INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

WORKING GROUP FOR THE PREPARATION OF
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (3RD)
5th session
Rome, 24 – 26 May 2010

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Summary Report on the 5th Session

(Rome, 24-26 May 2010)

(Prepared by the Secretariat of UNIDROIT)

1. The Working Group for the preparation of a third edition of the UNIDROIT Principles of International Commercial Contracts held its fifth session in Rome from 24 to 26 May 2010. The session was attended by M. Joachim Bonell (UNIDROIT, Chairman of the Working Group), Samuel Kofi Date-Bah (Ghana), Benedicte Fauvarque-Cosson (France), Paul Finn (Australia), Marcel Fontaine (Belgium), Michael Philip Furmston (United Kingdom), Henry D. Gabriel (United States), Lauro Gama, Jr. (Brazil), Arthur S. Hartkamp (The Netherlands), Alexander Komarov (Russian Federation), Ole Lando (Denmark), Pierre Widmer (Switzerland), Zhang Yuqing (China) and Reinhard Zimmermann (Germany). The session was also attended by the following Observers: Ibrahim Al Mulla for the Emirates International Law Center, Eckart Brödermann for the Space Law Committee of the International Bar Association, Alejandro Carballo for the Private International Law Group of the American Society of International Law, Christine Chappuis for the *Groupe de Travail Contrats Internationaux*, Chang-ho Chung for the Government of the Republic of Korea, Neil B. Cohen for the American Law Institute, François Dessemontet for the Swiss Arbitration Association, Alejandro M. Garro for the New York City Bar, Attila Harmathy for the Arbitration Court of the Hungarian Chamber of Commerce and Industry, Emmanuel Jolivet for the ICC International Court of Arbitration, Timothy Lemay for the United Nations Commission on International Trade Law (UNCITRAL), Marta Pertegás for the Hague Conference on Private International Law, Hilmar Raeschke-Kessler for the German Arbitration Institute and Giorgio Schiavoni for the Chamber of National and International Arbitration of Milan. The session was also attended by José Angelo Estrella Faria (Secretary-General of UNIDROIT) and Alessandra Zanobetti (Deputy Secretary-General of UNIDROIT). Paula Howarth (UNIDROIT) and Lena Peters (UNIDROIT) acted as Secretaries to the Group. The list of participants is attached as APPENDIX.

2. In opening the session the Chairman informed the Working Group that the Governing Council of UNIDROIT, at its 89th session held in Rome from 10 to 12 May 2010, had proceeded to an in-depth examination of the new draft chapters to be included in the 2010 edition of the Principles of International Commercial Contracts, i.e. the Draft Rules on Restitution (UNIDROIT 2010 – Study L – Doc. 114) (Rapporteur: R. Zimmermann); the Revised Comments to Article 1.4 (*Mandatory Rules*) (UNIDROIT 2010 – Study L – Doc. 115) (Rapporteur: M.J. Bonell), the Draft [Chapter] [Section] on Illegality (UNIDROIT 2010 – Study L – Doc. 116) (Rapporteur: M.J. Bonell), the Draft Chapter on Plurality of Obligors and/or Obligees (UNIDROIT 2010 – Study L – Doc. 117) (Rapporteur: M. Fontaine), and the Draft Chapter on Conditions (UNIDROIT 2010 – Study L – Doc. 118) (Rapporteur: B. Fauvarque-Cosson), in view of their submission to the Working Group for a final reading. In order to facilitate the Council's task the Secretariat had prepared a document (UNIDROIT 2010 C.D. (89) 3) setting out the most important and/or controversial issues related to the new draft chapters together with a brief summary of the views expressed within the Working Group in the course of its deliberations. After extensive discussion the Council approved the black letter rules and also, in substance, the Comments leaving it to the Working Group to refine them wherever it felt it necessary to do so.

3. In the light of the foregoing the Chairman invited the Working Group to proceed to the final reading of the above-mentioned draft chapters focusing on the Comments and Illustrations. After extensive discussion the Group agreed on a number of amendments to the Comments and Illustrations the most important of which are set out below.

