities.

284. In relation to the UPICC, the Deputy Secretary-General reported that the Secretariat had continued to carry out traditional promotion activities including organising, co-sponsoring, and participating in conferences, seminars, and lectures. Participants in such events included not only scholars but also practitioners, judges, arbitrators, and in-house counsel. In selecting its partners for such events, the Secretariat had given preference to bodies representing the legal profession as well as organisations concerned generally with capacity-building. Regarding dissemination activities, the Secretariat had also continued to rely on the support of UNIDROIT experts, including Members of the Council. Further, joint events had been organised under the auspices of the UNCITRAL-HCCH-UNIDROIT Tripartite Cooperation, and moot court competitions had been sponsored to promote the knowledge and application of the UPICC. The Secretariat had also engaged in a joint project with the University of Roma Tre concerning contractual change of circumstances under the UPICC.

285. Turning to promotion strategies for the future, she first mentioned the opportunity of moving towards a project-based approach. This would involve utilising the UPICC as background general contract law, upon which other uniform law instruments focusing on specific contracts (including other UNIDROIT instruments) could build. Examples were given where the UPICC had consciously been used either as a point of reference for the general contractual legal framework or as a source for model contractual clauses, including choice-of-law clauses. This included not only the LGCF and the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC), but also the PRICL and two new projects on the Principles of International Commercial Contracts and Investment Contracts, and the Corporate Sustainability Due Diligence in Global Value Chains.

286. A second strategy in the promotion of the UPICC was a region-based approach. In this regard, she referred to the ongoing work in promoting the UPICC in the Middle East and North Africa (MENA). It was highlighted that this approach would target regions such as MENA, which had a level of similarity in contract law among the constituent jurisdictions.

287. Finally, the Deputy Secretary-General noted that the 30th anniversary of the adoption of the UPICC was approaching and welcomed suggestions from the Members of the Council regarding specific initiatives or promotional strategies which could be usefully deployed on that august occasion.

288. *The President* then turned the floor to Ms Priscila Pereira de Andrade (*Legal Officer*) to present the promotional strategy for the LGCF.

289. *Ms Andrade* recalled that the LGCF had been the first legal guide developed under the tripartite partnership with FAO and IFAD in the field of private law and agricultural development. She informed that the Secretariat relied on the collaboration of different stakeholders and former Working Group members for the dissemination of the LGCF and that it had been presented in a number of different conferences in 2022, all listed in the Annual Report. She drew the attention of Council

Members to a new proposal to set up a pilot project for fostering good practices for agricultural contracts in specific jurisdictions.

290. Ms Andrade noted that in 2019 UNIDROIT had been awarded the United Rule of Law Appeal (UROLA) prize, but, due to the particular circumstances created by the COVID-19 pandemic during 2020 and 2021, its implementation had not yet been possible. Therefore, the implementation of the pilot project would start during the 2023-2025 Work Programme, and the Secretariat would explore the possibility of partnering with local (and non-local) associations, universities, and other intergovernmental organisations undertaking technical assistance work in different parts of the world, with field experience in implementing development projects on the ground. 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). 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.

291. Finally, she noted that UNIDROIT would consider establishing 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, had expressed its interest to collaborate in the field of contract farming in Africa.

292. *The President* invited comments and responses from the Members of the Council.

293. *Mr Eesa Allie Fredericks* noted the recent and very encouraging developments in the use of the UPICC in the private international law context. He drew the Council's attention to an article published in 2021 in the *Uniform Law Review*¹ which had highlighted the prominent role accorded to the UPICC in the recent draft African Principles on the Law Applicable to International Commercial Contracts. He explained that the "draft African Principles", a regional model law project, were developed under the auspices of the Research Centre for Private International Law in Emerging Countries, based at the University of Johannesburg. In particular, he noted the various roles of the UPICC in the draft African Principles, including as possible governing law of the relevant contract, as a part (together with other uniform law instruments) of the general *lex mercatoria* which could be opted for as governing law, and also as an instrument to interpret and supplement the terms of the contract, regardless of its governing law. Mr Fredericks concluded by noting this was yet another demonstration of how the UPICC could be used as general background principles in specific legal contexts.

294. *Sir Roy Goode* observed that the 30th anniversary of the UPICC would be an appropriate occasion to reflect on and commemorate the work done to promote and popularise the UPICC by Mr Michael Joachim Bonell.

295. *The Governing Council* took note of the Secretariat's report on the activities undertaken to disseminate UNIDROIT's instruments since the Governing Council's 101st session and of the new promotion strategy and future activities proposed, in particular for the UNIDROIT Principles of International Commercial Contracts and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming.

Item 11: UNIDROIT Correspondents ([C.D. \(102\) 20](#))

296. *Ms Marina Schneider* (Principal Legal Officer and Treaty Depositary) introduced the topic of UNIDROIT Correspondents, indicating that the Governing Council had in 2022 adopted the Plan proposed by the Secretary-General to revitalise the network of Correspondents. In application of this

¹ *Uniform Law Review*, Volume 25, Issue 2-3, August 2020, pp. 426-36.

Plan, an Office for Correspondents was created within UNIDROIT, and five officers were each made responsible for one of the geographical regions of the UNIDROIT Member States, coordinated altogether by Ms Schneider. She indicated that the objective to have 100 correspondents for the 100th anniversary of UNIDROIT had already been reached (currently with 108 individual correspondents and three institutions).

297. Another implementation of the Plan was the creation of a Permanent Committee for Correspondents within the Governing Council, composed of five Members representing the five geographical regions, and it was through this channel that proposals for the appointment of Correspondents would be made henceforth. Ms Schneider noted that the Council would be called upon this year to appoint Mr Edward Derek Wille, Permanent High Court Judge in South Africa, as Correspondent, on proposal by the Permanent Committee for Correspondents, which had scrutinised the candidature. Then, Ms Schneider indicated that, also in implementation of the Plan, a specific section reserved for Correspondents on the UNIDROIT website had been created, listing all Correspondents, their links with UNIDROIT, and their areas of expertise, in order to create networks. She then underlined the activities of Correspondents as members of committees, working groups, academic projects, and the Foundation, and also in sending observations to public consultations or organising activities linked to UNIDROIT instruments. For the future, the Secretariat would ask Correspondents to produce, country by country, a kind of national report on the implementation of UNIDROIT instruments.

298. Ms Schneider concluded by noting that three countries of which current Governing Council Members were nationals had no Correspondents, calling for both proposals for next year and the continued support of said current Members.

