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REPORT

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Contents

Item 1: Adoption of the annotated draft agenda (C.D. (95) 1 rev. 2)	3
Item 2: Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (95) 1 rev. 2)	3
Item 3: Reports	4
(a) <i>Annual Report 2015 (C.D. (95) 2)</i>	4
(b) <i>Report on the UNIDROIT Foundation</i>	5
Item 4: International Commercial Contracts: adoption of additional rules and comments to the UNIDROIT Principles of International Commercial Contracts concerning long-term contracts (C.D. (95) 3)	6
Item 5: International Interests in Mobile Equipment	18
(a) <i>Implementation and status of the Luxembourg Rail Protocol and the Space Protocol (C.D. (95) 4)</i>	18
(b) <i>Preliminary Draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (C.D. (95) 5)</i>	20
Item 6: Transactions on Transnational and Connected Capital Markets: Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (95) 6 rev.)	25
Item 7: Private Law and Agricultural Development	26
(a) <i>Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (95) 7(a))</i>	26
(b) <i>Possible preparation of an international guidance document on land investment contracts (C.D. (95) 7(b))</i>	28
Item 8: Transnational civil procedure – formulation of regional rules (C.D. (95) 8)	31
Item 9: Promotion of UNIDROIT instruments (C.D. (95) 9)	33

Item 10:	Correspondents (C.D. (95) 10)	35
Item 11:	Library and research activities (C.D. (95) 11)	37
Item 12:	UNIDROIT information resources and policy (C.D. (95) 12)	38
	(a) <i>Uniform Law Review and other publications</i>	38
	(b) <i>The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation</i> Errore. Il segnalibro non è definito.	
Item 13:	Proposals for the Work Programme for the triennial period 2017 – 2019 and comments received by the Secretariat (C.D. (95) 13 rev. and Addenda)	40
Item 14:	Preparation of the draft budget for the 2017 financial year (C.D. (95) 14)	48
Item 15:	Date and venue of the 96 th session of the Governing Council (C.D. (95) 1 rev. 2)	49
Item 16:	Any other business	50
Item 17:	International Contract Conference jointly with the CISG Advisory Council (20 May 2016)	50
APPENDIX I	List of participants	51
APPENDIX II	Agenda	57
APPENDIX III	List of abbreviations and acronyms	59

[Note of the Secretariat: The Report uses abbreviations and acronyms for UNIDROIT and other organisations' instruments, international organisations or other institutions. The list of such abbreviations and acronyms is to be found in APPENDIX III to this document.]

1. *The President of the Institute, Mr Alberto Mazzoni, welcomed members of the Governing Council to the Council's 95th session.*

2. In his opening address, the President remarked that 2016, the 90th year of the Institute, had been and continued to be celebrated through several major events organised by the Secretariat. The President reported that the opening event, held on 15 April 2016, had been designed to facilitate discussions surrounding the practice of international law at the United Nations. The second event had been a conference held on 19 April 2016 entitled "Reflections on the League of Nations on the 90th Anniversary of UNIDROIT". The President concluded his overview of the 90th anniversary celebratory events by describing the latest event, the special session of the General Assembly, held on 20 April 2016. The President informed the Council that, following the General Assembly, UNIDROIT had hosted a symposium devoted to the role and place of private law in supporting the implementation of the international community's broader cooperation and development objectives.

3. In turning to the agenda of the meeting, the President emphasised that the Governing Council was expected to review the Institute's work completed over the preceding 12 months, as well as determine the Institute's activities for the upcoming triennium. The President began his report by characterising the past year as extremely productive in achieving the objectives set out in the Institute's triennial Work Programme 2014-2016, and took special note of the significant progress of four major projects. The President first described the progress on the adoption of additional rules and comments to the UNIDROIT Principles concerning long-term contracts. The second project he described was the preliminary draft MAC Protocol. The President summarised the progress made on the preliminary draft as having successfully solved several significant legal issues surrounding the creation of the Protocol, and emphasised that the completed preliminary draft Protocol that was being presented to the Governing Council was a testament to the work completed by the MAC Protocol Study Group. The President then noted the continued work on the preparation of the draft Legislative Guide on Intermediated Securities. He commented upon the rapid progress that had been made on the project, despite that the first substantive meeting of the Working Group had only taken place in October 2015. The final project upon which the President provided a progress report was the joint project of UNIDROIT and the ELI in preparing European regional model rules in relation to transnational civil procedure. The President described the project as epitomising the commitment of UNIDROIT to deliver high-quality legal instruments through cooperation with other relevant organisations.

4. The President concluded his snapshot of the work of UNIDROIT and noted that while the work described was highly significant, there were many other projects deserving similarly high praise. He then cautioned the Governing Council that the task before them was not to simply review the projects, but that it was their responsibility to determine the future of the current projects and to analyse the viability of the proposed work projects. He declared the session open.

Item 1: Adoption of the annotated draft agenda (C.D. (95) 1 rev. 2)

5. *The Governing Council adopted the agenda as proposed in document C.D. (95) 1 rev. 2).*

Item 2: Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (95) 1 rev. 2)

6. *The Governing Council appointed Mr Alexander S. Komarov as First Vice-President and renewed the appointment of Mr Lyou Byung-Hwa as Second Vice-President of the Governing Council, both of whom will serve in these positions until the 96th session of the Council.*

Item 3: Reports**(a) Annual Report 2015 (C.D. (95) 2)**

7. The *Secretary-General, Mr Jose Angelo Estrella Faria*, presented the Annual Report for 2015. He stressed that, although the year 2015 had not been momentous in terms of institutional developments, much work had actually been accomplished toward UNIDROIT's objectives. He further emphasised that all of the work to be discussed in the course of the Governing Council meeting had been accomplished by the small number of staff that comprised the Secretariat.

8. Regarding the efforts of reaching potential new member States, the Secretary-General indicated that efforts had primarily focused on South-East Asia, including consultations with the Socialist Republic of Vietnam. Related to those efforts in reaching new member States, the Secretary-General mentioned a visit from a delegation from the Philippines to discuss issues related to the publication of the Contract Farming Legal Guide, which confirmed that the instrument had contributed to the visibility of the Institute. Moving to the completion of the amendments to the UNIDROIT Principles to include long-term contracts, the Secretary-General stressed the Secretariat's gratitude to the Max Planck Institute for having hosted the second meeting of the Working Group in Hamburg, Germany.

9. The Secretary-General then highlighted a few aspects of last year's major legislative activities. In regards to the MAC Protocol, the Secretary-General stressed one substantive aspect: the resolution of the issue regarding the scope of the Protocol. After highlighting the history of the MAC Protocol since 2006, the Secretary-General recalled that much of the scepticism surrounding the MAC Protocol had resulted from the difficulty in defining the scope of the equipment to be covered. He then explained that the culmination of the Study Group's effort over the past year was that the scope had been sufficiently narrowed down to cover high value agricultural, construction and mining equipment. He expressed his appreciation to the State Department of the United States of America, which had made available to UNIDROIT the services of Professor Marek Dubovec of NatLaw to assist the Study Group in its research on equipment, as well as legal issues related to the creation of the Protocol. He then expressed the Secretariat's belief that the preliminary draft Protocol as to be presented to the Governing Council was ripe for consideration by a Committee of Governmental Experts.

10. In summarising the cooperative project with the ELI regarding transnational civil procedure, the Secretary-General noted that the project, in addition to the ALI/UNIDROIT Principles, had attracted interest of political institutions throughout the world, and had raised the potential for a similar project in Latin America.

11. The Secretary-General then described the resumed work towards the preparation of a Legislative Guide on Intermediated Securities by the Committee on Emerging Markets. He noted that the next step would be to take the revised draft to the Committee on Emerging Markets for a round of inter-governmental discussions on the instrument prior to its adoption.

12. The Secretary-General also noted a proposal from FAO to join efforts in the development and review of the legislative framework for contract farming and operation of the Legal Guide on Contract Farming.

13. The final area of work highlighted by the Secretary-General was with regard to the protection of cultural property. He recalled that the topic had attracted a high level of political interest after the United Nations Security Council had adopted resolution 2199 on 12 February 2015, which called upon the international community to join efforts in the prevention of the looting of cultural property in the Middle East, especially as it related to the possible use of stolen and

illegally excavated cultural property for the purpose of terrorist financing. He pointed out that UNIDROIT was part of a task force set up by UNESCO with other organisations to assist the international community in that effort.

14. *The Governing Council took note of the Secretary-General's report on the activity of the Institute in 2015.*

(b) Report on the UNIDROIT Foundation

15. *Mr Jeffrey Wool, President of the UNIDROIT Foundation*, introduced the item by reminding the Council of the Foundation's decisions in 2015 to modify its approach to raising funds in support of UNIDROIT, by including funding earmarked for specific research projects on topics closely related to and complimentary with the core work of UNIDROIT. The goal of this approach was to enable funding to appear more attractive to outside parties, thus encouraging more donations. Mr Wool recalled that approximately €100,000 had been raised, as a result of the modified approach. He then recalled that the two main projects identified last year to benefit from earmarked contributions were (a) research and work on the economic assessment of international commercial law reform and (b) best practices in electronic registries. Mr Wool noted that both projects had been fully funded for 2015 and 2016. He then pointed out that two meetings in support of the two main projects had been held in March 2016 as part of a joint undertaking between the Foundation and the commercial law centre at Harris Manchester College University of Oxford.

16. Mr Wool then summarised the results of both meetings. In regards to the economic assessment of international commercial law reform, Mr Wool noted that the project had confirmed a large gap between theory and practice. He shared that the group had settled on two different solutions to alleviate the gap between practice and theory. The first solution was to create a general formula to capture the quantification of economic benefit in international law reform, which included the benefits associated with risk reduction, as well as benefits associated with uniformity and harmonisation. He then described the second approach as developing an outline of best practices for assessment of economic benefit of law reform projects, both before the commencement of a project in order to determine the need for any particular project, as well as after the conclusion of a project to analyse its success.

17. Mr Wool shared that the second project on the electronic registries had its core in Article 28 of the Cape Town Convention, which stated that the registrar was liable for a range of issues associated with problems under the registry. He further noted that the Convention provided that compliance with best practices was a possible defence, however, he highlighted that "best practices" had not been defined in the Convention. Mr Wool informed the Council that the project had identified a need for a functional, risk-based approach to define best practices, and that ongoing work would be done on the project.

18. Mr Wool concluded by informing the Council of the Foundation's plan to finish the two existing projects and to provide funding for further projects to support continued development in the field of cultural property. Mr Wool also highlighted the work done by the Cape Town Convention Academic Project, in conjunction with Oxford University. He noted that, while the model of the Academic Project was not in all respects a suitable template for building an information platform on the 1995 UNIDROIT Convention, the Cape Town Convention Academic Project had been well received around the world and its basic concept could be adopted in relation to supporting the Institute's work on cultural property.

19. *Mr Gabriel* expressed his appreciation to Mr Wool and stated that the focus of the Foundation on the existing projects as a way to attract funding was an excellent idea.

20. The *Secretary-General* reminded the Governing Council that the UNIDROIT Foundation had been established under Dutch law, and its purpose was to raise funds in support of the various activities of UNIDROIT. He further called the Council's attention to the fact that the Foundation had traditionally funded scholarships for young lawyers, typically in developing countries, to spend some time at UNIDROIT to conduct independent research. As a result of the modified fundraising approach of the Foundation, a new model of awarding scholarships had been proposed which would allow the funding of research on specifically pre-selected topics, in addition to the general support provided to the UNIDROIT scholarships programme. He stated that the Secretariat had been very pleased with the progress of both projects and looked forward to their continued progress.

21. *The Governing Council took note of the report by the President of the UNIDROIT Foundation.*

Item 4: International Commercial Contracts: adoption of additional rules and comments to the UNIDROIT Principles of International Commercial Contracts concerning long-term contracts (C.D. (95) 3)

22. Transitioning to this item on the agenda, the *Secretary-General* first invited Mr Neale Bergman, Legal Officer UNIDROIT Secretariat, to provide information on the evolution of the project. The *Secretary-General* then noted that, after Mr Bergman's introduction, Mr M. Joachim Bonell (UNIDROIT Consultant and Chairman of the Working Group) would be invited to present the Working Group's proposed amendments and additions to the 2010 edition of the UNIDROIT Principles.

23. *Mr Bergman* drew the Governing Council's attention to document C.D. (95) 3, which contained the Working Group's proposed amendments and additions to the UNIDROIT Principles, and he proceeded to make four brief points. First, he noted that the initial five paragraphs of that document contained background with which the Governing Council was already familiar from its previous sessions, including brief summaries of the origin of the project, the composition of the Working Group, and the Working Group's first session in January 2015.

24. Second, he stated that the following paragraphs provided an update to the Governing Council since its 94th session. In particular, paragraph 6 addressed the Working Group's second session, which had been held in Hamburg at the kind invitation of the Max Planck Institute for Comparative and International Private Law and at which the Working Group, after carefully examining the drafts prepared by the listed rapporteurs, had reached agreement on its recommended amendments and additions to the Principles. Next, paragraph 7 addressed an event entitled "The UNIDROIT Principles and Issues relating to Long-Term Contracts", which had been held in March at the kind invitation of the University of Oslo's Faculty of Law and at which the recommended amendments and additions had been discussed at length.

25. Third, he explained that the amendments and additions were listed in order in paragraph 8, but noted that the Working Group had consistently organised its work by particular topics and that such an organisation had been retained in the Annexes to the document. He further noted that the Annexes reflected the recommended amendments and additions in redline, specifically with the text proposed for addition underlined and the text proposed for deletion struck out.

26. Fourth, he noted that, provided that the Governing Council would adopt the amendments and additions to the Principles, the Secretariat sought the Governing Council's authorisation to prepare, new English and French language editions for publication by December 2016, including editorial work to ensure consistent style and language.

27. *Mr Bonell* introduced the drafts of the UNIDROIT Principles prepared by the Working Group. Regarding Annex 1 on the notion of long-term contracts, he first noted the decision of the Working

Group to amend Comment 2 of the Preamble in order to emphasise that the new edition gave due consideration to the special needs of long-term contracts. He then noted that the footnote had been amended to refer to the Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts, which had been adopted in 2013. He stated that, while the Working Group had decided to include a definition of the term “long-term contract”, it envisioned the definition to be a descriptive one rather than a regulatory one. That definition introduced three elements of long-term contracts: (a) duration of the contract, (b) an ongoing relationship between the parties and (c) complexity of the transaction. In this regard, he emphasised that the essential element was duration, while the latter two elements would normally be present to varying degrees, but not required. He then highlighted Comment 3 to that Article, which provided an illustrative list of long-term contracts, as well as cross-references to the black letter rules and comments that took into account the special needs of long-term contracts.

28. Regarding Annex 2 on contracts with open terms, he first noted that the Working Group had decided to add a reference in the first two paragraphs of Article 2.1.14 to the possibility that missing terms might be determined unilaterally by one of the parties. This amendment would align it with Article 5.1.7 as well. He then highlighted that Comments 1-3 had been amended accordingly and that a new Comment 4 had been added to emphasise the particular relevance of Article 2.1.14 in the context of long-term contracts. He mentioned a further change in Comment 3 to Article 5.1.7 on price determination, which referred to the possibility for the parties to fix a standard with which a third party would have to comply, and that determination could be challenged if that standard was not met. He further mentioned that, as set forth in the Comment, parties might wish to fix different standards depending on whether the task of the third party was to determine terms or facts.

29. Regarding Annex 3 on agreements to negotiate in good faith, he stated that the Working Group had decided to delete the last sentence of Comment 2 of Article 2.1.15 and to replace it with a new Comment 3 on agreements to negotiate in good faith. He elaborated on the changes in that Comment by stating that the duty to negotiate in good faith meant, at the very least, a duty to negotiate seriously with an intent to conclude an agreement, and by pointing out the cross-references to Articles 1.8 and 2.1.16, on inconsistent behaviour and the duty of confidentiality respectively. The Comment, in this regard, made clear that parties might wish to further define such duties themselves.

30. Regarding Annex 4 on contracts with evolving terms, he discussed the addition of a new Comment 3 to Article 4.3, which explained the particular importance of subparagraphs (b) and (c) of Article 4.3 to long-term contracts. He noted that parties might wish to adopt a particular mechanism for possible variations and adjustments of the contract during performance. He then noted that the existing Comment 3 had become Comment 4, which stated that parties wishing to limit or exclude any relevance of subsequent conduct in their contract might include a “merger” or “no oral modification” clause.

31. Regarding Annex 5 on supervening events, he first discussed the Working Group’s proposition to add Comment 5 to Article 7.1.7. He explained that Comment 5 stated that, due to the extensive amount of time and resources associated with long-term contracts, parties might wish to add provisions in their contracts allowing for the continuation of the relationship when hardship or a force majeure situation arose, thereby reserving termination of the contract as a last resort. He then drew the attention of the Governing Council to the new illustration at the end of the Comment, which was taken from actual contractual practice.

32. Regarding Annex 6 on co-operation between the parties, he explained that the Working Group had decided to split the existing Comment into two separate Comments. He further explained that Comment 1 covered the importance of the duty of co-operation for all kinds of

contracts, whereas Comment 2 stressed the particular importance of that duty in the context of long-term contracts. He then noted that Comment 2 included illustrations taken from actual contractual practice.

33. Regarding Annex 7 on restitution after ending contracts entered into for an indefinite period, he stated that the Working Group had decided to amend the title of Article 5.1.8 from "Contract for an indefinite period" to "Termination of a contract for an indefinite period". He further stated that the Working Group had decided to harmonise the terminology by replacing "may be ended" with "may be terminated" and by making conforming changes in Comment 1. He then noted that this Article had been further amended to make it clear that, once a contract for an indefinite period was terminated, the provisions in Articles 7.3.5 and 7.3.7 would apply, and that Comment 2 had been added accordingly.

34. Regarding Annex 8 on termination for compelling reason, he noted that the proposed provisions were the most innovative among all the proposed amendments and additions to the Principles. He then noted that, in view of the reservations expressed by some Members of the Governing Council regarding termination for compelling reason, the Working Group had appointed two of its most eminent experts, *Sir Vivian Ramsey* and *Mr Reinhard Zimmerman*, as Co-Rapporteurs. After reading out the proposed Article 6.3.1, he emphasised that that Article and the related Comments made it very clear that the right of termination under these provisions was an exceptional remedy, which could be resorted to only for long-term contracts characterised by an ongoing relationship of co-operation and trust between the parties, specifically in situations where that relationship irreparably broke down to the extent that it would be manifestly unreasonable for the terminating party to be expected to continue the contractual relationship. He then recalled the concerns of some Members of the Governing Council regarding the relationship between Article 6.3.1 and other provisions already dealing with termination, as well as potential abuse of the provision. For the former concern, he stated that the Working Group had decided to address it expressly in Comment 2, which included various illustrations. For the latter concern, he similarly stated that it had been expressly addressed in Comment 3, which made clear that inappropriate termination would constitute anticipatory repudiation, resulting in the other party's ability to terminate the contract for fundamental non-performance. He then pointed out that Comment 4 made clear that the proposed provisions were of a non-mandatory nature.

