

UNIDROIT COLLOQUIUM

PROMOTING INVESTMENT IN AGRICULTURAL PRODUCTION:

PRIVATE LAW ASPECTS

Villa Aldobrandini, Via Panisperna 28, 00184 Rome (Italy)

8-10 November 2011

Summary report prepared by the UNIDROIT Secretariat

A colloquium on "Promoting investment in agricultural production: private law aspects" was held at UNIDROIT – the International Institute for the Unification of Private Law – in Rome from 8 to 10 November 2011. The Colloquium was followed, on the afternoon of 10 November, by a special meeting on "The Possible benefits of extending the Cape Town system to agricultural, mining and construction equipment".

The purpose of the Colloquium was to explore the kind of contribution that UNIDROIT might provide to international efforts to meet global food security objectives, through the particular mandate of the Organisation and its expertise in the formulation of uniform rules of private law, in synergy with the multilateral Organisations working for agricultural development, in particular the Rome-based Organisations: the Food and Agriculture Organization (FAO) and the International Fund for Agricultural Development (IFAD).

The Colloquium focused on three main areas: investment in agricultural land, commercial agriculture for small farmers and capital mobilisation and equipment finance for agricultural production. Over 30 high-level experts from different backgrounds, in particular representing multilateral Organisations (FAO, IFAD, the International Finance Corporation (IFC), the United Nations Commission on International Trade Law (UNCITRAL) and the World Bank) presented reports and participated in the discussions, with an audience made up of representatives of UNIDROIT member States and independent experts. The Colloquium was opened by Ms Karen Johnson (*Chargé d'affaires*, Permanent Representation of the United States of America to the United Nations Agencies for Food and Agriculture in Rome) and by the UNIDROIT Secretary-General, Mr José Angelo Estrella Faria, with the participation of Dr. Rutsel Martha (General Counsel and Director of Legal Affairs, IFAD) and M. Louis Gagnon (Legal Counsel, FAO). The Colloquium was closed by the President of UNIDROIT, Mr Alberto Mazzoni.

The first session on "**Private law and responsible agricultural investment**" dealt with the questions related to title to land, and the need to ensure formal recognition of the rights of local populations (Dr Jonathan M. Lindsay, World Bank). The various legal sources – under the Common law, the Civil law and Islamic law, as well as traditional and customary law rules – diverge widely as regards the nature, the scope and the implications of these rights (Prof. Massart, University of Pisa). Many countries are engaged in putting in place or improving their land registers (Dr. Eduard Galishin, Russian Federation), often enjoying the support of national or multilateral institutions, in Africa, Asia or Latin America, three examples of which were given (Dr Lindsay; Me Didier Nourissat, International Union of Notaries and Prof. Leon Verstaappen, Global Land Tool Network (GLTN)).

The second part of this session dealt with large-scale (mainly but not exclusively foreign) investment in land and water resources, and the concerns that some reported transactions have raised. After reviewing relevant legal sources and the treatment applied to host countries and investors, two speakers highlighted the fundamental role of the contract in defining the rights of the parties, securing default remedies and settling essential issues relating to the investment transaction (Prof. François Collart Dutilleul, University of Nantes, and Dr Howard Mann, International Institute for Sustainable Development).

In the field of international law sources, one presentation focused on the commitment of multilateral agencies in drafting Principles for responsible agricultural investment and voluntary Guidelines on responsible governance of tenure of land (Dr Greg Myers, USAID, Chair of the FAO/CFS Working Group on Voluntary Guidelines for Land Tenure). Presentations were given of two cases showing how investment can indeed be designed with the aim of benefitting the host country: Mexico (Mr Jorge Alberto Arrambive Montemayor, Ministry of Land Reform) and Brazil (Mr Antonio Flavio Camilo de Lima, Secretary of State for agriculture and irrigation, State of Goias). The importance of devising transparent and efficient concession award procedures was illustrated from the perspective of privately financed infrastructure projects (Ms Caroline Nicholas, UNCITRAL); the last presentation focused on the *UNIDROIT Principles of International Commercial Contracts*, which have acquired broad recognition, in particular in the context of arbitral proceedings, and highlighted how they may apply in the context of long-term contracts and to what extent it might be appropriate to consider drafting additional provisions for this particular purpose (Prof. Michael Joachim Bonell, UNIDROIT consultant).

The second session was devoted to **“Legal tools for including smallholder farmers in the value chain”** and supporting the transformation of subsistence agriculture into the commercially oriented production and marketing of agricultural products. After a presentation of the opportunities and risks involved (Dr Rutsel S. Martha, IFAD), attention was given to the legal structure and operation of farmers’ organisations, focusing in particular on the ability of such legal forms to strengthen or hamper farmers’ inclusion in the value chains. In this context a comparative review was made of the main features of such organisations (*i.e.* membership and ownership, liabilities and profits, management and governance) (Prof. Andres Miguel Cosials Ubach, University of Barcelona) and presentations were given of two particular forms of these organisations, *i.e.* co-operatives (Prof. Hagen Henry, University of Helsinki), and the new status accorded to the small individual entrepreneur (*“entreprenant”*) under the new OHADA legislation (M. Daniel Tricot, French member of the UNIDROIT Governing Council). The structure of farms was also considered from the perspective of market constraints – with a focus on Central and Eastern European countries (CEE) and countries of the Commonwealth of Independent States (CIS) (Prof. Zvi Lerman, Hebrew University) - and from the point of view of their capacity to gain access to credit and equipment finance (Mr Gerard van Empel, Rabobank).

The second part of this session dealt with collaborative strategies between farmers and buyers in the value chain. An overview of contractual frameworks and inter-firm co-operation (Prof. Antonio Iannarelli, University of Bari) was followed by a review of crucial issues involved in contract farming (Dr Carlos A. Da Silva, FAO), which stressed the importance of an adequate legal framework to govern the relations between producers and the market and ensuring fair and equitable contracts. These aspects were further illustrated from the growers’ viewpoint with case studies from Ethiopia and Zimbabwe (Ms Ayelech Tiruwha Melese, Stichting Dir).

The **“Promotion of finance for agricultural production”** was the subject of the last session of the Colloquium. It opened with a general overview of financing instruments and structures for agricultural production (Mr van Empel) and went on with a presentation on Loan collateral in rural finance based on a specific region of the world, *i.e.* the Near East and North Africa (Dr Mohammed R. Mustafa, NENARACA). Then a particular instrument to enhance the much needed mobilisation of agricultural receivables was illustrated with the warehouse receipt (Prof. Henry D. Gabriel, American member of the UNIDROIT Governing

Council). The last part of the session focused on financing of equipment by means of leasing and the particular relevance of leasing in the context of agriculture, with one presentation dealing with the relevance of the legal framework (Mr Murat Sultanov, IFC) and another with the UNIDROIT Model Law on Leasing (Mr Martin Stanford, UNIDROIT). Finally, the possible benefits of extending the Cape Town system to agricultural equipment were presented as an introduction to the special meeting to be held on the afternoon of 10 November 2011 (Mr John Atwood, UNIDROIT).

The presentations and discussions which took place during the various sessions highlighted the importance of strengthening the legal framework of private law that governs the relations between investors and agricultural producers in the context of investment in land and in contract farming, with a view to both increasing agricultural output and ensuring the fairness of contractual relationships. In this regard, the UNIDROIT Secretariat intends to pursue consultations with partner institutions, in particular with FAO and IFAD, with a view to presenting proposals for possible future work to the UNIDROIT Governing Council at its next session in May 2012.

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