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WHITE PAPER

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INTRODUCTION

I. The Workstream on Procedural Law and Dispute Resolution

1. One of the principal objectives of UNIDROIT's Centenary in 2026 is to take stock of the Institute's contribution to the progressive harmonisation and modernisation of private law, and to identify strategic directions for its future work. To this end, UNIDROIT's instruments and ongoing projects have been organised into seven thematic Workstreams, each entrusted to a Committee composed of a Chair and a small group of experts. Each Committee is tasked with producing a White Paper that (i) offers an analysis and critical assessment of the work conducted by UNIDROIT in the relevant field, (ii) takes stock of the current state of play, and (iii) sets out a strategy for future work, accompanied by recommendations. The conclusions of the seven White Papers will be presented during a joint session of the UNIDROIT Governing Council and General Assembly in December 2026.

2. The Procedural Law and Dispute Resolution (PLDR) Workstream covers UNIDROIT's work in the fields of transnational civil procedure, procedural harmonisation, enforcement, arbitration, and the dispute resolution mechanisms embedded in sector-specific instruments. It encompasses, in particular, the ALI/UNIDROIT Principles of Transnational Civil Procedure (2004) (ALI/UNIDROIT Principles)[2], the ELI-UNIDROIT Model European Rules of Civil Procedure (2020) (ELI-UNIDROIT Model Rules), the recently approved Best Practices for Effective Enforcement (2026) (BPEE), the project on International Civil Procedure in Latin America (which is a low priority project within the UNIDROIT Work Programme), and the dispute resolution and enforcement mechanisms contained in other UNIDROIT instruments. Taken together, these instruments and projects span the principal stages and scope of civil dispute resolution — from the harmonisation of procedural principles, through the formulation of regional model rules, to the effective enforcement of judgments and awards.

3. This scope reflects the historical depth of UNIDROIT's engagement with procedural law and dispute resolution. Work on transnational civil procedure in the strict sense became a structural feature of the Institute's activities with the launch of the joint project with the American Law Institute (ALI) in 1999. UNIDROIT's interest in dispute resolution, however, reaches considerably further back. Established in 1926, the Institute began its work in 1928, and arbitration featured among the first subjects it sddressed, with a first report prepared as early as 1929 (Study III)[3], reflecting an early concern with mechanisms capable of giving effect to party autonomy in cross-border commercial relations. More recently, UNIDROIT instruments and projects in adjacent fields have incorporated dispute resolution mechanisms in a broader sense, including arbitration, mediation, expert determination, conciliation, and graduated or multi-tier clauses, as functional components of the frameworks they establish. It is this combination of breadth and longevity that explains why the Workstream is framed not merely as one on "transnational procedural law", but as one on "procedural law and dispute resolution": it deliberately extends beyond transnational civil procedure to encompass the wider range of mechanisms through which disputes connected with UNIDROIT instruments may be prevented, managed, resolved, and effectively enforced.

4. The PLDR Committee's membership reflects the diversity of expertise and legal traditions that the field demands. It brings together senior members of the judiciary, leading scholars, and experienced practitioners, drawn from different regions and from both civil law and common-law traditions.

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[2] The American Law Institute & UNIDROIT, *ALI/*UNIDROIT *Principles of Transnational Civil Procedure* (Cambridge University Press, 2006), adopted by the UNIDROIT Governing Council in April 2004 and by the ALI in May 2004 (hereinafter ALI/UNIDROIT Principles).

[3] UNIDROIT 1929 – Study III – Doc. 1, Rapport sur la question internationale de la procédure d'arbitrage en matière privée. See also https://www.unidroit.org/studies/arbitration/. See also Part IV, A of this White Paper.

5. Within the broader global landscape, UNIDROIT occupies a distinctive position. Its work complements that of other international and regional organisations active in civil procedure, private international law, arbitration, enforcement, and access to justice. UNIDROIT's comparative expertise, well-established working methods, and experience in producing non-binding instruments in the procedural field make it particularly well placed to identify areas where harmonised guidance may support domestic reform, regional convergence, and international cooperation. The PLDR Workstream therefore offers an opportunity not only to evaluate past achievements, but also to consider how UNIDROIT can continue to contribute to the development of fair, efficient, technologically responsive, and internationally coherent systems of procedural law and dispute resolution.

6. This field is closely connected to several other Centenary Workstreams, notably Contract Law, Access to Credit, and Financial Markets and Technology. Dispute resolution clauses and their enforceability are an integral part of contractual practice; effective enforcement is inseparable from the law of secured transactions and from access to credit; and the treatment of digital assets in the BPEE links directly to UNIDROIT's work on technology and the law. The assessment that follows should accordingly be read as complementary to, rather than separate from, the analyses conducted by the other Centenary Workstream Committees.

II. UNIDROIT's Work on Procedural Law and Dispute Resolution within the Global Landscape of International Harmonisation

7. To assess UNIDROIT's contribution, its work should be situated within the broader international effort to overcome the fragmentation of procedural law and dispute resolution across national jurisdictions.

8. For a long time, civil procedural law was regarded as the area of law most resistant to international harmonisation. Whereas substantive commercial law became the object of unification efforts at a relatively early stage, civil procedure was traditionally understood as an expression of state sovereignty. It was only in the latter part of the twentieth century that a conceptual shift took hold: procedure came to be seen less as an emanation of sovereign authority and more as a body of rules governing the relationships between the parties and between the parties and the court, a kind of legal "software" that could, in principle, be the subject of convergence. It is this shift that made the very idea of a transnational civil procedure conceivable.

9. At the same time, the globalisation of commerce, investment, finance, technology, and supply chains has made the procedural dimension of private law increasingly important. Cross-border legal relationships require not only compatible substantive rules, but also fair, efficient, and predictable mechanisms for resolving disputes, leading to outcomes that can be effectively enforced. A modern system of private law cannot function effectively if parties have rights on paper but lack meaningful access to justice, adequate opportunities to present their case, efficient case management, proportionate access to evidence, effective interim relief, reliable enforcement mechanisms, or appropriate alternatives to litigation. In this sense, procedural law and dispute resolution are not secondary or merely technical matters. They are essential conditions for the practical effectiveness of private law.

10. Against this background, international efforts in the field have developed along several related lines. One of them coordinates jurisdictions through private international law and judicial cooperation, without seeking to align the content of domestic rules of procedure. Another is directed at the rules themselves, pursuing the approximation or harmonisation of domestic civil procedure. A third concentrates on enforcement, without which procedural rights remain ineffective whichever of the first two approaches is taken. A distinct and largely self-standing area is arbitration, together with the wider field of alternative dispute resolution (ADR), which has built a transnational architecture for resolving disputes outside, or alongside, national courts.

11. UNIDROIT's contribution takes shape within this landscape. In relation to civil procedure, its signature methodology has been the development of soft-law model instruments addressed to the substantive law of procedure, starting with the ALI/UNIDROIT Principles which represented the first global attempt to articulate a common procedural framework capable of bridging the common-law and civil-law traditions. The ALI/UNIDROIT Principles in turn gave rise to a strategy of regionalisation: they were transposed and adapted to the European context in the ELI–UNIDROIT Model Rules, and now envisaged, in the longer term, for Latin America. Alongside this, UNIDROIT has worked on issues at the crossroad between access to credit and procedural law, in particular enforcement of creditor's rights, and to integrate dispute resolution across its sectoral output, where arbitration, mediation, expert determination, and graduated or multi-tier clauses are considered in the context of the substantive relationship at hand rather than standing as ends in themselves.

12. Against this backdrop, the present White Paper seeks to consider how the impact of soft-law instruments can best be measured and promoted; where harmonised guidance is still genuinely needed; how the field of civil procedure should respond to the developments now reshaping it, notably, digital technology, third-party litigation funding, and the protection of vulnerable parties; and finally, how UNIDROIT's contract law expertise might be brought to bear on the international arbitration agreement.

PART ONE — ADOPTED INSTRUMENTS

I. ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)

A. Development and Adoption

13. The American Law Institute began a project examining transnational civil procedure in 1997; in 1999, UNIDROIT joined the work. Together, they developed a set of Principles "for adjudication of transnational commercial disputes."[4]

14. The work was completed in 2004, when both organisations approved a set of thirty-one Principles that sought to bridge the gap between the procedural regime in the civil-law countries and the regime that prevails in the common-law countries. The published text also includes an Appendix with an illustrative set of rules (not formally approved by the two organisations) that suggests one way in which the Principles might be incorporated into national laws. By using this format, the Principles also signalled that other approaches to implementation were possible, in particular the development of more detailed rules that may apply regionally.

B. Key Content

15. The scope of the Principles was debated during drafting: some viewed "universal" procedural rules as premature; others doubted the feasibility of bridging common-law and civil-law differences. These reservations were overcome through comparative-law research and the contributions of the experts involved.

16. The 31 Principles, each accompanied by a Comment, set out a framework of fundamental procedural norms for the adjudication of transnational commercial disputes, promoting fairness, efficiency, and judicial cooperation. They open with foundational guarantees of judicial integrity, namely the independence, impartiality, and qualifications of the court (Principle 1) , and enshrine core procedural rights: the equality of the parties (Principle 3), the right to counsel (Principle 4), due notice and the right to be heard (Principle 5), prompt justice (Principle 7), and access to information and evidence (Principle 16).

17. A further set of Principles governs the conduct of proceedings, balancing party initiative against judicial supervision: the parties control the scope of the dispute (Principle 10), while the court manages the process (Principle 14). Other provisions address multiple claims and parties (Principle 12), oral and written presentations (Principle 19), and the burden and standard of proof (Principle 21). Reflecting the cross-border context, the Principles also address the effective enforcement of judgments (Principle 29), set standards for the recognition of foreign judgments (Principle 30) and encourage international judicial cooperation (Principle 31).

C. Impact and Implementation

18. On the occasion of UNIDROIT's Centenary, it is helpful to consider what direct and indirect impact the Principles have had. By way of background, however, it is useful first to set out the possible ways in which such a project might exert influence.

19. There are several ways in which the Principles have influenced the development of transnational civil procedural law. First, the overall structure provides a useful summary of the topics that any set of civil procedural rules must address. Second, the way in which these Principles have

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[4] ALI/UNIDROIT Principles (n 2), Scope and Implementation, 16.

influenced the teaching of comparative civil procedure. Third, the recognition that soft-law instruments are often more accessible to countries interested in civil procedure reform than a more prescriptive set of rules might be. These and other modes of influence are discussed below.

1. Modes of Influence

(a) Formal adoption of some or all Principles by one or more countries or jurisdictions

20. In the case of formal adoption, reliable and verifiable direct influence may be documented through the use of specific terminology or formulations of the Principles, or by their citation in legislative materials or decisions of the highest courts. Nevertheless, formal adoption may be rare at present as growing competition between different legal and social systems favours the trend towards kinds of legal nationalism combined with legislative self-confidence in the interest of desirable social and legal identity. To avoid conflicts, even international organisations such as UNIDROIT, UNCITRAL, and the HCCH, as well as the European Commission, cite national sources with care. Sometimes a national source provides a useful example of how to address a new problem, but at other times it may reflect only a certain national tradition that does not need to be replicated. The ALI and the European Law Institute (ELI) often benefit from national experience, but they too are careful to avoid any form of favouritism for one system over another.

(b) Model for reform of domestic procedural law without express adoption

21. Many elements of the Principles may be the result of existing trends in national laws, in the form of legislation, academic development, or case law. These trends may also reflect predictions about the future general acceptance worldwide, or at least in parts of the world, of rules concerning, e.g., international jurisdiction, structure of proceedings, court management, requirements of factual and evidential disclosure, judicial activity and settlements, requirements and scope of appeals etc. Domestic reforms in these areas may follow the "spirit of the time" as affirmed, strengthened, or anticipated by the Principles. In these cases, the influence of the Principles may be probable but not clearly demonstrable.

(c) Scholarly resource for projects to reform civil procedure

22. Scholarly research for projects regarding reform is an important and fertile source of influence (dissertations, articles, monographs, scholarly expertise for legislators, etc.). Nevertheless, whether the influence can be traced often depends on the author's influence as a member of legislative committees, commissions, or the highest courts. The borderline between this type of more targeted influence and the influence of the "spirit of the time" (see above, paragraph 20) may not be very clear if a flood of similar publications has inspired a legislative solution.

(d) Education for users of transnational commercial dispute resolution, debunking the myth that there are no commonalities among procedural systems

23. It was the acceptance of the Principles by influential American lawyers who were members of the ALI that contributed decisively to their status as a serious step toward procedural harmonisation in the United States. The ALI members, representing the bar, the academic community, and the judiciary, were already familiar with the practice of international arbitral tribunals and their sets of rules, which have always reflected compromises based on commonalities among procedural systems. The arbitral experience was in part adopted as a good example by the drafters of the Principles, even though the Principles were primarily directed to courts. It was thought at the time that they might also serve as a guide to arbitral tribunals. To date, however, the Principles have only rarely been used as a kind of global code for arbitral tribunals. Instead, those tribunals have continued to prefer their own rules, which have developed over decades according to the special needs of arbitration. Institutionally organised arbitration still prefers rules developed by its

international or national organisations. Nonetheless, this does not mean that the mutual exchange of ideas does not take place. Openness towards dispute resolution by mediation and similar processes has been accepted in some continental systems since the middle of the 20th century or even before, and later in the US, especially in the form of what Professor Frank Sander called the "multi-door courthouse."[5] By that, he meant that the courts would be in a position to offer many different types of dispute resolution services, including mediation, arbitration, negotiation, early neutral evaluation, collaborative law, and, of course, traditional litigation. Some courts, while not offering all of those services, have a system of mandatory pre-litigation arbitration.[6] Other courts, including the US federal courts of appeals, require civil litigants to attempt to mediate their disputes before formal adjudication proceeds (see Federal Rule of Appellate Procedure 33, which authorises the court to require a settlement conference). The ALI/ UNIDROIT Principles represented the opportunity to affirm and strengthen this development, putting emphasis on common features.