I. DRAFT RULES ON RESTITUTION (UNIDROIT 2010 – Study L – Doc. 114)

Article 3.18 (Restitution)

Illustration 2: It was decided to change the wording "claim back the price demanded by B" to "reclaim the purchase price".

Illustration 5: It was decided to refer to an "expert opinion" instead of "expertise".

Article 7.3.6 (Restitution with respect to contracts to be performed at one time)

Illustration 2: It was decided to change the wording "claim back the money" to "reclaim the purchase price".

Comment 5 Compensation for expenses: last paragraph: The reference to Illustration 9 should be a reference to Illustration 10.

Comment 6 Benefits: It was decided to change "fruits" to "benefits" here and elsewhere and to change the paragraph to read as follows:
"The Principles do not take a position concerning benefits that have been derived from the performance, or interest that has been earned. In commercial practice it will often be difficult to establish the value of the benefits received by the parties as a result of the performance. Furthermore often both parties will have received such benefits".

Article 7.3.7 (Restitution with respect to contracts to be performed over a period of time)

Paragraph (2) black-letter rule: It was decided to delete "a", so that the paragraph reads:
"(2) As far as restitution has to be made, the provisions of Article 7.3.6 apply".

Comment 1 Contracts to be performed over a period of time: It was decided to change the first paragraph to read as follows:
"Contracts to be performed over a period of time are at least as commercially important as contracts to be performed at one time, such as contracts of sale where the object of the sale has to be transferred at one particular moment. These contracts include leases (e.g. equipment leases), contracts involving distributorship, out-sourcing, franchising, licensing and commercial agency, as well as service contracts in general. This Article also covers contracts of sale where the goods have to be delivered in instalments. Performances under such contracts can have been made over a long period of time before the contract is terminated, and it may thus be inconvenient to unravel these performances. Furthermore, termination is a remedy with prospective effect only. Restitution can, therefore, only be claimed in respect of the period after termination".

II. REVISED COMMENTS TO ARTICLE 1.4 (*MANDATORY RULES*) (UNIDROIT 2010 – Study L – Doc. 115)

Comment 1 Mandatory rules prevail: It was decided to change the reference at the end of the paragraph from "European Community" to "European Union".

Comment 4 Mandatory rules applicable in case of reference to the Principles as law governing the contract: It was decided that the version of the ICC Arbitration Rules should be specified, as a new version with different numbering was being prepared. It was also decided to change the words "Moreover, the arbitral tribunal may feel bound to apply in any case those" to "Moreover the arbitral tribunal may consider it necessary to apply those".

Comment 5 Recourse to rules of private international law relevant in each given case: National references should be deleted here and elsewhere.

III. DRAFT [CHAPTER][SECTION] ON ILLEGALITY (UNIDROIT 2010 – Study L – Doc. 116)

Article 1 (Contracts infringing mandatory rules)

Paragraph (3) black-letter rule: It was decided to amend the wording of sub-paragraphs (e) and (f) to read as follows:
"(e) whether one or both parties knew or ought to have known of the infringement;
(f) whether the performance of the contract necessitates the infringement".

Comment 3 Ways in which a contract may infringe mandatory rules: It was decided to add the following sentence at the end of the first line:

"As shown by the following Illustrations concerning corruption and collusive bidding, mandatory rules may be specific statutory provisions or unwritten general principles of public policy".

It was decided to add after Illustration 3 a new Illustration referring to a case of violation of a principle of public policy.

Illustration 5: It was decided to change the sentence "the United Nations imposes a trade embargo on country X" to "the United Nations imposes an embargo on the importation of such type of equipment into country X".

Illustration 6: It was decided to delete the words "which is aware of this payment or at least ought to have been aware of it".

Comment 4 Effects of infringement expressly prescribed by the mandatory rule infringed: It was pointed out that the reference to Article 81(1) should be a reference to Article 101(1).

