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**Item No. 3 on the agenda: International Commercial Contracts - Possible future work on long-term contracts**

(prepared by the Secretariat)

<i>Summary</i>	<i>Developments related to the proposal for future work on long-term contracts</i>
<i>Action to be taken</i>	<i>See paragraph 42</i>
<i>Mandate</i>	<i>Work Programme 2014-2016</i>
<i>Priority level</i>	<i>Low</i>
<i>Related documents</i>	<i>UNIDROIT 2013 – C.D. (92) 4 (b)</i>

**I. INTRODUCTION**

1. When it approved the second edition of the UNIDROIT Principles of International Commercial Contracts in 2004, the Governing Council recommended that the Principles become an ongoing project on the Institute's Work Programme, and instructed the Secretariat to monitor their use by the international legal and business communities and to solicit comments and suggestions with respect to additional topics to be dealt with in future new editions.<sup>1</sup>

2. The current 2010 edition of the UNIDROIT Principles, which consists of 211 Articles – together with accompanying comments – divided into 11 chapters, covers virtually all the most important topics of general contract law, such as formation, interpretation, invalidity including illegality, performance, non-performance and remedies, assignment, set-off, limitation periods, etc. However, while the UNIDROIT Principles can undoubtedly be considered a sort of "general part" of the law governing international contracts of sale and other contracts to be performed at one time, it remains to be seen to what extent they provide adequate solutions also for so-called long-term contracts in general, and investment contracts in particular.

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<sup>1</sup> Cf. UNIDROIT 2004, C.D. (83) 24, p. 12.

## II. PRELIMINARY FINDING OF THE SECRETARIAT

3. At its 92<sup>nd</sup> session in May 2013, the Governing Council was seized of a Memorandum prepared by the Secretariat concerning possible future work on long-term contracts in general, and investment contracts in particular (cf. UNIDROIT 2013 – C.D. (92) 4(b)).

4. The Memorandum recalled that the UNIDROIT Principles as they now stand already contain a number of provisions which take into account, at least to a certain extent, the special needs of long-term contracts in general, and investment contracts in particular.

Thus, Article 2.1.14 which, by stating that if the parties intend to conclude a contract the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent the contract from coming into existence, is particularly suited to these types of contracts where parties, on account of the duration of the contract and/or the complexity of the subject, often leave open one or more terms because they are unable or unwilling to determine them at the time of conclusion of the contract. Likewise, Articles 5.1.4 distinguishing between the duty to achieve a specific result and the duty of best efforts, and Article 5.1.5 providing criteria for determining whether the parties are under one or the other duty, take into account the fact that over the period of their duration long-term contracts in general and investment contracts in particular not only give rise to a great variety of obligations for the two or more parties involved, but the degree of diligence required in performing these obligations varies considerably from one obligation to another. Moreover, also Articles 6.2.2 and 6.2.3 on hardship take into account the fact that long-term contracts in general, and investment contracts in particular, are for a variety of reasons particularly exposed to the consequences of supervening unforeseeable events which may substantially alter the equilibrium of the contract as originally agreed upon between the parties, thereby requiring renegotiation and ultimately adaptation of the contract so as to restore the original equilibrium.

5. Yet at the same time the Memorandum pointed out that there are still issues particularly relevant in the context of long-term contracts in general, and investment contracts in particular, that the UNIDROIT Principles in their present form do not address at all or do so insufficiently.

- (a) By way of example, in view of their complexity, long-term contracts in general, and investment contracts in particular, are often concluded after prolonged negotiations without an identifiable sequence of offer and acceptance, with the consequence that it may be difficult to determine whether and, if so, when a binding agreement has been reached. The UNIDROIT Principles address both questions, but do so only in general terms (see Article 2.1.1 and Comment 5 to Article 5.3.1). Yet what if, because of the complex nature of the transaction, negotiations proceed in stages and the agreement is reached only bit by bit, with the parties exchanging writings known by a variety of names, such as "letters of intent", "agreements in principle", "memoranda of understanding", "heads of agreement" etc.? All these writings have in common that they do not represent the ultimate agreement in its entirety, but their precise nature and legal effects are far from clear. Likewise, what if in the course of the negotiations the parties sign an informal document, usually called "Preliminary agreement", containing the terms of the agreement so far reached, but at the same time declare their intention to provide for the execution of a formal document at a later stage, by including language such as "Subject to contract" or "Formal agreement to follow". In such a case, did the parties intend to condition the conclusion of the contract on the execution of the formal document, or did they instead want the formality simply for evidentiary purposes? In addition, if the special formal requirement is intended to be of a constitutive nature, may it be waived by the subsequent conduct of the parties?