24. Meanwhile, in Europe, some countries made obligatory mediation a precondition of admission to court proceedings, other countries authorised courts to sanction unjustified refusal by adequate cost distribution, and some countries did not provide any sanction, respecting a party's freedom directly to apply to courts for a judgment. Although it is difficult to draw a direct causal line from the Principles to the increasing importance of mediation processes worldwide, the Principles may have at least reinforced, and perhaps have contributed to the adoption of, and support for, mediation, including in East Asia and in some developing countries.

(e) Facilitating the recognition and enforcement of foreign court judgments and judicial assistance

25. Principle 30 explicitly states that final judgments of foreign courts awarded in proceedings in accord with the fundamentals of the Principles must be recognised and enforced unless substantive public policy requires otherwise. Principle 31 recommends providing assistance to civil proceedings consistent with the Principles. Principles 30 and 31 do not purport to introduce novel rules. Their significance lies instead in incorporating the recognition and enforcement of foreign judgments, together with judicial assistance, into a global statement of procedural standards. In this respect, the Principles are consistent with the HCCH Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention), which entered into force on 1 September 2023.

(f) Supporting the Rule of Law

26. The main purpose of the Principles, as defined by their drafters, was to create a kind of Magna Carta of the Rule of Law in civil proceedings. UNIDROIT's agreement to cooperate with the ALI did not extend to the development of a complete set of rules for international commercial disputes as originally intended by the ALI project's reporters. UNIDROIT's intended to avoid going deeply into detail and to avoid discussions about the features of individual legal systems insofar as possible. The ALI accepted this limitation, as part of the compromise, to permit the drafters to present a set of more detailed rules solely as one example of implementation; as noted above, those rules appear in an Appendix to the Principles. Ultimately, this implementation could be brought to a successful conclusion without serious discussions or differences of opinion between representatives of civil-law countries and those of common-law countries.

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[5] See Frank E.A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976).

[6] See, for example, the state of Illinois, Illinois Courts, 'Court-Annexed Mandatory Arbitration' https://www.illinoiscourts.gov/reports/-court-annexed-mandatory-arbitration/ accessed 11 November 2026.

2. Dissemination, Use and Engagement, including Illustrations from Practice

27. Set out below are notable examples illustrating the influence of the Principles. These are offered as indicative rather than exhaustive; many further illustrations could be drawn from the numerous examples that exist.

28. Good examples of clearly documentable influence can be found in European legislative projects, including the materials of the Directive 2014/104/EU on certain rules governing actions for damages in cases of infringement of competition rules, where Principle 16.2 of the ALI/ UNIDROIT Principles, which corresponds to Principle 11.3, is explicitly mentioned as a clear example for Article 5 of the Directive. The Agreement on a Unified Patent Court and the corresponding Rules of Procedure not only adopt the structure of proceedings as proposed in ALI/UNIDROIT Principle 9, but also adopt the terminology "interim phase" for the phase between written proceedings and oral hearing explicitly used in the drafts and then in the final text changed to "interim procedure". As noted above, legislators mostly avoid clear references to the sources of their legislative ideas. Especially with respect to the formulation of the final version of a legal text, it is common to see contributions from many different sources. Reliable documentation remains difficult, and in the end a clear differentiation between influence on preparatory discussions or materials and influence on final texts remains debatable. Attempts to attribute influence are somewhat naïve. Careful national legislators or the highest courts may have taken notice of the ALI/UNIDROIT Principles during the preparatory stage of their decision making because in many articles and textbooks of national authors the ALI/UNIDROIT Principles were described and discussed, though their final influence may be only probable and not exactly documentable. This is also true for the notable temporal concurrence of the affirmation of the Principles by the ALI and the subsequent sequence of the US Supreme Court's landmark decisions[7] that required a kind of plausibility test as a precondition for the commencement of discovery proceedings – at least in the eyes of foreign observers going back to a moderate kind of traditional fact pleading as continuously practiced in individual states of the federation, in England, and in other trend-setting states on the European continent and addressed in Principle 11.3 with comment P-11B and in Principle 22.2.1 with comment P-22C (see paragraph 29 below on the development of the Federal Rules as a whole).

29. The most notable success for the ALI/UNIDROIT Principles as a whole to date is the foundational role they played in the development of the 2020 ELI–UNIDROIT Model Rules. Indeed, throughout the ELI–UNIDROIT Model Rules, the drafters took care to provide cross-references to the Principles, demonstrating how the earlier project laid the groundwork for the subsequent more detailed instrument. As with all efforts by non-legislative bodies to propose formal legal reform, it typically takes time before legislatures adopt a project, and even considerably longer before formal adoption takes place. Nevertheless, the message is clear: it is possible, and desirable, to simplify these rules, to reduce transaction costs for businesses that are involved in many countries, and in the process to adopt the best practices that can be distilled from the wealth of national experience.

30. Although it is impossible to know for sure how direct the link is between the Principles and developments in US civil procedure, such a link seems likely. There was a time in the United States when a party could initiate a case in federal court with nothing but a bare-bones complaint, and that party could then turn to wide-ranging and expensive discovery to build a case. This position has now changed: today, pleadings must set forth a plausible case for recovery, and federal judges closely monitor the discovery process, using a variety of judicial-management tools.[8] The rules now emphasise the need for proportionality in the process of developing the essential facts.[9] Particularly

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[7] The decision of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and the decision of Ashcroft v. Iqbal, 556 U.S. 662 (2009).

[8] See, for example, Fed. R. Civ. P. 16 (pretrial conferences, scheduling, and discovery control), Fed. R. Civ. P. 26(f) (requiring development of a detailed discovery plan, under court supervision).

[9] See Fed. R. Civ. P. 26(b)(1).

in commercial cases where cooperation with foreign tribunals is essential, the existence of commonly agreed international standards is helpful.

31. When a court in one country is asked to recognise or enforce a foreign civil judgment, one thing it will examine is the procedural regularity of the latter court's judgment. To the extent that both courts consider their own system to be consistent with the Principles, recognition or enforcement is more likely. It is worth noting again that since 1 September 2023, the Hague Convention on the Recognition and Enforcement of Foreign Judgments has been in effect, though it has yet to be ratified by the United States.[10] If and when ratification occurs, one can expect an increase in the number of judgments eligible for recognition and enforcement.[11]

32. Finally, the ALI/UNIDROIT Principles offer a universal approach to commercial civil litigation and in part to civil procedure generally that comports with the rule of law. Principle 1 offers a concise summary of those values: judicial independence, reasonable tenure in office, impartiality, refusal to engage in unauthorised *ex parte* contacts, and judges with substantial legal knowledge and experience.[12]

3. Implementation by Emphasising a Particular Feature: the Principle of Cooperation

33. An interesting phenomenon is that of implementation by emphasising a particular feature of the Principles. During the work on the ELI–UNIDROIT Model Rules, some of the experts preferred the idea of an "overarching principle of cooperation" in the sense of a general duty imposed on the parties, their lawyers, and the court, which was intended to govern all interactions (see Model Rules 2 et seq.). This understanding of the procedural activities of parties and the court has been criticised by other experts as an exaggeration resulting in an oversimplification of the procedural distribution of risks and duties of the parties.

34. The drafters of the Principles intended only to enumerate individual duties of cooperation among parties and between the court and the parties. They did not propose cooperation as an overarching principle in the sense of a possible source of many concrete duties of cooperation that could form a kind of procedural working community. The drafters of the Principles were aware of the need to avoid a one-sided view of the interaction between the parties and the court and among the parties themselves. In their view neither the sporting theory of justice nor the theory of a procedural working community meets the requirements of the procedural reality, which could be described as a competition among parties to present all arguments to be considered in doing justice. These activities (which are conducted through a more or less adversarial process) need, according to the drafters, rules of fairness that keep the parties on an equal footing and protect them from dishonest or unfair behaviour of the opponent in the interest of truth and the need for justice to be granted within a reasonable period of time.

35. Adopting a different approach, the drafters of the ELI–UNIDROIT Model Rules accepted the idea of a general rule on cooperation between parties, their lawyers and the court, but at the same time they articulated this idea of cooperation in an increased number of specific rules with the clear intention of avoiding the impression of a one-sided view defining the interaction between parties, their lawyers and the court as a kind of procedural working community (see especially Rule 2, Comment 8).

36. As always, texts may have their own fate, and their drafters and the organisations within which they are developed cannot control their future influence on the development of legislation and interpretation of legal rules. Such developments are therefore worthy of continued observation and

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10 See HCCH, at https://www.hcch.net/en/instruments/conventions/specialised-sections/judgments.

11 See especially Principle 30 and comments.

12 ALI/UNIDROIT Principles (n 2), Principle 1, 17.

independent discussion with an openness to outcomes that may vary from what was originally envisaged. This approach is preferable to refusal of reconsideration and a standstill in a changing world.

D. Lessons Learned and Recommendations for the Future

37. One important lesson learned from the experience of UNIDROIT and the ALI in drafting and disseminating the ALI/UNIDROIT Principles is that it can often be most effective to start with a soft-law instrument, rather than proceeding directly to the drafting of a possible model code or other work product that would need to be directly adopted by a national or regional legislative body. The process itself of developing the rules had the salutary effect of revealing in a concrete way to all participants the substantial areas of agreement among them. Where incompatible approaches existed, this process also allowed participants to think of creative ways to identify areas where consensus was not possible and to explore alternative possibilities not yet tested in national systems.

38. Another insight came from the decision to start with broad-based principles rather than with granular, detailed rules. At the level of Principles, it was easier to detect commonalities and to see how different systems handled problems faced by all. This in turn enriched the understanding on all sides of how an effective system of civil procedure operates.

39. Finally, as noted at the outset, UNIDROIT and the ALI did not start out with the goal of creating a single overarching system of civil procedure for the entire globe. Instead, they foresaw the utility of the Principles for regional harmonisation efforts. Such an effort has already borne fruit with the 2020 ELI–UNIDROIT Model Rules, discussed below, and it may be that Latin America or other parts of the world will follow (see Part II). A regional approach allows each region to tailor rules based on the Principles to its own needs.

II. ELI–UNIDROIT Model European Rules of Civil Procedure (2020)

A. Development and Adoption

40. The ELI-UNIDROIT Model European Rules of Civil Procedure were the product of a seven-year programme carried out jointly by the European Law Institute and UNIDROIT (the ELI-UNIDROIT Model Rules Project). They were intended to achieve two objectives: first, to concretise the ALI/UNIDROIT Principles through the development of regional model civil procedure rules based on those Principles; and, second, to realise a longstanding aim of European civil proceduralists to develop such harmonised rules.[13]

41. The ELI-UNIDROIT Model Rules Project began in 2013. Initially, working groups were established to address three areas of civil procedure: service and due notice of proceedings; provisional and protective measures; and access to information and evidence. This scope of the project expanded over time, ultimately encompassing all aspects of procedure, from overarching principles to costs and funding.[14] The ELI-UNIDROIT Model Rules were finalised and published in 2020

[13] Recommendation No. R (84) 5 of the Council of Ministers to Member States on the Principles of Civil Procedure designed to improve the functioning of justice, Council of Europe (1984); M. Storme, *Approximation of Judiciary Law in the European Union* (Kluwer, 1994) 61; R. Jacob, *Towards a European Civil Procedural Code?*, (1998) The International Journal of Legal Education 125.

[14] See J. Sorabji, *The ELI-UNIDROIT – project: an introduction and an English perspective*, in A. Nylund & M. Strandberg, *Civil Procedure and Harmonisation of Law: The Dynamics of EU and International Treaties*, (Intersentia, 2019); R. Stürner, *The ELI-UNIDROIT Model Rules of Civil Procedure, An Introduction to Their Basic Conceptions*, [2022] Rabels Zeitschrift für ausländisches und internationales Privatrecht 421.

by Oxford University Press and via open access.[15] Since their initial publication in English and French, they have been translated into Farsi, Italian, Portuguese, Spanish, and Ukrainian.[16]

B. Key Content

42. The Model Rules comprise 245 Rules with accompanying commentary, organised into twelve Parts: General Provisions; Parties; Case Management; Commencement of Proceedings; Proceedings Preparatory to a Final Hearing; Service and Due Notice of Proceedings; Access to Information and Evidence; Judgment, Res Judicata and Lis Pendens; Means of Review; Provisional and Protective Measures; Collective Proceedings; and Costs.