299. *Mr Eesa Allie Fredericks* indicated that extending the list of Correspondents in Africa was highly commendable and that it would go a long way in due course of increasing membership to UNIDROIT from the African States. At present, there were only four African Member States out of 65 total Member States, so initiatives such as these would be in line with the 2017 update to the UNIDROIT Regulations that, if nominated, there would be at least one Governing Council Member from each geographical region (one being Africa). This initiative was crucial as it was common knowledge that Africa remained the poorest of all the continents, so mere involvement with – let alone membership to – an institution like UNIDROIT provided substantial benefit in its own right.

300. *Ms Eugenia Dacoronia* expressed her congratulations for reacting so immediately after the adoption of the Plan last year, in forming the Office of Correspondents, and for the number of Correspondents, which were remarkable, as all the work done at UNIDROIT.

301. *The Governing Council took note of the Secretariat's report on the steps undertaken to implement the Plan for action adopted in 2022 and commended the Secretariat for the work done. The Council agreed to appoint a new Correspondent from South Africa, as recommended by the Permanent Committee for Correspondents.*

Item 12: UNIDROIT Academy ([C.D. \(102\) 21](#))

(a) UNIDROIT Academic Projects

302. First, *the Secretary-General* recalled the reasoning for “rebranding” several components of UNIDROIT’s work under the overarching theme of “UNIDROIT Academy”, hearkening to the extremely strong academic tradition of the Institute. He explained how two separate Academic Projects had been created around UNIDROIT’s two signature hard-law instruments, the Cape Town Convention and the 1995 Convention, with the aims of fostering highly technical academic activity from within and procuring extra-budgetary resources for research and related activities.

303. *Mr Hamza Hameed (Legal Consultant)* detailed the activities of the Cape Town Convention Academic Project (CTCAP), recalling that the project was a joint undertaking between UNIDROIT and the University of Cambridge Faculty of Law, under the auspices of the Centre for Corporate and Commercial Law (3CL). The Aviation Working Group was its founding sponsor. Since the Council's last session, the Project had continued to prosper, having organised the 11th annual CTCAP Conference at the University of Cambridge (and remotely) on 13 and 14 September 2022. The Conference, which focused on public international law and the Cape Town Convention, had 138 registered participants, 82 of which attended in person. Additionally, the Project had also organised two meetings for its initiative on Economic Assessment of International Commercial Law Reform (10 March 2022 and 15 September 2022), and one meeting for its initiative on Best Practices in the Field of Electronic Registry Design and Operation (12 September 2022). Finally, in 2022, CTCAP had launched the Cape Town Convention International Moot Court Programme ("CTC Moot Court"). The purposes of the CTC Moot Court would be to familiarise students and judges with the CTC in the context of complex hypothetical fact patterns and to provide students with educational exercises involving these instruments in a simulated judicial setting.

304. *Ms Louise Gullifer (UNIDROIT Foundation, and co-director, CTCAP)* provided the Council with a brief update and explained that the CTCAP's scope had recently been enlarged to cover not only the Cape Town Convention but also other aspects of asset-based financing. Additionally, Ms Gullifer explained that the CTCAP's Journal, now being published by Edward Elgar, would begin issuing calls for academic papers and even set up an editorial board to engage in peer review. She also explained in further detail the development of the CTC Moot Court and the projects carried out by the UNIDROIT Foundation under the auspices of the CTCAP.

(b) Academic Institutes

305. *The Deputy Secretary-General* presented the recent developments concerning the QMUL/UNIDROIT Institute of Transnational Commercial Law ("the Institute"). She recalled that the Institute had originally been founded in 2016 at the initiative of Sir Roy Goode and the late UNIDROIT President Alberto Mazzoni. As the original agreement to set up the Institute had lapsed, the Institute had recently been relaunched via a Concordat Renewal Agreement signed in February 2023.

306. As part of the agreed measures to renew and revitalise the Institute, a renovated governance had been set up, with the Deputy Secretary-General and Ms Rosa Lastra as Co-Directors of the Institute, Ms Franziska Arnold-Dwyer as Deputy Director, Sir Roy Goode as Founding Member, and the Secretary-General appointed to the Executive Board. The Advisory Board, composed of eminent academics and practitioners and listed on page 5 of Doc. [C.D. \(102\) 21](#), had also been partly confirmed and renewed.

307. The Deputy Secretary-General further explained that the planned activities of the Institute included: first, dissemination of the knowledge of transnational commercial law and relevant UNIDROIT instruments among academia and other stakeholders, leveraging in particular QMUL's connections and contacts; second, research in this field; and third, educational initiatives, such as internship opportunities and postgraduate teaching, with a focus on postgraduate students of the Institute. In this latter regard, it was noted that a teaching module on transnational commercial law, with a focus on secured transactions including under the Cape Town Convention, was being planned.

308. She concluded by noting that the activities of the Institute had only just begun, having included a seminar in honour of the 90th birthday of Sir Roy Goode with participation of Council Members and current and former CCLS Directors. With a meeting of the Advisory Board planned, the Secretariat looked forward to providing a fuller report at the next session of the Council.

309. *Sir Roy Goode* congratulated UNIDROIT on successfully renewing the operation of the Institute and looked forward to its upcoming activities under the new leadership.

310. *The President* also pointed out that UNIDROIT had also launched its Nordic Law Centre, which had been presented to the Council the day prior at a side event to the session.

(c) UNIDROIT International Programme for Law and Development

311. *Mr Marco Nicoli* (UNIDROIT Foundation) explained that due to the positive feedback following last year's "International Summer School" at UNIDROIT, for 2023 funding had been secured from the Italian Ministry of Foreign Affairs and International Cooperation to carry out another edition, renamed as the International Programme for Law and Development (IPLD).

312. *The President* reiterated thanks to the Italian Government for its support of this initiative and expressed a hope that its funding could be guaranteed for a fixed amount of years. She explained how the Institute viewed this initiative as a key strategy in approaching Non-Member States, by forging long-standing connections with legislative drafters and other decision-makers. She also acknowledged the important role that H.E. the Ambassador of the Republic of South Africa Ms Nosipho Nausca-Jean Jezile played in supporting the IPLD and other initiatives centred on Africa.

(d) UNIDROIT Chair Programmes

313. *The Secretary-General* was pleased to discuss the two Chair Programmes within UNIDROIT. The first Chair Programme was a pilot project with the Italian Ministry of Foreign Affairs and International Cooperation, providing UNIDROIT with an academic expert from Africa. The Secretary-General introduced the MAECI-UNIDROIT Chair, Mr Keni Muguongo Kariuki, a post-doctoral researcher who had been working with the Secretariat to offer assistance in the current projects in the field of agricultural development. He explained that the second Chair Programme, jointly run with the Bank of Italy, was focused on developing projects related to bank insolvency, digital assets, and carbon credits, and that this new Chair would begin work soon.