35. Regarding Annex 9 on post-contractual obligations, he noted that Article 7.3.5 of the 2010 UNIDROIT Principles dealt with such obligations in a rather succinct manner. He then noted that the Working Group had decided to amend Comment 3 to Article 7.3.5 to point out further examples of provisions or obligations which survived termination. He also noted that a new Comment 4 had been added, which not only pointed out the particular relevance of post-termination obligations in long-term contracts, but also suggested that parties might wish to indicate in their contract specifically which obligations, if any, would exist even after termination to avoid any uncertainty in this regard.

36. In concluding, Mr Bonell expressed his most sincere appreciation to the Members and Observers of the Working Group for their contributions to the development of the proposed amendments and additions. He reflected that the task given to the group had not been an easy one and that, due to the high calibre of the experts involved, the group's discussions had brought out diverse views and opinions. He then stated that the proposed amendments and additions were ultimately of the highest quality and achieved the purpose for which they were intended.

37. The *President* opened the floor for consideration of Annex 1 on the notion of long-term contracts.

38. *Mr Neels* pointed out that the definition of a long-term contract was actually a description. He noted that some simple contracts, such as a contract where delivery and payment took place on two separate dates, could fall within the scope of that proposed description. He then queried whether it would be more beneficial to adapt the proposal to require, in addition to duration, one of the other two proposed elements, such as that a contract to be performed over a period of time would also have to meet either a requirement of complexity or a requirement of an ongoing relationship between the parties in order to qualify as a long-term contract.

39. *Ms Broka*, after expressing her gratitude to Mr Bonell and the Working Group for their efforts, stated her support for the proposed definition. She further stated that the three listed elements provide a wide range of possibilities for interpretation, which was necessary so that the definition did not become too strict, which would not facilitate the purpose of better taking into account long-term contracts in the Principles.

40. *Mr Gabriel* stated that dealing with long-term contracts was important to help fill out the Principles. He further stated, however, that he was perplexed by the use of the word “complexity” in the definition. In suggesting that many contracts falling under the definition of a long-term contract would not necessarily be complex, Mr Gabriel indicated his belief that the intent was to include long-term contracts which were not complex. In this regard, he preferred to see the concept of complexity reflected in the comments rather than in the black letter definition itself.

41. *Mr Vrellis* congratulated the Working Group and its Chairman for the work that had been completed. He suggested that if a particular concept, such as complexity, was not always necessary to indicate a long-term contract, then it might not necessarily be a characteristic of such a contract. He preferred for the definition to be simplified to state that a long-term contract “refers to a contract which is to be completed over a period of time and which involves an ongoing relationship between the parties”.

42. *Mr Bobei* congratulated the Working Group on its accomplishments regarding these amendments. He then suggested that a clear definition of long-term contracts was needed, however that what was provided in Article 1.11 was not a definition, but a description, because it stated that a long-term contract “refers to” rather than a long-term contract “means”. He further suggested that, to be more in line with the purpose of the Principles, it might be more appropriate to provide a definition for long-term commercial contracts, instead of just long-term contracts.

43. *Mr Popiolek* reflected that this definition was difficult because the determination was made with respect to time rather than a particular meaning. He questioned whether, despite the two elements of complexity and an ongoing relationship not being requirements, the wording of the elements would suggest a conjunctive application, meaning that both elements would have to be satisfied in order for a contract to qualify as a long-term one.

44. *Mr Bonell* insisted upon the view, which had been unanimously adopted by the Working Group, that the criteria for a long-term contract provided in Article 1.11 should be presented as a description rather than a definition. He then pointed out that the Article already contained both definitions and descriptions. In referring to concerns regarding the complexity element, he stated that, because the criteria for a long-term contract was presented as a description rather than a definition, it provided the necessary flexibility for determining whether a particular contract qualified as a long-term one, rather than being overly restrictive.

45. The *President* recalled that, among civil law scholars, there had been a discussion of syllogistic definitions and typological ones. In this regard, he recommended that the Governing Council should not view this issue syllogistically. Rather, the description of long-term contracts

should be viewed typologically, meaning that contracts which met some elements of the description could qualify as long-term ones even if they did not meet all of the elements.

46. *Mr Tricot* voiced his support for the description of a long-term contract because he recognised that there were certain notions which could not be defined and should instead be described. In pointing out that the terms “normally” and “to a varying degree” were unnecessary and possibly dangerous, he suggested that the language could be simplified to read: “‘long-term contract’ refers to a contract which is to be performed over a period of time and which involves a complex and ongoing relationship between the parties”. He noted that he had reservations about the term “complex” but had thus far been unable to think of a better one. He further noted that his proposition would achieve the same result sought by the Working Group, but in a more streamlined and clearer manner.

47. *Ms Jametti* expressed her support for the text as it was proposed by the Working Group. She noted that there was a great variety of long-term contracts, and it was for good reason that the terms “normally” and “to a varying degree” were used as they offered the necessary flexibility to cover such variety.

48. *Mr Bobei* suggested that, regardless of what the definition was, the criteria for a long-term contract as presented in Article 1.11 essentially constituted a definition. He further suggested that, if a footnote or Comment was provided to state that the definition should not be understood in a strict manner, it would then place the other definitions in that Article in the vulnerable position of also not being understood in a strict manner.

49. *Ms Pauknerová* expressed her support for the proposed definition and for Ms Jametti’s statement. She noted that the Working Group had been composed of highly sophisticated experts. In trusting that those experts had thoroughly discussed this definition, she encouraged the Governing Council to defer to their wisdom and experience.

50. *Ms Sandby-Thomas*, in stating that she understood both sides of the debate thus far, suggested a change to the title of Article 1.11 from “Definitions” to “Definitions and descriptions”.

51. *Mr Komarov* queried whether all the drafters had understood the criteria to be conjunctive, with all three elements being required, or whether they believed that those criteria should be viewed selectively. In order to provide more transparency with respect to which contracts would be covered, he emphasised the importance of keeping the description as narrow as possible.

52. The *President*, as a point of order, suggested that the Governing Council should consider generally whether to support or oppose the proposed amendments. He then noted that the Working Group had been comprised of eminent experts who had considered the proposed definition and other issues at length. In acknowledging that the Governing Council had limited time, he further suggested that members should, of course, express their views on points about which they were in opposition, but should also exercise restraint in proposing revisions to the Working Group’s recommended amendments and additions.

53. *Mr Popiołek* noted that, while the title of Article 1.11 is “Definitions”, the important aspect was the function of the description. Regarding wording, he questioned whether the language “and which normally involves” altered the description because the latter part of the sentence also stated “complexity of the transaction and an ongoing relationship”. He then enquired about the effect of the word “and”, which was used in both of those phrases, and whether the word “or” might be better in the latter phrase.

54. *Mr Moreno-Rodriguez*, after congratulating the Working Group on its achievements, expressed his strong support for adopting the definition as it was proposed in Annex 1. Referring to the concerns raised, he stated that the proposal was sufficiently clear and pointed out the helpful explanation in Comment 3 of Article 1.11 that “the essential element is the duration of the contract”.

55. *Mr Sandoval* expressed his support for the proposed definition. He then enquired whether the reference to “sales contracts to be performed at one time” in Comment 3 could be simplified and suggested the deletion of “at one time” as superfluous.

56. *Mr Gabriel* stated that, while he was willing to accept that the definition was a descriptive one, he questioned the practicality of this provision, as lawyers would expect that the terms provided in the Article on definitions would be definitions. He further stated that, if the description of a long-term contract was not intended to be a definition, then it should be removed from that Article. He then suggested that, in order to achieve the goal intended, Comment 3 should be moved to the comments on the Preamble.

57. *Ms Shi* expressed her appreciation to the Working Group and emphasised that, regardless of how the criteria were characterised, they would act like a definition because it had been placed in Article 1.11. In this regard, she suggested that the title of the Article should be renamed to “Definition and Scope of Application”. She then questioned the ambiguity associated with the word “complexity” and queried whether a definition of that term should also be provided. She concluded by stating that adding the word “commercial” to the definition would be an unnecessary addition because the UNIDROIT Principles, as a whole, implied a commercial nature to the contract.

58. The *Secretary-General* recalled that the title of the provision, as well as its structure, had been in place since 1994. He pointed out that Article 1.11, since then, had always included descriptions and definitions and that, for the term “court”, a description had been provided. He encouraged the Governing Council not to focus on the overall architecture of the Principles, which had been approved at previous sessions of the Governing Council.

59. *Ms Bouza Vidal* congratulated the Working Group for its work and expressed her support for Annex 1. In this regard, she pointed out that the proposed Comment 3 addressed the concerns raised with respect to the proposed addition to Article 1.11. With respect to Comment 2 to the Preamble, she noted the exclusion of so-called “consumer transactions” and enquired whether, in connection with possible future work, the scope of the Principles could be enlarged to cover such transactions and also to consider contracts with a weaker party.

60. The *President* stated that possible future work on the Principles was not before the Governing Council at that time, but took note of Ms Bouza Vidal’s proposition regarding the scope of the Principles.

61. *Mr Kanda* enquired whether the proposed amendments might cause some unintended consequences. In particular, he asked whether the proposed amendments would allow, in a multiparty and multi-contract situation, for some contracts to qualify as long-term contracts and for other ones not to qualify. He further asked whether the proposed amendments would alter the way lawyers viewed multiple contracts under one master agreement.

62. *Mr Sánchez Cordero* expressed his strong support for the comments made by Ms Sandby-Thomas and Mr Gabriel.

63. *Mr Bonell* emphasised that all of the points raised had been considered and discussed by the Working Group. He noted that the Working Group had decided to recommend that the provision

be drafted in a descriptive way that would allow the reader to understand what it was about and then to go further in the operative rules and comments. With respect to a situation in which there were multiple contracts between parties, he said that, provided that the relationship was ongoing and of a sufficient duration, then that situation could be covered by the description. He then encouraged the members of the Governing Council not to be too scholastic and stated that the description should just give an idea of what a long-term contract was, before getting to the operative rules which would lay out the particular details as they related to long-term contracts.

64. The *President*, in light of the points made, reiterated the proposal for the adoption of Annex 1, and it was adopted.

65. The President then drew the Governing Council's attention to Annex 2 on contracts with open terms and opened the floor for discussion.

66. *Mr Gabriel* expressed his support of the adoption of Annex 2.

67. *Mr Tricot* stated that he had been convinced by Mr Bonell's explanation with respect to the adoption of Annex 1 as it was proposed. He further stated that, for the same reasons, he was also convinced to support the adoption of Annex 2.

68. *Mr Leinonen* expressed his gratitude for the Working Group's efforts. He noted that he was pleased with Annex 1 and that he supported Annex 2 for adoption as well.

69. Seeing no further requests for the floor, the *President* proposed adoption of Annex 2, and it was adopted.

70. The President then drew the Governing Council's attention to Annex 3 on agreements to negotiate in good faith and opened the floor for discussion.

71. *Mr Tricot* noted that Article 2.1.15 addressed negotiations in bad faith and not those in good faith. He further noted that the proposed new Comment 3 to that Article addressed agreements to negotiate in good faith. He asked for clarification on this distinction and then inquired whether it was necessary to speak of agreements "to negotiate in good faith" instead of just agreements "to negotiate".

72. *Mr Bonell* responded to Mr Tricot's inquiry by acknowledging the controversial nature of the issue of good faith and elaborated that the controversy was because many, namely civil law jurisdictions, took for granted that negotiations, per se, implied good faith, while in other parts of the world, that was not the case.

73. *Mr Gabriel* pointed out that Comment 3 did not imply good faith because it was assuming the existence of an agreement specifying that the negotiations were to be conducted in good faith. He further pointed out that, in the absence of that assumption, there might have been an issue regarding good faith, but Comment 3 was essentially stating that the sky is blue on the days that clouds were not there.

74. Seeing no further requests for the floor, the *President* proposed the adoption of Annex 3, and it was adopted.

75. The President then drew the Governing Council's attention to Annex 4 on contracts with evolving terms. Seeing no requests for the floor, he proposed the adoption of Annex 4, and it was adopted.

76. The President then drew the Governing Council's attention to Annex 5 on supervening events. Seeing no requests for the floor, he proposed the adoption of Annex 5, and it was adopted.

77. The President then drew the Governing Council's attention to Annex 6 on co-operation between the parties. Seeing no requests for the floor, he proposed the adoption of Annex 6, and it was adopted.

78. The President then drew the Governing Council's attention to Annex 7 on restitution after ending contracts entered into for an indefinite period and opened the floor for discussion.

79. *Mr Gabriel* stated that, while the previous two Annexes dealt with the commentary, Annex 7 actually amended the language of an existing article. He queried whether Annex 7 substantively altered Article 5.1.8, or if it was simply clarifying the existing provision. He then stated that, if it was simply meant for clarification purposes, then he fully supported its adoption.

80. *Mr Bonell* replied that Annex 7 was not meant to substantively alter Article 5.1.8 and was intended to align terminology.

81. Seeing no further requests for the floor, the *President* proposed the adoption of Annex 7, and it was adopted.

82. The President then drew the Governing Council's attention to Annex 8 on termination for compelling reason and opened the floor for discussion.

83. *Mr Gabriel* began the discussion of Annex 8 by recalling that the subject of termination for compelling reason had been raised before, most recently in the context of the development of the additions made to the Principles in 2010. He surmised that, at that time, the Working Group had decided that the concept was not appropriate since it had been felt that, while use of the Principles was low but still growing, adding those provisions would likely damage the Principles and could halt any further growth in their usage. He further asserted that because the concept of termination for compelling reason might be seen as a radical departure from established principles in many legal systems, lawyers would likely exclude the Principles entirely rather than just excluding these new provisions. He concluded by stating that these provisions would cause the Principles to take a step backwards and that he was therefore strongly opposed to their adoption.

84. *Mr Popiołek* first congratulated the Working Group for its efforts in drafting these particular amendments. He joined Mr Gabriel in his opposition of Annex 8, noting that the provisions would have a negative impact not only in theory, but also in practice because of how difficult they would be to apply.

85. *Mr Tricot* expressed his opposition to the adoption of Annex 8. In doing so, he referred to the Introduction of the 1994 UNIDROIT Principles, which emphasised that the objective of the Principles was to establish a balanced set of rules for use throughout the world irrespective of the legal traditions and the economic and political conditions of the countries in which they were to be applied. He noted that the Introduction also emphasised that the Principles had deliberately avoided use of terminology peculiar to any given legal system. He further noted that adoption of Annex 8, which was based upon a particular legal tradition, would be contrary to this founding philosophy of the Principles.

86. *Mr Wilkins* complimented the Working Group in completing the project but recalled the statement made at the last session of the Governing Council to the effect that the amendments regarding long-term contracts were unnecessary. He stated that, despite the harmless nature of

the proposed amendments overall, he supported Mr Gabriel's assessment that the provisions in Annex 8 would cause considerable harm to the Principles. He stated that this concept was needlessly contentious, and that he was therefore opposed to the adoption of Annex 8.

87. *Mr Bobei* expressed his disapproval of the proposed provisions and drew the Governing Council's attention to the fact that this concept had been considered and rejected during the last revision of the Principles. In stating that nothing new had occurred since that time to warrant reconsideration of that rejection, he concluded by stating that he did not feel there was any compelling reason to adopt the proposed provisions.

88. *Mr Acquaticci*, who was appearing on behalf of Mr Hans-Georg Bollweg, strongly supported the proposed provisions and stated that they would allow UNIDROIT to close a gap in the Principles. He expressly thanked Mr Bonell and Mr Zimmerman for their efforts on the project generally and for these provisions specifically. He further stated that, without the provisions on termination for compelling reason, the Principles would remain incomplete and that the efforts of the last year to amend the Principles in this regard would have been pointless. He then pointed out that other countries had successfully implemented a similar rule and reiterated his support for adoption of the new provisions.

89. *Mr Leinonen* stated that he had struggled with this proposed addition and therefore had consulted with both academics and practicing attorneys. He further stated that, from such consultations, there was some support among a few practitioners but most others conveyed fear and hesitation with respect to the new provisions. As a result of such consultations and Mr Gabriel's comments, Mr Leinonen stated that he was convinced that the Governing Council should not take the risk of adopting these provisions.

90. *Mr Moreno Rodriguez* stated that he recognised that this concept was much more than a technical matter and was very much a bold solution. He noted that he, like Mr Leinonen, had consulted with contract law experts, not only from Paraguay, but from across Latin America and those consultations had revealed strong opposition to adding these provisions to the black letter rules of the Principles. He further noted, however, that there was some openness for the concept to be included in some form elsewhere in the comments.

91. *Mr Vrellis* expressed his support for Annex 8, stating that it was necessary for the Governing Council to be more courageous than usual and to try to take a step forward in this regard.

92. *Ms Jametti* acknowledged the expressed concerns, but stated that she was persuaded by these necessary provisions and supported them. She further stated that unexpected situations could arise in long-term contracts in which it was unreasonable to expect the parties to continue. The proposed provisions were realistic ones in this sense. She then stated that the question was whether or not the Governing Council wanted to address these exceptional situations. Even though she was not completely pleased with the provisions, she knew that they were necessary.

93. *Mr Király* expressed his opposition to the new provisions. He noted that, with respect to contractual practice worldwide, parties already had many tools to design their relationships and that opening up this new possibility of terminating for compelling reason was very dangerous to the Principles and could open the floodgates for lawyers to take advantage of these provisions. He further noted that he would be more amenable to these provisions if they were going to be part of a general civil code, but that he could not support their inclusion among principles for international commercial contracts.

94. *Mr Neels* expressed his support for the new provisions, stating that they were an important social concept for long-term contracts. Because the provision was based on the concept of a compelling reason being “manifestly unreasonable,” he believed that the provisions were appropriately restrictive and therefore supported their adoption.

95. *Mr Sánchez Cordero* stated that he had also consulted with outside professionals and that they had all felt that this concept would introduce uncertainty into the Principles and would therefore be dangerous to the entire instrument.

96. *Ms Broka* stated that she was unable to support the proposed provisions, though she recognised that there were some strong arguments in their favour. She further stated that, if these provisions were needed in the future, the Governing Council should reconsider them. She then acknowledged that a compelling reason to terminate, in her legal system, would be extremely challenging to prove. She concluded by observing that the Governing Council had made clear that it was not ready to adopt these provisions at this time.