43. At their foundation lies a cooperation principle, fostering collaboration among the court, the parties, and their lawyers to ensure fair, efficient, and speedy dispute resolution, marking a shift away from traditional adversarial and inquisitorial models. This is reinforced by the principle of proportionality, which requires courts to handle cases in a manner commensurate with the nature, importance, and complexity of the dispute and its associated costs, and by the right to be heard as a constitutive element of procedural justice. Structurally, first-instance proceedings are organised into three clear stages: written pleadings; an interim phase preparing the final hearing, or if appropriate providing for early final judgment; and a concentrated final hearing. This structure promotes a balance between oral and written process.

44. The Model Rules also develop several specific areas through innovative approaches. With respect to access to information and evidence, they establish European best practices distinct from US-style discovery, emphasising proportionality, the protection of confidential information, and the court's exceptional *ex officio* power to request evidence. In relation to judgments, the Model Rules align with the jurisprudence of the Court of Justice of the European Union on *lis pendens* and extend the positive effect of *res judicata* to incidental and necessary legal issues explicitly decided. Appeals are designed to balance finality against error correction through limitations on the right and scope of appeal. Regarding collective redress, the Model Rules cover both injunctions and damages actions, generally preferring an opt-in mechanism while allowing opt-out for low-value claims, and requiring transparency of third-party funding. They also provide for (i) proceedings solely for settlement purposes ("stand-alone settlement") and (ii) proceedings where the court calculates the total amount of damages and orders the establishment of a fund to be distributed among group members according to the strength of their claims, on the basis of equitable criteria as determined by the court. Provisional and protective measures may be issued *ex parte* in urgent situations, subject to a prompt subsequent inter partes hearing, while costs generally follow the "loser pays" principle, tempered by judicial discretion based on the parties' success and conduct.

C. Impact and Implementation

45. While it is clear to see the extent to which the ELI-UNIDROIT Model Rules have been recognised academically, gauging their influence is more challenging. Their influence may, however, be assessed at three levels: national, European, and international. In this context, it is important to distinguish between model European rules and model European Union rules, as the ELI–UNIDROIT Model Rules are intended for Europe more broadly, rather than exclusively for the European Union.

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[15] ELI-UNIDROIT, *ELI-UNIDROIT Model European Rules of Civil Procedure – From Transnational Principles to European Rules of Civil Procedure*, (OUP, 2021); https://europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_UNIDROIT_Model_European_Rules.pdf and https://www.unidroit.org/instruments/civil-procedure/eli-unidroit-rules/.

[16] See https://europeanlawinstitute.eu/projects-instruments/instruments/eli-unidroit-model-european-rules-of-civil-procedure/.

1. Modes of Influence

(a) National Influence

46. The ELI-UNIDROIT Model Rules have been influential in several European countries. Influence can be traced back to the earliest stages of the Project. The first country to draw inspiration from the ELI-UNIDROIT Model Rules was Hungary. In 2014, one year after the ELI-UNIDROIT Model Rules Project began, Hungary commenced a revision of its civil procedural code. That process continued until 2016 with the new code coming into force in 2018. During that time, there was considerable engagement by the Hungarian Ministry of Justice with members of the ELI-UNIDROIT Model Rules Project's working parties.[17] Insights from the ELI-UNIDROIT Model Rules Project were noted to have influenced the design of the new Hungarian Code.[18]

47. A more subtle form of influence has been identified as potentially arising in Norway, a non-EU country within Europe. Scholars have noted how, due to the pragmatic and practical approach that the ELI-UNIDROIT Model Rules took to the development of model rules, there is a likelihood that, as with other such soft-law instruments that demonstrate a pragmatic focus, the Model Rules will influence both the interpretation and application of the Norwegian Code of Civil Procedure. This has particularly been noted where approaches to case management are concerned. More specifically, however, their influence has been noted in revisions to the rules concerning appellate process. The Commission that considered such reforms was, for instance, reported to have made several references to the ELI-UNIDROIT Model Rules' approach to appellate process in its work revising the Norwegian rules, concluding that its reforms should follow the approach taken by the Model Rules.[19]

48. Similarly, the ELI-UNIDROIT Model Rules' influence has been noted in Croatia. From 2019, its Code has been subject to several amendments. These include reforms to the approach of case management, which reflect the ELI-UNIDROIT Model Rules' approach to cooperation between parties, lawyers, and the court in promoting proper management of proceedings, and reform to permit the deployment in proceedings of evidence procured by illegal means, which is also consistent with the approach advocated by the ELI-UNIDROIT Model Rules. Additionally, the ELI-UNIDROIT Model Rules' approach to the promotion of settlement efforts prior to proceedings commencing has been identified as an influence in the reforms in Croatia concerning the promotion and use of ADR.[20]

49. Additionally, there are anecdotal indications that the ELI-UNIDROIT Model Rules have influenced procedural reform in France and have been considered by the body responsible for developing the civil procedural rules in England and Wales; where the latter is concerned, this has been said to be particularly so where the Model Rules' approach to *lis pendens* and *res judicata* is concerned. It is, however, difficult to find concrete examples of such influence.

(b) European Influence

50. The ELI–UNIDROIT Model Rules' influence at the European level has taken two forms, both of which have focused on the European Union.

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[17] See, for instance, the conference held on the development of the ELI-UNIDROIT Model Rules in Hungary in May 2016 <http://www.lb.hu/sites/default/files/sajto/new_hungarian_civil_procedure_act_programme_final_draft_30-31_may_2016.pdf>; and see *Acta Iuridica Hungarica* Volume 58, Issue 1, March 2017.

[18] The new Code entered into force on 1 January 2018. See, L. Pribula, *The New Civil Procedure Code in Hungary*, (SUBB Iurisprudentia) 79.

[19] H. Haukeland Fredriksen & M. Strandberg, *Impact of the ELI-UNIDROIT European Model Rules for Civil Procedure on National Law – the Case of Norway*, Oslo Law Review Volume 9, No. 3-2022, 152 at 160 and following.

[20] A. Uzelac, *Principles of civil procedure under ELI-UNIDROIT rules: convergence through a uniform approach to procedural obligations?*, Uniform Law Review, 2025, 30, 18 at 30-32.

51. First, the European Commission took an active interest in the ELI–UNIDROIT Model Rules Project throughout its lifespan. That interest was noted by the Commission's representatives to form the biggest step forward in European civil procedure since the 1980s, a conference on the ELI–UNIDROIT Model Rules held in Vienna in 2024 reported that the project had influenced EU developments in, for instance, revisions to its approach to service of process. Second, the project directly inspired the European Parliament to engage in work to develop common minimum standards for European civil procedure. That work ultimately resulted in the publication of a draft Directive on such minimum standards in 2017. Although the initiative has not progressed further, the very fact that the EU institutions engaged in this area amounted to a significant step forward for the European Union.[21]

(c) International Influence

52. The extent to which the ELI–UNIDROIT Model Rules have exerted influence beyond Europe remains difficult to ascertain, although it is noteworthy that UNIDROIT has considered whether to expand its regional approach to harmonisation of civil procedure rules to South America.

2. Dissemination, Use, and Engagement, including Illustrations from Practice

53. The ELI–UNIDROIT Model Rules have been well received internationally. Notwithstanding the fact that they were finalised and launched during the COVID-19 pandemic, which severely limited the opportunity for in-person conferences and study, they have been the subject of consistent academic scrutiny. By way of example, the ELI–UNIDROIT Model Rules have featured prominently at conferences organised by the Academy of European Law (2018),[22] at the Future of European Civil Justice Conference in Uppsala (2021)[23], and at a conference dedicated to the launch of the Spanish translation of the ELI–UNIDROIT Model Rules in Madrid (2022). The ELI–UNIDROIT Model Rules have also been the subject of multiple conferences organised by both the ELI and UNIDROIT.

54. In addition to being the subject of multiple conferences, the ELI–UNIDROIT Model Rules have also formed the basis for the creation of a dedicated academic Chair at IE University in Madrid. That Chair focusses on the detailed study of the ELI–UNIDROIT Model Rules and has, among other things, furthered that through organising lectures and seminars on them, the publication of a monograph, and the development of the Spanish translation. The monograph is particularly noteworthy as it takes the form of a dialogue between the various authors of the ELI–UNIDROIT Model Rules and details their understanding of the Model Rules and their development.[24] Furthermore, monographs have also demonstrated direct influence of the ELI–UNIDROIT Model Rules; for example, the development of a model code of civil procedure for England and Wales was directly inspired by the ELI–UNIDROIT Model Rules.[25]

55. Detailed exegesis has also been provided through the publication of an analysis of the ELI–UNIDROIT Model Rules: *European Rules of Civil Procedure – A Commentary on the ELI–UNIDROIT Model Rules*. This both traces the drafting history of the rules and provides a detailed and in-depth

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[21] For discussion see, J. Sorabji (2019) noting how the minimum standards Directive can be seen to draw directly from the ELI-UNIDROIT Model Rules' approach to case management; and also see the discussions in F. Gascon Inchausti & B. Hess (2020) at 241 and following.

[22] Academy of European Law (ERA), 'From Transnational Principles to European Rules of Civil Procedure' (Conference, Trier, 26–27 November 2018) https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Projects/Unidroit_Materials/Trier_2018/118DP09_Programme.pdf accessed 12 November 2026.

[23] Swedish Network for European Legal Studies and Uppsala University, 'The Future of Civil Procedure in Europe – A Nordic Perspective on the Model European Rules of Civil Procedure' (Conference, 15–16 March 2021).

[24] M. de Benito, C*olloquies on European Civil Procedure – Exploring the ELI-UNIDROIT Model European Rules of Civil Procedure*, (Brill, 2025).

[25] J. Sorabji, *A Model Civil Procedure Code for England and Wales*, (OUP, 2024).

critique.[26] Other notable commentary on the Rules includes *The Future of the European Law of Civil Procedure*, which considers, among other things, the nature and influence of the ELI–UNIDROIT Model Rules on developing strands of European civil procedural coordination and harmonisation.[27]

56. Academic commentary has not been confined to monographs and edited works. There have been a significant number of scholarly articles published on the ELI–UNIDROIT Model Rules. The ELI regularly publishes an updated, non-exhaustive list of such articles, which currently notes thirty-three publications.[28] Additionally, the *Uniform Law Review* has published numerous peer-reviewed articles on the ELI–UNIDROIT Model Rules.[29] It is fair to say that the ELI–UNIDROIT Model Rules' academic reception has been particularly significant.

D. Lessons Learned and Recommendations for the Future

57. The ELI–UNIDROIT Model Rules are a soft-law instrument. They concern, in the European context, an area of law that is closely associated with national sovereignty and well embedded in individual countries' legal cultures. The successful development of such a set of Model Rules given unsuccessful past attempts was itself a major achievement. To expect them to have anything other than medium to long-term effects would be overly optimistic. As previously illustrated, their shorter-term influence is more likely to be felt in countries that are undergoing civil procedural reform. In such circumstances, the Rules can provide a ready template and a source of inspiration.

58. If UNIDROIT and the ELI were to reconsider the steps taken to promote the ELI-UNIDROIT Model Rules, they might however be well-advised to consider the following.

59. First, although planned promotional events were disrupted by the COVID-19 pandemic, a clearer and more detailed dissemination strategy could have been devised; extending beyond a single launch conference. This could have included, for instance, a series of planned events across Europe, hosted by law faculties or law firms.

60. Second, the publication of the ELI–UNIDROIT Model Rules could have been accompanied by a shorter policy brief, which could have been disseminated to policymakers and those responsible for drafting and making civil procedure rules across Europe. This could have enabled a much more targeted and focused effort to influence those opinion-makers who could themselves concretely influence procedural reform.

61. Third, given the opportunity that is, and remains, present to influence procedural reform due to European States' ongoing efforts to digitalise their civil justice systems, it remains possible for UNIDROIT to engage in the first and second activities: to bring the ELI–UNIDROIT Model Rules back to, or into, the foreground, of procedural reform at a time when transnational harmonisation of European civil procedures could well be achieved to a greater degree than in the past through those

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[26] A. Stadler et al, *European Rules of Civil Procedure – A Commentary on the ELI-UNIDROIT Model Rules*, (Elgar, 2023).

[27] F. Gascon Inchausti & B. Hess*, The Future of the European Law of Civil Procedure*, (Intersentia, 2020). Also see the coverage of the ELI-UNIDROIT Model Rules in X. Kramer et al, *European Civil Procedure*, (de Gruyter, 2026).

[28] See https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Citations/Citations_ELI-UNIDROIT_Model_European_Rules_of_Civil_Procedure.pdf.

[29] See, for instance: R. Stürner, *The Model European Rules of Civil Procedure—an overview of the main issues between the drafters from a today's point of view*, Uniform Law Review, Volume 30, Issue 1, March 2025, 1; A. Uzelac, *Principles of civil procedure under ELI-Unidroit rules: convergence through a uniform approach to procedural obligations?,* Uniform Law Review, Volume 30, Issue 1, March 2025, 18; M. Ahmed, *Harnessing the ELI-Unidroit Model Rules of Civil Procedure in promoting 'judicial ADR activism' in the English civil justice system*, Uniform Law Review, Volume 30, Issue 1, March 2025, 69; D. Wood, *A US Perspective on the ELI/Unidroit Model Rules of Civil Procedure*, Uniform Law Review, Volume 30, Issue 1, March 2025, 11.

digitalisation programmes. In this regard, it may be noted that the ELI–UNIDROIT Model Rules did not cover extensively and in detail the use of artificial intelligence (AI) in justice. Although the instrument did acknowledge the increasingly relevant role of technology in civil procedure and even anticipated the potential role of AI in civil justice, it was decided not to include special provisions dealing with the use of AI in and for decision-making in the civil justice system. In the absence of specific provisions, several questions were left unanswered. Now, the legal landscape has evolved dramatically, and digitalisation and automation must be addressed. Therefore, a revision and a possible supplement on technology to the Model Rules might warrant consideration.