314. *The President* also acknowledged that Ms Diletta Lenzi was the young researcher who was the recipient of the 2023 Sir Roy Goode Scholarship.

(e) UNIDROIT Library and research activities

315. *Ms Bettina Maxion* (UNIDROIT Library) announced that since 2022 the Library had secured a new partner, the University of Foggia in Italy, in addition to ongoing cooperation with the University of Rome "La Sapienza" and the Max Planck Institute for Comparative and International Private Law in Hamburg. In addition, discussions had begun for a future partnership with the University of Regensburg in Germany. Such cooperation was paramount to the Library's collection as UNIDROIT relied heavily on donations and exchanges for its expansion due to its budgetary limitations. Particular thanks were given to the Max Planck Institute in Hamburg for its generous support. Ms Maxion also recalled the special donation of Professor Gorla's volumes to the Library and the "Ricordando Gino Gorla" event held at the seat of UNIDROIT in October 2022.

316. As concerned the process of digitalisation, Ms Maxion explained that the Library had thus far concentrated on comparative law and the collection of Mr Filippo Chiomenti's volumes, also thanks to the help of the Library's training programme. It was the objective of the Library to develop an enriched catalogue offering readers more material with open access to an online catalogue. This objective had led to a meeting with commercial agents from Kluwer for discussions on which publications could be substituted with electronic versions and on the possible acquisition of eBook packages, to be evaluated in the future. Ms Maxion expressed gratitude for the generous donation from the Dutch non-profit "Largesse" and for the help given by Ms Christina Ramberg, from Sweden, concerning access to Nordic Law books and works, both in 2022. After referencing the series of interesting lectures that the Library had hosted in 2022, Ms Maxion also stated that in 2022 the Library had received 112 guests from 35 countries.

317. *The President* expressed her deep gratitude for the contributions of Mr Maurizio Lupoi to the Gorla collection, as well as Mr Lupoi's potential donation of a collection of books on the law of trusts. She also reiterated how enriching the Library's training programme had been for the Institute, especially due to the involvement of persons with disabilities.

318. *Mr Henry Gabriel* suggested increasing the budget of the library and prioritising the digitalisation of the invaluable collections held in the Library.

319. *The President* agreed with Mr Gabriel's comments and sympathised that the budget should indeed be expanded to digitalise the collections, in addition to the Institute's archive.

320. *Mr William Brydie-Watson (Senior Legal Officer)* explained the impact of the internship and scholarship programme since its launch in 1993, bringing over 400 scholars and 390 interns from 70 countries to UNIDROIT. The programme's significance could not be underestimated; interns and scholars acted as an informal "ambassador" network for UNIDROIT around the globe. Mr Brydie-Watson thanked Ms Laura Tikanvaara of the UNIDROIT Secretariat for her role in coordinating interns and scholars.

321. Mr Brydie-Watson pointed out that the amount of interns and scholars coming to UNIDROIT had doubled from 2015 to 2019, and that this figure had doubled again from 2019 to 2023, and yet the selection process remained extremely competitive. For example, for 2023, 260 applications were received, resulting in 60 interns selected with only 10 receiving funding. Of the total candidates, 20% of the interns were selected and of those only 3% received a paid internship. Additionally, Mr Brydie-Watson explained that an anonymous feedback system had recently been implemented to enhance interns' experience; overall, the feedback received had been extremely positive. Mr Brydie-Watson described how the programme was not included in the Budget and instead relied on extra-budgetary contributions; he stated that if the programme were fully funded, the total cost would amount to approximately €120,000 annually. To enhance diversity at UNIDROIT and foster equitable access to this unique experience, Mr Brydie-Watson strongly encouraged Council Members to consider extra-budgetary contributions.

322. *Ms Giuditta Cordero-Moss (President of the International Academy of Comparative Law)* discussed the contribution of the Academic Council of the Nordic Law Centre to the UNIDROIT Library, spanning both physical and online collections. *The President* suggested that the Nordic Law Centre could serve as an example for any other similar thematic initiatives that the UNIDROIT Library could receive and host.

(f) Cooperation with academic institutions

323. *Ms Philine Wehling (Legal Officer)* stated that the Secretariat was aiming to expand and intensify its cooperation with academic institutions residing both in Member States of UNIDROIT, and in countries that were not yet Member States. Such cooperation had often been formalised through cooperation agreements, of which UNIDROIT currently had over 50 in place. While each cooperation agreement could pursue its own particular objectives, usually the aim had been to promote and cooperate in research and legal education in areas related to UNIDROIT's work, instruments, and internship and research programme. The kinds of activities foreseen under these agreements were diverse, from the joint organisation of conferences and seminars, to the implementation of joint projects and the provision of internship positions at the Institute.

324. Since the last session of the Council in June 2022, UNIDROIT had signed 11 new cooperation agreements. Cooperation agreements had been signed over the past year with, among others, the International Academy of Comparative Law, the Shanghai Arbitration Commission, the Centre for Commercial Law Studies of Queen Mary University of London, the European Law Institute (building

upon a prior agreement between both institutions), Özyeğin University Istanbul, and An-Najah National University of Palestine.

325. Activities undertaken within the framework of such agreements over the past year included, for instance, the co-organisation, together with Roma Tre University, of the Transnational Commercial Law Teachers Meeting and of the Ninth Annual International Arbitration Lecture. As for the new partner institutions, the Secretariat had, for instance, agreed to co-organise a series of conferences concerning UNIDROIT instruments together with Özyeğin University Istanbul, the first of which would be held the following week in Istanbul. Finally, with its most recent partner institution, An-Najah National University of Palestine, the Secretariat had agreed to provide to their commercial law programme for LLM students a guest lecture in the Arabic language on the UNIDROIT Principles of International Commercial Contracts. Concluding, Ms Wehling observed that UNIDROIT's partner institutions were diverse, as were the activities carried out as part of the cooperation agreements.