Comment 5 Effects of infringement to be determined according to what is reasonable in the circumstances: It was decided to amend the text as follows: "[…] such as the right to treat the contract as being of no effect, the adaptation of the contract or its termination on terms to be fixed".

Comment 6 Criteria for determining what is reasonable in the circumstances: (Chapeau): It was decided to add the following sentences at the end of the chapeau:
"The list is not exhaustive. In many cases more than one of the criteria will be relevant and the decision will involve a weighing of these criteria".

Comment 6(c) Any sanction that may be imposed under the rule infringed: It was decided to replace the existing comment with the following:
"Statutory regulations prohibiting certain activities or imposing limitations to certain activities often provide criminal or administrative sanctions. As noted in Comment 4, when such a regulation expressly states the effect of violation on contractual rights or remedies, that statement controls. When the regulation is silent as to that effect, however, the existence and nature of the criminal or administrative sanctions can provide important insight into the purpose of the rule that has been violated, the category of persons for whose protection the rule exists, and the seriousness of the violation. Accordingly, the existence and nature of these sanctions should be taken into consideration in determining the effect of such a violation on contractual rights and remedies".

Illustration 13: It was decided to place this Illustration under Comment 6(d) and to delete the following sentence: "Both A and B knew that B did not have any vehicles of the prescribed type and that the agreed freight was inadequate for carriage by a vehicle of the prescribed type".

Comment 6(e) Whether infringement was intentional: It was decided to change the title of the Comment to read: "Whether one or both parties knew or ought to have known of the infringement".

It was decided to include two new Illustrations to read as follows:

"The facts are the same as in Illustration 1, except that B has paid the bribe to C and D, who neither knew nor ought to have known of the bribe to C, awarded the Contract to A. If D subsequently becomes aware of the payment of the bribe, D may choose whether or not to treat the Contract as effective. If D chooses to treat the Contract as effective, A will be obliged to perform and D will have to pay the price, subject to an appropriate adjustment taking into consideration the payment of the bribe. If, on the other hand, D chooses to treat the Contract as being of no effect, neither of the parties has a remedy under the Contract. This is without prejudice to any restitutionary remedy that may exist".

"Contractor A of country X enters into negotiations with D, the Minister of Economics and Development of country Y, with a view to conclude an agreement on a large infrastructure project ("the Contract"). D requests the payment of a "commission" of 7.5% of the contract

price in order to conclude the Contract. A pays the requested "commission" and the Contract is concluded. When A has already performed half of its obligations under the Contract, a new Government comes to power in country Y and the new Minister of Economics and Development, invoking the payment of the "commission", cancels the project and refuses to pay for the work already performed. A is not entitled to any remedy under the Contract. This is without prejudice to any restitutionary remedy that may exist".

Comment 6(f) Closeness of relationship between infringement and contract: It was decided to change the title of the Comment to read: "Whether the performance of the contract necessitates the infringement".

It was decided to delete *Illustration 16*.

Comment 6(g) The parties' reasonable expectations: It was decided to insert the words "on account of different legal or commercial culture" after "one of the parties".

It was decided to delete *Illustration 17* and to modify *Illustration 18* as follows:

"Company A of country X enters into an agreement with B, the Minister of Economics and Development of country Y, concerning an investment project in country Y ("the Agreement"). The Agreement contains a clause providing that all disputes arising out of the Agreement should be decided by arbitration to be held in country Z in accordance with the UNCITRAL Arbitration Rules. If a dispute arises later and A commences arbitration proceedings, B cannot invoke a mandatory rule of country Y according to which for disputes relating to contracts of the type of the Agreement the domestic courts of country Y have exclusive jurisdiction which may not be contractually excluded by an arbitration agreement".