97. *Mr Erdem* expressed his opposition to the proposed provisions and stated that they would give grounds to international lawyers to attack the Principles because what was reasonable or unreasonable varied greatly across systems. He further stated that the word “manifestly” would not be enough to explain what was meant in this regard.

98. *Ms Pauknerová* stated that the proposed provisions were only to be used in exceptional circumstances and were to be interpreted restrictively. She therefore supported the adoption of Annex 8.

99. The *Secretary-General* noted that what had been expressed was very similar to the discussion that had occurred within the Working Group in 2010. He stated that, at that time, he had felt inclined to agree with the sentiment of those who had expressed reservations about termination for compelling reason. He then stated that, since that time, and in the light of the thoughtful consideration and excellent drafting done by the Working Group, he had been persuaded to view it, as expressed by Ms Pauknerová, as an exceptional remedy that had to be restrictively interpreted, and which, as such, could serve a useful purpose.

100. The *President*, in light of the clear majority who were against adoption of the new provisions, asked whether the Governing Council would wish to consider an alternative solution, such as including the concept in the comments elsewhere in the Principles.

101. *Mr Gabriel* stated that, if the proposal was simply to move the concept from the black letter rules of the Principles and to hide it in the Comments, then he would certainly be against that proposal. He reiterated his belief that the concept was flawed and therefore should be nowhere in the Principles, including the comments. He acknowledged, however, that if the proposal was different than simply doing that, he would of course be willing to consider it.

102. *Mr Komarov* stated that he found the provisions to be good overall and disagreed with the notion that they would harm the Principles. He noted that the purpose of the Principles was not to create perfect rules, but to be an instrument that provided tools for parties to use in the creation of their contracts. He then noted that he would support an alternative approach for this concept, in particular its inclusion in the comments, which would be better than completely excluding it from the Principles.

103. *Mr Wilkins* voiced his reservations regarding a possible alternative solution, but requested a clarification regarding exactly what solution was being proposed. He elaborated that, while using

the Principles to push this concept would not be appropriate, he would not be against using the comments simply to raise awareness of it.

104. *Mr Tricot* stated that, if this concept was to be introduced in the comments, or even just in an illustration, it would introduce another twist. This would affect readability and comprehension of the Principles because the Comments were intended to build upon what was set forth in the black letter rules of the Articles. In this regard, he insisted that this concept should not be hidden in the comments if it was not found in the black letter rules and that it would not be for the Governing Council to draft a new Comment, which had not been envisaged by the Working Group. He also stated that there were other general provisions, such as those on hardship, anticipatory non-performance and adequate assurance of due performance, which were not limited to long-term contracts and could effectively respond to the same situations as termination for compelling reason. He stated that, as a result, there was no reason to go further, suggesting that Annex 8 should be rejected and that it was not necessary at this time to decide where and how this concept could be added to the comments.

105. *Mr Lyou* emphasised that, if there was a compelling reason to terminate in a long-term contract, it would likely constitute a situation of force majeure. For that reason, he stated that the alternative approach of including the concept in the comments could be appropriate.

106. *Mr Vrellis* stated that he understood the negative reaction to Annex 8, but was looking at this concept from a different perspective. He emphasised that the Principles did not just play the role of setting forth common principles, but also played an educational role. He noted that, if a situation was to arise which did not qualify as force majeure, it might still be reasonable in exceptional circumstances to liberate a party from its obligations without damages. He further noted that, if the law itself was unreasonable and inflexible, it could destroy that party. He then said that, in recognising that Annex 8 would not be adopted, he would support addressing this concept in the comments.

107. *Ms Sandy-Thomas* echoed the reservations expressed by Mr Wilkins, stating that the Governing Council should not try to include in the comments a concept which had clearly been rejected from the black letter rules. She acknowledged that, because there were so many reservations regarding these provisions, it had caused her to have serious concerns about even including them in some form in the comments.

108. *Ms Jametti*, in noting that she was part of the small group that had supported the adoption of Annex 8, stated that the will of the majority of the Governing Council should be respected and that this concept, for the moment, should not be inserted into the Principles. She further stated that the discussion could be taken up again in revising the Principles at a later stage.

109. *Mr Moreno Rodriguez* emphasised that this concept was proposed specifically in relation to long-term contracts and a complete breakdown in co-operation between the parties, and that it was not intended for the concept to relate to all contracts generally. In this regard, he suggested that it could be helpful to include in the comments examples of the different types of long-term contracts and situations in which a complete breakdown in co-operation between the parties could allow for termination.

110. The *President* noted that, while some members were opposed to inserting this concept into the comments, others had requested clarification on what exactly a compromise proposal would be. He stated that a compromise could entail inserting into the comments an indication that there might be specific reasons justifying a termination in this regard, together with examples. He then offered the floor to Mr Bonell and the Secretary-General for further explanation.

111. *Mr Bonell* emphasised that it would not be appropriate for him to advocate for a compromise because the proposed alternative was not a result of the Working Group's deliberations, but had been suggested at the event on the Principles in Oslo in March 2016. With respect to the proposed provisions on termination for compelling reason, he recalled that the Governing Council had raised similar objections last year and then stated that the Working Group had considered all of those objections and seriously examined them. He further stated that certain content and various illustrations were specifically included to address those objections and that a strong majority of the Working Group had agreed to the proposed provisions. He concluded that the possible compromise was not a proposal recommended by the Working Group, but could offer a workable solution and should be explained.

112. *The Secretary-General* stated that a possible compromise could simply consist of another way of expressing the concept of termination for compelling reason so that it would be agreeable to everyone. He further stated that there were some long-term contracts, which presupposed such a high level of mutual trust, so that one could understand that there was an implied term to the effect that, if there was a complete breakdown of trust and the parties were no longer able to cooperate, then either party would have the right to terminate the contract. He pointed out that this formulation was one that even the energy lawyers at the Oslo event, who were strongly opposed to the proposed provisions, were willing to accept. He clarified that, if a Comment were to be added to the Principles in this regard, it would simply be informative rather than instructive. He then noted that he had no personal opinion on this compromise, but pointed out that, if the Governing Council so desired, a Comment in this regard could be added to Article 5.1.3 on co-operation between the parties. In particular, he read out the following proposal for a new Comment 3 to that Article: "In particular, some types of long-term contracts presuppose a very high level of co-operation (e.g. distributorships, franchising, contractual joint ventures, etc.) such that a term may be implied (see Article 5.1.2) that in the absence of language or circumstances to the contrary, if there is a collapse of mutual trust and confidence rendering the continuation of the contract untenable, either party may terminate the contract." He concluded by noting that, if the Governing Council preferred, this issue could of course be remanded until the next revision of the Principles.

113. *Ms Sandby-Thomas* stated that she remained unpersuaded and believed that the proposed compromise solution was unnecessary. She further stated that, if this concept was to be included, it might still open up the floodgates for attorneys to use it to get out of obligations to which they had previously agreed. In concluding, she renewed her opposition to the concept and stated that the Governing Council should refrain from adding anything to the Principles in this regard.

114. *Mr Gabriel* stated that, under the Principles, there would be no substantive difference if the concept was an implied term or an express term, because the Principles would effectively include that concept in the agreement. He further stated that, in the situation where parties' relationships broke down to the extent that they could no longer work together, then the parties would certainly be able to agree to terminate their contract. He emphasised his opposition to giving a party the unilateral right to terminate, which was what he believed was being provided by the concept. He stated that, if parties were given the right to unilaterally terminate a contract for compelling reason, it would provide a way to engage in the exact type of mischief that the Principles had intended to prevent. While recognising that the Principles were partially aspirational, he concluded that they had to be usable and that there was, in light of the strong opposition, no need to move in this direction.

115. *Mr Tricot* drew the Governing Council's attention to Article 7.3.4 and pointed out that it already addressed a breakdown in trust, reasonableness, and termination. He then enquired why it was necessary to add what was already in the Principles and proposed that cross-references to Article 7.3.4 be added to the amendments made to Comments 1 and 2 of Article 5.1.3, specifically

to the third paragraph of Comment 1 and the second paragraph of Comment 2, as set forth in Annex 6.

116. *Mr Wilkins* expressed his opposition to the compromise solution, even if it was a shrewd one. He reiterated that the goal of the Principles was to provide a practical document and that his feeling was that these provisions would cause too much confusion to be useable.

117. *Mr Tricot* noted that what he had proposed only clarified what was already in the Principles, and that it was not necessary for that proposal to be taken up.

118. Seeing no further requests for the floor, the *President* acknowledged that both Annex 8 and the so-called compromise solution had not been adopted by the Governing Council.

119. The President then drew the Governing Council's attention to Annex 9 on post-contractual obligations and opened the floor for discussion.

120. *Mr Gabriel* stated that the additional comments and illustrations provided in Annex 9 helped to clarify Article 7.3.5. He then expressed his support for the adoption of Annex 9.

121. Seeing no further requests for the floor, the *President* proposed adoption of Annex 9, and it was approved.

122. *The Governing Council adopted the amendments and additions to the 2010 UNIDROIT Principles of International Commercial Contracts recommended by the Working Group on Long-Term Contracts, with the exception of the new provisions on termination for compelling reason, and authorised the Secretariat to prepare and publish a new edition to be known as the "2016 UNIDROIT Principles of International Commercial Contracts".*

Item 5: International Interests in Mobile Equipment

(a) *Implementation and status of the Luxembourg Rail Protocol and the Space Protocol (C.D. (95) 4)*

123. Consideration of the Cape Town Convention began with two expert presentations regarding the existing statuses of the Convention and the Aircraft Protocol.

124. *Mr Jeffrey Wool* briefed the Governing Council on high level developments related to the Cape Town Convention, with particular reference to the Aircraft Protocol. Mr Wool noted that in supporting the functioning and success of the Cape Town Convention and Aircraft Protocol, the AWG had begun a transition in its focus from assisting States in their initial ratification of the instruments, to interpretation and ongoing compliance of the instruments. Mr Wool's discussion then shifted to the lessons learned from the different features of implementing the Convention and the Aircraft Protocol. Mr Wool perceived that the primary lesson from past patterns of ratifying countries was that the countries who chose to ratify had been those that had a strong economic incentive to ratify. He further described a direct link between transactional experience and ratification; countries that had ratified had often completed the ratification to take advantage of the Convention and Protocols' economic benefits in relation to a planned future purchase of aircraft.

125. Another lesson he identified involved the declarations, or choices made regarding certain clauses in the Cape Town Convention. Mr Wool stated that surprisingly, the optional provisions adopted by most of the ratifying countries had broken down the traditional differences between

civil and common law. Mr Wool also noted that despite the fact the Convention was a comprehensive document, there were many references to applicable law and gap filling principles, which created a complex relationship between the international rules and national law. In discussing the economic impact of the Convention, Mr Wool stated that *ex post* data was becoming available to allow testing of propositions regarding economic assessment.

126. Mr Wool concluded with a brief overview of cases that had recently tested or would test the Cape Town Convention in the near future: (a) the SpiceJet case in India; (b) International Registry Cases regarding improper registrations; (c) Malaysian Airline Administrative changes in Malaysia; (d) the Transaero bankruptcy in Russia; and (e) the impending CHC bankruptcy case in the United States of America. Mr Wool further commented that the CHC case would be a major test of the Cape Town Convention as the creditor would be attacking the Convention to try to get as much money as possible from the debtor. In closing, Mr Wool highlighted the work with the Cape Town Convention Academic Project and how all of the information discussed was available on their website.

127. *Mr Rob Cowan*, the managing director of the International Registry under the Aircraft Protocol, provided a status update regarding the Registry. He explained that the International Registry was an international monopoly under the management of Aviareto, a non-profit organisation which was co-owned by SITA and the Irish Government. He characterised the overall growth rate in terms of registrations as continuous, with a compound annual growth rate of 10%, while the previous two years had seen growth rates of 15% per year. He noted that at the time of the Governing Council's 95th session, the Registry had 687,000 registrations and had facilitated over 750,000 searches.

128. In concluding, Mr Cowan provided a summary of several key issues facing the International Registry: (a) the continual wave of ratifications; (b) the upcoming publication of the 7th edition of the regulations; (c) technological changes beyond the control of the registry and its attorneys; (d) continual growth of cybersecurity risks; and (e) the recent expansion to a 20 hour shift to accommodate different worldwide market hours. In summary, Mr Cowan stated that the Registry was ever-changing, but was considered to be extremely successful due to the well thought out implementation of the Aircraft Protocol.

129. *Mr Leinonen* offered his congratulations for the work accomplished by the International Registry.

130. *The Deputy Secretary-General of UNIDROIT, Ms Anna Veneziano*, introduced the topic of the implementation and status of the Luxembourg Rail Protocol and the Space Protocol. The Deputy Secretary-General first referred the Council members to the report (document C.D. (95) 4) as well as the annual report.

131. On the implementation of the Luxembourg Rail Protocol, the Deputy Secretary-General highlighted two developments. The first point she discussed was in regards to the Ratification Task Force that had been set up by the Rail Preparatory Commission. She took special note in recognising the efforts of the Government of Luxembourg to raise awareness of the Protocol. She highlighted one particular event held in Paris, hosted by the Government of Luxembourg in which the Ambassador of Luxembourg, the Rail Working Group and the Rail Preparatory Commission had been given the opportunity to promote the Luxembourg Rail Protocol to diplomatic representatives from around the world. The second development the Deputy Secretary-General noted was that the United Kingdom had recently signed the Luxembourg Rail Protocol. She noted that the signature was a clear step towards ratification, and it indicated the intention of the United Kingdom to eventually ratify the Luxembourg Rail Protocol.

132. Regarding the Space Protocol, the Deputy Secretary-General reported that, at the fourth session of the Space Preparatory Commission, they had been able to finalise the Regulations for the International Registry. She expressed her appreciation to the participants in the Space Preparatory Commission, as well as their consultant, Sir Roy Goode. The Deputy Secretary-General concluded by acknowledging the existence of other issues still facing the Space Protocol, particularly in regards to the appointment of a Supervisory Authority, but she assured the Council that work towards solving the outstanding issues was continuing.

133. *Mr Gabriel* expressed his appreciation to the Deputy Secretary-General for her informative presentation, and he further acknowledged the extremely hard work exacted by the Secretariat in implementing and promoting the Protocols.

134. After expressing his enthusiasm regarding the United Kingdom's signing of the Luxembourg Rail Protocol, *Mr Acquaticci* suggested, regarding the Space Protocol's future need of an International Registry, that existing registries be utilised, and made a specific reference to ICAO. *Mr Cowan*, the managing director of the International Registry under the Aircraft Protocol, clarified that the company which operated the registry, Aviareto, currently operated only the aircraft Registry, and that any possibility of Aviareto also taking on the role of Registrar for the Space Protocol would be dependent on the aviation industry supporting the proposal. He stated that while the shareholders of Aviareto might be interested in operating the registry, he could not speak for them. *The Secretary-General* sought to reassure Mr Acquaticci that the Secretariat would look at all alternatives in regards to both the Supervisory Authority of the Space Protocol and its Registrar.

135. *Mr Sánchez Cordero* informed the Council that, due to the fact North America had its own system regarding railroads in place, Mexico would not be ratifying the Luxembourg Rail Protocol.

136. *Ms Sandby-Thomas* articulated her hope that the United Kingdom would be able to have the Luxembourg Rail Protocol approved by the British Parliament. However, she also expressed her reservations regarding the Space Protocol, and noted that she was not optimistic regarding its adoption.

137. *The Governing Council expressed its appreciation for the progress made in the implementation of the Luxembourg Rail Protocol and for the negotiations conducted by the Space Preparatory Commission for the setting up of an International Registry for the Space Protocol.*

(b) Preliminary Draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (C.D. (95) 5)

138. *Mr William Brydie-Watson, Legal Officer at the UNIDROIT Secretariat*, introduced the item to the Governing Council. He noted that, in the 12 months since his last update, the Study Group had worked diligently to craft an instrument under the auspices of the Cape Town Convention that addressed the existent legal problems associated with the financing of mining, agricultural and construction (MAC) equipment, but also remained faithful to and consistent with the purpose and structure of the Cape Town Convention system.

139. Mr Brydie-Watson referenced the documents that had been provided to the Governing Council for its consideration. Primarily, he noted the sixth annotated draft MAC Protocol, as approved by the Study Group at its fourth meeting (Rome, 7-9 March 2016). He noted that the sixth annotated draft contained 33 provisions and three annexes that defined the scope of the Protocol and the types of equipment it applied to, dealt with the relationship between international interests in the equipment and immovable property interests arising out of domestic law, and also contained a refined amendment process that accommodated changes to the Harmonized System.

He noted that the sixth annotated draft had also been translated into French, thanks to Marina Schneider, Senior Legal Officer at the UNIDROIT Secretariat.

140. Mr Brydie-Watson explained that the Legal Analysis, which accompanied the sixth annotated draft Protocol, had grown to be 112 pages long, and included an analysis of 23 discrete legal issues. He noted that the list of HS System codes for inclusion in the annexes to the draft Protocol had been narrowed down from 115 codes provided by the private sector in 2015 to 36 individual codes, which met the criteria determined by the Study Group for inclusion within the scope of the Protocol.

141. He briefly described the various MAC Protocol activities that had occurred over the previous 12 months. Primarily, work had been completed by the Secretariat and the Study Group over the third (Rome, 19-21 October 2015) and fourth Study Group sessions. In addition, the Study Group had held two out-of-session teleconferences in December 2015 and January 2016 to further work on the association with immovable property issue. He explained that the Secretariat had also called upon the UNIDROIT Correspondents to provide additional information regarding the domestic law regulation of immovable property interests and specialised agricultural insolvency laws in their respective jurisdictions. In response to the Secretariat's request, it had received input on the domestic legal regimes in 16 countries (Argentina, Canada, Colombia, Egypt, France, Germany, Greece, Hungary, Japan, Mexico, Spain, Syria, Turkey, the United Kingdom, the United States of America and Uruguay).

142. He noted that Professor Henry Gabriel of the Governing Council had delivered a presentation on the MAC Protocol at the Cape Town Academic Project Conference on 9 September 2015, which had been commented on by Professor Charles Mooney, a member of the MAC Protocol Study Group. Finally, he noted that the private sector Working Group responsible for facilitating the involvement of the private sector in the project had held its first meeting in London on 10 September 2015, and had held a second meeting via teleconference in December 2015.