III. Best Practices for Effective Enforcement (2026)

A. Development and Adoption

62. The project built on UNIDROIT's earlier work on "Principles of Effective Enforcement". In December 2018, the World Bank submitted a focused proposal on best practices for debt enforcement. Following a consultation procedure authorised in 2020, the Governing Council approved the project's scope and established a Working Group, chaired by Ms Kathryn Sabo and supported by institutional observers including the European Bank for Reconstruction and Development (EBRD), the ELI, the HCCH, UNCITRAL, the International Union of Judicial Officers (UIHJ), and the World Bank Group.

63. Between 2020 and 2025, the Working Group held eleven plenary sessions, with intersessional drafting work carried out through three thematic subgroups, which prepared draft recommendations and comments that served as the basis for the work of a joint Drafting Committee. A comprehensive draft was finalised in early 2025 and released for public consultation from 1 July to 15 September 2025; the eleventh session, held in October 2025, addressed the outcome of the consultation. The instrument was approved by the UNIDROIT Governing Council at its 107th session in May 2026, and the preparations for its publication is underway.

B. Key Content

64. The BPEE aim to make the enforcement of creditors' claims more effective while securing adequate protection for debtors and third parties. Addressed primarily to domestic legislators, they are structured in three Parts subdivided into Chapters containing Recommendations and Commentary, some framed as provisions that could be enacted directly, others as guidance for designing or reforming more tailored enforcement rules.

65. Part I addresses enforcement by public authority, offering global standards for general enforcement procedures. Part II covers the enforcement of security rights, focusing on extrajudicial mechanisms and complementing existing international instruments, including those developed by UNCITRAL, with new guidance on expeditious relief and on enforcement over immovables. Part III deals with enforcement on digital assets, aligning with and supplementing the UNIDROIT Principles on Digital Assets and Private Law (DAPL).

66. Several features are identified as innovative. For example in Part I, Chapter V provides for the establishment of registers or systems of registers in which enforceable instruments (as defined in Chapter III), the results of disclosure, and the record of all enforcement measures and their outcome are stored in digital form, supervised by a court or other public authority so as to ensure reliability and the protection of all parties involved. As legal systems increasingly adopt digital platforms to manage civil proceedings, including the enforcement phase, legislators may consider adopting this solution or at least draw inspiration from it in relation to supervision options, content, accessibility, data protection, and communication with registries set up for other purposes. Another example concerns the recommendation on online auctions (Rec. 52), which is purposely placed in a

separate section to ensure visibility, and is recommended for all types of assets including immovables, an important innovation with respect to legal systems still adopting a more restrictive approach.

67. Part I puts emphasis on proposals suitable for improvements of effective and fair civil enforcement, which are, for many countries, at least in part innovative: creditor´s disposition of the commencement and termination of enforcement proceedings and limited disposition of the enforcement measures to be taken; guidance to legislators to easily and quickly consider and incorporate accessible enforceable instruments that do not finally determine the merits of the underlying claim but postpone their determination completely or in part to later fair and efficient proceedings; effective modes of monetary enforcement on all assignable and transferable assets, irrespective of whether they are tangible, intangible, movable or immovable, digital or virtual assets, rights, or other kinds of interest; enhanced duties of cooperation and disclosure of debtors and third parties and efficient search orders as a matter of last resort and within the limits of fundamental rights; appropriate seizure of movables by means of electronic restraints or control and automation of the third-party debt order procedure; third-party debt order entitling to seizure of the third party's assets; extension of the applicability of receivership to all cases of complex enforcement with combined or time-consuming enforcement measures; applicability of enforcement measures against debtors personally as a matter of last resort in all cases where enforcement measures on assets turn out to be inefficient or impossible without the debtor´s active cooperation; simplified and expediently working system of challenges to enforcement, which is important especially to guarantee the effective protection of debtor's and creditor's fundamental rights; public officers and private enforcement agents invested with the same public authority and endowed with the same rights and duties, according to the legislators' choice of organisational structure, with the possibility of a system with competing types of enforcement organs.

68. In Part II, Recommendation 120 on expeditious relief to support extrajudicial enforcement is one of the instruments most innovative recommendations, with particular relevance to the effectiveness of extrajudicial enforcement on movable collateral. In many legal systems, once a party raises opposition, the extrajudicial procedure is turned into an ordinary judicial proceeding, thereby frustrating its very purpose. The expeditious relief in Recommendation 120 offers balanced guidance to legislators on how to ensure that the extrajudicial enforcement stays on track. Another area where unprecedented international guidance is provided is Chapter VII on security rights in immovables, which contains rules informed by best practices in both common law and civil law jurisdictions as well as the World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes.

69. Finally, Part III concerning enforcement on digital assets reaffirms a technologically neutral approach, based on the premise shared with Principle 18 of the DAPL that the relevant factor is not the asset's characterisation under domestic law but whether it has value that can be realised through enforcement. Part III is based on the concept of digital assets laid down in the DAPL. That entails the assumption that general rules and best practices of the BPEE do apply to digital assets and other digital items to the maximum extent possible, so adaptations are limited to those necessary considering the functional, operational, or practical features of such assets.

C. Implementation and Engagement

1. Implementation Options and Factors

70. Unlike the implementation of other instruments, such as conventions or model laws, implementation of best practices is more difficult to trace and assess and may take various forms from providing inspiration for domestic initiatives to, less frequently, formal "reproduction" of the recommendations in domestic acts of any kind. Therefore, effective implementation-tracking mechanisms and, more importantly, factors revealing effective implementation should be considered.

71. Implementation efforts should be focused on raising awareness and promoting dissemination among States and other relevant stakeholders. The primary steps to trigger the implementation process are as follows: (i) specific sessions of the UNIDROIT International Programme for Law and Development on the BPEE are key to engaging courts and judges in the awareness-raising activities; (ii) additional training workshops for judges and enforcement agents can be developed; and (iii) distribution to institutions responsible for development and law reform should be envisaged.

72. Cooperation, partnerships and joint activities with institutions working on law reform and capacity-building are important means of influencing law reform in targeted jurisdictions: (i) UNIDROIT can propose that the BPEE be incorporated into the law-reform packages developed by EBRD or the World Bank Group in jurisdictions engaged in reforming both access to credit and judicial system; (ii) UNIDROIT can partner with organisations such as the International Union of Judicial Officers, which actively participated in the development of the project, not only to raise awareness among its members but also to inform future editions of instruments such as the Global Code of Enforcement; (iii) Part II of the BPEE can be coupled with the UNCITRAL Model Law on Secured Transaction in secured transactions law reform projects; (iv) the BPEE can be offered as a complement in strategies to digitalise judicial systems undertaken in several jurisdictions; and (v) Part III of the BPEE could be presented alongside the DAPL.

73. In addition, the dissemination of both Part III of the BPEE and the ELI Principles and Guidance for Implementation on Enforcement against Digital Assets, adopted by the ELI in parallel to the BPEE project, might benefit from cooperation between the two organisations. This latter instrument provides practical guidelines and specific recommendations for regulators revising their legal framework for enforcement to ensure adaptability to digital assets. Joint events might enhance the visibility of both instruments with a specific focus on this topical matter, bearing in mind that Part III of the BPEE operates within the general framework establishment by Parts I and II.

2. BPEE as a Benchmark

74. The BPEE can be used as a benchmark in indexes and rankings assessing the robustness of judicial systems, the reliability of enforcement methods, and the attractiveness for investors (e.g. the World Bank Group's Business Ready (B-READY) project or similar).

3. Implementation-Assessing Factors

75. Successful implementation should then be assessed in terms of impact on procedural practice and inspiration for law reform. Efforts should be made to identify these factors.

4. Engagement

76. Joint presentations to courts, enforcement agents, and lawmakers may be more effective if the BPEE are presented in combination with the following instruments: (i) the DAPL; (ii) UIHJ Global Code on Enforcement and the guidelines of the European Commission for the Efficiency of Justice (CEPEJ); (iii) for Part III of the BPEE, ELI Principles and Guidance for Enforcement Against Digital Assets and the UIHJ Global Code on Digital Enforcement; (iv) the ALI/UNIDROIT Principles and the ELI–UNIDROIT Model Rules, in relation to selected BPEE recommendations; (v) The work of the UNIDROIT Cape Town Convention Academic Project (CTCAP): in relation to selected recommendations in Part II.

D. Recommendations for the Future

77. The BPEE form an extensive and comprehensive instrument, but it is not, nor was it intended to be, a complete and exhaustive set of best practices on enforcement. Thus, there are areas that are not explicitly covered, while others are more innovative and provide insights to reforming jurisdictions. Therefore, the instrument can more effectively operate in a modular manner, with its Parts considered separately. To that end, specific groups of provisions (e.g. on immovables, expeditious relief for extrajudicial enforcement, liability, or technology) might be disseminated and shared separately, without disregarding the consistency and the unity of the text. This strategy can be used not only for dissemination or communication, but also for training purposes.

78. Although the impact of technology was considered from the outset of the project and constituted one of the key pillars in the formulation of effectiveness-enhancing solutions, the final BPEE does not provide a systematic and structured set of best practices on digitalisation. That feature might undermine its potential as a benchmark or as the key tool in digitalisation initiatives. The BPEE might be complemented with a supplement compiling in a coherent document all the BPEE practices dealing with technology-related issues and accompanied by a substantive introduction

79. Part III of the BPEE might be revisited in connection with the recommendations dedicated to immovables to assess whether, and how it applies, to real estate tokens. Tokenisation linked to or involving immovables is increasing dramatically in most markets. The ELI is starting a project on "Taxonomy of Real Estate Tokens and Legal Problems". Cooperation on this project would be particularly value.

80. As data gain relevance not only as commercial assets integrating portfolios and company estate, but also significant economic value, enforcement against data will increase at a fast pace. The BPEE addresses data but without specific, bespoke solutions. General best practices apply to them, considering their intangible character, provided that they have not been issued or are not circulating as digital assets for the purposes of Part III. Jurisdictions need more clarity to adapt their laws to the data economy. A data-specific supplement based on the BPEE might play an enabling role.

PART TWO — OTHER UNIDROIT PROJECTS

I. International Civil Procedure in Latin America (Adopted Project)

A. Development and Current Status

81. The origins of the project date back to 2019, when the Department of International Law of the Organization of American States (OAS) formally expressed its interest in exploring joint work with UNIDROIT in the field of international civil procedure. Drawing on informal exchanges and consistent with the geographical mandate of the proponent, the envisaged work was to focus on the Latin American jurisdictions. It was intended to build upon UNIDROIT's earlier work with the American Law Institute, namely the ALI/UNIDROIT Principles, and to draw inspiration from the joint work with the European Law Institute, namely the ELI–UNIDROIT Model Rules, which had adapted the ALI/UNIDROIT Principles to the European regional dimension.

82. At its 98th session in 2019, the Governing Council recommended that the project be included in the Work Programme with low-priority status, pending the conclusion of the ELI–UNIDROIT project. This recommendation reflected both the higher priority then accorded to the project on Effective Enforcement and the generality of the original proposal, which was considered to require further consultation. The recommendation was adopted by the General Assembly at its 78th session in December 2019.

83. The project remains conceptually anchored in UNIDROIT's broader trajectory of regional procedural harmonisation. From UNIDROIT's perspective, the ELI–UNIDROIT project represented a first regional adaptation capable of paving the way for further projects tailoring the ALI/UNIDROIT Principles to the specificities of other legal cultures. The Work Programme accordingly envisages the development of an instrument on procedural law in Latin America. For the time being, the Governing Council has retained the project's low priority status, leaving open the question, now before the Committee , of whether that status should be reconsidered in light of the growing interest in procedural harmonisation and recent regional developments.

B. Rationale and Need

84. Procedural law in several Latin American jurisdictions may require modernisation, although a number of them have already adopted modern solutions. The region is not without materials on which to draw: the Principles on Transnational Access to Justice (TRANSJUS) of the American Association of Private International Law (ASADIP), the Ibero-American Protocol on International Judicial Cooperation approved at the Plenary Assembly of the XVII Ibero-American Judicial Summit held in Chile, and the Inter-American Juridical Committee (IAJC) report and Guide on Technology and Cooperation approved in August 2023 provide well-developed models for States seeking to modernise their procedural law.

85. Against this background, UNIDROIT's future work might usefully extend to the preparation of a new soft-law instrument, perhaps a model law, that would harmonise the work already accomplished, in particular across Latin America and Europe. Such an instrument would bring together the Latin American soft-law instruments referred to above with the ALI/UNIDROIT Principles and the ELI–UNIDROIT Model Rules, as well as the Model Code of Civil Procedure for Ibero-America (*Código Procesal Civil Modelo para Iberoamérica*) and the Model Code of Interjurisdictional Cooperation for Ibero-America (*Código Modelo de Cooperación Interjurisdiccional para Iberoamérica*). The latter, adopted in 2008 with the participation of Professors Ángel Landoni Sosa and Eduardo Véscovi on behalf of Uruguay, sets out in the form of articles, the provisions that national procedural codes should incorporate in this field.