Comment 6(h) Other criteria: It was decided to replace the first two paragraphs by a new paragraph to read as follows:

"In addition to the criteria expressly listed in paragraph (3) of this Article, there are others which may be taken into consideration to determine the remedies available in the circumstances, if any. One criterion is the extent to which the contract infringes the mandatory rule. If the contract infringes the mandatory rule only in part, it may be reasonable to adapt the contract and grant the parties remedies under it".

Article 2 (Restitution)

Comment 1 Restitution under contracts infringing mandatory rules to be granted where reasonable under the circumstances

Illustration 1: It was decided to delete Illustration 1.

Comment 2 Criteria for determining whether granting of restitution reasonable: (Chapeau): The following wording was adopted for the chapeau:

"The same criteria laid down in paragraph (3) of Article 1 to determine if any contractual remedies are available in the circumstances, if any, apply to determine whether granting restitution under paragraph (1) of this Article is reasonable. However, since the contractual and restitutionary remedies are different, the same criteria may lead to different results under the same facts".

Illustration 2: A new illustration was accepted reading as follows:

"Contractor A of country X enters into negotiations with D, the Minister of Economics and Development of country Y, with a view of concluding an agreement on a large infrastructure project ("the Contract"). D requests the payment of a "commission" of 7.5% of the contract price in order to conclude the Contract. A pays the requested "commission" and the Contract is concluded. After A has fulfilled all of its obligations under the Contract, a new government comes to power in country Y and the new Minister of Economics and Development, invoking the payment of the "commission", refuses to pay the remaining contract price. A may be granted an allowance in money for the work done corresponding to the value of the infrastructure project".

IV. DRAFT CHAPTER ON PLURALITY OF OBLIGORS AND/OR OBLIGEES (UNIDROIT 2010 – Study L – Doc. 117)

It was decided that the *title of the Chapter* should be "Plurality of obligors and of obligees".

Section 1 : Plurality of obligors

Article 1.1 (Definitions)

Paragraph 2 of the Comment: It was decided to delete the words "[…], which is the more common situation".

Article 1.2 (Presumption of joint and several obligations)

Comment 3 Suretyship and joint and several obligations: It was decided to replace the paragraph immediately after Illustration 4 with the following paragraph:
"It may happen that the technique of joint and several obligations is used as a mechanism by which the economic benefit of suretyship may be obtained. The obligee requests the company willing to guarantee the initial obligor's obligation to intervene next to the latter as a joint and several obligor, instead of entering into a separate agreement of suretyship. The obligee's advantage is that in such a case, it can require payment directly from the intervening company. This does not necessarily deprive the intervening company of the special rights provided to a surety under the law of suretyship".

It was decided to add the following sentence at the end of *the paragraph after Illustration 5:* "The law of suretyship may, of course, provide additional consequences".

Article 1.7 (Effect of expiration or suspension of limitation period)

It was decided that, in the editing process, the dates in *Illustrations 1 and 3* should be updated.

It was decided that, in the paragraph immediately after *Illustration 1*, the words "pursuant to article 1.10 below" should be replaced by the words "in accordance with Article 1.10".

Article 1.8 (Effect of judgment)

The proposed paragraph (2) of the black-letter rules was adopted. Consequently, the proposed Comments on that paragraph were also adopted.

Article 1.9 (Apportionment among joint and several obligors)

It was decided that the term most appropriate in the paragraph immediately after *Illustration 2* was "guarantor" and not "guarantee".

Article 1.11 (Rights of the obligee)

It was decided to adopt a new formulation of Comments 1 and 2:

"1. Subrogation in the obligee's rights

A joint and several obligor who has paid more than its share to the obligee has a contributory claim against the other obligors under Article 1.10. Article 1.11(1) gives the co-obligor who has such a contributory claim the possibility of benefiting from the rights of the obligee, including all rights securing their performance. This possibility is of particular value to the joint and several obligor when the rights of the obligee are secured, because the contributory right under Article 1.10 is not secured.