143. Mr Brydie-Watson made two substantive points in relation to the draft MAC Protocol. First, he noted that the Study Group had steadfastly attempted to keep the MAC Protocol consistent with the provisions and structure of the previous three Protocols to the Cape Town Convention. Of the 33 provisions in the sixth annotated draft Protocol, he provided that 27 of them were identical to or closely mirrored the provisions in the previous Protocols. He noted that the deliberate adherence to the provisions in the previous Protocols ensured that the draft MAC Protocol remained consistent with the overall approach of the Cape Town Convention in relation to major issues such as the constitution and registration of security interests, the creation of the International Registry and Supervisory Authority, and the remedies available to parties in the event of a default or an insolvency-related event.

144. Second, Mr Brydie-Watson noted that even where it had been necessary for the MAC Protocol to diverge from the specific provisions of the previous Protocols, the innovative approaches adopted by the Study Group remained consistent with the overall approach and purpose of the Cape Town Convention system. He illustrated the point by referencing the use of the HS System to define the scope of the MAC Protocol. He explained that, despite the innovative use of the HS System differing from the mechanisms that defined the scope of the previous Protocols, the Study Group continued to take into account the criteria in Article 51(1) of the Cape Town Convention (mobile, high value and uniquely identifiable) to determine which HS codes would be added to the annexes to the MAC Protocol. As a second example, he noted the provision of different alternatives for Contracting States in relation to how the MAC Protocol addressed the interaction between international interests in MAC equipment and domestic interests arising out of the equipment's association with immovable property. He explained that the use of alternatives to address this complex issue was consistent with the approach of the previous Protocols to the

provision of insolvency remedies. He went on to explain the differences between Alternatives A, B and C in Article VII of the draft MAC Protocol.

145. Finally, Mr Brydie-Watson noted that, if the Governing Council agreed to convene a Committee of Governmental Experts, the Secretariat tentatively expected that the first meeting could be held in the first quarter of 2017. He also noted that in the process of translating the draft Protocol into French, the Secretariat had noted a few minor drafting errors in relation to incorrect references to other provisions and also in relation to consistency with the wording of previous Protocols. He concluded that if the Governing Council approved the Protocol to proceed to intergovernmental consideration, the Secretariat proposed that it would amend these minor mistakes before distributing the Protocol further.

146. *The representative of UNCITRAL* noted the successful and ongoing coordination of efforts between UNIDROIT, UNCITRAL and HCCH in the field of security interests to avoid duplication of efforts. He noted that UNCITRAL's continued secured transactions work had taken into account Article 51(1) of the Cape Town Convention, which set the criteria to determine the appropriateness of the adoption of future Protocols. He noted the work that had been done in relation to the adherence to Article 51(1) for the MAC Protocol project, but also reiterated the importance of the Article 51(1) criteria in determining the scope of the MAC Protocol. He noted in reference to the Article 51(1) criteria, that the HS System was maintained by the WCO for a different purpose, was subject to change and contained codes which covered equipment of as little as \$10,000 in value.

147. *The Secretary-General* noted his satisfaction with the high level of cooperation and coordination between the three agencies in the field of secured transactions and highlighted the ongoing work of UNCITRAL to produce a domestic secured transactions model law. He explained that the Study Group had gone to great lengths to limit the scope of the Protocol by reducing the number of HS codes contained in the annexes, especially those specifically covering low-value equipment. However, it had proven impossible to remove all possible low value equipment, as certain HS codes that covered mainly very high value equipment, sometimes in excess of several million dollars per unit, could in some cases also cover equipment of lesser value. He stressed, however, that this situation was the exception rather than the rule.

148. *Mr Gabriel* voiced his support for approving the draft MAC Protocol to be further considered by a Committee of Governmental Experts. He noted that, in the ten years that the MAC Protocol had been a part of the UNIDROIT Work Programme, this was the first occasion he was satisfied that the draft Protocol was sufficiently developed to move forward. He noted his support for the work of the Study Group, and that the draft appeared to satisfactorily resolve the difficult scope issue.

149. *Mr Wilkins* congratulated the Study Group on its innovative work in addressing some of the difficult legal issues faced by the project. He supported the approval of the draft Protocol to be further considered by a Committee of Governmental Experts.

150. *Mr Leinonen* congratulated the Study Group on its work, and noted that while many of the provisions were consistent with those contained in previous Protocols to the Cape Town Convention, those that differed were extremely difficult and the Study Group had identified appropriate solutions. He noted that while outstanding issues still remained, the draft MAC Protocol was sufficiently mature to be further considered by a Committee of Governmental Experts.

151. *The representative of Canada* noted that the resolution of the scope issue depended entirely on the use of the HS System. She queried whether the HS System codes changed over time, and if so, how that would impact on the scope of the MAC Protocol. *The Secretary-General* confirmed that the HS System was indeed updated approximately every five years, and that the Study Group had consulted extensively with the WCO to consider how such changes would affect

the MAC Protocol. He explained that Article XXXII of the draft MAC Protocol had adopted a three-tiered approach to amendments that accommodated changes to the HS System itself. He explained that, firstly, under paragraph 3, a substantive amendment to the Protocol would require the usual amendment procedure reflected in the previous three Protocols to the Cape Town Convention, and thus required a fully-fledged diplomatic Conference. Secondly, where additional HS codes which contained equipment 'materially similar' to the equipment contained in the annexes to the Protocol were identified, the Depositary could add the 'materially similar codes', unless a majority of States Parties registered their objection. Finally, where a new nomenclature was adopted by WCO, the Depositary would consult with the WCO. Once the Depositary had been satisfied that the annexes corresponded with the updated nomenclature without a material expansion of the scope of the MAC Protocol, the annexes could be amended by the Depositary without intervention by Contracting States or the need to convene a diplomatic conference.

152. *Mr Tricot* congratulated the Study Group for its excellent work. He queried why the first Committee of Governmental Experts meeting was being delayed until 2017. *The Secretary-General* explained that there was a practical rationale behind not convening the first Committee of Governmental Experts meeting before early 2017. Firstly, he noted that should the Governing Council approve the convening of a Committee of Governmental Experts, the Secretariat intended to distribute the draft Protocol to UNIDROIT member States for comment, and to conduct further consultations with private industry in the regions of the world that had not yet fully engaged with the project. Secondly, he explained that it was unlikely that member States had budgeted to send delegations to a meeting during the 2016 financial year, thus holding the first meeting in 2017 should maximise the ability of member States to send delegations to participate in the meeting.

153. *Ms Broka* commended the work of the Study Group and supported the convening of a Committee of Governmental Experts to further consider the MAC Protocol.

154. *Ms Sandy-Thomas* supported the convening of a Committee of Governmental Experts.

155. *Ms Jametti* added her congratulations and compliments to the Study Group for the work completed. She supported approving the MAC Protocol for consideration by a Committee of Governmental Experts, but noted that the priority of the project should be considered alongside all other proposals set out in document C.D. (95) 13 rev.

156. *The representative of Canada* queried whether the Secretariat had considered how many Committee of Governmental Experts meetings might be required to finalise the MAC Protocol, before a diplomatic conference. *The Secretary-General* noted that it was anticipated that the Protocol could be approved after two or three meetings of a Committee of Governmental Experts. He explained that this optimistic view of the limited number of meetings required was based on the understanding that several of the more contentious issues faced by previous Protocols, such as the public service exceptions contained in the Rail and Space Protocols, were not relevant in the MAC Protocol context. He also noted that the rate at which the project advanced would also depend on the level of priority assigned to it by the Governing Council in the 2017-2019 Work Programme.

157. *Mr Vrellis* agreed that the MAC Protocol was sufficiently developed to progress to consideration by a Committee of Governmental Experts.

158. *The Governing Council expressed its appreciation for the progress made in the preparation of the preliminary draft Protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment and considered it sufficiently developed to warrant the convening of a Committee of Governmental Experts in early 2017.*

Item 6: Transactions on Transnational and Connected Capital Markets: Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets
(C.D. (95) 6 rev.)

159. The *President* introduced the next item on the agenda and asked Mr Bergman to make a brief presentation on that item.

160. *Mr Bergman* recalled, at the outset, that the Legislative Guide on Intermediated Securities was the third step in a three-step series of work in this field. The initial step was the 2009 adoption of the Geneva Securities Convention by the diplomatic Conference in Geneva and the second step was the 2013 adoption of the Netting Principles by the Governing Council at its 92nd session. He then stated that, since the Governing Council's 94th session, substantial progress had been made thanks to an informal group of experts whose work had advanced greatly the preparation and review of an initial draft of the Legislative Guide.

161. After discussing the composition of the informal group of experts, Mr Bergman reported that the group had met for the first time at UNIDROIT's headquarters on 23-24 October 2015 and had considered a partial initial draft. Together with a follow-up videoconference on 16 November 2015, a revised outline for the initial draft had been agreed, and each expert had agreed to be responsible for certain portions. The experts had then diligently drafted their sections and submitted them to the Secretariat in early January 2016. At that time, the Secretariat combined them into a single document and circulated it back to the group in February 2016. Mr Bergman then acknowledged the group's willingness to embrace new technologies and remote working methods, which had enabled the work to advance rapidly.

162. He pointed out that Annex 2 of document C.D. (95) 6 rev. contained an in-progress and now out-of-date draft of the Legislative Guide. This was because that draft had served as the basis for the second meeting of the informal group of experts, which had been held earlier in the week on 16-17 May 2016. In providing an overview of that draft, he recalled that the draft Legislative Guide sought to improve the legal framework applicable to intermediated securities by providing guidance for States to consider in establishing an intermediated securities holding system or evaluating an existing system and to promote the implementation of Geneva Securities Convention or key principles and rules distilled from it.

163. Regarding next steps, he noted that the draft Legislative Guide would soon be ready for review within Committee on Emerging Markets, in particular the informal working group which had been established to work on the project at the Committee's meeting in Rio de Janeiro. The draft Legislative Guide would also be circulated for extensive consultation and collaboration with other organisations and interested stakeholders. He further noted that it was envisioned that a fourth meeting of the Committee could be convened as soon as early 2017 at which, as had been done in the past, a colloquium on financial markets law could be held and, among other things, the draft Legislative Guide could be reviewed.

164. *Mr Vrellis* thanked the informal group of experts for the substantial progress made and expressed his support for holding another meeting of the Committee on Emerging Markets.

165. *Ms Sandby-Thomas* echoed Mr Vrellis' thanks and expressed her appreciation for the progress made.

166. *The Governing Council noted the activities undertaken by the Secretariat, including steps taken to develop a Legislative Guide on Intermediated Securities and to plan an upcoming meeting of the Committee on Emerging Markets Issues, Follow-up and Implementation, in or around January 2017.*

Item 7: Private Law and Agricultural Development**(a) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (95) 7(a))**

167. Ms Frédérique Mestre (Senior Legal Officer, UNIDROIT Secretariat) introduced the project by reflecting on the purpose of the Legal Guide on Contract Farming. She noted that the primary objectives of the project were in line with global concerns to improve agricultural production to increase food security, to reinforce the efficiency of food and agricultural product supply chains, and to consider the economic and social implications of the transformation of food production from subsistence to market production.

168. Ms Mestre explained the history of the project, emphasising that it had been prepared over two and a half years by a working group chaired by a member of the Governing Council, Mr Henry Gabriel. She reminded the Governing Council had adopted the Legal Guide at its 94th session in 2015, and that since that time the document had been published in English and French and widely distributed to stakeholders engaged in contract farming.

169. She noted that several instruments had been developed at international level, to address responsible and sustainable investment in agriculture and the development of food supply chains, and made specific reference to the CFS-RAI Principles and the OECD-FAO Guidance for Responsible Agricultural Supply Chains, which had been adopted in March 2016.

170. She explained that the Legal Guide dealt with specific legal issues related to agricultural production, reiterating that agricultural production contracts were often long-term, complex contracts between parties with uneven power, and in some instances were largely informal or undocumented. She noted that in some countries, the practice of contract farming was subject to ad hoc regulation, with domestic rules being progressively improved in developing countries to secure food networks and to protect producers against abusive clauses or conditions.

171. Ms Mestre described the implementation and promotion activities associated with the Legal Guide, as set out in the document provided to the Governing Council (C.D. (95) 7(a)). She explained that FAO and IFAD had taken the lead in developing additional products to assist the implementation of the Legal Guide, as they had strong connections with the stakeholders who would actually use the document. She noted that to assist in its implementation, the Legal Guide was being translated into Spanish, concise guidelines for better contract farming operations based on the Legal Guide were being produced, an analysis of existing regulatory frameworks for contract farming operations was being developed, and contract templates were being jointly developed by FAO and the IISD.

172. Ms Mestre noted that UNIDROIT's largest contribution to implementation activities had been in relation to the CoP/LACF supported by the IFAD/FAO Implementation Project and established within the framework of the Global Forum on Law, Justice and Development, which was a World Bank initiative. She explained that the objective of the CoP/LACF was to promote a favourable legal environment for contract farming operations through knowledge sharing and dissemination. She further explained that the CoP/LACF was thus a platform to sustain the Legal Guide and its objectives. She noted that the IFAD and FAO financial support for the project had allowed UNIDROIT to hire a consultant to assist with the coordination of the CoP/LACF, who had been extremely useful in the implementation phase of the project.

173. Ms Mestre noted that, since the 94th session of the Governing Council, the Secretariat had organised or participated in various initiatives promoting the Legal Guide. She specifically made reference to a conference which had taken place on 27 April 2016 in Rome, involving the

participation of diplomatic representatives of member States, non-Members States and a number of interested organisations. This meeting had demonstrated a strong interest in the Legal Guide, which already served as a reference in legislative reforms in the Philippines. During the conference, several representatives had indicated the intention of their Government or organisation to organise events promoting the Legal Guide in various regions around the world.

174. Finally, in the context of future work related to agricultural development, Ms Mestre referenced the feasibility study prepared by the Secretariat in relation to the formulation of a potential international guidance document on land investment contracts (C.D. (95) 7(b)), as well as proposals made by member States and international organisations for the future 2017-2019 UNIDROIT Work Programme.

175. *The Representative of FAO* began the discussion by reflecting on the successful cooperation between FAO and UNIDROIT in the creation of the Legal Guide on Contract Farming. She observed that the Legal Guide had already led to beneficial outcomes in FAO field projects. She explained that as a part of the implementation of the Legal Guide, a legislative study would be prepared that considered the regulatory framework of contract farming. She then shared that the legislative study would provide governments and regulators with examples of how contract farming was regulated in various countries, provide good regulatory practices to strengthen contract farming, as well as examples of cases where good contract farming practices had been used to contribute to beneficial public outcomes. She also noted that the study would provide case studies analysing the existing domestic legal frameworks of contract farming. She stated that FAO would welcome UNIDROIT'S contribution to the legislative study and hoped that UNIDROIT would be able to utilise its extensive network of legal scholars and students to assist with the preparation of the study. The representative of FAO noted that continuing the collaboration between UNIDROIT, FAO and IFAD would be conducive to a "cross-pollination" of ideas between the organisations, which would lead to an increase in the quality of the materials produced.

176. *The Representative of IFAD* voiced his hope that IFAD'S collaboration with UNIDROIT regarding the Legal Guide was only the beginning of future potential collaboration on projects in many different fields. He noted that the Legal Guide had already had a practical and useful impact on the work at IFAD due to their ability to utilise it for the implementation of other projects. He then explained that IFAD was currently in the early stages of working on a proposal to create a journal regarding international, agricultural development law that would provide a forum to discuss ideas and topics related to contract farming. He noted that once the journal had been launched, IFAD hoped to receive contributions of articles from UNIDROIT and its member states.

177. *Mr Sandoval Bernal* expressed his thanks and congratulations to the Secretary-General for the efforts in the distribution of the Legal Guide. In relation to the value of the Legal Guide for Colombia, Mr Sandoval Bernal noted that a seminar on "challenges in agricultural productivity in the world – perspectives from the UNIDROIT/FAO/IFAD Legal Guide and Contract Farming and its application in Colombia" had been co-hosted between the Open Chair of Rural Affairs and the Law of Land Specialization of the Universidad Externado de Colombia and UNIDROIT on 21 October 2015. He explained that the event had been attended by the UNIDROIT Secretary-General, Professor Fabrizio Cafaggi (member of the Working Group on Contract Farming), representatives of the Colombian Government and academic circles. He noted that better contract farming practices were an important aspect of a new agricultural model which created higher agricultural productivity, more efficient commercialisation, better use of technology, stronger relationships between financiers and producers and consideration of the economic, social and environmental dimensions of food security. He stated that, for some large rural zones in developing countries, the application of the Legal Guide might assist producers and their families to modernise their agricultural production. Mr Sandoval Bernal concluded that contract farming might be an important resource in

post-conflict situations, in which the inhabitants of rural zones and soldiers need to cooperate to achieve peace and development.

178. *Ms Pauknerová* expressed her appreciation of the work done on the Contract Farming project and noted that the Ministry of Agriculture in the Czech Republic had a strong interest in further development and implementation of the Legal Guide. She explained that the Ministry had been working on translating the Legal Guide into Czech and would be organising seminars for the users of the Legal Guide. Finally, *Ms Pauknerová* noted the Agriculture Ministry's interest in participating in future events associated with the project.

179. *Mr Gabriel* reflected on the success of the Legal Guide, notwithstanding its short existence. He explained that he perceived the Legal Guide to be two different experiments. The first experiment, he stated, was to explore how the Institute could work together with other larger international organisations to produce joint products, while the second was to take the expertise of UNIDROIT and apply it to social issues. Given the success of the experiments, *Mr Gabriel* expressed his hope that the Legal Guide would be the first of many similar projects regarding food security. *The President* expressed his personal view that the success of the Legal Guide was due, in large part, to the contributions of *Mr Gabriel* as Chair of the Working Group.

180. *Ms Broka* agreed with *Mr Gabriel's* sentiments regarding the success of the experiments, and noted that she was impressed by the work that had taken place regarding the implementation of the Legal Guide. She concluded that collaboration projects with other international organisations were very important for the future success of UNIDROIT.

181. *The Representative of Canada* highlighted Canada's support for the continued work in the agricultural and development fields and thanked the Secretariat for the activities which had been accomplished since the 94th session. She concluded from the report that it appeared that the Guide had already been a success and its importance would only continue to grow. She noted that Canada would like to see UNIDROIT continue to make contributions in the areas of private law and agricultural development.

182. *The Governing Council* took note of the Secretariat's Report on the follow-up activities and promotion of the Legal Guide on Contract Farming, and encouraged the Secretariat to continue its collaboration with FAO and IFAD in this regard.

(b) Possible preparation of an international guidance document on land investment contracts (C.D. (95) 7(b))

183. *The President* moved to the next sub-item on the agenda and asked *Mr Bergman* to introduce it.