(g) UNIDROIT Publications

326. Introducing this item on the Agenda, *Ms Lena Peters (Principal Legal Officer and Managing Editor, Uniform Law Review)* recalled that traditionally the Institute divided publications into the *Uniform Law Review* and *Other Publications*. As regarded the *Uniform Law Review*, Ms Peters reminded Council Members that since 2013 the *Uniform Law Review* was published by Oxford University Press (OUP). A new agreement had been concluded in September 2022, which introduced a certain number of modifications, perhaps the major one being a new online method for submission and treatment of articles (the "ScholarOne" submission system). The intention was to start using this system with Issue 3 of 2023, which was to publish the Acts of the 13th Transnational Commercial Law Teachers' Meeting. What seemed to be clear was that the OUP expected the *Uniform Law Review* eventually to become a totally electronic journal. Recent subscription data supplied by OUP indicated that there was a trend towards online subscriptions. In this context the special arrangement OUP had in place for developing countries, which offered online subscriptions to journals at lower rates and, in some cases, for free, should also be noted. Of interest was the table on pages 10-11 in Document [C.D. \(102\) 21](#) listing the articles most viewed in 2022, which confirmed the interest of readers in the *UNIDROIT Principles of International Commercial Contracts*. The week before the Council meeting, the OUP had sent the accounts for 2022. The profit gained by the Review in 2022 had increased from 13,823 euro in 2021 to 17,268 euro, the royalties of UNIDROIT being 8,946 euro, as opposed to 8,065 euro in 2021. Ms Peters also drew the attention of Council Members to the table appended to [C.D. \(102\) 21](#) pages 16 to 21, which detailed the income received from the sale of UNIDROIT publications in the years 2013 to 2022.

327. Turning to the *Other Publications*, Ms Peters stated that as these publications were the instruments adopted by the Institute, what was published in any one year depended also on what had been adopted. It was hoped that 2023 would see several publications, as two instruments had been adopted by the Council earlier that week. The English version of the *ELI/UNIDROIT Model Rules of European Civil Procedure* had been published in August 2021 by Oxford University Press. The French version had been finalised and would be published in the course of the year. Agreements had been concluded for the translation of the Model Rules into Chinese, Farsi, German, Hungarian, Italian (black-letter rules only), Portuguese, Russian, Spanish, and Ukrainian. Ms Peters recalled that the fifth edition of the *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment* by Sir Roy Goode had been published in May 2022, and had been made available to interested Members of the Council at their 2022 meeting. An electronic version of the *Official Commentary* had subsequently been prepared, with links both internal to the volume and to external websites. It had been prepared in conformity with an agreement with Aviareto, the institution managing the Aircraft Protocol's Registry, and was now being sold by the Institute. The *Official Commentary* was the first UNIDROIT publication to be sold in electronic format, with links to facilitate its consultation. It was the intention of the Secretariat to make the other UNIDROIT publications available in a linked, electronic format.

328. *Ms Alexandra Logue (UNIDROIT Secretariat)* illustrated findings on the options available for the protection of publications sold online. The need to decide on a form of protection had become clear when an order had been received for a copy of an e-book, the letterhead of which indicated that the law firm of the customer had more than 20,000 people, with 12,000 lawyers in 200 locations. The number of lawyers who could access the e-book had to be limited. It was not possible to completely prevent the unauthorised sharing of an e-book; instead, it had to be made sufficiently difficult to dissuade abuse, effectively making the purchase of the publication more cost-effective than the time and effort it would take to reproduce it. There were several potential types of protection, including password encryption, certificate encryption (i.e. digital certificate or public key certificate), and DRM services. Ms Logue had spoken with contacts at HCCH and UN Publishing and had learned some insights into how their e-books were distributed and sold. A related question that had to be considered was the possible automating of e-commerce on the site, as opposed to the maintaining of the manual handling of each order.

329. *Mr Eesa Allie Fredericks* observed how easy it was to underestimate the value of activities such publications. He applauded the efforts of the Secretariat for developing countries. In the last three years research on the tenability and viability of UNIDROIT instruments for Africa had increased exponentially in southern African universities: one in every four dissertations was certain to contain elements of the UNIDROIT Principles or other UNIDROIT instruments. These studies were conducted at the Master's or PhD level and this tied in with the internship programme and the International Programme for Law and Development of the Institute, as the graduates would perhaps be future Governing Council Members or Correspondents. These studies would never have been possible, had it not been for exposure to, and availability of information on, UNIDROIT activities through the publications and the IPLD.

330. The *Secretary-General* observed that UNIDROIT had different types of publications. The first was the black-letter rules, access to which should be completely free. There were publications which included both black-letter rules and commentary, in which case it could be argued that the same applied, as the comments were a part of the instruments. However, in the past publications had been entrusted to commercial publishers, such as the *Official Commentary* on the 2009 Geneva Convention, which had been published by Oxford University Press. To what extent the sale of publications should be externalised, or a more in-house solution should be adopted, ought to be discussed. At present most publications were published by UNIDROIT itself. There were two more kinds of publications, one being books, such as the book with the Acts of the Conference on the 1995 Cultural Property Convention which Ms Marina Schneider would report on, and the Official Commentaries written by Sir Roy Goode, from which most of the income was currently derived. The Official Commentaries were Sir Roy Goode's, as he held copyright to the volumes, with the Institute acting as agent for the author. Sir Roy Goode very generously donated the proceeds of the sales of the Official Commentaries to the Institute.

331. *Ms Peters* added that the booklets with the black-letter rules of Conventions and other instruments were not sold, but were made for distribution, mainly for dissemination purposes. The website had the black-letter rules as well as the integral versions of many of the other publications: the *Principles of International Commercial Contracts*, the *Guide to International Master Franchise Arrangements*, the *Legal Guide on Contract Farming*, and the *UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts* were all on the website in integral versions. What was not on the website was what was published by commercial publishers: the *Official Commentary on the Geneva Convention*, sold by OUP, and the *ELI-UNIDROIT Model European Rules of Civil Procedure*, also sold by OUP in the ELI series of publications. Sir Roy Goode's *Official Commentaries* were published by UNIDROIT but were not on the UNIDROIT website in integral version, whereas some of the documents appended to those volumes were (the Final Acts and the Resolutions adopted by the Diplomatic Conferences, for instance). As regarded Other Publications, she recalled the two volumes of *Essays*

in honour of Michael Joachim Bonell that had been published in 2016.² These had included some 125 articles which were not on the website and the copyright of which was shared by the authors and UNIDROIT. As regarded the big sellers, the *Official Commentary on the Aircraft* was one without a doubt, but the *Principles of International Commercial Contracts* should not be forgotten, as they represented a very large amount of sales indeed whenever new editions were published.

332. *Sir Roy Goode* welcomed the comments made by Mr Fredricks on Africa and the potential impact of some UNIDROIT instruments on Africa. What he found of particular concern was that in sub-Saharan Africa there was a large amount of arable land but most was harvested “by hand and hoe”, because people simply could not afford to buy machinery to do it. If the MAC Protocol were to be adopted and implemented, what was produced in Africa agriculturally would be multiplied many times over, whereas what was presently produced was generally subsistence-level. There seemed to him to be a huge scope for getting the MAC Protocol applied to raise money for modern agricultural equipment with a view to transforming production in Africa.