Illustration

1. Bank X has loaned EUR 500,000 to companies A and B as joint and several obligors, secured by a mortgage on A's premises. B reimburses the full amount of the loan. Under Article 1.10, B has an unsecured claim against A for contribution in the amount of EUR 250,000. B may also exercise X's rights against A up to the amount of EUR 250,000, including enforcement of the mortgage on A's premises.

2. Obligee's rights reserved and preferred

By providing that an obligee who has not received full performance retains its rights against the joint and several obligors, and by giving those retained rights of the obligee precedence over the rights of the performing obligor, the rule in Article 1.11(2) assures that the benefit given to the joint and several obligor in Article 1.11(1) does not detrimentally affect the remaining rights of the obligee. This precedence may be effectuated by deferring enforcement of the claim of the performing joint and several obligor under Article 1.11(1) until full performance is received by the obligee.

Illustration

2. The facts are the same as in Illustration 1, except that B has reimbursed only EUR 400,000 of the loan, and the remaining EUR 100,000 remain unpaid. B has a contributory claim against A for the amount in excess of its own share, i.e. EUR 150,000 (EUR 400,000 – EUR 250,000). B also has the right to exercise X's rights against A up to that amount, including enforcement of the mortgage on A's premises. However, as X's rights with respect to the remaining EUR 100,000 have precedence over the rights of B, enforcement of B's rights against A may not occur until after X has received repayment of the remaining EUR 100,000.

This rule on precedence is subject to the possible application of mandatory rules providing otherwise in insolvency proceedings".

Article 1.12 (Defences in contributory claims)

The Rapporteur indicated that he wanted to propose modifications to both the black-letter rules of, and the comments to, this Article. The proposal was adopted with minor amendments and read as follows:

"A joint and several obligor against whom a claim is made by the co-obligor who has performed the obligation :

(a) may raise any common defences and rights of set-off that were available to be asserted by the co-obligor against the obligee;

(b) may assert defences which are personal to itself;

(c) may not assert defences and rights of set-off which are personal to one or several of the other co-obligors".

"COMMENT

This provision deals with the defences and rights of set-off that may be asserted between co-obligors when contributory claims are exercised.

1. Common defences and rights of set-off

Pursuant to Article 1.4, the co-obligor that is asked to perform by the obligee may assert all defences and rights of set-off common to all the co-obligors. If that co-obligor has failed to raise such a defence or right of set-off which would have extinguished or reduced the obligation, any other joint and several obligor against which the former obligor exercises a contributory claim may assert that defence or right of set-off.

Illustration

1. Joint and several obligors A and B have purchased a know-how licence together. Licensor X has undertaken that the technology was fit for both licencees. If this appeared not to be the case, each obligor could invoke this common defence against X. If A fails to do so when required to pay the fees by X, B may refuse to pay its contributory share to A.

2. Personal defences

A co-obligor may also assert a defence personal to itself against a contributory claim.

Illustration

2. Companies A, B and C are jointly and severally bound to pay the price of products to be purchased from seller X. A, however, was induced to enter the contract by fraud within the meaning of Article 3.8. B pays the full price to Seller X. A may assert the fraud it had been subjected to as a personal defence against B's contributory claim.

Under Article 1.12, rights of set-off are not subject to the same rules as defences, as they usually are in these Principles. The reason for this is that the rights of set-off cannot be treated in the same manner as defences when it comes to the asserting of a personal right of set-off against the obligee to counter a contributory claim. In actual fact, under Article 11.1.5, performance by the other co-obligor has discharged the first obligor from its obligations towards the obligee, with the consequence that the right of set-off does not exist any more. The first obligor will have to pay its contributory share to the other obligor, while remaining in a position to exercise its distinct claim against the obligee.

Illustration

3. Bank X has loaned EUR 3,000,000 to joint and several obligors A and B. As a result of the selling of shares belonging to A on the stock market, X then becomes A's obligor for an amount of EUR 500,000, thus giving A a right of set-off for that amount. X claims reimbursement of EUR 3,000,000 from B, which pays the full amount. If B then claims contribution from A, the latter may not assert its own right of set-off against B. Such right does not exist any more since payment to X by B has also discharged A towards X. A will have to pay its contributory share to B and will be able to exercise its own claim of EUR 500,000 against X.