184. *Mr Bergman* drew the Governing Council's attention to document C.D. (95) 7(b), which contained a feasibility study on the possible preparation of an international guidance document on land investment contracts. He discussed four main points, consistent with the structure of the study. First, he summarised the background, recalling that this work had long been contemplated and was held pending completion, among other things, of the CFS-RAI Principles and the Legal Guide on Contract Farming. He further recalled that, once the Legal Guide had been adopted at its 94th session, the Governing Council had instructed the Secretariat to undertake a stocktaking exercise and feasibility study on land investment contracts.

185. Second, regarding the stocktaking exercise, he noted that this instruction had indeed been a wise one because there were many existing initiatives relevant to agricultural land investment, which was generally governed by domestic law, international investment treaties, and the contracts

or investment agreements themselves. Despite the abundance of initiatives from international Organisations, States, non-profit organisations and the private sector, he noted that there seemed to be, at the international Organisation level, a gap with respect to legal guidance on private law aspects of land investments. In this regard, he noted that the study covered many more initiatives than could be discussed in the allotted time. He briefly pointed out some of the key initiatives covered, including: for international Organisations, the VGGT and the CFS-RAI Principles, which together provided high-level principles and policy guidance on land tenure and investment respectively; for States, the Ghana Commercial Agriculture Project (GCAP), which had developed, among other things, a Model Lease Agreement; for non-profit organisations, the International Institute for Sustainable Development's Guide to Negotiating Investment Contracts for Farmland and Water, which was prepared as a legal and policy tool for governments and communities involved in negotiating investment contracts with foreign investors and included model contractual provisions; and for the private sector, various transparency initiatives, which were making more investment contracts available.

186. Third, regarding a possible UNIDROIT instrument, he acknowledged that UNIDROIT would be able to add value to existing international organisation initiatives by supplementing such initiatives in a way that was aligned to the VGGT and CFS-RAI Principles through the preparation of an instrument focused on the private law aspects of land investment contracts. Thanks to the wealth of existing initiatives, doing so would appear to be highly feasible as they provided an excellent base for determining the instrument's proper scope, content, and form. With respect to scope, he noted that the existing initiatives addressing this point could be used to consider and determine what types of land investments the potential instrument should cover (e.g. concessions, leases, etc.) and that another consideration would also have to be with respect to land ownership as agricultural land could be owned, for example, by individuals, communities or States. With respect to content, he noted that, in instances where the initiatives offered model provisions, those provisions could be analysed in detail and, to the extent necessary, further developed and modified and he pointed out the relevance of the UNIDROIT Principles in this regard. He further noted that some matters, such as force majeure, were addressed by some initiatives, but not by others. With respect to form, he briefly described various options, including a legal guide, model contractual provisions, model legislative provisions, a combination of those options, or other possibilities.

187. Fourth, in conclusion, he stated that private law aspects of land investment contracts did not seem to be sufficiently addressed by existing initiatives. He further stated that UNIDROIT would appear to be well placed to prepare an instrument on such aspects, using its private law expertise to build upon relevant initiatives, bring together key experts who had worked on them, and develop, in collaboration with the Rome-based food and agriculture organisations of the United Nations system and other institutions, valuable guidance for farmers, communities, investors, governments, and other stakeholders.

188. *Mr Király* expressed his appreciation for the comprehensive feasibility study and his agreement with the conclusion that it had reached. He said that UNIDROIT should continue its work in this area, focusing on private law aspects and, in particular, contractual aspects. He suggested that the Governing Council should keep this project on the Work Programme and raise its priority level to medium. He recognised that the appropriate form would depend on how the work developed, but stated that both a legal guide and model contractual provisions could result from this work.

189. *Ms Sandby-Thomas* endorsed the study and the excellent gap analysis that it contained. She expressed agreement with the points made by Mr Király, but stated that she would prefer for the project to be given a high priority.

190. *Mr Gabriel* stated that he had previously thought that this work would be a good idea and that, after seeing the excellent study, he fully believed it was both necessary and feasible. He further stated that UNIDROIT should aim for a bigger project than just model contractual provisions, such as a best practices guide, and that the project should be given a high priority.

191. *Mr Tricot* stated that the Legal Guide on Contract Farming was a model of success and was of a very high quality. He further stated that the Legal Guide had been completed in record time and had increased awareness of UNIDROIT in this area. He noted that, with the work on land investment contracts, UNIDROIT could develop synergies on multiple themes, in particular agriculture and best practices. He further noted that these potential synergies should be developed and that the project should be given a high priority.

192. *The representative of Canada* expressed Canada's support for the project and gratitude to the Secretariat for the study, which was very thorough, well-researched, and highly persuasive. She stated that this work was important and suggested that it might be more beneficial simply to start with developing model contractual provisions and related commentary and then to consider whether creating a fuller legal guide would make sense, in this way not duplicating any work that had already been done. She further stated that general model contractual provisions would be the best way forward and that simply developing detailed provisions on a specific issue such as grievance mechanisms would not be appropriate.

193. *Ms Pauknerová* expressed her strong support for an international guidance document on land investment contracts. She emphasised that the Czech Republic would be ready to support this work and suggested that the participation of a post-communist country would enrich discussions on agricultural land investments, restitution, and the structure of land ownership.

194. *Mr Wilkins* thanked the Secretariat for the compelling analysis contained in the study. He stated that, in his view, work on model contractual provisions, at the least, needed to be undertaken. He further stated that he too had concerns about going further into some of the other areas, such as grievance mechanisms. He reiterated that starting with model contract provisions would be very prudent and should be given a high priority.

195. *Mr Komarov* joined the preceding expressions of appreciation and support and wished to emphasise the importance of work in this area, in particular for countries that were in transition and seeking investment in agricultural land. He pointed out, however, that the reference to land investment contracts could be misleading. For clarification, he recommended the topic be referred to as work on agricultural land investment contracts.

196. *The President* expressed his personal support for Mr Komarov's proposed clarification, which received wide support from the Governing Council.

197. *The Secretary-General* stressed three important aspects of the project on agricultural land investment contracts. First, he stated that this project was supposed to be a continuation of the co-operation with FAO and IFAD. He emphasised that any work completed in this area had to be in complete harmony with their policies, as FAO was the organisation empowered to decide agricultural and food policy and UNIDROIT was only in the position to provide its private law expertise to supplement work that had been done there. In this regard, he noted that the consensus within the Rome-based organisations, in particular FAO, was that contract farming was the primary model for including smallholders and was the model to be promoted, rather than direct investments in land. He further noted, however, that other types of deals involving land would continue to happen. He pointed out that, for deals not following the contract farming model, there could be little or no legal framework, guidance on best practices, or other appropriate private law guidance for the protection of legitimate public interests. He then pointed out that a private law

instrument could fill in this gap and support more equitable and sustainable agricultural land investment. Second, he stressed that the scope of the project had not yet been determined, so time was needed to consider and define it, including whether a legal guide would be necessary or if just creating model provisions would be more appropriate. As comprehensive as the feasibility study was, it was just the first step in the development of the project. Third, the Secretary-General stated that the work had to take into account the great diversity of land regimes around the world, which was more complex than a mere public-private dichotomy, and that UNIDROIT could not convey the message that the property regime had to look a certain way because that was a matter of national sovereignty.

198. *Mr Vrellis* stated that the work that had been done thus far was excellent and expressed his support for maintaining this project on the Work Programme. He further stated that he was looking forward to the discussion of the other possible items for the Work Programme. In the meantime, he noted that he thought a medium priority was appropriate, but that he was ready to support a higher priority if the Governing Council would prefer.

199. *The representative of FAO* stressed that FAO was generally very well disposed to working with UNIDROIT and that the co-operation thus far had been very useful. She noted that FAO had been examining the feasibility study with great interest, in particular in the pros and cons of the various options proposed, and was looking forward to further discussions regarding the scope of the project. Referring to the Secretary-General's statement, she emphasised the importance of those further discussions and the need for any work to be aligned with the CFS's instruments as envisaged. She also stressed that there was strong public law component regarding land investment, which could not be ignored. It was essential, as the Secretariat had acknowledged, that UNIDROIT draw upon outside expertise, such as other international organisations, governments, NGOs, and the private sector, and consult extensively not just with experts, but also with civil society generally, for instance through the CFS' civil society mechanisms.

200. *The Governing Council* took note of the feasibility study and decided to recommend the General Assembly to retain in the UNIDROIT Work Programme for the 2017-2019 triennium the topic of an international guidance document on agricultural land investment contracts with a high level of priority.

Item 8: Transnational civil procedure – formulation of regional rules (C.D. (95) 8)

201. *The Deputy Secretary-General* introduced the project by explaining its structure. She noted that the project started in 2014 and that the drafting of the model rules to implement the ALI/UNIDROIT Principles in a European context had been entrusted to different working groups. She further stressed that the role of UNIDROIT was to oversee the development of the policy of the project, and to monitor progress made by the working groups. She clarified that the work had been financed by ELI, and that as result of ELI's ability to obtain a substantial grant, UNIDROIT's financial contributions in relation to the project were relatively minor.

202. In describing the different working groups associated with the project, the Deputy Secretary-General described how the project had been separated into different steps. She further stated that in order to ensure conformity in the working methods and outcomes between the working groups, it had been decided to use "cross-fertilisation" of the groups, which meant that many participants were members of multiple groups. She explained that initially three working groups had been established to consider (a) access to information and evidence (b) provisional and protective measures and (c) service of documents and due notice of proceedings, however a further two working groups to consider (d) *lis pendens* and *res judicata* and (e) obligations of the parties and lawyers were set up in November 2014. The Deputy Secretary-General projected that

based on the pace of the groups' progress, it was anticipated that preliminary model rules could be published by the end of 2016. She then referred the Council to the reports regarding the various groups' work, as available on the UNIDROIT website.

203. Regarding the future of the project, the Deputy Secretary-General stated that the anticipated final product would be a set of minimum standard rules, which would apply in Europe, but could also be used for domestic reforms in other countries. She clarified that the goal of this project was not to develop a European code of civil procedure, although that might be a possible use for the rules if the European legal community found the minimum standards to be useful. In regards to future developments, she noted that the project had attracted growing interest at a domestic level in some European countries, and that some participants in the working groups had discussed the preliminary findings of the working groups with national lawmakers.

204. *Mr Moreno-Rodríguez* noted that he had spoken at ASADIP regarding the progress made by UNIDROIT on this project, and had encouraged Latin America to consider a similar project. He provided that the proposal had been received with enthusiasm. He emphasised there might be potential for future collaboration project with ASADIP on such a project.

205. *Mr Sánchez Cordero* informed the Council that his government had translated the ALI/UNIDROIT Principles into Spanish, and the translations were available in print. He further recommended that UNIDROIT should conduct a study which analysed the extent to which arbitrators and legislators used the principles.

206. *Mr Király* first expressed his gratitude for the report as well as the progress made in regards to the project. He then expressed a desire for ELI to publish preliminary versions of the principles in a reasonable time period to allow for widespread expert consideration before they were finalised. Mr Király expressed his support for the approach of creating minimum standards in European civil procedure.

207. *The Deputy Secretary-General* responded that certain preliminary rules developed by the working groups had already been published on the UNIDROIT website. She stated that initially the groups had been hesitant to publish any provisions, but that the Steering Committee, together with ELI, emphasised the importance of publishing preliminary provisions so as to create a conducive environment for further consideration of the draft rules. She further stated that the first three working groups would publish preliminary rules and comments by November 2016.

208. *Mr Acquaticci* expressed his satisfaction that the project did not intend to create a universal set of European civil procedure laws. He noted that a set of minimum standards would be useful in cross-border judicial cases between national legal systems with significantly differing rules. He concluded by affirming his support of the project.

209. *Mr Tricot* emphasised the importance of the project and noted that he had witnessed a significant amount of enthusiasm for it in Europe. He noted that during recent travels between European jurisdictions he had experienced significant differences and contradictions in the approach of the judiciary to issues of transnational civil procedure, even where both parties were based in Europe. He supported the approach of identifying minimum standards rather than attempting to draft a model transnational civil procedure law. Secondly, Mr Tricot requested some further information from the Secretariat regarding the relationship between the Steering Committee and the working groups.

210. *The Deputy Secretary-General* noted that the main role of the Steering Committee was to monitor and evaluate the results of the working groups with the intent of ensuring the final products produced by the different groups would be similar in approach, structure, terminology and

outcome. She reaffirmed that the main legal consideration of the issues occurred at the working group level. She noted that the role of the Steering Committee was important, as it did not appear that the Co-Reporters of each working group were closely monitoring the progress of the other working groups.

211. *The Representative from HCCH* extended warm wishes on behalf of the HCCH Secretary-General. He noted HCCH's continued interest and commitment to work on the project with UNIDROIT. *The Deputy Secretary-General* expressed her appreciation to the HCCH and noted that the Steering Committee highly valued their participation in the project.

212. *Ms Broka* emphasised the importance of the project and, reflecting on her personal experience regarding the difficulty of negotiating national laws with politicians and bureaucrats, hoped that the project would be more successful as it was being progressed by academics. She predicted that in the future, regional rules would be highly beneficial for European legal practitioners.

213. *Mr Bobei* proposed that the regional rules should consider the formulation of model arbitration clauses, which could be inserted into contracts between European parties. *The Deputy Secretary-General* responded that the development of model clauses went beyond the scope of the project.

214. *Mr Gabriel* expressed his appreciation to the Deputy Secretary-General for the amount of work she had accomplished. Mr Gabriel re-emphasised the value of the Institute developing soft law instruments as well as hard law instruments, and noted that the project was an excellent example of a future valuable soft-law instrument.

215. *The President* agreed with Mr Gabriel's intervention and predicted that the project would assist in harmonising national legislation in European countries.

216. *The Governing Council* took note with appreciation of the progress made in the implementation of the project on transnational civil procedure – formulation of regional rules.

Item 9: Promotion of UNIDROIT instruments (C.D. (95) 9)

217. *Ms Schneider* introduced the item, emphasising the importance of promoting UNIDROIT instruments, as the success of any international instrument was determined by its implementation. She noted the Special General Assembly meeting which took place on 20 April 2016 as part of the UNIDROIT 90th Anniversary Celebration Series during which the value of UNIDROIT instruments and the importance of their promotion were stressed. In fact, many member States voiced their support for various UNIDROIT instruments and called for their further implementation and promotion.

218. Ms Schneider then described the promotion efforts related to particular instruments. She noted that the 2010 UNIDROIT Principles were always at the centre of the Institute's promotion strategy, and made reference to the various promotional activities related to the Principles that had occurred since the Governing Council's 94th session, as set out in the relevant document (C.D. (95) 9). She noted that following the launch of the Arabic version of the Principles in March 2014, the Principles had also been translated into Romanian, and were in the process of being translated into Turkish.

219. In relation to the Cape Town Convention, Ms Schneider, as the Depositary for the Institute for the Convention and its three existing Protocols, noted that over the preceding 12 months, four

States had deposited their instruments of ratification or accession for both the Convention and the Aircraft Protocol (Australia, Denmark, Sweden and the United Kingdom), Moldova had deposited its instrument of accession for the Convention only and the Ivory Coast and Spain had deposited their instruments of accession for the Aircraft Protocol only. She mentioned that there were a series of countries from which it was not possible to accept the deposit of ratification instruments for the Space Protocol because the instruments failed to make the requisite mandatory declaration. She noted that the Institute was in ongoing discussions with the relevant States to assist them with the process.

220. Ms Schneider further noted that the Secretariat had also been involved in giving bilateral assistance to Italy and Iraq, which were working on the ratification/accession of the Cape Town Convention and Aircraft Protocol. She also noted that much of the promotion work related to the Cape Town Convention was done under the auspices of the Cape Town Academic Project and that its fifth annual Conference was scheduled for 13-14 September 2016 in Oxford.

221. Ms Schneider described a variety of successful promotion activities related to the 1995 UNIDROIT Convention. She noted that partially due to the promotional activities undertaken by the Secretariat, six countries were expected to deposit their instruments of accession in the near future (Ghana, Laos, Morocco, Tunisia, South Africa and Syria). She further noted that the Convention had developed heightened importance following Resolution 2199 of the United Nations Security Council, which called upon UN member States to take appropriate steps to prevent trade in Iraqi and Syrian Cultural Property and called upon UNESCO and other international organisations to assist with such efforts. Ms Schneider stated that to continue to intensify the Institute's partnership in this domain with other organisations, upon UNESCO's request she personally completed a six month consultancy at UNESCO in 2015 to assist with the implementation of Security Council Resolution 2199 and emphasize the importance of the 1995 Convention to this end. Ms Schneider further stated that UNIDROIT continued its partnership with Interpol, WCO, UNODC, ICOM and the Council of Europe.

222. Ms Schneider noted that UNIDROIT had been able to attend many training seminars thanks to the generous support of UNESCO, and had assisted, among others, Mongolia, Lebanon, Syria, Yemen and Turkey in their efforts to improve domestic legal protection of cultural objects. She explained that training efforts were scheduled in the coming weeks also in South-East Asia through a UNESCO partnership with ASEAN.

223. *The President* thanked Ms Schneider. He reminded the Council that she was responsible for all of the Depositary functions of the Institute and noted that her work was highly appreciated.

224. *Mr Király* congratulated the Secretariat on its promotion of the different UNIDROIT instruments. Mr Király expressed that he had personally found the 90th celebration event held on April 20 to be a particularly outstanding event, which substantially contributed to the promotion of UNIDROIT instruments. *Ms Pauknerová* seconded Mr Király's comments and informed the Council that a Czech publishing house had agreed to begin publishing the Czech translations of the UNIDROIT Principles.

225. *Mr Sánchez Cordero* expressed his view that UNIDROIT instruments themselves had given the Institute great visibility. He encouraged UNIDROIT to undertake translation of UNIDROIT instruments into other languages. Mr Sánchez Cordero expressed his belief that failure to use the instruments worldwide was due in part to the lack of translations available in different languages. He concluded by emphasising the importance continuous updates of the Spanish versions of the instruments.

226. The *President* agreed with *Mr Sánchez Cordero* regarding the importance of translating UNIDROIT instruments. However, he noted that, given its limited budget, UNIDROIT could not undertake the task of translating the instruments into various languages. He stated that the task of translations had been left to individual governments.

227. *Mr Tricot* paid tribute to the excellent and impressive work done in promoting UNIDROIT instruments and acknowledged with pleasure the consultancy work done by Ms Schneider with UNESCO in Paris. Concerning the promotion of the UNIDROIT Principles, he queried whether the amendments concerning Long Term Contracts adopted at this 95th session would become known as the “2016 UNIDROIT Principles”. He noted that there was value in marketing and promoting the instrument to brand them as such. The *President* agreed with Professor Tricot’s opinion and affirmed that the new edition would be published as the “2016 UNIDROIT Principles”.