333. *Ms Kathryn Sabo* observed that the Council had received a lot of information on the options available for the protection of electronic publications but it might want to receive still more information, possibly organised a bit differently. It was a policy question that also related to access to UNIDROIT’s work, to the publications but also to access to the library and the Institute’s materials. As regarded the products, she indicated she would tend to favour Open Access, but the possibility of having revenue for the Institute was also important. She asked whether it might be possible to charge those who could afford it, but to offer those without resources free access. She was not sure how a coherent policy could be derived in that respect. It was necessary for the Council to have that discussion. The comments of the Secretary-General on the different types of publications were useful to categorise them, as some categories might be treated differently from others: whether they should go into digital rights management, and if they did, whether controlled access should be adopted or whether it would be considered not worth the trouble in terms of potential revenue. Increases in sales also depended on what was being sold and whether a convention had just been completed or an explanatory report had just come out. She took Mr Fredericks’s comments to heart, as also the fact that much of UNIDROIT’s work was intended to reach an audience for which the cost of a sales publication would be prohibitive.

334. *Mr Pascal Pichonnaz (President of ELI)* stated that ELI shared the same concerns, having to decide on sharing the information and the result of their work as much as possible while at the same time trying to generate revenue whenever possible. With OUP they had agreed on an Open Access policy, where OUP published a book but accepted that the ELI had the publication on their platform as an Open Access publication. He added that what was available by digital means would not necessarily deter people from buying books; on the contrary, sometimes there was what could be called a “double-bound” effect, especially for those who had deeper pockets and wanted to have the book in their library. The ELI considered the policy adopted to be a good solution. As regarded the background materials, these were treated in a different way, as they were more of interest to academics, but with the tendency of all academic institutions to opt for Open Access, UNIDROIT and ELI would have to give Open Access more consideration.

335. *The Secretary-General* pointed out that “Open Access” did not mean that nobody paid: the reader did not, but someone else did. For academics and researchers, their university or research centre would be where the funds came from, but he did not know how the Institute would be able to handle that. An example of what had been done was that access was being granted chapter by chapter to the *Official Commentary on the Cape Town Convention and Aircraft Protocol* through the website of the Cape Town Convention Academic Project, even for downloading if the reader used a

² *Eppur si muove: The Age of Uniform Law. Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday*, Rome, UNIDROIT 2016.

non-professional, certified academic e-mail address (not the entire book, but separate chapters). He suggested that a full report be submitted to the Council in 2024, with proposals and options for the input of the Council and its decision. This would include an estimate of revenues.

336. *Ms Marina Schneider (Principal Legal Officer and Treaty Depositary)* updated the Council on the publication of the Acts of the Conference held in 2020 to celebrate the 25th anniversary of the adoption of the 1995 Convention.³ Despite the difficulties caused by the pandemic, it had been possible to hold the conference, 35 participants in person and more than 400 connected online. Unfortunately it had not been possible to give Council Members a copy of the publication. One of the difficulties had been in obtaining the contributions. One of the questions raised by the contributors had been what type of publication was intended, if the acts would be published with a renowned publisher or by UNIDROIT itself, as this was important for the visibility of the authors. The publication at present counted some 400 pages and was bilingual, in the sense that the articles were published in the language in which the contribution had been made, preceded by an abstract in both English and French. Essentially the publication reproduced what had been dealt with at the conference.

337. *The Council took note of developments as regarded the publications of the Institute, both the Uniform Law Review, which was in the process of adopting automated procedures for the submission and treatment of articles, and the other publications, which were in the process of being prepared for sale in electronic format. The Council observed that the options available for the sale of the electronic publications and their protection against abuse should be discussed further by the Council. The Council therefore recommended that time for such an examination and discussion be scheduled for the 103rd session of the Council in 2024.*

338. *The Governing Council took note of developments in all the activities of the UNIDROIT Academy, including: Academic Projects; Academic Institutes; International Programme for Law and Development; Chair Programmes; Library and the Scholarship, Internship and Research Programme; Cooperation with academic institutions; and Publications, and expressed its support for the Secretariat's initiatives in these fields.*

Item 13: Communications strategy and social media outreach (C.D. (102) 22)

339. *Mr Hamza Hameed (Legal Consultant)* detailed the Institute's work on social media. It was recalled that UNIDROIT's social media programme had a five-fold purpose: (i) raising UNIDROIT's public profile and online awareness of its current projects; (ii) promoting upcoming events and encouraging participation from relevant stakeholders; (iii) allowing researchers, visiting professionals, interns, and other stakeholders to connect with each other and maintain a connection with UNIDROIT; (iv) serving as a dynamic channel to communicate with the global community interested in UNIDROIT's work; and (v) allowing UNIDROIT to widely advertise vacancies and internship and scholarship opportunities. He added that UNIDROIT's social media channels had continued to perform well since the last meeting of the Governing Council. As of 13 April 2023, the Institute had more than 26,000 followers on LinkedIn, 5,500 followers on Facebook, 2,000 followers on Twitter, and 450 subscribers on YouTube. As for the Institute's "reach" across social media, over the past twelve months UNIDROIT content had been displayed on news feeds more than 706,364 times on LinkedIn, around 76,956 times on Twitter, and 26,464 times on Facebook. Additionally, videos on the UNIDROIT YouTube channel had been viewed more than 7,800 times in the past 12 months, with a total watch time of close to 500 hours. All Members of the Governing Council were encouraged to engage with the social media channels to increase the amount of awareness being generated for UNIDROIT instruments. It was noted that all content posted on UNIDROIT's social media channels followed an internally adopted

³ The 1995 UNIDROIT Convention – Cultural objects at the crossroad of rights and interests, Rome, 8-9 October 2020.

social media strategy, and that UNIDROIT had launched a social media internship programme in 2021 to support the Secretariat in its efforts in this area.