3. Defences and rights of set-off personal to other co-obligors

A co-obligor may not assert a defence or right of set-off which is personal to one or several of the other co-obligors.

Illustrations

4. The facts are the same as in Illustration 2. If B claims contribution against C, the latter may not invoke the fraud to which A was subject, since this defence is personal to A.

5. The facts are the same as in Illustration 3. If B claims contribution from C, the latter may not assert A's right of set-off, since this right is personal to another obligor".

Article 1.13 (Inability to recover)

Comment 2 All reasonable efforts

The text of *Illustration 2* was slightly amended to read:

"The facts are the same as in Illustration 1. A does not question B's assertion that it is unable to pay because of financial difficulties and immediately asks for an increased contribution from C. However, in order to avail itself of Article 1.13, A must establish that it has exerted all reasonable efforts to recover from B, such as reminders, injunctions, attachments or legal proceedings, as may be appropriate".

Section 2 : Plurality of obligees

Article 2.1 (Definitions)

Comment 3 Three main types: It was decided that the words at the end of the second paragraph of the Comment "[…] which will be presumed to be the case (see below, Article 2.2)" should be deleted.

Article 2.2 (Presumption of joint and several claims)

Since the presumption of joint and several claims was strongly objected to, it was decided to delete the rule laid down in Article 2.2 and to have no default rule at all.

Article 2.4 (Availability of defences against joint and several obligees)

The text between square brackets at the end of Comment 2 to Article 2.4 was adopted.

Article 2.5 (Allocation between joint and several obligees)

Comment 2 Transfer of excess received

Illustration 3: It was decided that the Illustration should refer to a factory instead of a house.

V. DRAFT CHAPTER ON CONDITIONS (UNIDROIT 2010 – Study L – Doc. 118)

Article 1 (Types of conditions)

It was decided that the text of the *black-letter rule* should be amended to read:
"A contract or a contractual obligation may be made conditional upon the occurrence of a future uncertain event, so that the contract or the contractual obligation only takes effect if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition)".

Comment 1 Scope of this Section

It was decided to add a new paragraph after paragraph 1 to read:
"Conditions governed by the Principles include both those that determine whether a contract exists and those that determine obligations within a contract. Accordingly, application of the Principles may in some circumstances impose duties even in the absence of a contract (see e.g. Articles 3 and 4)".

Paragraph 3: It was decided to amend the text of this paragraph to read:
"This section deals only with conditions that originate by agreement of the parties".

Comment 2 Notion of Condition

It was also decided to replace the two last sentences of paragraph 2 by the following text:
"These provisions are not conditions, they merely specify the obligations of both parties under their contract".

Illustration 1: It was decided to replace the words "at the closing date" by the words "at a certain date". It was also pointed out that the last sentence of the Illustration should read "Such performance is not a condition but a contractual obligation and as such it is not an uncertain event".

Comment 3 Suspensive and resolutive conditions

Paragraph 1: It was decided to replace the last two sentences of the paragraph by the following text:
"Under the Principles this is a suspensive condition. In some jurisdictions it is known as "condition precedent"."

Illustration 5: It was decided to delete the last two sentences.

Paragraph 2: It was decided to adjust the sentence "A provision to this effect is known as a resolutive condition" along the lines of the decision on the suspensive condition.

Illustration 6: It was decided to amend the text of the Illustration to read:
"A contract appointing B as a fund manager to manage the investments of a company provides that the agreement is to come to an end if B loses its licence to conduct the fund management business".

Paragraph after Illustration 6: It was decided to replace the present text with the words:
"Instead of agreeing on a resolutive condition, the parties to a contract may agree that one or both of them may, under certain circumstances, have the right to terminate the contract".