228. *Ms Schneider* highlighted that, while certain instruments such as the Cape Town Convention and Aircraft Protocol existed in six different official languages as adopted under the joint auspices of UNIDROIT and a UN organisation, these examples were the exception rather than the norm. She noted that each time UNIDROIT was made aware of a non-official version of an instrument as translated by a State, the version was published on the UNIDROIT website with a disclaimer providing that it was a non-official version. She affirmed that non-official translations remained important documents that assisted in the dissemination of the Institute’s instruments. Ms Schneider invited the Council to inform the Secretariat if they were aware of any instrument which had been translated into another language, which would allow UNIDROIT to promote the non-official translation with due recognition for the authors of the translation.

229. Ms Schneider also requested the audience to let her know when UNIDROIT instruments were presented during events and conferences in order to include them in the Annual Report.

230. *The Governing Council took note of the activities held and envisaged by the Secretariat to promote UNIDROIT instruments and underlined the importance of promotion.*

Item 10: Correspondents (C.D. (95) 10)

231. *Ms Schneider* referred to the relevant document (C.D. (95) 10), and reminded the Council of the change in the rules concerning the correspondents, under which correspondents were now given a three-year mandate with the possibility of renewal. Under the new system, UNIDROIT had three categories of correspondents: active, emeritus and institutional. She informed the Council that the mandate of the active correspondents would end in May 2016 and, according to the new procedure, the Secretariat had contacted all active and institutional correspondents to enquire as to whether they wished to have their positions renewed. She further noted that the correspondents had also been invited to make comments or proposals for the 2017-2019 triennial Work Programme.

232. Ms Schneider explained that as at 1 May 2016 UNIDROIT had 48 active correspondents, 46 of which would reach the term of their mandate in 2016, and 4 institutional correspondents, 3 of which 3 would also reach the end of their mandate in 2016. She noted that, in response to the invitation from the Secretariat to renew their positions, 26 had explicitly asked to remain active correspondents. An additional 17 had not responded, however had actively collaborated with the Secretariat on a variety of matters during their three-year term, and as such would expect to have their positions retained. She noted that a further three, while expressing their continued support for the Institute’s work, did not wish to remain active correspondents. Finally, she noted that, out of the three institutional correspondents up for renewal, only one had answered positively to wish to remain an institutional correspondent. Ms Schneider concluded, as consistent with the new rules,

that 44 of the active correspondents and 1 institutional correspondent would be renewed, and 3 formerly active correspondents would become emeritus correspondents. Ms Schneider also indicated that the Secretariat proposed to submit the question of correspondents on the agenda of the Governing Council every three years and to coincide the appointment of new correspondents with the renewal of the active correspondents.

233. Ms Schneider reminded the Council of the recent sad passing of Professor Louis Del Duca, who had been UNIDROIT correspondent since 1991 and had contributed greatly to the dissemination of UNIDROIT'S work.

234. The *Secretary-General* expressed his pleasure in introducing four candidates for consideration by the Governing Council to become active correspondents for UNIDROIT. He noted that all four candidates were much more than simply honorary applicants, as they had previously made and continued to make huge contributions to the work of UNIDROIT. The Secretary-General presented the resumes of the four candidates: Professor Fabrizio Cafaggi (Italy), Professor Neil Cohen (United States of America), Professor Lauro Gama Jr (Brazil) and Professor Pilar Perales Viscasillas (Spain).

235. Professor Fabrizio Cafaggi was well known at UNIDROIT in particular because of his recent contributions to the Legal Guide on Contract Farming. Professor Cafaggi was responsible for writing some very difficult chapters for the Legal Guide and did so with a high dedication. The Secretary-General noted that his curriculum vitae, like that of all four candidates, was extremely impressive.

236. Professor Lauro Gama from the University of Rio de Janeiro, had been a contributor to the UNIDROIT Principles 2010. He had since participated in the group which wrote the model clauses for the use of the UNIDROIT Principles and was a member of the CISG Advisory Council. Professor Gama had always been a valuable point of contact for the Institute in Latin America and had consistently provided prompt and high quality information when requested.

237. Professor Neil Cohen from the Brooklyn Law School, New York City, had participated in the development of the UNIDROIT Principles, and most recently was a member of the working group which formulated the amendments to the UNIDROIT Principles on long-term contracts. Professor Cohen was a leading international expert in the harmonisation of commercial and private law and whenever UNIDROIT had referred a legal query to Professor Cohen his replies had always been detailed, precise and timely.

238. Professor Pilar Perales Viscasillas from the University Carlos III of Madrid was a member of the CISG Advisory Council and a member of the working group which formulated the amendments to the UNIDROIT Principles concerning long-term contracts. She had also been very active in the organisation in Madrid of the Willem Vis International Commercial Arbitration Moot, which concerned not only the CISG Convention but also the UNIDROIT instruments. Her acceptance as an active correspondent would add valuable expertise from the Spanish and Portuguese language legal traditions.

239. *The President* expressed his support for the approval of the four candidates as active UNIDROIT correspondents.

240. *Mr Gabriel* expressed his support for all four candidates, based on their continuous activity with UNIDROIT. In addition, he also expressed his support for approving the reinstatement of the correspondents in accordance with the new rules.

241. *The Governing Council took note of the reappointment procedure and the renewal of 43 active correspondents for a three-year period as from 1 June 2016.*

242. *The Governing Council also approved the appointments of Professor Fabrizio CAFAGGI (Italy), Professor Neil COHEN (United States of America), Professor Lauro GAMA Jr. (Brazil) and Professor Pilar PERALES VISCASILLAS (Spain) as active correspondents for a three-year period as from 1 June 2016.*

243. *The Governing Council finally decided to examine the item relating to correspondents every three years, when the renewal procedure takes place and with the appointment of new correspondents.*

Item 11: Library and research activities (C.D. (95) 11)

244. *Ms Bettina Maxion (UNIDROIT Library) introduced this item on the agenda by referring to the relevant Governing Council document (C.D. (95) 11). She noted that in 2015 the Library had continued with its collaboration programs with other libraries, specifically with the law library of the University of Naples. Ms Maxion further explained that, in regards to the catalogue, the upgrade of the libraries software system had been successfully completed without any interruption in service, which continued a pattern of 10 years without an interruption. She noted the Library's continued work on the legal thesaurus which would allow users to conduct searches in five languages.*

245. Reflecting on the Governing Council's request at its 94th session for the Library to investigate the possible avenues to digitise the existing collection, Ms Maxion explained that she had had mixed results. She elaborated that in response to UNIDROIT's request to partner with Google Books in digitising the collection, Google was unable to accept new partners, due to a backlog of other libraries requiring digitisation that Google had already agreed to partner with.

246. Ms Maxion explained that the Secretariat had conducted additional research on the costs associated with in-house digitisation. Ms Maxion explained that the technical equipment, primarily a book scanner, were relatively inexpensive and started at a cost of approximately €12,000. She further explained that UNIDROIT invited a local digitisation firm SIAI to visit the Library in order to provide an estimate of costs for the actual digitization. On inspection, SIAI estimated that their company could digitise 25,000 books with approximately 700 pages each for a price of €0.0668 per page, which included adaption of the meta data, storage, and indexing. Ms Maxion explained that it was the Secretariat's view was that this cost was reasonable. She explained that if the Governing Council approved the in-house digitisation, the intent would not be to digitise the entire collection straight away, but that digitisation would be a gradual process.

247. Regarding the financing of the project, she shared that the Library would be able to devote a portion of its budget to the project, and that the Secretariat would explore potential additional resources. Ms Maxion stated that an additional benefit of contracting SIAI to conduct the digitisation would be that there would be no long-term commitments, and that UNIDROIT would have the option of selecting the number of documents to be digitized based on the availability of financial resources. However, Ms Maxion emphasised that the bid from SIAI was only one offer, and that other companies could be considered. She further posed that in order to limit the financial cost of the digitisation, independent researchers and interns could also contribute to the actual process of scanning pages.

248. Ms Maxion then turned to the research activities by characterising the Library as a very attractive resource for young attorneys from all over the world. She noted that in 2015, UNIDROIT had 1,177 visitors from 28 different countries, and also supported 28 interns and 17 scholars from 14 different countries. She described UNIDROIT's legal research scholarship for top level lawyers, with special consideration being given to researchers from developing countries. Ms Maxion shared

that the scholarship was largely made possible through voluntary contributions from the UNIDROIT Foundation, members of the Governing Council on a personal basis, the President of UNIDROIT, as well the Transnational Law and Business University (TLBU). She concluded by expressing the appreciation of the Secretariat to all donors for their contributions in 2015.

249. *The President* expressed his support of continuing the digitisation project and reflected that digitisation would improve the ability of the Library to induce financial support through a tiered system of access to the Library's resources.

250. *Professor Vrellis* stated that he had been impressed by the proposal to conduct in-house digitisation and he found the bid by SIAI to be reasonable. He expressed his support in continuing the project as the digitisation of the Library was a necessary step for the Institute.

251. *Ms Sandby-Thomas* expressed her support for the digitisation project, as well her recommendation to accept the bid from SIAI and begin the project immediately.

252. *Mr Király* supported the opinions of Mr Vrellis and Ms Sandby-Thomas regarding the digitisation project. He further noted that a goal of digitising approximately 1,000 volumes a year would be ideal.

253. *Mr Popiołek* queried the span of time that it would take to complete the project. *Ms Maxion* replied that it would likely take a number of years. She further noted that the selection process alone would require a significant amount of time complete.

254. *Mr Gabriel* shared his support of digitisation and noted that the Library contained many important historical and irreplaceable documents that should be preserved. He suggested that those types of documents should be given a high priority in the digitisation process.

255. *The Governing Council* took note of the progress made and supported the proposal of the Secretariat concerning digitisation of the collections.

Item 12: UNIDROIT information resources and policy (C.D. (95) 12)

(a) Uniform Law Review and other publications

256. *Ms Lena Peters, Senior Legal Officer UNIDROIT Secretariat*, introduced the item and referred to its accompanying document (C.D.(95) 12). She noted that the document was divided into the different types of resources, paper and electronic.

257. Considering first the paper publications, Ms Peters noted, with reference to the Uniform Law Review, that the Publisher's Report of April 2016 was also before the Council. The Editorial Board had met at the end of April and one point of discussion had related to the classification of the Uniform Law Review under national evaluation systems. The representative of Oxford University Press had informed the Board that some former systems no longer existed, such as the classification of the University of Pretoria. In Italy the system still existed and the Uniform Law Review had been categorised as "A Class". The statistics provided by the Oxford University Press indicated that circulation of the Uniform Law Review was slowly growing. Ms Peters noted that one important issue highlighted by the Publisher's Report was that the Uniform Law Review had at least 816 developing country subscriptions. The growing appeal of the Uniform Law Review to people in developing countries was apparent from the increase in submissions from authors in countries in Africa and the Middle East.

258. As regarded other publications, Ms Peters explained that the Secretariat had made a major effort in preparing the publication of the essays in honour of Professor Bonell. 122 authors had adhered to the initiative and submitted articles, another 149 had opted for inclusion in the *Tabula Gratulatoria*. Articles had been submitted in the five official languages of the Institute, although the vast majority had been submitted in English. They had all been edited or, where the author was writing in his or her mother-tongue, re-read. After submission of the edited text to the authors for feedback, most of the articles had been formatted and the Secretariat was in the process of sending the formatted articles, which constituted the proofs of the articles, to the authors. The intention was to organise the articles by subject. In this context Ms Peters expressed her appreciation for the collaboration of former and present colleagues working with her on the project.

259. Ms Peters explained that another initiative the Secretariat had undertaken was the publication of a volume to mark the 90th anniversary of the foundation of the Institute. She noted that the publication would contain a section on the Institute's history, with short descriptions of a selection of instruments and activities and comments by experts involved in their preparation, as well as short biographies of those experts. Short biographies would also be included of key persons in the history of the Institute. This section would include also illustrations of historic documents of importance to the history of UNIDROIT, such as the League of Nations document regarding its creation. The second part of the publication was to be a history of the Villa Aldobrandini, which had housed the Institute since its inception. She noted that the celebratory volume was not intended for sale, but as a publication to be used for official purposes.

260. Ms Peters noted that the fourth edition of the UNIDROIT Principles was to be published at the end of 2016 or the beginning of 2017. In addition to the insertion of the modifications to the current edition of the Principles, as approved by the Governing Council on the recommendation of the working group, the intention was to ensure that there were no discrepancies between the English and French versions of the Principles. Translators into other languages would thereafter receive a marked-up version to enable them to revise their translations of the Principles.

(b) *The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation*

261. In relation to the website, Ms Peters explained that work was continuing on the online streaming of meetings and conferences through the website. She noted that the process had not yet been perfected, however it had been made easier by YouTube making the software for broadcasting freely available. She noted that video recordings of conferences were also being posted on the website, the first of which was the video recording of the conference celebrating the twentieth anniversary of the 1995 UNIDROIT Convention, and the second was the International Symposium on "Private Law, International Cooperation and Development", a part of the 90th anniversary events. In this context, Ms Peters thanked Mr Stefano Muscatello of the UNIDROIT Secretariat for his work on the website.

262. Finally, Ms Peters informed the Council that the Secretary-General, on the occasion of the seminar held on 20 April on Private Law, International Cooperation and Development, had announced that the Institute had opened accounts on Facebook and LinkedIn, as a first step to strengthen the Institute's engagement with social media.

263. *Mr Gabriel* expressed his appreciation to Ms Peters for her work on the publication program. He queried as to the number of unique users that were accessing the website. Ms Peters responded that the Google analytics report provided that in the period of March 2015 - April 2016, there were a total number of 242,583 sessions with 158,881 unique users. She elaborated by stating that there were 776,155 visualisations of pages, with 3.2 pages visualised per session and an average

duration of 3.8 minutes. She concluded by stating that the statistics surrounding new sessions showed a growth of 64.37% upon the previous year.

264. *Mr Király* noted his appreciation of the work regarding the Uniform Law Review.

265. *Mr Neels* expressed his appreciation for the activities in respect to providing resources for developing countries.

266. *The Governing Council took note with appreciation of the activities of the Secretariat in this field.*

Item 13: Proposals for the Work Programme for the triennial period 2017 – 2019 and comments received by the Secretariat (C.D. (95) 13 rev. and Addenda)

267. The *Secretary-General* opened the discussion of proposals for the Work Programme by drawing the Council's attention to the document C.D. (95) 13 rev., which comprised of two categories of projects; (a) current projects that might continue into the next Work Programme and (b) new projects. He informed the Council that requests for proposals had been sent out to the member States and relevant international organisations. He noted that while the Secretariat had received some proposals prior to the deadline, other organisations intended to submit proposals at a later time. Further, he informed the Council that some of the proposals had been received following the completion of the report and were presented in the Addenda.

268. The *Secretary-General* recalled that, as distinguished from the Institute's legislative agenda, implementation and promotion of UNIDROIT instruments had always received a high priority, and he expressed his hope that the Council would confirm that priority.

269. Regarding the discussion on the allocation of resources, the *Secretary-General* emphasised that due to the sheer number of proposals made by member States, it had been impossible to make a reliable and detailed estimate regarding the resources required for each project. He stated that the annual budget for meetings of study groups, working groups and committee of experts was 120,000 euros, and each meeting cost an average of approximately 20,000 euros. As a result, he estimated that the Institute could accommodate up to six meetings each year, and therefore invited the Council to consider priority levels based on that estimation. Using the MAC Protocol as an example, the *Secretary-General* stated that since the project had been approved to be considered by a Committee of Governmental Experts, giving it a higher priority would allow the Secretariat to schedule two meetings in one year, while a lower priority would result in only one meeting per year, thus causing the project to take a few more years to complete.

270. Moving to the subject of the Transactions on Transnational and Connected Capital Markets project, the *Secretary-General* informed the Council that the Legislative Guide was well underway, and explained that the project had cost UNIDROIT relatively little, due to the experts' ability to utilise teleconferences and other technological means to accomplish their tasks. Further, he explained that a meeting of the Emerging Markets Committee would be hosted by a member country, who would then cover the cost of that meeting.

271. Regarding the Transnational Civil Procedure Project, the *Secretary-General* stated that while the Secretariat had anticipated completion of the project in 2017, due to the fact that some European institutions had an elaborate process of approval, progress of the project had been slightly slowed. He elaborated by stating that, due to the financial support of the European

institutions as well as the European Law Institute, UNIDROIT's financial obligations had been relatively small.

272. In relation to the existing low-priority projects on the triennial Work Programme 2014-2016, the Secretary-General requested that the Council consider whether each project on the list should remain on the Work Programme or simply be removed. He specifically drew the Council's attention to the two possible future Protocols to the Cape Town Convention, one concerning ships and maritime transportation equipment, and the second on off-shore power generation and similar equipment. Regarding the Maritime Protocol, the Secretary-General reflected that this was a topic discussed during the early days of the Cape Town Convention, but had been temporarily tabled due to the fact that the International Maritime Organization did not favour the idea. As the 1993 Geneva Convention on Maritime Liens and Mortgages had experienced limited success, the Secretary-General suggested that the Council could discuss whether a further feasibility study into the Maritime Protocol would be useful. Regarding the possible future Protocol on off-shore power generation and similar equipment, he noted that this project had been proposed in 2013, and that despite reservations by the Council regarding its necessity, the initial study undertaken by the Secretariat demonstrated that there might have been a need for such an instrument. He noted that further work undertaken by the Secretariat since the 94th session had indicated that, while only a limited number of countries would benefit from a Protocol covering off-shore wind power generation equipment, the economic feasibility of the possible Protocol would be enhanced by expanding its scope to cover all renewable energy equipment.

273. The Secretary-General explained that very little additional work had been conducted on the project related to Liability for Satellite-based Services as it had been afforded a low-priority.

274. The Secretary-General then introduced the new legislative proposals that had been suggested for inclusion in the 2017-2019 triennial Work Programme. First, he noted that scholars who had worked on the European Principles of Insurance Law had approached the Secretariat and suggested that the UNIDROIT Principles and applicable contract law could be utilised to help create Principles on Reinsurance Contracts. He explained that reinsurance contracts were strictly commercial contracts, and not consumer contracts. He reflected that the project appeared to fit well within the traditional mandate of UNIDROIT, and that the topic might provide a valuable opportunity for UNIDROIT to engage in cooperative work with other international institutions. Also related to insurance law, the Secretary-General shared that two additional proposals had been received from the government of Colombia, although the detail elaborating the specific nature of the projects was somewhat sparse. The first proposal regarded the formulation of general principles of insurance contracts, and the other was the formulation of general principles of inclusive insurance. He then indicated that if the Governing Council was interested in pursuing either topic, the Secretariat would consult with Colombia regarding what the scope of the projects might entail.