340. *The Governing Council took note of the activities of the Secretariat and commended the Communications and Outreach Strategy.*

Item 14: Administrative matters:

(a) Reappointment of the Secretary-General for a second term ([C.D. \(102\) 1 rev.](#))

341. *The Governing Council expressed its gratitude to Mr Ignacio Tirado and unanimously accepted the proposal of the President to reappoint him as Secretary-General for a second term.*

(b) Appointment of a Special Committee to update the UNIDROIT Regulations ([C.D. \(102\) 23](#))

342. *The Secretary-General referenced the fact that discussion of and work towards updating the Regulations had already been ongoing for several years and through several iterations. He explained that while both a general update and *upgrade* to the Regulations were due, since these matters dealt with rather delicate policy decisions, a Special Committee representing the greater Governing Council should be formed to assist the Secretariat in drafting policy proposals to later be discussed by the plenary Governing Council and ultimately presented for approval by the General Assembly.*

343. *The Secretary-General described the proposal's aim of strengthening the Institute's governance in order to facilitate greater direct contact with Member States to leverage the Institute's existing flexibility, in response to feedback received from various States that they had had limited involvement until instruments had already reached their final stages. The Secretary-General suggested the possibility of creating, for example, interim organs that bridge the perceived gap between the Governing Council and States.*

344. *In addition, the Secretary-General acknowledged that the Regulations still had to be "modernised" (in line with other, comparable intergovernmental organisations) to include at least a fundamental version of, e.g., a fully-fledged code of conduct, or rules for use of social media.*

345. *The President delineated two specific and separate needs, one being the need to enhance the relationship with Member States to better inform them of and involve them with the Institute's work on a regular basis, and the other being the need to better ascertain feedback from market participants and other stakeholders, all with greater transparency.*

346. *Ms Kathryn Sabo expressed agreement with the idea of forming a Special Committee (sometimes referring to it as a "task force") to help the Secretariat in formulating policy proposals for changes to the Regulations. Referencing her experience during the previous changes made to the Institute's benefits scheme and the establishment of the Institute's pension fund, Ms Sabo stated that some of the language in the Regulations was currently out of place. However, Ms Sabo voiced concerns regarding whether a change to the Regulations would be the appropriate method for providing for a more direct relationship with Member States. She also expressed confusion about the nexus between that proposal and the relationship with experts, asking whether it would merely consist of allowing for more consultation. Moreover, Ms Sabo insisted upon the importance of developing regulations appropriate to the scale and role of the Institute, mentioning the experience of another small organisation which had attempted to derive its regulatory model from that of a much larger organisation and had subsequently encountered many problems. Additionally, Ms Sabo queried whether it might be appropriate or efficient to involve some direct representation of Member*

States themselves or the Finance Committee, along with the Secretariat and the Governing Council, in the potential Special Committee.

347. *The Secretary-General* recalled that the Finance Committee would need to be asked for input concerning any proposed changes to the Regulations that might have financial consequences. In addition, he expressed concern regarding a Special Committee that became too large. The Secretary-General instead proposed that it might be possible to insert an earlier phase of soliciting comments from a consultative organ representing the General Assembly before presenting the results of the Special Committee's work to the General Assembly as a whole.

348. In response to the Secretary-General's proposal, *Ms Sabo* proffered the feasibility of involving three representatives from the Governing Council and two from the General Assembly. Furthermore, she explained that she had previously referenced the Finance Committee merely in terms of optimising the timing, since over the course of the year the Finance Committee would convene before the General Assembly.

349. *The Secretary-General* responded that choosing only two representatives from the General Assembly would be too difficult and at risk of being seen as a political choice. *Ms Sabo* agreed that a consultative committee representing the General Assembly might be a better solution, highlighting the opportunity for input by the General Assembly earlier in the process of the proposed Special Committee's undertaking.

350. *The Deputy Secretary-General* suggested that the product of the Special Committee could be shared with the General Assembly with ample time for feedback, as opposed to the complication of creating a separate consultative group within the General Assembly, unless that would be deemed necessary to secure engagement.

351. *Mr Antti Leinonen* voiced support for both the proposal of a Special Committee in general and for *Ms Sabo's* concern in favour of increasing involvement of the Member States, while admitting that more reflection was needed to determine the best manner for proceeding. He highlighted that the most important consideration would be to ensure that the Member States were fully informed in writing throughout the process, even if not many written comments on their part were to be expected. While acknowledging the importance of increasing Member State involvement, *Mr Leinonen* also expressed reservations about the risk of jeopardising the famous efficiency of, or even politicising, the Institute's established working methods. Furthermore, *Mr Leinonen* stated his conviction that working groups be limited to a maximum of ten (or in rare cases fifteen) members and that input could be produced by consultative bodies in certain ways that would not overburden working groups. Additionally, *Mr Leinonen* proposed the idea of encouraging the involvement of Member States more frequently in the sessions of the Governing Council, while admitting the potential downsides of that increased engagement.

352. *Mr Henry Gabriel* reasoned that increased involvement of Member States could be done informally but that changing the Regulations to specifically foresee this would add unwelcome political and bureaucratic dimensions and therefore expressed his disagreement with such a proposal. He stated that five would be a justifiable number of Governing Council Members represented in the Special Committee to form a committed, core group. Regarding the involvement of the General Assembly, *Mr Gabriel* conjectured that between the present time (May 2023) and when the General Assembly would next be convened in December 2023, little beyond a structural proposal would likely be accomplished, and therefore the General Assembly would have the possibility of being involved at a rather early stage without the need of a separate consultative body. In addition, *Mr Gabriel* recognised that inviting Member States to observe Governing Council sessions had been an existing informal policy for many years and was not to be discouraged. Finally, *Mr Gabriel* reiterated his preference for limiting participation in the proposed Special Committee to a small selection of Governing Council Members.

353. *The Secretary-General* pointed out that there existed a specific rule providing for the invitation as Observer to the Governing Council to Member States without a national within the Governing Council, but that fact did not prevent the Secretariat from also occasionally inviting Member States who did have a national within the Governing Council when there was good cause. He also stressed that the Governing Council had the authority to determine which items of the agenda would be open to Observers' attendance.

354. *Ms Sabo* reiterated that additions to the Regulations should only be made when strictly necessary and that it would be preferable to consider modernising and upgrading systems within the existing frameworks to the extent possible.

355. *Mr Arthur Hartkamp* expressed agreement with the comments of Mr Gabriel and the most recent intervention by Ms Sabo.

356. *The President* acknowledged that the Governing Council agreed as to the prudence of forming the Special Committee and sought an indication of who would volunteer to become involved. The President then welcomed the expressions of willingness to participate of the following Governing Council Members: Ms Stefania Bariatti, Ms Kathryn Sabo, Mr Henry Gabriel, Mr Eesa Allie Fredericks, and Mr Hideki Kanda. The President declared that the Special Committee would begin working and then at some point would determine the best way to communicate its progress with Member States.

357. *The Secretary-General* proposed that in the coming weeks the Secretariat would send to the five volunteers a proposed timeline of the work and a list of possible topics to cover for a first meeting within a relatively short time frame, and then to agree on how to proceed.