86. An instrument of this kind would prove valuable in the numerous private international law cases requiring judicial cooperation between courts across different continents. Its principal merit would lie in building upon existing work and coordinating efforts rather than duplicating them.

87. The envisaged text should serve both as a model for legislative reform and as an interpretive benchmark for courts and practitioners. A model code — or a dedicated cooperation section within a procedural code — if properly updated, would be well suited to both functions.

88. The more pressing priority, however, lies elsewhere. Beyond the proliferation of repetitive conventional norms (normas convencionales) and of soft-law instruments that are inadequately disseminated, what is most urgently required is the training of Central Authorities, judiciaries and legal practitioners in international legal cooperation. Unfamiliarity with elementary questions remains widespread, and its consequences are tangible: a procedure channelled through a Central Authority precisely in order to simplify it frequently results in two further links — the requesting and the requested Central Authorities, being added to an already lengthy diplomatic chain. No amount of further agreements or soft law will remedy this; training, and the assignment of permanent specialised staff to the Central Authorities, would.

89. This difficulty is compounded by a shortage of human resources. Certain Central Authorities are staffed by a single official, a situation by no means confined to developing countries, also encountered also in European States, which for matters such as child support or international child abduction may designate only one official. The consequences are practical: acknowledgement of receipt of a child support application may take a year, or proceedings may be suspended until the responsible official returns from leave.

90. Unless theory is translated into practice, the field will continue to generate agreements that States decline to ratify — or, worse, ratify without implementing — and soft-law instruments that remain unknown to those who might otherwise apply them.

C. Existing Instruments and Gaps

91. The regional instruments bearing on procedural law in Latin America are numerous, and several of them are relevant in more than one respect. Among those concerned with access to justice are the Agreement on the Benefit of Litigating Without Costs and Free Legal Assistance between the States Parties of the Southern Common Market (MERCOSUR), and the corresponding Agreement between the States Parties of MERCOSUR, the Republic of Bolivia and the Republic of Chile. The latter was ratified by Uruguay through Law No.19.261 of 2014 (deposited ten years later) and is currently in force between Brazil, Paraguay, Chile and Uruguay.

92. The Convention of 25 October 1980 on International Access to Justice (HCCH 1980 Access to Justice Convention) should likewise be taken into account. It ensures that nationals or habitual residents of a Contracting Party enjoy access to justice in all Contracting Parties on a non-discriminatory basis, covering legal aid (including legal advice), security for costs, copies of entries and decisions, and physical detention and safe-conduct. Its object is not the harmonise domestic laws but to ensure that alien status, or the absence of residence or domicile in a Contracting Party, does not constitute a ground for discrimination in matters of access to justice.

93. Among these instruments, those that primarily address recognition and enforcement include the Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (adopted at CIDIP-II, Montevideo, 1979), with ten States Parties. Several other hard-law and soft-law instruments also touch on the subject, including Chapter V of the Protocol of Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters (MERCOSUR, Las Leñas, 1992); Chapter 7 of TRANSJUS, drafted by Javier Ochoa-Muñoz; and Chapter VI of the Ibero-American Protocol on International Judicial Cooperation.

94. A number of these instruments contain guidance relevant to procedural law as such: the Inter-American Convention on Letters Rogatory (adopted at CIDIP-I, Panama, 1975), in force in eighteen countries, together with its 1979 Additional Protocol; the Inter-American Convention on the Taking of Evidence Abroad (adopted at CIDIP-I, Panama, 1975) and its 1984 Additional Protocol; the Inter-American Convention on the Execution of Preventive Measures (adopted at CIDIP-II, Montevideo, 1979); the Protocol of Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters (MERCOSUR, Las Leñas, 1992) and its Supplemental Agreement; the Agreement on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters between the States Parties of MERCOSUR, the Republic of Bolivia and the Republic of Chile; and the MERCOSUR Protocol on Precautionary Measures (1994), with four States Parties, among others.

95. As to gaps, the principal limitation of the existing hard-law instruments is that having been adopted before the relevant technological developments, they do not specifically address the use of modern digital technologies in judicial cooperation or, *a fortiori*, artificial intelligence. The existing soft-law instruments may nonetheless serve as guides to an updated interpretation and application of the hard law. Given the pace at which technology and artificial intelligence are evolving, it is here that a revived UNIDROIT initiative could add value, ideally in the form of a soft-law instrument permitting continuous updating.

D. Coordination and Added Value of a UNIDROIT Initiative

96. A revived initiative could add value by offering a global soft-law instrument capable of serving cases that involve both the Latin American and European legal spheres. Identifying which elements of the ELI–UNIDROIT Model Rules would be useful references for a Latin American "regionalisation" effort — and which would be less transferable — would, however, require a dedicated comparative study, best undertaken as future joint work between UNIDROIT, ASADIP and the IAJC. The same comparative exercise would help to pinpoint those areas where existing instruments are not sufficiently detailed yet are important in practice, and where Latin American work could contribute useful substance.

97. A soft-law instrument would be the most suitable form for this initiative, both regionally and globally, principally because it can be updated more readily than a hard law instrument and can be applied without the protracted process of securing ratification by States. Such an approach would allow the work to be carried forward simply by issuing new, updated versions as frequently as necessary, a lesson borne out by existing Inter-American soft-law experience.

98. The most realistic and useful deliverable for UNIDROIT would accordingly be a global soft-law instrument that incorporates Latin American and European perspectives and that harmonises and coordinates the existing instruments.

99. The suitable partners for this work would be ASADIP, the OAS/IAJC, and the ELI. ASADIP would be particularly valuable given its leadership and transatlantic orientation, and because it brings together the principal private international law professors of the region and beyond, all drawn from well-known universities, which makes it unnecessary to approach those universities individually. The OAS/IAJC has already worked on the subject, producing the 2023 report on new technologies and their relevance for international jurisdictional cooperation, which includes a Guide to Best Practices in Jurisdictional Cooperation for the Americas.

100. The initiative should nonetheless be pursued through a single lead partner, UNIDROIT, which would coordinate and guide the work and convene meetings with other partners. As a first step, an exploratory workshop with the participation of multiple partners, including the ELI and the ALI, would be appropriate.

E. Technology and Emerging Issues

101. The priority issues relating to technology in civil procedure span the full range of matters mentioned above: electronic records and files, electronic and digital signatures, electronic communications, electronic addresses for service, and the notification and the service of orders, decisions and judgments by electronic means, as well as judicial summons, the use of artificial intelligence by lawyers and judges, electronic forms, and related questions. The IAJC report and its Guides have already addressed most of these topics, though not all of them — artificial intelligence being a notable exception. UNIDROIT could therefore progress the work, rather than starting from scratch.

102. Technological advances should be incorporated without being tied to specific systems, so as to avoid reproducing situations of the kind now found in certain criminal-matters agreements, where the "advance" of a letter rogatory by electronic means is contemplated by reference to the fax and the telex — two technologies more readily found today in a museum than in an office.

103. As to artificial intelligence and other rapidly evolving technologies, a soft-law instrument appears to be the best available vehicle for keeping the text workable and future-proof, though other forms cannot be excluded.

104. Given the significant disparities in technological readiness across Latin American and Central American jurisdictions, the approach taken by the IAJC report on new technologies and their relevance for international jurisdictional cooperation seems appropriate. The report's Guide does not impose solutions on States or on the various public and private legal practitioners; rather, it proposes means of achieving its objective — the best use of the technology available in each country — so as to improve and optimise the functions performed by the conventions and domestic rules in force, without any need, at least initially, to modify or replace them. It also offers solutions or recommendations for cases in which no convention exists between the States concerned. This is without prejudice to the future development of an adequate legal framework for the use of information and communication technologies (ICTs). In practice, the solutions the Guide suggests may be implemented to the extent that the economic and technological realities of each State render them feasible, gradually and in a manner adapted to each country's capacity.

105. Even so, it would be desirable to encourage States to implement these technological mechanisms. Many Central Authorities, for instance, do not accept electronic transmission — not for lack of willingness, but because they know that their judges will not accept it.

F. Conclusion

106. In conclusion, the assessment is as follows: instruments aimed at updating existing norms are welcome, particularly those that promote the modification of domestic procedural regulations, inspired by a model code or equivalent soft-law instrument, that could be negotiated within the framework of UNIDROIT and geared towards the adoption of relatively homogeneous procedural rules among States. This would significantly contribute to strengthening international legal cooperation, while allowing each country to adapt these rules to its own legal system, its institutional capabilities, and its level of development.

107. All of this must be undertaken while incorporating a practical perspective into the diagnosis — one that affords international legal cooperation the institutional relevance, and the material and human resources, that it requires. Otherwise, there is well-founded reason to fear that the work will continue to produce technically accomplished texts which, absent adequate dissemination and effective implementation, ultimately fail to influence daily practice. While this does not fall within the remit of UNIDROIT— still less within that of the academic community — it is nonetheless an aspect that should not be overlooked.

PART THREE — DISPUTE RESOLUTION IN OTHER UNIDROIT INSTRUMENTS

108. Dispute resolution is not confined to those UNIDROIT instruments whose subject matter is specifically procedural, or to flagship instruments such as the UNIDROIT Convention on International Interests in Mobile Equipment (Cape Town Convention) and its Protocols. Several other UNIDROIT substantive-law instruments devote a chapter, or a group of provisions, to the question of how parties are to proceed once the relationship they have structured breaks down. Instruments that guide parties through the formation and performance of a contract usually contain guidance on remedies for non-performance (e.g., the UNIDROIT Principles of International Commercial Contracts (UPICC)). Other specialised instruments may offer recommendations or model provisions on enforcement.[30] In recent years, however, it has increasingly been recognised that instruments addressing contract law matters, especially those in the form of a legislative or legal guide, should not remain silent on dispute resolution, given the benefits of considering and addressing such issues in the contract itself.

I. UNIDROIT Instruments Related to Private Law and Agriculture

109. The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (2015) (LGCF) in its Chapter 7, provides a detailed overview of various possible amicable dispute resolution methods such as mediation, conciliation, and arbitration alongside more traditional judicial proceedings, whilst stating that efforts should first be made to resolve the problems between contracting parties through negotiations and cooperation. Though this instrument does not recommend any specific choice, it outlines the detailed features of each procedure in order to assist the parties in making such a choice. It highlights the synergy with instruments developed by other organisations such as the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Model Law on International Commercial Conciliation. While the LGCF is generally based on the premise that alternative dispute resolution (ADR) offers timely, flexible, and frequently more appropriate solutions for many types of disputes, it is also notes that arbitration and judicial proceedings may be preferable methods considering the enforceability of the outcome.

110. The UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts (2021) (ALIC Guide) in its Chapter 7, also addresses some types of dispute resolution. In addition to non-judicial procedures (expert determination, negotiation, arbitration) and judicial procedures, this instrument provides detailed information on grievance mechanisms, citing some guidelines and practices of other institutions (UN Guiding Principles', IFC's Good Practice Note on Addressing Grievances from Project-Affected Communities, good practice markers" developed by the World Bank). Although this instrument does not recommend any specific procedure either, it highlights the relevance of inserting appropriate clauses in the contract and the need to select adequately independent, impartial, and corruption-free adjudicatory bodies.

111. As new instruments have been published since the publication of the LGCF and the ALIC Guide, it is recommended that they be updated to ensure synergy with these new instruments. One example is the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention),[31] an instrument adopted after the LGCF was published. The Convention provides for the enforcement of international settlement agreements resulting from mediation, while the enforceability of domestic settlement agreements depends on national law, with some jurisdictions providing for it. Therefore, the premise that mediation is neither binding nor enforceable may need to be revised.

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[30] Apart from the Cape Town Convention and its Protocols, enforcement rules are contained in other instruments such as the UNIDROIT Model Law on Factoring and the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts.

[31] There are citations of this convention in the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts (2021) and in the current project on international investment contracts.

II. The Draft UNIDROIT–ICC Principles and Model Clauses for International Investment Contracts

112. UNIDROIT's project with the ICC Institute of World Business Law on the draft UNIDROIT–ICC Principles and Model Clauses for International Investment Contracts and the UPICC adopts, in Section C, a multi-tiered dispute resolution structure and provides principles and model clauses on various dispute resolution mechanisms. In the same way as the instruments described above, this instrument introduces amicable dispute resolution, such as negotiation, mediation, conciliation, as well as arbitration alongside judicial proceedings, while referring to relevant instruments developed by other organisations. Furthermore, it addresses expert proceedings and dispute boards as a type of amicable dispute resolution. In addition to the greater diversity of dispute resolution mechanisms, this instrument gives more flexibility to the parties in choosing proceedings and gives preference to amicable proceedings over adjudicatory dispute resolution mechanisms. It also provides model clauses to avoid parallel proceedings.

113. This instrument shares the feature of allowing for multiple (both judicial and non-judicial) dispute resolution mechanisms though there is a slight difference in the degree to which ADR is prioritised over judicial proceedings. However, these instruments generally do not explain on what basis one mechanism should be preferred over another. It is therefore desirable for these instruments to provide clearer guidance on choosing among the available mechanisms, taking into account the specific nature of the dispute and the characteristics of the parties involved, rather than merely listing the available methods.