- (b) Article 2.1.14, which provides that where parties intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person, the existence of the contract is not affected by the fact that subsequently the parties reach no agreement or the third person does not determine the term if there is a reasonable alternative means of rendering the term definite, may need to be further expanded for the case where the parties envisage the intervention by a third person. In particular, does that person have to be an independent expert or can he/she be an expert connected with one of the parties (e.g. engineer of the employer in construction contracts)? And who is to appoint the third person if the parties fail to reach an agreement on his/her appointment? Finally, can the determination by the third person be challenged by one of the parties, and if so on what grounds?
- (c) Article 2.1.15 which sets out in general terms the parties' duty to negotiate in good faith – *rectius*: not to negotiate in bad faith – would seem to need additional specifications with respect to long-term contracts in general and investment contracts in particular which not only are normally entered into after prolonged negotiations but may also in the course of their performance require (re-) negotiations on a number of occasions. In order to provide further guidance to parties and, in case of dispute, to courts and arbitral tribunals, one could think of indicating in greater detail what specific duties the general duty to (re-) negotiate in good faith involves.
- (d) With respect to the consequences of negotiating in bad faith the UNIDROIT Principles merely state that "[...] a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party" (Article 2.1.15(2)), with the Official Comment specifying that "[...] the aggrieved party may recover the expenses incurred in the negotiations and may also be compensated for the lost opportunity to conclude another contract with a third person [...]" and that "[o]nly if the parties have expressly agreed on a duty to negotiate in good faith, will all the remedies for breach of contract be available to them, including the remedy of the right of performance". In view of the considerable practical importance of the issue especially in the context of long-term contracts in general and investment contracts in particular, it may be advisable to address it in more detail, distinguishing between the remedies in case of breach of the general duty to negotiate in good faith and those in case of breach of a contractually agreed duty to negotiate in good faith.
- (e) In view of the fact that long-term contracts are by their very nature "evolutionary", i.e. the parties' obligations cannot be fully determined in advance, Article 5.1.1, which states that the parties' obligations are not limited to those expressly stipulated in the contract but may also be implied, may need further elaboration, since Article 5.1.2 provides only a first indication as to the sources of implied obligations.
- (f) The same can be said *mutatis mutandis* of Article 5.1.3 which states only in general terms the parties' duty of cooperation and may therefore need further elaboration in view of the fact that the duty of cooperation in the course of the performance of the contract is particularly relevant in the context of long-term in general, and investment contracts in particular.
- (g) The UNIDROIT Principles grant the disadvantaged party the right to request renegotiations only in case of hardship (Article 6.2.3), while in case of force majeure the party affected by the supervening impediment may only invoke it as an exception with a view to its non-performance being excused (Article 7.1.7). With respect to long-term contracts in general, and investment contracts in particular, where normally neither party would have an interest in terminating a relationship which may have endured for years and/or involved large investment, it may be argued that also in the case of force majeure both parties should be requested to engage in renegotiations with a view to adapting the contract to the new situation before resorting to other remedies such as withholding performance or termination of the contract.