358. *The Governing Council approved the proposal to constitute a Special Committee to update the UNIDROIT Regulations.*

(c) Preparation of the draft Budget for the 2024 financial year ([C.D. \(102\) 24](#))

359. *The Secretary-General* introduced the topic, recalling that the Governing Council was responsible for drawing up the draft Budget of the Institute each year. The draft Budget would then be circulated to Member States for comments, be reviewed by the Finance Committee, and ultimately be presented to the General Assembly for adoption. He added that the draft Budget for the 2024 financial year had already been reviewed by the Finance Committee at its 95th session (March 2023).

360. He explained that, for the first time in years, it was proposed to increase Member State contributions, specifically here by 6%. This was due to the high increase in inflation experienced in 2021 and 2022, which had a severe impact on the expenditure of the Institute, especially in areas that were at the core of UNIDROIT's work, such as travel of staff and experts. Even if inflation seemed to have stabilised generally, it was not expected that prices would decrease in the areas where UNIDROIT incurred its operational costs. He noted that UNIDROIT had always been cautious in suggesting revisions to Member State contributions, especially if compared to similar international organisations, but that cost-cutting measures had now reached a limit. Furthermore, while it was hoped that Member States with arrears would pay their outstanding contributions – as some had recently done – this would not be sufficient to cover the expected expenditure in 2024. He also explained that the proposed budget increase was small in absolute terms but crucial to allow the Institute to continue its work in the same prudent manner.

361. *Ms Myrte Thijssen (Legal Officer)* noted that Governing Council Members had received, on a confidential basis, a note with detailed explanations regarding the proposed increase in Member State contributions. Section A of the note described the developments in Member State contributions over the past years. It explained that, while the UNIDROIT Statute allowed revisions to the Contributions Chart every three years, the Secretariat had only suggested revisions three times in the last twenty-

five years - which had resulted in minimal changes. Section B explained the developments in inflation rates since mid-2021. It noted, among other things, that in the European Union, inflation rates had reached a historical high of 9.2% in 2022. The sectors with the highest increase in prices included transport, electricity and gas, which affected Chapters 1 and 5 of UNIDROIT's budget. Section C of the note explained the Secretariat's efforts in cutting costs and provided explanations for the proposed increase of certain budget lines in 2024. For instance, it was suggested to slightly increase the budget for the line of expenditure 'Governing Council and Permanent Committee' – which had remained at the same level since 2010 – to account for the increase in costs of plane and train tickets. Similarly, an increase in budget was proposed for 'Committees of Experts', also given that in 2024 several projects were expected to be finalised while new projects would have started as well. A small increase in budget was also proposed for the budget line 'Official journeys and promotion of activities'. Ms Thijssen explained that the current budget for travel expenditure of UNIDROIT staff was very small for an international organisation and that reducing this part of the budget would limit the Secretariat's possibilities to travel, especially to developing countries. She noted that Chapters 2 and 3 of the budget increased about 2.5% every year due to the design of the salary system. The budget for Chapters 4, 5, and 6 had been severely reduced over recent years and it was challenging, if not impossible, to further cut expenditure for these budget lines. Finally, the note explained the impact of the proposed increase in contributions in absolute terms, which was between € 152 and € 7,590 per Member State per year.

362. *Mr Samuel Rothenberg (Chair of the Finance Committee)* thanked the President for giving him the opportunity to speak. He explained that he was the longest-serving member in the Finance Committee and had therefore been appointed as Chair. He noted that the Finance Committee considered UNIDROIT's level of transparency unique. Furthermore, the Committee very much appreciated the high quality of the Institute's work and documents, and the availability of the Secretary-General and his staff.

363. With regard to the draft Budget for the 2024 financial year, *Mr Rothenberg* explained that the role of the Finance Committee had been to examine the draft Budget and provide initial feedback to the Governing Council. He noted that there was general wariness among States with regard to budget increases in international organisations since governments were trying to uphold a zero nominal growth policy. However, the Finance Committee recognised that inflation rates had been extraordinarily high in recent years and that this had had a serious impact on UNIDROIT's purchasing power, which could affect UNIDROIT's output, outreach and the uptake of its instruments. The Committee also recognised that UNIDROIT had not requested an increase in budget in years. The Finance Committee had suggested to strengthen efforts to reduce arrears in the payment of Member State contributions, which had cumulatively reached a significant amount. It much appreciated that arrears had recently been reduced thanks to these efforts. Finally, the Finance Committee acknowledged the savings that UNIDROIT had already realised through its working method and cost-cutting measures.

364. Mr Rothenberg concluded that, in light of the above, the Finance Committee was generally understanding of the proposed increase in Member State contributions. He also noted that two Member States (Canada and the United States) had explicitly expressed support for the proposal.

365. *Ms Kathryn Sabo* thanked the Secretary-General and the Chair of the Finance Committee for the explanations. She indicated that Canada had a zero nominal growth policy, but that these were, however, exceptional circumstances. Therefore, in line with the position expressed by Canada in the Finance Committee, she was supportive of the proposed increase in Member State contributions. She noted that inflation rates were currently decreasing, but that this was not expected to result in a drop of prices in the areas that were of particular relevance to UNIDROIT's activities. She underlined that the Institute should be able to continue its work. She considered that the proposed increase of 6% was more than reasonable, if not too modest, also considering that UNIDROIT had not sought a budget increase in a long time.

366. *Mr Niklaus Meier* agreed with the explanations provided by the Secretary-General and supported the proposed increase in Member State contributions. He appreciated that UNIDROIT only asked for an increase in contributions when it was necessary and that it had not proposed any changes in years. He agreed with Ms Sabo that a 6% increase was reasonable, noting that he would have also supported a slightly higher increase.

367. *Mr Pierre Beaudoin* (as the representative of Ms Bénédicte Fauvarque-Cosson) also agreed with Ms Sabo. He thanked and congratulated the Secretary-General for his constant efforts in limiting expenditure, which had been duly noted. He noted that France especially appreciated the efforts of the Institute to limit the budget increase as much as possible.

368. *Mr Lars Entelmann* (as the representative of Mr Hans-Georg Bollweg), noted that he was impressed by the amount of work carried out by UNIDROIT considering its relatively small budget. While the request in principle seemed reasonable given the circumstances, he noted that Member States were operating under constraints. He explained that the budget of the German government for supporting international organisations would not increase in 2024. He therefore appreciated if the Secretariat could seek to find additional cost savings.