PART FOUR — POTENTIAL FUTURE AREAS OF WORK IN PROCEDURAL LAW AND DISPUTE RESOLUTION

I. Technology and Procedural Innovation

A. Introduction

114. Recent rapid developments in digital technology used in courts and the drastic change in society after the COVID-19 pandemic (e.g. the widespread adoption of video conferencing) have caused significant changes in the structure of civil procedure and have had some impact on fundamental principles of procedural laws adopted by UNIDROIT instruments.

115. Likewise, the rapid growth of AI has proved that there are multiple and varied potential applications in dispute resolution. From predictive AI to generative AI, and more recently, agentic AI, both judicial and extrajudicial dispute resolution models can be influenced or affected by the potential uses of AI. Use cases are numerous (see Section C below). The level of risk involved and the legal implications, however, differ significantly depending upon the AI solution used, the intended purposes, and the likelihood of affecting key procedural principles and access to justice.

116. Some transformations, adaptations, and reconsideration of these principles will therefore be required in light of the possibilities of AI and other digital technologies.

B. Three-Phase Impact

117. The impact of technology on civil procedure can be described in three phases or levels:

- Use of electronic means and digital media in communications, notifications, documents, and decisions of parties and the third party authorised to settle the dispute. Most of the challenges posed by these technological advances have been overcome, but some issues remain to be addressed and be solved at an international level.

- Platforms provide a new "space" and a new structure for civil procedure, allowing multiple participants to access and share documents and actions. Furthermore, platform models enable the digitalisation of actions and decisions and facilitate automation. Problems relating to identification and authority remain.

- Automation and AI. This is the most pressing current challenge to dispute resolution posed by technological progress. It has the potential to impact "who" adopts these resources and "how" decisions in dispute resolution are taken. The intensity of the impact is substantial as it may affect the principles guiding civil procedure and dispute resolution. A lively debate is ongoing and global standards are still being developed.

C. Use Cases: Digital Tools Used in Civil Procedure in Current UNIDROIT Instruments

118. The three levels of digital transformation materialised in a variety of uses in dispute resolution in almost all the phases of any civil proceedings. Current UNIDROIT instruments have already addressed these issues.

1. Online Filing/ Electronic Filing/Electronic Case Management

119. The ELI–UNIDROIT Model Rules provide some rules on electronic submission of documents (Rule 53) and electronic case management (Rule 61), whereas the ALI/UNIDROIT Principles did not

explicitly address electronic filing or case management. Digitisation of documents and electronic case management are also envisaged in the Best Practices for Effective Enforcement.

120. Electronic filing enables online case management and online inspection of documents become possible. However, traditional paper-based filing methods are also available or mandated, especially for litigants unrepresented by counsel. Obstacles or uncertainties in the law may discourage digital filing in practice.

2. Online or Electronic Services

121. The area of service has also been greatly impacted by technology. For example, some innovative court decisions have accepted the use of social media or the airdropping of non-fungible tokens (NFTs) as valid methods of serving a communication on the commencement of proceedings. However, the risk of incorrect or failed delivery and uncertainty in the proper acknowledgement of receipt should be considered.

122. Existing UNIDROIT instruments already allow electronic service in addition to traditional methods of service (ALI/UNIDROIT Principles, Principles 5, ELI–UNIDROIT Model Rules, particularly Rules 71, 74, 79, and 80). However, according to these rules, caution should be exercised when using electronic services, especially service by email. For instance, electronic service should only be allowed if appropriately high technical standards are used which guarantee the identity of the sender, safe transmission, and a strong possibility that the addressee will receive notice of the documents (Rule 74, Comment 7 of the ELI–UNIDROIT Model Rules), including acknowledgement of receipt when relevant for procedural purposes, and access to national service providers and their platforms should be granted to all target countries.(Rule 71 commentary para 10 of the ELI–UNIDROIT Model Rules). Finally, the more recent BPEE expressly rely on the appropriate use of technology to enhance the effectiveness and transparency of enforcement proceedings. By way of example, Chapter III contains best practices on the requirements for the commencement of the proceedings. It gives guidance to legislators on the advisable threshold for the requirements of form, content, and authenticity of the documents that can be used by the creditor to open an enforcement procedure ("enforceable instruments") (Recs 9-11), and presents as good practice that they be digitised and managed via individual registers or systems of registers that facilitate automated processing (Recs 12-14, plus Chapter V). Enforcement proceedings should be triggered through access to electronic registries that ensure adequate case management and exchange of information.

3. Electronic Communications and Online Hearings

123. Electronic means of communication between the parties and the court as well as remote hearings became widely used especially during, and after, the COVID-19 pandemic.

124. UNIDROIT instruments had already provided principles or rules allowing electronic means of communication, while adopting a technologically neutral position. For instance, the ALI/UNIDROIT Principles allow a party to employ expedited means of communication, such as telecommunication, by agreement and with the approval of the court (Principle 5.7). The ELI/Model European Rules of Civil Procedure also provide a remarkable number of recommendations on the use of modern kinds of communication and recording (among others, Rule 17, 18, 64(1)), including publicity of judgments in electronic form.

125. With respect to remote hearings, however, national legislation is not necessarily clear. Currently, the possibility of conducting remote hearings depends heavily on the technological infrastructure of the courts and the digital literacy of the participants. In addition, safeguards against abusive use of virtual hearings or the violation of procedural requirements (e.g., the unauthorised use of AI, unlicensed legal practice, interference with witness statements) are not sufficient. It is also not necessarily clear whether the parties have a right to attend to the hearing in person.

126. Although remote attendance of the public or livestreaming of court hearings are used in some jurisdictions, UNIDROIT instruments do not explicitly mention the publicity of hearings in this way.

4. Electronic Evidence or Taking Evidence Online

127. With the digitalisation of society, the use of electronic evidence in civil procedure is on the rise.

128. The ELI–UNIDROIT Model Rules therefore provide a number of rules on electronic evidence (Rules 25, 93, 95 ,111, 112(2) and 126), in which electronic evidence is treated in the same manner as documentary evidence. Nevertheless, some jurisdictions consider it a new type of evidence. Therefore, applicable rules on evidence remain uncertain and complex.

129. As technology advances rapidly, issues specific to electronic evidence such as authenticity, falsification, preservation and production, are becoming increasingly apparent, requiring new safeguards. Particularly striking is the impact of deepfakes and generative AI tools in fabricating or manipulating digital evidence.

5. Use of AI

130. Although AI is increasingly used in legal practice, for instance in preparing for litigation, researching case law, designing procedural strategy, drafting documents, or predicting courts' decisions), the use of AI by courts and in other dispute resolution settings is still controversial. The Regulation (EU) 2024/1689 (the AI Act), classifies as high-risk AI systems intended to be used by or on behalf of a judicial authority to assist in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution. [32]The Act does not prohibit the use of AI, but several requirements apply. In the Recital[33] the EU AI Act states that dispute resolution is based on a human activity and can cover any of the following steps: predicting outcomes, flagging legal issues, identifying flaws or gaps, designing timelines, preparing summaries, transcribing or translating documents, evidence or practice, and drafting part (or the entirety) of resolutions.

131. However, it remains uncertain and difficult in practice to determine how and to which extent the human character of the activity is preserved when human review is unfeasible or the influence on human decision of the AI output cannot be prevented or distinguish.

132. Dispute the rise of AI in legal practice described above, existing UNIDROIT instruments do not explicitly regulate the use of AI in civil procedures or other dispute resolution procedures. A notable exception is the UNIDROIT BPEE, Recommendation 7[34] which addresses the use of appropriate technology, including artificial intelligence, in enforcement proceedings.

D. Recommendations and Future Perspectives

1. Updating Current Instruments

133. While existing UNIDROIT instruments contain some rules on the use of technology in civil procedure, these rules are generally technologically neutral and allow legislative and/or judicial discretion in using technology in courts. At the same time, some instruments explicitly express

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[32] Regulation (EU) 2024/1689 (Artificial Intelligence Act) [2024] OJ L 2024/1689, art 6(2) and Annex III, point 8(a).

[33] Regulation (EU) 2024/1689 (Artificial Intelligence Act) [2024] OJ L 2024/1689, recital 61.

[34] UNIDROIT, *Draft Best Practices for Effective Enforcement* (Consultation Draft), UNIDROIT 2025 – Study LXXVIB – Cons. – Doc. 2, Recommendation 7 and Comment 2.

caution toward certain types of technologies, such as emails or other electronic communications as a method of service, while considering the difficulties of providing uniform platforms. It is desirable that UNIDROIT keep up with developments of technology and legal frameworks regarding the use of technology in courts in different countries, for the purpose of updating the current rules and providing general frameworks governing the use of specific types of technologies, such guidance should be sufficiently flexible to accommodate digital technologies. It is also necessary to identify the legal obstacles in the use of technology and to facilitate the use of technology.[35]

134. These rules should comply with fundamental principles of procedure, such as publicity of hearings and judgments, fairness, and due process, and should promote access to justice, regardless of diverse technological environments of courts and abilities of participants.

135. While promoting the use of technology in civil procedure, the risk entailed by such use, misuse, and malfunction should not be underestimated. It is expected that conditions for the use of technology and proceedings in which technology can be used may need clarification. For instance, guidelines on remote hearings and online filing and service and safeguards against abusive use of technology, including AI, should be provided. The preservation of a (residual) right to physical attendance to the court, paper-based service, and submission of paper documents of participants, especially digitally disadvantaged people, should not be overlooked.

136. In this regard, providing support for digitally disadvantaged litigants should be prioritised. While a rapid digital transition may adversely impact certain persons and dangerously impair access to justice, especially if proceedings are completely online, a responsible and balanced digital transition can be a key driving force of strategies for legal inclusion.

137. In addition, existing instruments should be updated to adapt to the publicity of hearings and judgments. Instruments should also provide safeguards for protecting the privacy of parties and other participants. There is an open debate on how and to which extent open justice should be promoted to strike a balance.

138. As electronic data becomes increasingly prevalent in daily life, the use of electronic evidence in civil procedure is also on the rise. In addition, the types of electronic evidence have become increasingly diverse. Although existing UNIDROIT instruments do contain rules relating to electronic evidence, these rules need to be refined accordingly. For example, more detailed rules are expected regarding preservation of evidence, production of evidence, or evaluation of value of evidence.

2. Extending the Scope of Current Instruments (the use of technology in out-of-court proceedings, as well as at the global level)

139. As the use of technology in out-of-court proceedings will become increasingly widespread, the UNIDROIT instruments referring to dispute resolution mechanisms may need to be updated to facilitate the use of technology in these proceedings, while taking into consideration the characteristics of each type of proceeding. Close cooperation with arbitration and mediation institutions will be crucial, as they are intensively working on tacking the use of technology in ADR.

140. Since the issues on the use of technology in civil procedure are common worldwide, it is also desirable to draw up guidelines for the use of technology which could be adopted globally, whilst taking into account the characteristics of the local legal culture, as well as updating current regional instruments which are adopted regionally. To that end, the work on AI, as described above and in

[35] See, e.g., UNIDROIT, Best Practices for Effective Enforcement (Consultation Draft), Recommendations 19–23 (digital registers) and Recommendation 52 (online auctions).

one of the proposed forms, or work on the enforcement against data may offer particularly fertile areas to explore at a global level.

3. New Challenges for UNIDROIT

141. UNIDROIT is also expected to encourage the publication and use of digital judgments and decisions by courts. As an increasing number of judgments and decisions are published in electronically, this data could be utilised for predicting future judgments, preventing possible disputes and facilitating negotiations and automated decision-making by using of AI. However, there are some concerns that the unrestricted use of data might lead to breach of privacy and disproportionate impact on party's fundamental rights with unreasonably durable effects. Therefore, UNIDROIT should consider whether it is in a position to establish clear guidelines regarding the limitation of use of data available on judgments, court orders, or similar. As this initiative would primarily focus on data protection and private issues, UNIDROIT may need to cooperate with other organisations that may offer specialised contributions to these fields.

142. There is an urgent need for global guidelines for on use of AI, whilst attempting to harmonise the various guidelines drawn up in various regions and organisations. In particular, considering the proliferation in the current global scenes of principles, recommendations, and similar instruments on the use of AI in the judicial system, UNIDROIT can only effectively contribute if its action adds value. An additional set of principles of a general character risks being diluted in an already populated landscape. Therefore, UNIDROIT may consider two options. On one hand, it could consider formulating rules to be included by legislators in legal reform, thus, drafting more specific black-letter rules instead of general principles or general recommendations. On the other hand, UNIDROIT could develop more detailed and specific rules on particular aspects, building on the established principles adopted by other organisations. Examples may be the requirements necessary to ensure effective human supervision, or guidance on how to assess conflict of interest in the use of AI courts and how this impacts on judicial independence.

4. Key Recommendations

143. Existing UNIDROIT instruments, namely the ALI/UNIDROIT Principles, the ELI–UNIDROIT Model Rules, and the BPEE, already address issues relating to the use of technology in civil procedure. UNIDROIT should, however, continue to examine such issues from a broader perspective. In particular, it should update those instruments to ensure that they keep pace with technological developments, including as regards electronic evidence, remote hearings, and the publicity of hearings and judgments. It should also consider how they can be updated to remove barriers to the use of technology, while promoting access to justice for those who are digitally disadvantaged.