- (h) Though rather rare, there are cases where the duration of long-term contracts in general, and investment contracts in particular, is neither determined nor determinable, or where the parties have stipulated that their contract is concluded for an indefinite period. For all these cases Article 5.1.8 provides that the contract may be ended by either party by giving notice a reasonable time in advance: yet granting the parties such a unilateral right to put an end to the contract may not be sufficient and it may be advisable to provide, analogously to Article 7.3.7, that once the contract has been ended restitution for past performances is excluded.
- (i) More importantly, the UNIDROIT Principles do not address the question as to whether, and if so to what extent, parties to long-term contracts in general, and investment contracts in particular, are entitled, even in the absence of any special provision to this effect in the contract, to terminate their contract for irreparable breakdown of their mutual trust and confidence (so-called "termination for cause"). Especially so-called "relational contracts", i.e. contracts giving rise to a more or less enduring relationship based on trust and confidence between the parties and an ongoing duty to cooperate to allow each party properly to perform its obligations, are subject not only to the usual risks of a breach by one of the parties or of supervening events making performance impossible or excessively more onerous, but also to the risk of an irreparable breakdown of the parties' mutual trust and confidence making the continuation of their relationship, at least for one of the parties, no longer sustainable. Of course, when entering into long-term contracts of this kind, the parties are well advised to address the issue, and indeed in actual practice frequently do so, by so-called termination clauses defining the contingencies in which the contract may be terminated for this reason and specifying how the right to terminate may be exercised (e.g. by mere notice to the other party or by a court decision), whether termination takes effect immediately or only after a certain period of time, whether the terminating party or the other party is entitled to damages, etc. However, a problem arises when the contract is silent on this issue and it may be argued that the UNIDROIT Principles, like a number of domestic legislations (e.g. § 314 of the German Civil Code (as amended in 2001)) should include default rules on so-called termination of long-term contracts for cause.
- (j) Last but not least, investment contracts pose a number of special problems if, as is often the case, they are so-called "State contracts", i.e. stipulated between private investors and the Government or a governmental agency of the host State. The most controversial issues relate to supervening changes in the laws of the host country which negatively affect the foreign investment. Investment contracts normally contain so-called stabilisation clauses, i. e. provisions that either preclude the application of, or require compensation for, new or changed regulatory measures affecting the investment, or so-called adaptation clauses, i.e. provisions granting the foreign investor in case of supervening changes in the applicable law the right to request renegotiations to adapt the contract to the new situation. What still remains to be seen is whether such safeguards in investment contracts (and possibly reinforced in the BIT concluded between the host State and the foreign investor's home State) operate also with respect to regulatory measures enacted for legitimate public objectives, such as public health, safety, the environment and – particularly important in the agricultural sector – food and water shortages.

### **III. DELIBERATIONS BY THE GOVERNING COUNCIL**

6. The Governing Council expressed its appreciation for the Secretariat's Memorandum which provided a useful basis for further examination of the topic of long-term contracts in general, and investment contracts in particular. However, at this early stage the Council's discussion focused on the general questions as to whether the topic should be included in the Institute's Work Programme 2014-2016 and, if so, what approach should be adopted in carrying out the work.

7. As to the first question, the general view was that the topic was of considerable interest and should definitely be considered for inclusion in the Institute's Work Programme.

8. However, opinions were divided with regard to the approach to be adopted. One view favoured the idea of amending the present text of the UNIDROIT Principles by inserting, whenever appropriate, new black-letter rules and/or comments. This approach would appear to require fewer resources both in terms of time and finances; moreover, it would have the advantage of permitting users to find all provisions and comments, including those relating to long-term contracts in general and investment contracts in particular, in one and the same instrument.

9. According to another view it would be preferable to prepare a kind of supplement to the current edition of the UNIDROIT Principles, i.e. a separate publication containing black letter rules and comments specifically addressing issues of relevance in the context of long-term contracts in general, and investment contracts in particular. In support of this latter approach it was observed that it would be difficult to tailor the current edition of the Principles to the new needs without 'watering them down' or otherwise affecting the existing text. It was also felt that taking up the Principles again so soon after completing the 2010 edition might undermine the authority of the current edition.

10. In view of the different views expressed, the Governing Council finally agreed to postpone the decision on the approach to be taken until the scope of the work to be carried out had been better defined and invited the Secretariat to undertake preliminary in-house steps to identify the issues related to investment and other long-term contracts not adequately addressed in the 2010 edition of the UNIDROIT Principles of International Commercial Contracts (cf. C.D. (92) 17, para. 33).

#### **IV. SUBSEQUENT CONSULTATIONS BY THE SECRETARIAT**

11. Following this decision the Secretariat undertook an inquiry among the members and observers of the Working Group that had prepared the 2010 edition of the UNIDROIT Principles as well as other experts who over the years had shown particular interest in the Principles, soliciting comments and suggestions as to the proposed work on of long-term contracts in general, and investment contracts in particular.

12. All the replies received <sup>2</sup> stressed the importance of the topic which would constitute a useful integration of the current version of the Principles, and welcomed the decision of the Governing Council to recommend it for inclusion in the Institute's Work Programme 2014-2016.

13. Admittedly, given the rather vague notions of long-term contracts in general, and investment contracts in particular, it might prove difficult exactly to define the scope of the envisaged work to be undertaken (von Bar; Fontaine). It was suggested to move from a broad or liberal definition of long-term contracts in general, and investment contracts in particular, and to consider for this purpose the contract duration merely as one of the aspects to be taken into account, since other aspects, such as the associative or "relational" nature of long-term contracts in general, and investment contracts in particular, as opposed to the merely synallagmatic nature of ordinary exchange contracts, represented an equally if not even more important feature (Cohen, Dessemontet, Fontaine).