369. *Ms Monika Pauknerová* expressed the view that increasing Member State contributions was a sensitive topic, especially since several countries – including the Czech Republic – were currently facing budget constraints. However, if the proposed increase was absolutely necessary to ensure the proper functioning of UNIDROIT, it could be supported if there were a broader consensus among Member States.

370. *Ms Eugenia Dacornia* considered the proposed budget increase reasonable. At the same time, she shared the concern expressed by Ms Pauknerová and Mr Entelmann about budget constraints in several countries. She suggested considering whether a smaller increase in contributions would be an option, possibly by reducing the number of experts in certain projects and with the hope that Member States with arrears would pay their outstanding contributions. However, she recognised that UNIDROIT did a huge amount of work with a limited budget and would support the proposal if there were a broader consensus.

371. *The Secretary-General* indicated that a 6% increase would not even cover the loss of the value paid into the Institute's accounts by way of contributions, and that it was essentially a less-than-zero-growth budget since it only aimed at maintaining the purchasing power of the Institute.

372. *Mr Henry Gabriel* noted that UNIDROIT was a unique organisation in terms of productivity and efficiency. He agreed with other Council Members that the proposed 6% increase in Member State contributions was more than reasonable, underlining that the Secretariat had only proposed the minimum increase that would be necessary to continue UNIDROIT's work.

373. *Ms Stefania Bariatti* agreed with Mr Gabriel and the explanations provided by the Secretary-General. She underlined that the proposal merely aimed at containing the loss the Institute had suffered due to high inflation, which affected the organisation's ability to conduct its work. While inflation rates were now decreasing, as Ms Sabo had mentioned, the 6% increase was meant to recover from past inflation peaks, which were much higher than 6%. She therefore supported the proposal.

374. The Governing Council considered the draft Budget for the 2024 financial year, agreed to deem it drafted in accordance with Art. 11.4 of the Statute, and authorised the Secretariat to transmit it to Member States without amendments.

Item 15: Date and venue of the 103rd session of the Governing Council ([C.D. \(102\) 1 rev.](#))

375. The Governing Council agreed that its 103rd session could be held on 8-10 May 2024, subject to the Secretariat's confirmation.

Item 16: Any other business

376. *The Secretary-General* sincerely thanked the Members of the Governing Council and the entire UNIDROIT team. He acknowledged that it would be the last Governing Council session for two cherished staff members of the UNIDROIT Secretariat, who would be leaving the institution: Ms Lena Peters and Mr Hamza Hameed.

377. *Mr Arthur Hartkamp* declared his great appreciation for the work and the precision of UNIDROIT and specifically to the President and the Secretary-General.

Item 17: Concluding remarks of the President

378. *The President* once again expressed thanks and closed the session.

ANNEXE I**AGENDA**

1. Adoption of the annotated draft agenda (C.D. (102) 1 rev.)
2. Appointment of first and second Vice Presidents of the Governing Council (C.D. (102) 1 rev.)
3. Reports
 - (a) Annual Report 2022 (C.D. (102) 2)
 - (b) Report on the UNIDROIT Foundation (C.D. (102) 3)
4. Adoption of Draft UNIDROIT instruments:
 - (a) Model Law on Warehouse Receipts (C.D. (102) 4)
 - (b) Model Law on Factoring (C.D. (102) 5)
 - (c) Principles on Digital Assets and Private Law (C.D. (102) 6)
5. Ongoing legislative activities carried over from the 2020-2022 Work Programme
 - (a) Best Practices for Effective Enforcement (C.D. (102) 7)
 - (b) Bank Insolvency (C.D. (102) 8)
 - (c) Legal Structure of Agricultural Enterprises (C.D. (102) 9)
 - (d) Private Art Collections (C.D. (102) 10)
 - (e) Principles of Reinsurance Contracts (C.D. (102) 11)
6. Proposal for Joint Work: HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens (C.D. (102) 12)
7. Update on certain high-priority projects on the 2023-2025 Work Programme
 - (a) UNIDROIT Principles of International Commercial Contracts and Investment Contracts (C.D. (102) 13)
 - (b) Legal nature of Voluntary Carbon Credits (C.D. (102) 14)
8. International Interests in Mobile Equipment:
 - (a) Implementation and status of 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. (102) 15)
 - (c) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) (C.D. (102) 16)
 - (d) Appointment of a Supervisory Authority for the MAC Protocol registry (C.D. (102) 17)

9. International Protection of Cultural Property: Implementation and status of the 1995 Convention (C.D. (101) 16)
10. Promotion Strategy for UNIDROIT Instruments (C.D. (102) 19)
11. UNIDROIT Correspondents (C.D. (102) 20)
12. UNIDROIT Academy (C.D. (102) 21)
 - (a) UNIDROIT Academic Projects
 - (b) Academic Institutes
 - (c) UNIDROIT International Summer School
 - (d) UNIDROIT Chair Programmes
 - (e) UNIDROIT Library and research activities
 - (f) Cooperation with academic institutions
 - (g) UNIDROIT Publications
13. Communications strategy and social media outreach (C.D. (102) 22)
14. Administrative matters:
 - (a) Reappointment of the Secretary-General for a second term (C.D. (102) 1 rev.)
 - (b) Appointment of a Special Committee to update the UNIDROIT Regulations (C.D. (102) 23)
 - (c) Preparation of the draft Budget for the 2024 financial year (C.D. (102) 24)
15. Date and venue of the 103rd session of the Governing Council (C.D. (102) 1 rev.)
16. Any other business
17. Concluding remarks of the President

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

(Rome, 10-12 May 2023 / Rome, 10-12 mai 2023)

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| Mr Antti T. LEINONEN | Director General Law Drafting Department (Civil Law) Ministry of Justice Finland |
| Mr Ricardo L. LORENZETTI | Chief Justice Supreme Court of Justice Argentina |
| M. Niklaus D. MEIER | Co-chef de l'Unité de droit international privé Office fédéral de la Justice Suisse |
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| Mr Ignacio TIRADO | Secretary-General / <i>Secrétaire Général</i> |
| Ms Anna VENEZIANO | Deputy Secretary-General / <i>Secrétaire Générale adjointe</i> |
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| Mr Keni KARIUKI | MAECI Chair / <i>Titulaire Chaire MAECI</i> |
| Ms Bettina MAXION | Librarian / <i>Bibliothécaire</i> |
| Mr Marco NICOLI (<i>remotely</i>) | Director, International Programme for Law and Development / <i>Directeur, Programme international pour le droit et le développement</i> |
| Ms Alexandra LOGUE | Secretary / <i>Secrétaire</i> |