Comment 4 Condition entirely dependent on the will of the obligor

Illustration 7: It was decided to add the words "There is no obligation, not even a conditional obligation, on the part of A" in the second last line, as follows:

"A document drawn up between A and B contains a list of provisions. One of them states that a contract of sale will come into being if A decides to sell certain goods. There is no obligation, not even a conditional obligation, on the part of A, in view of the fact that it is within A's unfettered discretion to decide whether he wants to sell the goods. The fact that A may be under a pre-contractual obligation not to act in bad faith is, in this respect, irrelevant".

Illustration 8: It was decided to amend the text of the Illustration to read:

"An international merger agreement provides for the merger within a period of time of two subsidiaries of the parent company, subject to the approval of the board of directors of one of the companies which under the applicable law cannot be unreasonably withheld. There is a conditional obligation since the condition is not entirely dependent on the will of one of the parties".

Article 2 (Effect of conditions)

Comment 1 A general default rule

Second paragraph: It was decided to delete the first sentence on page 8.

Comment 2 No retrospective effect

Illustration 1: It was decided to modify the Illustration to read:

"The facts are the same as in illustration 5 to Article 1. The contract takes effect, if and when the necessary antitrust clearance is provided".

Illustration 2: It was decided to modify the Illustration to read:

"The facts are the same as in illustration 6 to Article 1. The contract comes to an end if and when B loses its licence".

Article 3 (Interference with conditions)

Illustration 2: It was decided that the Illustration in the Principles of European Contract Law, modified to make it international, should replace the present text.

Article 4 (Duty to preserve rights)

Black-letter rule: It was decided to amend the text of the black-letter rule to read as follows:

"Pending fulfilment of a condition, a party may not, contrary to the duty to act in accordance with good faith and fair dealing, act so as to prejudice the other party's rights in case of fulfilment of the condition".

Paragraph 3 of the Comment: It was decided to amend the second sentence of the text of the paragraph to read:

"A person who would benefit from the fulfilment of a condition has a conditional right which necessitates protection".

Paragraph 6 of the Comment: It was decided to delete the paragraph.

Article 5 (Restitution in case of fulfilment of a resolutive condition)

Black-letter rule: It was decided to amend the text of the Article to read as follows:

"(1) On fulfilment of a resolutive condition, the rules on restitution set out in Articles 7.3.6 and 7.3.7 apply with appropriate adaptations.

(2) If the parties have agreed that the resolutive condition is to operate retrospectively, Article 3.18 on restitution applies with appropriate adaptations".

Illustration 1: It was decided to delete the Illustration.

Paragraph after Illustration 1: It was decided to delete the paragraph.

Illustration 2: It was decided to delete the Illustration.

4. Finally the Group discussed the placement of the new draft chapters in the 2010 edition of the UNIDROIT Principles on the basis of a memorandum prepared by the Secretariat (UNIDROIT 2010 – Study L – Doc. 119) and ultimately decided that:

- the provisions on Illegality should become Section 3 ("Illegality") of Chapter 3 on Validity;
- the present Chapter 3 should be divided into two sections: Section 1 ("General Provisions") and Section 2 ("Grounds for Avoidance");
- the provisions on Conditions should become Section 3 ("Conditions") of Chapter 5 which should be renamed "Content, Third Party Rights and Conditions";
- the Chapter on Plurality of Obligors and of Obligees should become Chapter 11;
- the present Article 3.17 should be divided into two articles: Article 3.2.14 ("Retroactive effect of avoidance") corresponding to paragraph 1 of Article 3.17, and Article 3.2.15 ("Restitution") containing, in addition to paragraph 2 of Article 3.17, three new paragraphs;
- the present Article 7.3.6 should be deleted and replaced by two new articles: Article 7.3.6 ("Restitution with respect to contracts to be performed at one time") and Article 7.3.7 ("Restitution with respect to contracts to be performed over a period of time").

APPENDIX

WORKING GROUP FOR THE PREPARATION OF

PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (3RD)

5th session, Rome, 24 – 26 May 2010

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