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<sup>2</sup> Comments were received from Berhooz Akhlaghi (Iran), Christian v. Bar (Germany), Neil Cohen (USA), Francois Dessemontet (Switzerland), Paul Finn (Australia), Marcel Fontaine (Belgium), Michael Furmston (United Kingdom/Singapore), Arthur Hartkamp (Netherlands), Ole Lando (Denmark), Pilar Perales Viscasillas (Spain), Hilmar Raeschke-Kessler (Germany), Takaschi Uschida (Japan), Zhang Yuqin (China), Reinhard Zimmermann (Germany).

14. Turning to the specific issues listed in the Secretariat Memorandum, it was unanimously felt that they represented a useful basis for discussion, with some respondents making additional suggestions.

15. Strong support was expressed for the proposal to address the issue of the so-called termination for cause (see *supra*, para. 5 lit. (i)). It was recalled (Cohen, Zimmermann) that the topic had already been extensively discussed in the course of the preparation of the 2010 edition of the UNIDROIT Principles, and stressed that the decision of that Working Group to abandon its work on that topic was not based on any feeling that the drafting of a rule in that respect might not be necessary, or feasible. Even more significant: among the supporters of the proposal were not only experts from civil law countries, but also an eminent Australian Justice (Finn) who in a recent judgement concerning the winding up of a long-term business relationship between an Australian manufacturer and a Singapore distributor (cf. *Australian Medic-Care Company Ltd v Hamilton Pharmaceutical Pty Limited*) openly denounced the inadequacy of Australian law in dealing with cases of breakdown of mutual trust and confidence between the parties of long-term contracts, pointing out that “it is not a reasonable response to say that [the parties] should have made better provision for their rights, etc. into the future in the terms of their agreement. Contract law in its default rules should serve as well those who are not gifted with an all encompassing foresight expert”. Further support for addressing the issue in some way, from an expert not from a civil law country, came from an American expert (Cohen) who plays a leading role in developing and refining American commercial law under the U.S. Uniform Commercial Code.

16. Also the proposal to further expand Article 2.1.14 UNIDROIT Principles concerning contracts concluded with terms to be agreed upon by further negotiations between the parties or to be determined by a third person (see *supra*, para. 5 lit.(b)) received ample support.

17. It was pointed out (Zimmermann) that the regulation contained in Art. 2.1.14 needed to be seen, as far as determination of the contractual content is concerned, in connection with Art. 5.1.7., and that it might be questioned, first of all, whether it was a good solution to deal with basically the same issue in two different places, all the more so since there were no compelling reasons to confine Art. 5.1.7 to the question of price determination. On both points, the UNIDROIT Principles differed from other international instruments (see, most recently, Article 75 of the draft Regulation for a Common European Sales Law), and one might consider to adopt the same approach as the latter instrument.

18. Even more importantly, the relevant provisions of the UNIDROIT Principles – just like those in the other international instruments – were fragmentary. As pointed out also in the Secretariat’s Memorandum, they did not deal with the standards to be observed by the third person nor with procedural requirements. Nor did they say what would happen if the determination by the third person was manifestly unreasonable, or what was to happen in the case of a failure of the mechanism, e.g. if the third person does not make the determination: was the court or arbitral tribunal then empowered to make a determination? Or could the court substitute the third person by someone else?

19. More in general it was noted (Cohen) that, since parties to a long-term contract are well-aware that the background conditions that give rise to the relationship are likely to change over time, long-term contracts are more likely to incorporate external standards, either to measure performance or to determine payment. Such external standards, because they can change with changing circumstances, can be very useful, but they can produce significant difficulties if those standards become missing or inappropriate with the passage of time.

20. It was further noted (Zimmermann) that the UNIDROIT Principles are silent on a related matter which is of great practical importance. What is to happen if the third person is not required to determine a term of the contract but to assess certain facts which, for lack of experience, the parties cannot assess themselves? In Germany, this is discussed under the heading of “*feststellendes Schiedsgutachten*”, indicating that what the third party does is of a merely declaratory character; see also Articles 7:904 and 7:906 (2) of the Dutch Civil Code which provides

the same rules for both “*feststellendes Schiedsgutachten*” and determination of a contractual term by a third person, while in English law both are discussed under the heading “expert determination”.