144. UNIDROIT should also consider undertaking a project focused on the effective use of technology, including AI, in out-of-court proceedings.

145. Finally, and more generally, UNIDROIT should develop rules for the effective use of AI in dispute resolution. It should do so in cooperation with other organisations that have already worked on the issue, building on existing principles and focusing on areas where it can add value.

II. Litigation Financing and Access to Justice

A. Background

146. Litigation financing, also known as third-party litigation funding or third-party funding, is a relatively new means by which a party to litigation (the funded party) can secure the financial means to pay for their own litigation costs. In jurisdictions that operate a "loser pays" cost-shifting rule, it

can also be a means by which the funded party can pay the other party's litigation costs in the event the funded party's claim or defence fails.

147. Litigation funding specifically refers to a situation where an individual or organisation, which has no connection to the litigation which is to be funded, advances finance to the funded party and does so on the basis that, if the funded party's claim or defence succeeds the funder will receive repayment of the funds advanced and a financial benefit from the funded party. The financial benefit could be, for instance, a percentage of any damages that the funded party secures or a multiple of the funds advanced. Litigation funding is thus advanced on the expectation that in the event of success the funder will secure a profit. In the event that a funded claim does not succeed, the funder receives nothing, i.e., the funding is provided to the funded party on a non-recourse basis. Funding is either advanced directly from the funder to the funded party or indirectly by a funder advancing finance to a law firm on the basis that it will, for a return, use the funds to finance a range of claims. Indirect funding is generally referred to as "portfolio funding".

148. Historically, in many common-law jurisdictions litigation funding agreements were void for public policy reasons on the grounds that they amounted to unlawful maintenance and champerty. Entry into such agreements also tended to amount to criminal offences as well as torts. From the 1960s, such restrictions tended to be relaxed, i.e., in England and Wales litigation funding ceased to be a criminal offence in 1967, with such arrangements being held to be no longer void for public policy reasons in the early 2000s. The rationale was that permitting such forms of litigation funding was no longer thought to promote abusive or unmeritorious litigation; on the contrary, it was considered to promote access to justice. The access to justice rationale for the acceptance and promotion of such funding is particularly strongly advanced where the funding of multi-party actions (class actions, collective actions) is concerned. In many civil-law jurisdictions, such as France, litigation funding has not generally been prohibited but rather was and remains a matter governed by the general law of contract and legal professional ethics and regulation.

B. The Key Issue

149. The availability and use of litigation funding remains controversial. This is particularly so where it is used to fund class or collective litigation, as it is viewed by some to promote unmeritorious or abusive litigation.

150. Such concerns have led multiple jurisdictions to consider whether, how, and to what extent litigation funding should be permitted and, if permitted, regulated. For instance: Ireland is currently considering whether to legalise the use of such funding or whether it should remain a criminal offence to provide it;[36] England and Wales have committed to replacing a self-regulatory regime governing it with statutory regulation;[37] the European Union, having undertaken a systematic review of its Member States' approaches to it, has concluded that it will not take any steps to regulate it at present, although it does provide a discrete form of regulation via its Representative Actions Directive;[38] Singapore and Hong Kong have introduced different forms of statutory regulation;39 Australia has considered statutory regulation but maintains a self-regulatory approach; different US states have taken different approaches, although there is a trend towards statutory regulation, e.g., Maine, Montana, Vermont, and West Virginia. California and New York have not, however, adopted statutory

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[36] Irish Law Reform Commission, *Third Party Litigation Funding – A Consultation Paper*, (2023).

[37] Civil Justice Council, *Litigation Funding – Final Report*, (2025); Sarah Sackman MP, *Government Written Ministerial Response*, (December 2025).

[38] Representative Actions Directive 2020, art. 10(1). And see, *European Commission, Mapping Third Party Litigation Funding in the European Union*, (2025).

[39] See, for instance, The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Hong Kong); Civil Law (Third Party Funding) Regulations 2017 (Singapore).

regulation, although the latter has adopted a form of self-regulation.40 Additionally, the European Law Institute conducted a study of litigation funding, which concluded in 2024 in a series of proposals to guide a principle-based approach to the development of litigation funding. It did so, however, from a primarily European rather than global perspective.[41] There is thus no consistent approach, globally, to the regulation of litigation funding.

151. UNIDROIT has previously touched upon the issue of litigation funding. It is dealt with in Rules 237 and 245 of the ELI–UNIDROIT Model Rules; the former concerns litigation funding in collective proceedings, whereas the latter makes provision for litigation funding generally. Both rules are set at a high level of generality against the background of European approaches to litigation funding.

152. The key issue that UNIDROIT could therefore consider in a future work programme is whether it should develop detailed guidance on the approach to the regulation of litigation funding globally. This is likely to be particularly important where litigation is conducted on a cross-border basis. It is also likely to be of importance where the development of arbitration financing is concerned, as well as – more generally – to promote a more consistent approach to regulation where domestic litigation is concerned. Potential options for UNIDROIT to consider include: no regulation; self-regulation by litigation funders through, for instance, litigation funding associations; statutory regulation; and regulation through the general law of contract and/or through legal professional ethics and regulation. Such an approach would go significantly beyond the approach taken in, and consideration given by, the ELI-UNIDROIT Model Rules. That the ELI itself went beyond the Model European Rules in 2025 to provide more detailed, principle-based guidance is, moreover, very strongly suggestive that UNIDROIT could, itself, go further and develop a global instrument.

C. Specific Issues

153. The question of whether and, if so, how to regulate litigation funding may be the key issue, but there is a wide range of other issues that need careful consideration and call for principled, guidance aimed at harmonisation, which a future study could provide. These include the following, each of which arises from the need to ensure that litigation funding is provided as a means to promote access to justice consistently with standards of procedural justice and fairness.

154. First, how to minimise the risk that litigation funding could be deployed so as to promote unmeritorious or abusive litigation.

155. Second, the extent to which regulation needs to provide for funders to exercise no control over funded litigation. This includes consideration of whether there are justified exceptions to any such prohibition, e.g., whether funders may influence, and if so to what extent, decisions on how to manage funded claims to minimise their cost, whether to settle funded claims, and whether to appeal against decisions made in such claims.

156. Third, in connection with the previous issue, how conflicts of interest are to be managed and resolved effectively where they arise between funders and funded parties, and between funders and the funded parties' legal representatives.

157. Fourth, the nature and amount of information to be provided by funders and/or funded parties to opposing parties in litigation. This includes consideration of whether the existence of funding agreements, the identity of the funder, and the ultimate source of funding should be disclosed to the opposing party and/or the court. It also includes consideration of disclosure of the terms of the funding agreement and the extent to which any terms may not be subject to disclosure to protect

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40 For an outline of the various approaches taken by different countries see, S. Friel, *The Law and Business of Litigation Finance*, (2024).

41 European Law Institute, *ELI Principles Governing the Third Party Funding of Litigation*, (2024).

commercial interests and/or confidential or privileged information. Consideration also needs to be given to how to ensure that disclosure of information does not promote inequality of arms or procedural unfairness by exposing, either directly or indirectly, a funded party's litigation strategy to an opposing party.

158. Fifth, whether the provision of litigation funding should be linked to a "loser pays" costs rule, i.e., whether in those jurisdictions where loser pays does not apply generally, there should be a special rule making provision for it to apply where litigation funding is provided. Such consideration might also be linked with questions of whether the funded party should provide security for the opposing party's costs and/or whether a funded party should be required to take out legal expenses insurance to cover its own and any potential adverse litigation costs.

159. Sixth, the extent to which courts should have oversight of litigation funding agreements.

160. Seventh, whether and, if so, to what extent a litigation funder's return should be limited. Potential limitations could include: limiting the percentage return, as is the case in some US states; providing that funded parties receive a specific statutory minimum amount of damages as a means to set a cap on the potential return to the funder; or, requiring the court to approve any proposed return to the funder through the application of, for instance, a "fair, just and reasonable" test.

161. Eighth, whether, and if so to what extent and in what circumstances, funders should be permitted to withdraw from funding arrangements and, if permitted, the extent to which they should remain liable for expenses incurred prior to withdrawal;

162. Ninth, whether and to what extent funders should be required to maintain capital adequacy.

163. Tenth, whether, and if so, how regulation may differ depending on the nature of the party being funded (for example, a consumer, a class representative or a commercial party) and whether it may differ between litigation and arbitration.

164. Finally, the nature of any sanctions regime applicable to funders for regulatory breaches.

165. These various issues are non-exhaustive. They go significantly further than the manner in which litigation funding is considered in the ELI-UNIDROIT Model Rules.

D. Recommendation

166. Litigation funding is an issue that is producing differing approaches across the world, both where litigation and arbitration are concerned. In countries that have developed approaches to it, such as Australia, it remains likely that the position reached may be subject to future revision given the fact that it is an area that remains controversial, particularly when linked to the funding of class or collective proceedings. In other significant jurisdictions, such as the European Union, no settled approach has yet been taken, while in others still, such as the United States of America, different approaches are being taken in different states.

167. In the light of different global approaches, a considered and principled set of best practices by UNIDROIT could be of significant benefit. In that regard, UNIDROIT may wish to consider developing such an instrument in collaboration with the ELI and the ALI.

III. Inclusion and Protection of Vulnerable Parties

A. Concept and Procedural Needs of Vulnerable Parties

168. Vulnerable parties can be defined as those whose ability to participate in the process is diminished due to factors such as age, mental or physical disability, trauma, childhood, advanced age, a history of abuse, communication barriers or special cultural or social circumstances that hinder participation (language difficulties, illiteracy, or neurodivergence.)

169. The factors set out above do not bear on the merits of a party's case; they bear on that party's ability to bring the case before the court and to be understood once there. Several distinct procedural steps need to follow. The first is for the relevant person to be recognised as vulnerable and recognised early enough for any adjustment to be made in time. Where the difficulty lies in giving evidence in the ordinary way, the need is for the requirements of testimony (witness statements) to be adapted, both as to the place from which evidence is given and the extent of the party's exposure to the opposing party. Where the difficulty lies in comprehension or expression, there is a need for assistance in understanding what is asked and in conveying the answer, including assistance with language. Where the proceedings are themselves a source of distress, there is the need for a supporter to be present, for an adaption of the form of the questions, and for personal data to be especially protected. Beyond the hearing itself, a vulnerable party may need access to a court to be secured in the first place, and the time and cost requirements to be adjusted accordingly.

B. Existing Protective Measures and Legal Framework

170. A range of protective measures are available in court practice. Since most of them depend on the court knowing in advance that they may be required, the first is early identification: legal representatives are expected to identify indicators of vulnerability — severe depression or cognitive difficulties, for instance — and to notify the court at an early stage.

171. Special measures address the conditions under which evidence is given: testimony may be taken by live video link, screens may be used so that the witness is not exposed to the opposing party, or a private room may be used for this purpose. Where the obstacle lies in understanding or expression rather than in exposure, communication aids are available, in the form of registered intermediaries appointed to help explain questions and convey answers.

172. Support may be provided by permitting a friend or family member to be present. Ground rules may be set to modify the format in which advocates put their questions, so that the witness is not overwhelmed. Confidentiality may be maintained by protecting addresses and other personal details.

173. As to the legal context, courts have a duty to ensure that vulnerability does not result in an unfair trial. Practice directions often require the court to manage cases involving vulnerable people proactively, so that their participation is not compromised by the adversarial nature of the legal system, and to identify vulnerability early in order to place all parties on an equal footing.

C. Treatment in Existing UNIDROIT Instruments and Identified Gaps

174. In the ALI/UNIDROIT Principles, the provision dealing with the matter is Principle 3 (Procedural Equality of the Parties), which requires the court to ensure equal treatment and a reasonable opportunity for litigants to assert or defend their rights, prohibits illegitimate discrimination on grounds of nationality or residence, and directs the court to take account of the difficulties a foreign party may encounter in participating in litigation.

175. The shortcoming lies in Principle 2 (Jurisdiction over Parties). Principle 2.2 permits jurisdiction to be exercised where no other forum is reasonably available, and Comment P-2C identifies this as *forum necessitatis*; but it does so only on the basis of the presence or nationality of the defendant in the forum State, or the presence of the defendant's property in that State. A forum of necessity in that limited form does not assist a vulnerable claimant who can point to neither. Principle 3.4, which asks that venue rules not impose an unreasonable burden on access to court on a person who is not habitually resident in the forum, may help in this connection, but is insufficient to grant access to justice to vulnerable parties.

176. In the ELI-UNIDROIT Model Rules, the corresponding shortcoming is that the Rules generally avoid touching upon questions of jurisdiction (Preamble, para. 61).

177. The provisions dealing with the matter are of two kinds. The first are general. The Preamble's section on the integration of consumer cases (paras. 31–39) explains how a party in a structurally weaker position is accommodated without a separate procedure being created for the purpose; and the Preamble adds that where simplified techniques are used, courts must ensure that their use provides parties with an equal opportunity to present their case, that is, securing equality of arms and equal treatment (Preamble, para. 64 in fine). The requirement referred to is that in Rule 4, under which the court must ensure that parties enjoy equal treatment (see also Rule 4, Comment 2). Rule 20 deals with interpretation and translation. Part II (Parties), Section 1, states in its introduction that this part of the Rules aims to ensure that the court is properly accessible to all persons who have a legitimate interest in bringing or defending proceedings, that is, in assisting or enforcing rights.