275. The Secretary-General then introduced a proposal from the Ministry of Justice of Hungary entitled the "Formulation of Model Laws on Business Informatics". The Secretary-General cautioned the Council that, should it choose to pursue the project, the Secretariat would work very closely with representatives from UNCITRAL in order to narrow the scope of the project and avoid any potential overlap with the work of UNCITRAL in the area of electronic commerce.

276. The Secretary-General then noted that UNCITRAL itself had made a proposal for the preparation of a guidance document on existing texts in the area of international sales law, as a tripartite cooperation project between UNIDROIT, UNCITRAL, and the HCCH. The rationale behind the proposal was to jointly produce a guidance document that illustrated the interactions between the Hague Principles on Choice of Law, the CISG and the UNIDROIT Principles. The Secretary-General emphasised that the aim of this project would be to facilitate promotion of the appropriate use,

uniform interpretation, and adoption of each instrument, and that the project was envisaged to be a project between the three secretariats which would not require any intergovernmental meetings. In closing he further informed the Governing Council that the HCCH Council had approved the project, and that UNCITRAL would consider it at its next meeting.

277. Moving from contract law to transnational civil procedure, the Secretary-General introduced a proposal on possible principles on effective enforcement of civil judgments. He reflected that contract enforcement was one of the top criteria considered by the World Bank in its “Doing Business” rankings. He further commented that it was an area where there was little international guidance. He noted his belief that UNIDROIT could make a contribution in the area. He suggested that should it be included in the future Work Programme, the Secretariat could conduct a feasibility study into the issue, and that the project would be timed to begin once the ELI/UNIDROIT Rules joint project had been completed.

278. The Secretary-General then introduced five study proposals that had been submitted by member States. The first project discussed was on the protection of cultural property in private art collections proposed by Mexico. The second proposal was a Colombian proposal on capital markets law, specifically on the mechanisms for the integration of regional securities exchanges. The third was a proposal by the Government of Hungary regarding private law and the contractual practices of cooperatives. The fourth proposal, also submitted by Colombia, related to trade facilitation and the best practices in the control and evaluation of the coverage and enforcement of technical regulations. Fifth, the Secretary-General introduced a proposal by the Polish Embassy in Rome, which was accompanied by a letter from Mr Popiołek (C.D. (95) 13 Add. 3), that involved the possible future work dispute resolution models on claims for the return of cultural property. He emphasised that the proposal was submitted after the deadline, and that he had therefore not had time to further examine the topic. He concluded that there could be an issue of scope for the proposed project in relation to the dispute resolution mechanism in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

279. Finally, the Secretary-General noted a proposal submitted by the World Bank in the form of a letter which contained a long list of topics. He suggested that many of the suggestions would already be addressed by other proposals, and other suggestions, such as the proposed insolvency project, would involve considerable overlap with the work of UNCITRAL.

280. In opening the discussion on the future Work Programme, the *President* suggested that the Council begin by discussing the priorities of the current work and then consider the new projects as set out in the agenda. In setting levels of priority, he further reminded the Council that the Secretariat had the financial capacity to host approximately six meetings each year.

281. In regards to the ongoing projects, *Mr Király* proposed that all projects in which progress had been made should be continued. He then stated that the ongoing projects that were at a standstill should be removed from the Work Programme. He noted his support for the reinsurance contract project, and for the joint UNIDROIT/UNCITRAL/HCCH project. Finally, *Mr Király* queried the current methodological procedure behind the incoming proposals, and asked whether a waiting list could be created for those incoming proposals, so as to accommodate some flexibility in the Work Programme.

282. *Mr Sánchez Cordero* gave further explanation on Mexico’s proposal regarding cultural property and private art collections. *Mr Sánchez Cordero* conveyed his opinion that the time had come to create international norms, which would allow States to choose which cultural objects should be protected from private art collections. He then recalled that in the past, it had been argued that the issue was one of public rather than private law. In response, he gave three points

that indicated the protection of cultural property was private in nature: (a) the emergence of several recent cases involving privately-held cultural property; (b) recent legislation that protected and preserved national, cultural items; and (c) adjudications which involved contracts between public museums and private art collections. In concluding, Mr Sánchez Cordero emphasised that his preceding three points illustrated that the protection of cultural property remained in the private domain, and further encouraged the Council to take into account Security Council Resolution 2199 and endorse the proposal.

283. *Mr Gabriel* began his analysis of the future Work Programme by stating that the ongoing projects, which consisted of the implementation of the Rail and Space Protocol, the preparation of the MAC Protocol, the Legislative Guide on Intermediated Securities and the ELI-UNIDROIT Rules should all be given high priority in order to ensure their expeditious conclusions. Regarding the existing low priority items, he opined that the UNIDROIT Principles needed to be left untouched for a few years and perhaps revisited in the future. In relation to future protocols to the Cape Town Convention, he noted that the Maritime Protocol should remain a low priority, and that a future Protocol which covered only off-shore power generation equipment was not feasible. However, he noted that a feasibility study into the broader concept of a Renewable Energy Equipment Protocol should be kept at a low priority in order for the Secretariat to look into the subject. Mr Gabriel suggested that no new capital markets should be added. In term of the liability for satellite-based services, Mr Gabriel shared that the project had been studied in the past with the result that there was no real need for it, and it was time for it to be removed.

284. In terms of possible future work, Mr Gabriel felt strongly that the agricultural and land investment contracts project should be a given a high priority. He expanded by stating that the land tenure project could follow the land investment project, but for now it should be a lower priority with the intention to fully examine the project once the agricultural and land investment contracts project had been completed. He endorsed the inclusion of the joint UNIDROIT/UNCITRAL/HCCH project. He then stated the transnational civil procedure enforcement project should be put on the Work Programme in order to give the Secretariat the opportunity to research and better define the parameters of the project. Mr Gabriel shared his view that insurance contracts should not a part of the Work Programme due to their consumer rather than commercial nature, however, he felt that reinsurance contract proposal might be a relevant study, although his initial consultations with the insurance industry in the United States of America had indicated that the project might be unnecessary. He recommended giving the project medium priority. Regarding the legal aspects of social business proposal, he recommended its removal due to the ambiguity that surrounded the project. Finally, in response to Mexico's cultural arts proposal, Mr Gabriel felt that a study should be conducted to further analyse its viability, however it should be given a lower priority and that minimal resources should be expended.

285. *Ms Jametti* thanked the Secretary-General for his summary of the proposals for the future Work Programme. She expressed her belief that the medium and high priority projects on the current Work Programme should be continued in the 2017-2019 Work Programme as high priorities to ensure their expeditious completion. She reflected that while it was obviously not possible for the Institute to accept all proposals for the future Work Programme, it might be prudent to accept more projects than it was possible to start straight away, to signal to the other international organisations and to member States that UNIDROIT would be giving further consideration to those projects. She agreed with Mr Gabriel with the removal of several low priority projects on the current Work Programme, so as not to waste the precious resources of the Secretariat. Concerning the new proposals, Ms Jametti expressed her support for the transnational civil procedure enforcement project. She noted that enforcement of civil judgments was not well regulated at an international level and suggested a medium priority for the project. She expressed misgivings in relation to the joint UNIDROIT/UNCITRAL/HCCH project, and queried what the purpose and use of

such a summary document would be. She noted that insurance contracts were not a subject for UNIDROIT. However, she found the reinsurance contract project to be attractive. Finally, she supported a feasibility study into the Mexican cultural property proposal, given the protection of cultural property was a cornerstone of the Institute.

286. *Ms Sandby-Thomas* supported the expeditious conclusion of the high and medium priority projects on the current Work Programme. She expressed her frustration at the constant presence of some of the low priority projects and felt that they should be removed from the Work Programme so as to make room for future projects. She then recommended that the land project be given a high priority, and expressed her neutrality to the other prospective projects. She indicated, however, that she felt a need to develop better criteria when analysing the viability of future projects, which should include factors such as whether the Institute had previous expertise in the matter and whether there would be duplication or conflicts with other projects.

287. *Ms Broka* agreed with the previous opinions regarding current projects receiving a high priority. She also joined Mr Gabriel in his assessment of the Maritime Protocol receiving a low priority and the removal of the off-shore power generation Protocol in its current form, the liability for satellite services project and the legal issues with social business project. Ms Broka further stated that she would like to grant high priority to projects with sister organisations. She supported giving medium priority to the transnational civil procedure enforcement project, as well as the joint UNIDROIT/UNCITRAL/HCCH project. Finally, Ms Broka stated that she would give the reinsurance project and the Mexican cultural property proposal medium priority.

288. *Mr Moreno Rodríguez* conveyed his full support of Mexico's cultural property proposal. He further expressed his support for projects involving cooperation with other organizations. Mr Moreno Rodríguez proposed further collaboration with the inter-American Juridical committee, particularly in the area of international contracts.

289. *Mr Lyou* first recalled that the primary function of UNIDROIT was the unification of private law. He further emphasised that in considering the future direction of the Institute, consideration must also be given to non-legislative activities. He conveyed his strong affection for UNIDROIT, and his hope for continual effectiveness, which required consideration of non-legislative activities. Mr Lyou further emphasised the importance of the UNIDROIT library, scholarship program and internship program.

290. *The Representative of HCCH* noted that the HCCH considered international enforcement of civil judgments to be of significant import. He suggested that the Institute consider the Draft Global Code of Enforcement as developed by UIHJ. He reiterated that the HCCH fully supported the joint UNIDROIT/UNCITRAL/HCCH project, which had been approved by their Council in March 2016. Finally, he noted that the HCCH would also be interested in working with UNIDROIT on the reinsurance contract project, should it be accepted on the future Work Programme.

291. *The Representative of UNCITRAL* began his comments by expressing UNCITRAL's appreciation to the Secretary-General for his careful attention to objects of work that might cause overlap with the work of UNCITRAL. He affirmed the Secretary-General's characterisation of the joint UNIDROIT/UNCITRAL/HCCH project, and stated that the project had been designed to address the problems associated with the promotion of the various UNIDROIT/UNCITRAL/HCCH contract law instruments due to the potential overlap and competition between them. He concluded by stating that the idea regarding cooperation would be to identify potential overlap as well potential uses of the instruments as a way of promoting all of the instruments, not just the instruments particular to any one governing body.

292. *Mr Popiolek* emphasised the importance of promoting existing instruments. He expressed his support of Mexico's cultural property proposal, as well as the transnational civil procedure enforcement project. He further noted that UNIDROIT could accept proposals necessarily for their completion, but also to further consider their feasibility and to indicate to other international organisations of the Institute's intention to progress work in a particular legal area.

293. *Mr Vrellis* confessed that when he received the document (C.D. (95) 13 rev.) and its various Addenda, that he was initially overwhelmed by the many important and interesting subjects proposed. He expressed his support for the allocation of high priority to existing projects to ensure their rapid resolution. Regarding new proposals, he supported the drafting of a feasibility study in relation to the capital markets proposal, and wished to assign high priority to the Insurance Contracts proposal. Concerning the joint UNIDROIT/UNCITRAL/HCCH project, he shared the concerns of Ms Jametti. He also noted his support for the inclusion of the Mexican cultural property proposal in the forward Work Programme.

294. *Ms Pauknerová* expressed her support for allocating the agriculture and land investment and joint UNIDROIT/UNCITRAL/HCCH project high priority. She emphasised the importance of conducting feasibility studies in regards to the additional Cape Town Convention Projects. In regards to the newly proposed projects, she conveyed her support of the reinsurance project proposal and Mexico's cultural property proposal.

295. *Mr Neels* opined that of the new projects, a high priority should go to the agricultural land investment contracts and a medium priority to the reinsurance project, the joint UNIDROIT/UNCITRAL/HCCH project and Mexico's cultural property proposal.

296. *Mr Wilkins* supported Ms Pauknerová's intervention regarding the methodological importance in employing feasibility studies before starting new projects. He emphasised that this approach would better identify the issues that needed to be addressed by a project. Mr Wilkins joined the majority consensus regarding the priority levels of the existing and future projects. He raised a range of emerging issues related to the operation of capital markets. He further identified a level of confusion surrounding the impact of technology on financial practice and proposed that UNIDROIT conduct a feasibility study regarding this area, and give it a low priority. Mr Wilkins noted that the Mexico cultural property proposal, while having some merit, would be extremely complex. He suggested that the Council authorise a preliminary feasibility study on the topic.

297. *Mr Acquaticci* stated he would like to see high priority given to the implementation of the Luxembourg Rail Protocol and the creation of the MAC Protocol. He noted that the transnational civil procedure projects should be removed from the Work Programme, or otherwise given a low priority. Similarly, he stated that the Maritime Protocol and off-shore power generation Protocol be given a low priority. He further stated that the project on Liability for Satellite Based Services should be dropped from the Work Programme. Mr Acquaticci concluded by noting his support of UNIDROIT's cooperation with the World Bank.

298. *Mr Leinonen* stated that UNIDROIT should have a realistic and coherent Work Programme, and to achieve this, inactive topics should be removed. He then stated his support for granting high priority to the ongoing work in order to finalise them. Regarding the removal of projects, Mr Leinonen felt that the multilateral contract and Maritime Protocol projects should remain a low priority, however the off-shore power generation Protocol should be removed. He noted that the capital markets and the liability for satellite based services projects should also be removed. Regarding the new projects, Mr Leinonen stated that while insurance was not for a topic for UNIDROIT, the reinsurance topic was viable for the future and should be included in order for a feasibility study to take place. He then shared his support for the joint UNIDROIT/UNCITRAL/HCCH project. Mr Leinonen then predicted that the transnational civil procedure enforcement project

would not be realistic, but was not opposed to it being assigned a low priority. He expressed support for the cultural arts proposal by Mexico but stated that it should be given a low priority.

299. *Mr Tricot* noted that, in compliance with the rule understood to apply to all Governing Council members, he was speaking in his personal capacity and not on behalf of the French Government. He supported the inclusion of existing projects in the 2017-2019 triennial Work Programme, in order to finalise their content. He expressed his strong support for proposals that related to agriculture and development. In relation to the proposals regarding insurance, Mr Tricot noted that insurance law and insurance policy was a highly technical field and doubted how strongly related it was to the UNIDROIT Principles. Nonetheless, he thought the topic should be explored by a feasibility study, with a particular focus on those aspects related to reinsurance contracts. He expressed his support for the Mexican cultural property proposal, as it related closely to one of UNIDROIT's flagship Conventions. In relation to the liability for satellite-based services project, he noted that it might be worth further consideration in the future once the European Galileo satellite array was activated, but could be removed from the Work Programme for the time being.

300. *Mr Sánchez Cordero* noted his support for the proposal relating to the return of cultural objects dispute resolution model (C.D. (95) 13 Add. 3).

301. *Ms Bouza Vidal* agreed with the allocation of high priority to existing projects to ensure their completion. She emphasised the importance of the preparation of an international guidance document on land investment contracts, and noted that it would be a positive step into a new domain that followed on from the success of the Legal Guide on Contract Farming. In regards to the transnational civil procedure enforcement proposal, she queried how it would interact with other enforcement of judgment projects currently being undertaken by other international organisations, and what the exact scope of the project would entail. In regards to the capital markets proposal, she noted that the European Union was working on the integration of stock markets and that any work undertaken by UNIDROIT in the field should be closely coordinated with the EU efforts. Finally, she expressed her support for a feasibility study for the Mexican cultural property proposal.

302. *Mr Sandoval Bernal* opined that insurance contracts were a relevant topic for UNIDROIT because of the important role played by free trade agreements in the internationalisation of insurance markets. He further elaborated that the considerable disparities between domestic laws had become an obstacle for insurance policies between parties in different jurisdictions. Mr Sandoval then proposed that the UNIDROIT Principles could provide a coherent solution to this problem and noted his support for the topic to be included in the Work Programme. He expressed his full support for Mexico's cultural property proposal. He elaborated his support for the proposal by sharing his belief that the project would be relevant across the world, rather than for just one region.

303. *Mr Erdem* noted that he supported the insurance contract proposal, despite the potential difficulty in applying the UNIDROIT Principles to those types of contracts. He stated his support also for the reinsurance contract proposal, and suggested awarding it a medium priority. He supported the inclusion of the transnational civil procedure enforcement project as a medium priority. In closing, he shared his support for the Mexico cultural property proposal as a high priority.

304. *Mr Király* noted his support of the joint UNIDROIT/UNCITRAL/HCCH project and that a feasibility study should be conducted for the Mexico cultural property proposal. He elaborated that even though the joint UNIDROIT/UNCITRAL/HCCH project appeared to be a purely academic undertaking, he emphasised that it would have a practical value to international commercial law.

305. *Mr Komarov* noted his preference to raise the priority of work on the UNIDROIT Principles. He further affirmed his support of the joint UNIDROIT/UNCITRAL/HCCH project due to the fact that many practitioners held the belief that the instruments in question were extremely sophisticated and found it difficult to disentangle them.

306. The *Secretary-General* summarised his understanding of the interventions made by the Governing Council members. He stated that although it appeared to be a monumental task, he reflected his belief that it would be feasible for the Institute to carry out the projects suggested for inclusion in the 2017-2019 Triennial Work Programme under the existing budget, primarily because in 2017 the MAC Protocol, the ELI-UNIDROIT Rules, and the Legislative Guide on Intermediated Securities would together require only four meetings, costing approximately 80,000 euro in total, and that the remaining 40,000 euro in the meeting budget could be allocated to the land investment project. He then emphasised that once the ongoing projects were completed by the end of 2018, resources could then be shifted to other projects. He further noted that the majority of the remaining projects; reinsurance contracts, the joint UNIDROIT/UNCITRAL/HCCH project and the Maritime and Renewable Energy Protocols would all be low or no cost projects. The *Secretary-General* noted his personal scepticism regarding the private law element of the cultural property private art collection project, but clarified that the feasibility study might clear up any ambiguities.

307. *Ms Sandby-Thomas* requested clarification of whether the summary provided by the *Secretary-General* meant that the current low priority items would be removed from the Work Programme. The *Secretary-General* clarified that his understanding was that the Governing Council wished to delete those projects, with the possibility of reintroducing them in the Work Programme in the future.

308. *Mr Leinonen* requested the *Secretary-General* to explain the subsequent steps that he perceived would be required for the land investment project. The *Secretary-General* noted that the next step would be to convene a meeting of the organisations currently working in the field, as identified in the report presented to the Governing Council and to then narrow down the scope of the work to be done by UNIDROIT.