21. Still in view of the fact that due to the “evolutionary” nature of long-term contracts in general, and investment contracts in particular, the parties’ obligations cannot be fully determined in advance and may well require adaptations in the course of performance (see *supra*, para. 5 lit.(e)), it was pointed out (Finn) that even though parties address at length what are to be the terms of their contract, their conduct over time often deviates from those terms and for quite good reasons in some instances. This asymmetry can, at least in common law countries, be a cause of acute difficulty when disputes arise, since the rules on variation, waiver, ‘inconsistent behaviour’ and ‘no oral modification’ clauses can collide unhappily (see e.g. *GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* (2003) 128 FCR 1).

22. It was also noted (Finn) that the related question of what is the actual contract between the parties can from time to time be quite controversial, especially when the parties themselves acknowledge that the contract is an evolving one which, for example, is likely to require additional clauses, re-negotiation etc. but what already has been agreed and what needs to be, or remains to be, agreed it is disputed between the parties (see e.g. *South Sydney District Rugby League Football Club Ltd v News Ltd* [2000] FCA 1541).

23. A first answer to these questions may be found in acknowledging the particular importance in the interpretation of long-term contracts in general, and investment contracts in particular, of Article 4.3 UNIDROIT Principles and the reference therein contained to the “practices which the parties have established between themselves” and to “the conduct of the parties subsequent to the conclusion of the contract” as a means of interpretation (Fontaine). In this respect, it was pointed out (Cohen) that because long-term contracts involve by their very nature repeated performance (and repeated opportunity for a party to object if the party is displeased), conduct occurring after the conclusion of a contract can provide the basis for inferences as to what the parties believe their obligations are and, thus, can be a useful tool in contract interpretation.

24. Moreover, and more important, one might consider the creation of a permanent specific structure, such as a “contract management committee”, dedicated to following the evolution of the contract over time and to suggest adaptations that may appear to be advisable, even beyond major disturbances such as force majeure or hardship (Fontaine).

25. With respect to the proposal to elaborate further the duty to negotiate in good faith laid down in general terms in Article 2.1.15(1) UNIDROIT Principles on the ground that long-term contracts in general, and investment contracts in particular, not only are normally entered into after prolonged negotiations but may require (re-) negotiations also on a number of occasions in the course of their performance (see *supra*, para. 5 lit.(c)), it was recalled (Zimmermann) that mediation clauses are introduced, more and more often, into business contracts, particularly in the context of long-term contracts. One might therefore consider to tie renegotiations to mediation in order to “save the contract”, as far as possible, in line with the notion of private autonomy.

26. Also with respect to the proposal to elaborate further the duty of co-operation laid down in general terms in Article 5.1.3 UNIDROIT Principles (see *supra*, para. 5 lit.(f)), it was noted (Finn) that, although ‘cooperation’ has uncommon importance in practice in relational contract settings in particular, the UNIDROIT Principles are quite muted in recognising this.

27. Concerning the issue of negotiations in bad faith and its consequences (see *supra*, para. 2 lit. (d)), it was pointed out (Finn) that indeed many projected long-term contracts fail to eventuate after lengthy periods of preliminary negotiations, preparatory work, etc. often at great cost to one party. The examples are many also in common law jurisdictions and involve projected distributorships or franchises, contractual joint ventures, leases of buildings to be constructed, lengthy but unsuccessful tender bids, etc. Such cases can give rise to issues as varied as ‘bad faith negotiations’ (Article 2.1.15(2) UNIDROIT Principles), ‘inconsistent behaviour’ (Article 1.8 UNIDROIT

Principles), preliminary contract, and unjust enrichment/restitution, and in this respect reference was made to two Australian decisions, i.e. *Gibson Motorsport Merchandising Pty Ltd v Forbes* (2006) 149 FCR 569 (Aust) and *Hughes Aircraft Systems International v Air Services Australia* [1997] FCA 558.

28. Support was also expressed (Zimmermann) for the proposal (see *supra*, para. 5 lt.(h)) to amend Article 5.1.8 UNIDROIT Principles, which is particularly relevant especially with respect to long-term contracts in general, and investment contracts in particular, so as to make it clear, analogously to Article 7.3.7, that once the contract has been ended restitution for past performances is excluded.

29. With respect to hardship and force majeure, it was noted (Cohen) that the sorts of changed circumstances that might constitute hardship under Article 6.2.2 of the UNIDROIT Principles are more likely to occur in the context of long-term contracts, and may lead to a wide variety of types of relief sought by the disadvantaged party.