178. The second category addresses individual obstacles a vulnerable or foreign party may face: Rule 82 (language requirements), Rule 84 (modification of time periods), Rule 85 (the general rule where the addressee has no domicile or habitual residence within the European Union), Rule 91 (evidentiary privileges and immunities), Rule 165 (extension of deadlines for non-domiciled parties) and Rule 244 (legal aid).

179. The BPEE approaches the question from the opposite direction. The protection of a debtor's or a third party's fundamental rights is expressly framed as being balanced with the effectiveness of the creditor's fundamental right to effective enforcement (Rec. 2). Protection of the weaker party is therefore not a free-standing objective within the BPEE but an exception admitted within a framework whose primary goal is the effectiveness of enforcement, a balance that Chapter VI is expressly designed to strike a balance between fairness and efficiency, taking into account the need for cost- and time-effective enforcement alongside proportionate protection of debtors and of third parties in specific circumstances.

180. Individual recommendations give concrete form to this framework. Chapter VI of Part I provides exemptions for movable assets (Rec. 26) and for exemptions from seizure in the context of third-party debt orders, which cover bank accounts and earnings (Rec. 34). Recommendation 49, on debtor eviction and protective measures, addresses the position of debtors, their families and third parties: forced eviction should as a general rule be granted, after a short period for the property to be vacated, but a stay of eviction for an additional short period may be sought where the debtor and its family are particularly vulnerable and habitually reside at the property subject to seizure. In Part II, Recommendation 99 preserves the applicability of additional measures for the protection of consumers, and Chapter VII contains the most debated recommendations of that Part, concerning the extent to which creditors' remedies should be limited where the collateral is residential property and on the relationship between the secured creditor's rights and existing third-party rights such as leases (Recs 126–127).

181. The comments to Chapter I already illustrate how the interests of parties and third parties are balanced throughout the instrument, always by reference to the primary goal of ensuring the effectiveness of enforcement. Following the public consultation, the Working Group further clarified

in the commentary the exceptional nature of the exemptions and other limitations to enforcement introduced to protect vulnerable parties, with particular regard to enforcement over immovables. The BPEE therefore stops short of the more extensive protections found in certain domestic laws, but still offers balanced protection in specific situations of vulnerability.

D. Recommendations on Possible Future Developments

182. It may be useful to draft a specific instrument on procedural law dealing with the inclusion and protection of vulnerable parties or at least offer a more encompassing explanation and guidance for legislators and other stakeholders regarding the way vulnerability issues are considered in existing instruments. The rules contained in the existing instruments are scattered and may consequently go unnoticed among the many other rules these instruments contain, since their primary goal is broader.

IV. International Arbitration: Emerging Issues and Interface with Contract and Procedural Law

A. UNIDROIT and International Arbitration: A Historical Perspective

183. Arbitration is among the oldest fields of UNIDROIT's work. A first report on this topic, issued in 1929, already offered a survey of the arbitration laws of a large number of countries in Europe and the Americas.[42] It was followed in 1932 by René David's comparative study, *Rapport sur l'arbitrage conventionnel en droit privé*, which examined in greater depth the laws of France, Germany, Italy, Poland, Spain, Sweden, and England, among others.[43] He observed that arbitration was evolving from an occasional, informal arrangement between merchants into an institutional system, which existing laws had not been designed to accommodate. On this basis, work proceeded in the 1930s on a preliminary draft uniform law, accompanied by an explanatory report, with provisions addressing scope of application, composition of tribunals, procedure, awards, enforcement, setting aside, costs, and the competent court.[44]

184. The ICC strongly supported the project and, in 1937, approved the draft in principle, with some reservations. Political events, however, interrupted the work. UNIDROIT, re-established in 1940 as an independent intergovernmental organisation, was not in a position to convene a diplomatic conference, and after 1945 the League of Nations no longer existed. The draft nonetheless survived. Following its re-examination by the ICC at its 1951 Congress, the Governing Council revised it in 1953, largely retaining the provisions of 1937, and a revised explanatory report followed in 1954. At the same time, the ICC put forward a proposal for a convention on the enforcement of international arbitral awards, which was taken up by the United Nations Economic and Social Council and led to the 1958 New York Convention. UNIDROIT contributed observations to that project in 1956 on the basis of its earlier work, and its Secretary-General, Mario Matteucci, participated in the 1958 Conference as a member of the Italian delegation. The limited grounds for resisting enforcement later enshrined in the Convention had thus already found expression in UNIDROIT's draft some two decades earlier.

185. More than a decade before the 1965 Washington Convention, UNIDROIT also addressed the question of how a private party could bring a contractual claim against a State before an international

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[42] S.d.N. – U.D.P. 1929 – Études III – Arbitrage – Doc. 1 https://www.unidroit.org/french/documents/1929/etude03/s-03-01-f.pdf.

[43] René David, Rapport sur l'arbitrage conventionnel en droit privé : étude de droit comparé (UNIDROIT1932), U.D.P. – Études III – S.d.N. 1932 https://www.unidroit.org/french/documents/1932/etude03/s-03-02-f.pdf.

[44] See UNIDROIT, "Arbitration" https://www.unidroit.org/studies/arbitration/.

tribunal. A working committee was established in 1948, and in 1949 the Institute issued a preliminary draft convention providing for recourse to the Permanent Court of Arbitration in disputes arising from commercial contracts between States and private parties.[45] The draft applied where a contract between a State and a private party residing in another State so provided. Contracts concluded by an organ of the State, or by an entity subject to it, were deemed State contracts, and the law governing the contract was treated as a matter of private international law. The revised draft of January 1950 gave the claimant a choice between the Permanent Court of Arbitration and the ICC, committed each Contracting State to recognise awards rendered under the Convention and to enforce them in its territory, and was accompanied by model clauses.

186. UNIDROIT's later engagement with arbitration has been less direct but no less significant. The UPICC have become the UNIDROIT instrument most frequently referred to by arbitral tribunals, applied as the rules of law chosen by the parties, directly applied by the arbitral tribunal, and, more often, applied to interpret and supplement the applicable domestic law. The ALI/UNIDROIT Principles envisage the possibility to be equally applied to international commercial arbitration (see Part I, Section I), while more recent instruments such as the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts and the forthcoming UNIDROIT-ICC Principles and Model Clauses for International Investment Contracts integrate arbitration into the frameworks they establish (see Part III).

187. The procedural architecture of international arbitration is, however, already densely occupied by the work of other intergovernmental organisations, professional bodies, and the arbitral institutions themselves. UNIDROIT's comparative advantage therefore lies less in procedure than in the substantive and contractual questions that underpin the arbitral process.

B. Recommendations: Cooperation with Arbitral Institutions and the Private Sector

188. The effectiveness of UNIDROIT's soft-law instruments in the field of arbitration depends largely on their uptake in practice, and on the Institute's ability to observe how they are applied. Both are constrained by the confidentiality of arbitration, which limits the visibility of awards, and by uneven familiarity with transnational instruments among practitioners in different regions. Arbitral institutions are natural partners in addressing these constraints. They observe a broad range of disputes, are well-placed to identify the gaps that arise in the application of contracts and transnational rules, and shape practice through their rules, model clauses and training activities. Cooperation between UNIDROIT, as an intergovernmental organisation, and such private actors may also help sustain the development of transnational commercial law at a time when multilateral initiatives face numerous challenges.

189. Such cooperation could take several forms: the joint development of model clauses for the incorporation of the UPICC and other UNIDROIT instruments into contracts and arbitration agreements; support for efforts to harmonise the statistics published by institutions, including on the applicable law, which would provide a more reliable basis for measuring the impact of UNIDROIT instruments; the broader collection of arbitral decisions applying those instruments for inclusion in UNILEX, with due regard for confidentiality; and the involvement of arbitral institutions in the development of new UNIDROIT instruments, through consultations or participation as observers. A regular forum for dialogue between UNIDROIT and arbitral institutions would provide a stable framework for these activities. Such a forum could combine open discussion of issues of common interest with closed-door exchanges involving judges, judicial institutions and ministries of justice with which UNIDROIT

[45] UNIDROIT, Study XXV – Arbitration between Governments and Individuals, Doc. 3 https://www.unidroit.org/wp-content/uploads/2022/06/Study-XXV-Arbitrage-Doc.-3-complete.pdf.

regularly works, thereby bringing together the private and public actors on whom the effectiveness of arbitration ultimately depends.

C. Recommendations: Possible Future Work

190. Building on this comparative advantage, UNIDROIT could focus its international arbitration work on the contractual dimension of arbitration — that is, on the international arbitration agreement. Arbitration rests, first and foremost, on the arbitration agreement, which is itself a contract; the questions on which UNIDROIT could usefully work therefore follow the classic requirements for the validity of a contract, namely capacity, consent, and a lawful object, together with the principle of the autonomy of the arbitration agreement. Such a focus would build on UNIDROIT's established expertise in the harmonisation of contract law, and would mark out a clear interface with, rather than a duplicate, existing procedural instruments. Several still-controversial topics lend themselves to this approach, including, beyond the arbitration agreement itself, the contractual relationship between the parties and the arbitrators, and the international arbitration field would benefit from uniform principles and rules or model clauses addressing them:

1. The so-called "extension" of the international arbitration agreement to non-signatories

191. The participation in arbitration of multi-party or corporate structures gives rise to the issue of whether an arbitral tribunal or court can bind a party that did not formally agree to the arbitration contract (so called "non-signatory") to participate in or be bound by the arbitration. The fundamental role of consent in arbitration makes it difficult to justify such an extension traditional contract law. On the other hand, commercial practice needs to grapple with realities of complex party structures. there are many differences among jurisdictions as to the treatment of the potential extension of the international arbitration agreement to non-signatories: some do not accept such extension at all, others accept it widely, and many have no specific rules on the matter. UNIDROIT could explore, on the basis of a comparative study, whether, within a theory of implicit consent, there should be a uniform principle or rule defining with precision the requirements for an international arbitration agreement to be extended to a non-signatory. UNIDROIT could also propose model clauses that, if adopted by the contracting parties, would prevent the issue of the extension of the international arbitration agreement from being raised in the circumstances.

2. The scope and limits of the autonomy or severability of the international arbitration agreement

192. The principle of autonomy is a legal fiction designed to ensure the effectiveness of arbitration by empowering arbitral tribunals to resolve objections concerning the existence or validity of the main contract, yet it is at times invoked for purposes it was not intended to serve. There is a trend in some jurisdictions to consider that the rule of the autonomy or severability of the international arbitration agreement is absolute; in other jurisdictions, however, there is a trend to limit such rule to issues of existence or validity of the main contract. UNIDROIT could explore whether there should be a uniform principle or rule according to which the autonomy or severability of the arbitration agreement should be limited to granting arbitral tribunals the power of resolving disputes regarding the existence or validity of the main contract.

3. The capacity to enter into an international arbitration agreement, in particular the legal entitlement of States and State entities to do so (the notion of subjective arbitrability)

193. There are many differences among jurisdictions as to the treatment of the entitlement of the State or State entities to enter into an international arbitration agreement. UNIDROIT could explore whether there should be a uniform principle or rule according to which States and State entities are

entitled to enter into international arbitration agreements; as a corollary, UNIDROIT could also explore whether there should be a uniform principle or rule according to which States or State entities cannot rely on their internal/domestic laws to avoid the application of an international arbitration agreement. The question is of particular practical importance in light of the UNIDROIT-ICC Principles and Model Clauses for International Investment Contracts, which rely on arbitration agreements concluded by States and State entities as the basis for a contract-based alternative to treaty-based investment arbitration.

4. The legal content and subject matter of the international arbitration agreement, namely the scope and limits of objective arbitrability

194. There are many differences among jurisdictions as to treatment of the legal content or subject matter of the international arbitration agreement or objective arbitrability. UNIDROIT could explore whether there should be a uniform principle or rule identifying the matters that, by law, should and should not be submitted to international arbitration, or whether this question should remain a matter for each State to determine in accordance with its own policy.

5. The immunity and liability of arbitrators

195. Beyond the arbitration agreement itself, the relationship between the parties and the arbitrators is also contractual in nature, and the question of arbitrators' liability has become increasingly relevant in recent years. Arbitrators acting under the ICSID Convention enjoy specific protection, but no equivalent protection exists in many other contexts, and national laws and institutional rules differ as to its scope, ranging from exclusions of liability save for fraud to exceptions for wilful misconduct, gross negligence or acts not performed in good faith. Since institutional rules cannot confer protection beyond what the applicable law permits, UNIDROIT could explore whether uniform principles or model legislative provisions on the immunity of arbitrators would assist legislators in ensuring that arbitrators can discharge their functions without fear of unwarranted claims.

196. There remains considerable debate concerning each of these issues, and uniform principles and rules addressing them would represent a meaningful and well-delimited contribution by UNIDROIT to the field of international arbitration. Priority could be given to the extension of the arbitration agreement to non-signatories, where the divergence of national approaches is most marked and where UNIDROIT, by remaining within the sphere of contract law and contractual consent, could foster a common language without attempting to resolve the issue in its entirety.