309. *The Governing Council took note of the proposed Work Programme and Comments received from member States and UNIDROIT Correspondents, and agreed to recommend to the General Assembly the adoption of the Work Programme for the triennium 2017 – 2019 with the level of priorities indicated below:*

A. Legislative activities

1. Secured transactions
 - (a) Implementation of Rail and Space Protocols: high priority
 - (b) Preparation of other Protocols to the Cape Town Convention
 - (1) Agricultural, construction and mining equipment: high priority
 - (2) Ships and maritime transport equipment: low priority
 - (3) Renewable energy equipment: low priority
2. Transactions on Transnational and Connected Capital Markets
Legislative Guide on Principles and Rules capable of enhancing trading in securities in emerging markets: high priority
3. Private law and development

Preparation of an international guidance document on agriculture land investment contracts: high priority

4. Transnational civil procedure
 - (a) Formulation of regional rules: high priority
 - (b) Principles of effective enforcement: low priority
5. International Commercial Contracts

Formulation of principles of reinsurance contracts: low priority
6. International sales law

Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and the Hague Conference on Private International Law: high priority
7. International protection of cultural property

Private art collections: low priority

B. Implementation and promotion of UNIDROIT instruments

1. Depositary functions: high priority
2. Promotion of Unidroit instruments: high priority

C. Non-legislative activities

1. Unidroit Library and Depositary Libraries: high priority
2. Information resources and policy: high priority
3. Internships and scholarships: high priority

Item 14: Preparation of the draft budget for the 2017 financial year (C.D. (95) 14)

310. The *Secretary-General* introduced the draft budget by describing it as a zero nominal growth budget, and noted that the only significant change in the budget was the reallocation of resources from Chapter 2, salaries and allowances, into Chapter 1, meeting and travel costs, as well as an increase in the amount allocated for covering meetings from € 90,000 to € 120,000 in order to allow UNIDROIT to hold more meetings. The *Secretary-General* then reminded the Council that if the budget met their approval, it would be circulated to member States for comments before it was presented for approval at the General Assembly at the end of 2016.

311. *The Representative from Canada* conveyed her satisfaction with the budget as well as past budgets. She praised the *Secretary-General* for his ability to accomplish so much with such a nominal budget.

312. *Mr Király* expressed his support for the budget, but highlighted the fact that the digitisation of the Library's collections project had received an enthusiastic response from the Governing Council but it did not appear to have any funding allocated directly to it in the budget for the 2017 financial year. He expressed his hope that the digitisation process would commence as soon as possible.

313. *The Governing Council took note of the draft Budget for the 2017 financial year.*

Item 15: Date and venue of the 96th session of the Governing Council (C.D. (95) 1 rev. 2)

314. *The Governing Council agreed that the 96th session of the Governing Council should be held from 10 to 12 May 2017, at the seat of the UNIDROIT in Rome.*

Item 16: Any other business

315. The *Secretary-General* informed the Council that the Secretariat was on the verge of settling on a cooperation agreement with academic institutions who would be willing to fund fellowships for students to work with UNIDROIT in furtherance of progressing items on the Institute's Work Programme.

316. He announced that in collaboration with Sir Roy Goode, the Secretariat was about to conclude an agreement with the Centre for Commercial Law Studies of the Queen Mary University of London in order to allow students to assist UNIDROIT with the design and preparation of instruments for the harmonization of private international law. He noted that the centre would provide post-graduate teaching and fund fellows to work at UNIDROIT on its projects. The Secretary-General shared his hope that this cooperation would be a blueprint for similar agreements with other universities in the future.

317. *The Governing Council took note of the draft concordat to be signed between the Queen Mary University of London (the College) and UNIDROIT to establish the Queen Mary-UNIDROIT Institute of Transnational Commercial Law at the Centre for Commercial Law Studies (CCLS), at the initiative of Professor Sir Roy Goode.*

Item 17: International Contract Conference jointly with the CISG Advisory Council (20 May 2016)

318. *The Governing Council adjourned for the International Contract Law Conference entitled "The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts - Contrast and Convergence" organised jointly with the CISG Advisory Council.*

APPENDIX I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****(Rome, 18 - 20 May/mai 2016)****MEMBERS OF THE GOVERNING COUNCIL /
MEMBRES DU CONSEIL DE DIRECTION**

Mr Alberto MAZZONI	President of UNIDROIT / Président d'UNIDROIT
Mr Marco ACQUATICCI	Head of Legal and Consular Office Embassy of Germany in Italy Rome (Italy) <i>Representing Mr Hans-Georg Bollweg</i>
Ms Stefania BARIATTI	Professor of International Law School of Law Università degli Studi di Milano Milan (Italy)
Mr Radu Bogdan BOBEI	Attorney; Professor Faculty of Law University of Bucharest Bucharest (Romania)
Ms Núria BOUZA VIDAL	Professor of Private International Law Pompeu Fabra University School of Law Law Department Barcelona (Spain)
Ms Baiba BROKA	Adviser to the Minister of Environmental Protection and Regional Development Riga (Latvia)
Mr B. Bahadır ERDEM	Professor of Law İstanbul Üniversitesi Hukuk Fakültesi; Lawyer İstanbul (Turkey)
Mr Henry D. GABRIEL	Visiting Professor of Law School of Law Elon University Greensboro, North Carolina (United States of America)

Mme Monique JAMETTI	Juge fédéral Tribunal fédéral suisse Lausanne (Suisse)
Mr Hideki KANDA	Professor Law School Gakushuin University Tokyo (Japan)
Mr Miklós KIRÁLY	Professor of Law Dean of the Faculty of Law Eötvös Loránd University Budapest (Hungary)
Mr Alexander S. KOMAROV	Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation)
Mr Antti T. LEINONEN	Director of Legislation Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland)
Mr Byung-Hwa LYOU	President and Professor of Law TLBU Graduate School of Law Seoul (Republic of Korea)
Mr José Antonio MORENO RODRÍGUEZ	Professor of Law Attorney Asunción (Paraguay)
Mr Jan Lambert NEELS	Professor of Private International Law University of Johannesburg Johannesburg (South Africa)
Ms Monika PAUKNEROVÁ	Professor of Private International Law and International Commercial Law Faculty of Law Charles University Prague 1 (Czech Republic)
Mr Wojciech POPIOŁEK	Associate Professor of Law; Lawyer ADP Popiołek Advocates and Advisers, Law Firm Katowice (Poland)
Mr Jorge SÁNCHEZ CORDERO	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)

Ms Rachel SANDBY-THOMAS	Solicitor and Director-General - Legal Services Group Department of Business, Innovation and Skills London (United Kingdom)
Mr Álvaro SANDOVAL BERNAL	Ambassador of Colombia to Norway Embassy of Colombia in Norway Oslo
Ms SHI Jingxia	Professor of Law Dean, School of Law China University of International Business & Economics (UIBE), Director of UIBE International Law Institute (ILI) Beijing (People's Republic of China)
M. Daniel TRICOT	Président de l'Association française des docteurs en droit (AFDD) Arbitre et médiateur en affaires Soc. DTAM Paris (France)
Mr Spyridon VRELLIS	Emeritus Professor of Law Director Hellenic Institute of International and Foreign Law Athens (Greece)
Mr Roger Bruce WILKINS	Former Secretary to the Attorney-General's Department Barton, ACT, 2600 (Australia)

OBSERVERS / OBSERVATEURS

FOOD AND AGRICULTURE ORGANIZATION (FAO) / <i>ORGANISATION POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)</i>	Ms Margret VIDAR Legal Officer - FAO Legal Office Rome (Italy)
	Ms Carmen BULLON Legal Officer - FAO Legal Office Rome (Italy)
	Mr Teemu VIINIKAINEN International Consultant Rome (Italy)
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) / <i>CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE</i>	Mr Thomas JOHN Attaché The Hague, The Netherlands <i>Representing Mr Christophe Bernasconi</i>

INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO) / <i>ORGANISATION INTERNATIONALE DE DROIT DU DEVELOPPEMENT (OIDD)</i>	Mr Clifton JOHNSON General Counsel Rome (Italy)
	Mr Cory SPILLER Associate General Counsel Rome (Italy)
INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) / <i>FONDS INTERNATIONALE DE DEVELOPPEMENT AGRICOLE (FIDA)</i>	Mr Gerard SANDERS Rome (Italy)
	Mr Charles FORREST Senior Counsel
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) / <i>COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI)</i>	Mr Cyril EMERY Legal Officer, UNCITRAL Secretariat Librarian, UNCITRAL Law Library Vienna (Austria)
AVIARETO LIMITED	Mr Rob COWAN Managing Director Dublin (Ireland)
AVIATION WORKING GROUP	Mr Jeffrey WOOL Secretary-General London (United Kingdom)

**PRESIDENT-ELECT OF THE UNIFORM LAW FOUNDATION /
PRESIDENT ELU DE LA FONDATION DE DROIT UNIFORME**

Mr Jeffrey WOOL	Condon-falknor professor of global business law, UW School of Law Senior research fellow, Harris Manchester College, University of Oxford London (United Kingdom)
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UNIDROIT MEMBER STATES / ETATS MEMBRES D'UNIDROIT

BELGIUM / <i>BELGIQUE</i>	Mr Jacques CASTIAUX Conseiller Ambassade de Belgique en Italie
CANADA	Ms Kathryn SABO General Counsel Department of Justice
INDONESIA / <i>INDONESIE</i>	Mr Royhan N. WAHAB First Secretary Embassy of the Republic of Indonesia in Italy

IRAN	Mr Kourosch JAFARI Third Counsellor Embassy of Iran in Italy
IRELAND / IRLANDE	Ms Margaret RYAN Deputy Head of Mission Embassy of Ireland in Italy
LUXEMBOURG	S.E. M. Carlo KRIEGER Directeur des Affaires Juridiques MAAE
PORTUGAL	Ms Rita LOURENÇO Legal Officer Embassy of Portugal in Italy
SAUDI ARABIA / ARABIE SAOUDITE	Mr Bandar Ali M. REDA Commercial Attaché Embassy of Saudi Arabia in Italy
SLOVAKIA / SLOVAQUIE	Ms Kristina CANDRÁKOVÁ Intern Embassy of the Slovak Republic in Italy
TURKEY / TURQUIE	Mr Mehmet Onur KATMERCİ Counsellor Embassy of Turkey in Italy Mr Sefa OZTUR Second Secretary Embassy of Turkey in Italy

UNIDROIT SECRETARIAT / SECRETARIAT D'UNIDROIT

Mr José Angelo ESTRELLA FARIA	Secretary-General / <i>Secrétaire Général</i>
Ms Anna VENEZIANO	Deputy Secretary-General / <i>Secrétaire Général Adjoint</i>
Ms Frédérique MESTRE	Senior Legal Officer / <i>Fonctionnaire principale</i>
Ms Lena PETERS	Senior Legal Officer / <i>Fonctionnaire principale</i>
Ms Marina SCHNEIDER	Senior Legal Officer / <i>Fonctionnaire principale</i>
Mr Neale BERGMAN	Legal Officer / <i>Juriste</i>
Mr William BRYDIE-WATSON	Legal Officer / <i>Juriste</i>
Ms Bettina MAXION	Librarian / <i>Bibliothécaire</i>
Mr Michael J. BONELL	

UNIDROIT INTERNS AND RESEARCHERS / STAGIAIRES ET CHERCHEURS D'UNIDROIT

Mr Solomon Madike NGOLADI	Fellow (Nigeria) / <i>Chercheur (Nigéria)</i>
Mr Ercole DE VITO	Research Assistant (Italy) / <i>Assistant de recherche (Italie)</i>
Ms Giuditta GIARDINI	Research Assistant (Italy) / <i>Assistante de recherche (Italie)</i>
Mr Sofiane BENMESSAOUD	Scholar (Algeria) / <i>Boursier (Algérie)</i>
Mr Weldon W. BLACK ZALDIVAR	Scholar (Paraguay) / <i>Boursier (Paraguay)</i>
Mr He BO	Scholar (PRC) / <i>Boursier (République populaire de Chine)</i>
Mr Guo PENG	Scholar (PRC) / <i>Boursier (République populaire de Chine)</i>
Ms Malgorzata POHL	Scholar (Poland) / <i>Boursier (Pologne)</i>
Ms Erna PRILIASARI	Scholar (Indonesia) / <i>Boursier (Indonésie)</i>
Mr Mohamed ABDELSALAM	Intern (Egypt) / <i>Stagiaire (Egypte)</i>
Ms Anne BRIGOT-LAPPERROUSAZ	Intern (France) / <i>Stagiaire (France)</i>
Ms Sabrina GENZOW	Intern (Germany) / <i>Stagiaire (Allemagne)</i>
Mr Ben KOEHLER	Intern (Germany) / <i>Stagiaire (Allemagne)</i>
Ms Niranjana MENON	Intern (India) / <i>Stagiaire (Inde)</i>
Mr Richard MULIIKA	Intern (Uganda) / <i>Stagiaire (Ouganda)</i>
Mr Jason PRUETT	Intern (USA) / <i>Stagiaire (Etats-Unis d'Amérique)</i>
Ms Jung Hwa YOU	Intern (Republic of Korea) / <i>Stagiaire (Rép. de Corée)</i>
Mr Ihab ARJA	Independent Researcher (Jordan) / <i>Chercheur indépendant (Jordanie)</i>
Mr Davit GRIGORYAN	Independent Researcher (Armenia) / <i>Chercheur indépendant (Arménie)</i>
Mr Faidon VAREISIS	Independent Researcher (Greece) / <i>Chercheur indépendant (Grece)</i>
Mr Leonel C. VILLALBA	Independent Researcher (Colombia) / <i>Chercheur indépendant (Colombie)</i>
Ms Maria Isabel VILLAR FUENTES	Independent Researcher (Spain) / <i>Chercheur indépendant (Espagne)</i>
Ms Liang WENWEN	Independent Researcher (PRC) / <i>Chercheur indépendant (République populaire de Chine)</i>
Ms Shu ZHANG	Independent Researcher (PRC) / <i>Chercheur indépendant (République populaire de Chine)</i>

APPENDIX II**AGENDA**

1. Adoption of the annotated draft agenda (C.D. (95) 1 rev. 2)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (95) 1 rev. 2)
3. Reports
 - (a) Annual Report 2015 (C.D. (95) 2)
 - (b) Report of the Uniform Law Foundation
4. International Commercial Contracts: adoption of additional rules and comments to the UNIDROIT Principles of International Commercial Contracts concerning long-term contracts (C.D. (95) 3)
5. International Interests in Mobile Equipment
 - (a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol (C.D. (95) 4)
 - (b) Preliminary Draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Mining and Construction Equipment (C.D. (95) 5)
6. Transactions on Transnational and Connected Capital Markets: Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (95) 6 rev.)
7. Private Law and Agricultural Development
 - (a) Follow-up activities and promotion of the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (C.D. (95) 7(a))
 - (b) Possible preparation of an international guidance document on land investment contracts (C.D. (95) 7(b))
8. Transnational civil procedure - formulation of regional rules (C.D. (95) 8)
9. Promotion of UNIDROIT instruments (C.D. (95) 9)
10. Correspondents (C.D. (95) 10)
11. Library and research activities (C.D. (95) 11)
12. UNIDROIT information resources and policy (C.D. (95) 12)
 - (a) Uniform Law Review/ *Revue de droit uniforme* and other publications
 - (b) The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation
13. Proposals for the Work Programme for the triennial period 2017 – 2019 and comments received by the Secretariat (C.D. (95) 13 rev. and Addenda)
14. Preparation of the draft budget for the 2017 financial year (C.D. (95) 14)
15. Date and venue of the 96th session of the Governing Council (C.D. (95) 1 rev. 2)

16. Any other business
17. International Contract Law Conference jointly with the CISG Advisory Council (20 May 2016)

APPENDIX III**LIST OF ABBREVIATIONS AND ACRONYMS****UNIDROIT INSTRUMENTS**

1995 UNIDROIT Convention	UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)
Aircraft Protocol	Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (2001)
ALI/UNIDROIT Principles	ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)
Cape Town Convention or CTC	Convention on International Interests in Mobile Equipment (2001)
ELI/UNIDROIT Rules	Joint project with the European Law Institute to formulate European transnational civil procedure regional rules (ongoing)
Geneva Securities Convention	UNIDROIT Convention on Substantives Rules for Intermediated Securities (2009)
Legal Guide on Contract Farming	UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (2015)
Legislative Guide on Intermediated Securities	Future UNIDROIT Legislative Guide on Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (ongoing)
Luxembourg Rail Protocol	Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (2007)
MAC Protocol	Future Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment (ongoing)
Netting Principles	Principles on the Operation of Close-out Netting Provisions (2013)
Space Protocol	Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (2009)

UNIDROIT Principles Model Clauses	Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts (2013)
UNIDROIT Principles or UPICC	UNIDROIT Principles of International Commercial Contracts (editions issued 1994, 2004, 2010, 2016)

OTHER INTERNATIONAL INSTRUMENTS

CFS-RAI Principles	Principles for Responsible Investment in Agriculture and Food Systems (2014)
CISG Convention	United Nations Convention on Contracts for the International Sale of Goods (1980)
HS System	Harmonized Commodity and Coding System
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (2012)

INTERNATIONAL ORGANISATIONS AND OTHER INSTITUTIONS

ALI	American Law Institute
ASADIP	American Association of Private International Law
ASEAN	Association of Southeast Asian Nations
AWG	Aviation Working Group
ELI	European Law Institute
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
HCCH	Hague Conference on Private International Law
ICAO	International Civil Aviation Organization
ICOM	International Council of Museums
IDLO	International Development Law Organization
IFAD	International Fund for Agricultural Development

IISD	International Institute for Sustainable Development
Interpol	International Criminal Police Organization
NatLaw	National Law Center for Inter-American Free Trade
OECD	Organisation for Economic Co-operation and Development
RWG	Rail Working Group
SIAI	Servizi Integrati Alle Imprese
SITA	Société Internationale de Télécommunications Aéronautiques
UIHJ	International Association of Judicial Officers
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDROIT	International Institute for the Unification of Private Law
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization

GROUPS

Committee on Emerging Markets	Committee on Emerging Markets Issues, Follow-up and Implementation
CoP/LACF	Community of Practice on Legal Aspects of Contract Farming
GFLJD	Global Forum on Law, Justice and Development
Rail Preparatory Commission	Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock pursuant to the Luxembourg Rail Protocol
Space Preparatory Commission	Preparatory Commission for the establishment of the International Registry for Space Assets

pursuant to the Space Protocol