30. Finally, there were put forward some proposals not directly related to any of the issues raised in the Secretariat's Memorandum.

31. Thus, it was recalled (Fontaine) that long-term contractual arrangements are often implemented by means of a group of linked contracts, either simultaneous (e.g. distinct contractual arrangements about financing or technical assistance) or successive (e.g. a basic framework contract to be implemented by the future conclusion of specific contracts). Hence the proposal to consider at least some of the aspects concerning such inter-relations.

32. Furthermore, it was pointed out (Fontaine) that the UNIDROIT Principles only marginally referred to post-contractual obligations: in fact, Art. 7.3.5 (3) merely states that "[t]ermination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination". In view of the fact that in the context of long-term contracts in general, and investment contracts in particular, the issue of post-contractual obligations is definitely more complex, one might consider dealing with it in a more specific manner.

33. It was also noted (Cohen) that the existing UNIDROIT Principles address hardship and force majeure, but in the context of long-term contracts other future events, such as the failure of an agreed standard by which a party's payment or performance obligations are determined, may also occur and should be addressed.

34. More in general it was observed (Cohen) that after a passage of long period of time, provisions agreed to in the distant past that made sense at the time may seem silly or bizarre (or unfairly surprising) when unearthed many years later, and that therefore might be given whether, and under what circumstances, to provide relief from surprising application of anachronistic features of agreements entered into in the distant past

35. With special reference to investment contracts, it was pointed out (Raeschke-Kessler) that disputes arising from them are often subject to the applicable bilateral or multilateral investment treaties, but that in the case the arbitral tribunal decides in favour of the foreign investor, the enforcement of the award may be at risk on the ground of the doctrine of State immunity invoked by the host State. Hence the suggestion to address the issue in the UNIDROIT Principles.

36. Finally, several replies commented on the approach to be adopted in the envisaged work on long-term contracts in general, and investment contracts in particular.

37. One expert (Fontaine) was in favour of preparing a legal guide indicating how parties may, in their contract, adapt or supplement the black-letter rules of the current edition of the UNIDROIT Principles to meet the special needs of long-term contracts in general, and investment contracts in particular. In support of this solution it was pointed out that the additional issues at stake with respect to these types of contract would need to be treated with a degree of flexibility that black-letters, even soft law black-letters, cannot always offer.



38. Others (Lando, Perales Viscasillas, Yuqing Zhang) expressed their preference for preparing a kind of supplement to the current edition of the UNIDROIT Principles, i.e. a separate publication containing black-letter rules and comments specifically addressing issues of relevance in the context of long-term contracts in general, and investment contracts in particular.

39. Yet the majority (Cohen, Finn, Hartkamp, Uchida, Zimmermann) was decidedly in favour of proceeding to a close examination of both the black-letter rules and comments of the current edition of the UNIDROIT Principles with a view to determining the modifications and/or additions to be made in order to take into account the special needs of long-term contracts in general, and investment contracts in particular.

40. In support of this approach it was pointed out (Zimmermann) that some of the issues to be considered (e.g. determination of missing contract terms by a third person) relate to contract law in general even if they are of particular relevance in the context of long-term contracts in general, and investment contracts in particular. Furthermore, parties to international commercial contracts as well as arbitrators definitely prefer to find all rules in one comprehensive text rather than having to compare two documents with each other.

41. Moreover, and more importantly, it was felt (Zimmermann, Finn) that relatively few of the issues at stake – above all termination for just cause – would appear to require additional black-letter rules (or amendments to the existing rules) of the UNIDROIT Principles, while most of them could be properly disposed of by additions to the comments and/or by significant cross-referencing of comments where a ‘family’ of articles might potentially apply in a given instance. It was also suggested (Finn) that, since some of the already existing articles of the UNIDROIT Principles have a greater importance for long-term, and particularly relational, contracts than others, the scheme of the UNIDROIT Principles should reflect this openly.

## **V. ACTION TO BE TAKEN**

42. *In the light of the foregoing the Governing Council may wish tentatively to endorse the approach proposed by the majority of experts this far consulted by the Secretariat (see supra, para. 39) and instruct the Secretariat to set up a restricted Steering Committee composed of experts that have shown particular interest in the proposed work on long-term contracts in general, and investment contracts in particular, for the purpose of formulating specific proposals for appropriate amendments and additions to the current black letter rules and comments of the UNIDROIT Principles with a view to a first reading by the Council at its 94<sup>th</sup> session in 2015.*