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## **REPORT**

(prepared by the Secretariat)

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1. *The President of UNIDROIT, Ms Maria Chiara Malaguti*, opened the 103<sup>rd</sup> session, welcoming Members and Observers to the meeting. She pointed out that the Governing Council had new Members beginning their mandate in 2024. She explained that, excluding herself as President, the current composition of the Governing Council had 26 Members, including a Judge from the International Court of Justice – the Honourable Leonardo Nemer Caldeira Brant – who had been appointed alongside the 25 elected Members.<sup>1</sup>

2. The President provided new Members with a brief explanation of UNIDROIT's governance, noting it was different from other international organisations. Before giving the floor to the Secretary-General, she emphasised that the Members of the Governing Council, though appointed by Member States, were vested in their personal capacity. This explained that historically the backgrounds of the various Members were so diverse – some academic and some governmental. Commenting on her role as President of the Governing Council, she informed the Council that she had been appointed, pursuant to UNIDROIT's Statute, by the Government of Italy rather than elected like the other Members.

3. *The Secretary-General, Mr Ignacio Tirado*, welcomed all those present to the meeting and in particular extended a warm welcome to all Members of the Governing Council, including both the 14 re-elected Members and the 11 new Members. He expressed enthusiasm to work with all of them in the five years that lay ahead.

**Item 1: Adoption of the annotated draft agenda ([C.D. \(103\) 1 rev.](#))**

4. Referring to the adoption of the annotated draft agenda, *the Secretary-General* proposed a change not in the agenda itself but in the order of business ([C.D. \(103\) Misc. 1 rev.](#)). Item 6 (a) and (b) had been deemed better placed for discussion in the morning of the second day, whereas point (c) would be discussed on the first day as originally planned.

5. *The Governing Council adopted the agenda and agreed to discuss item 6 (c) instead of item 5 (c) at the end of the first day of the Council, moving the latter to the first item of the second day.*

**Item 2: Appointments ([C.D. \(103\) 1 rev.](#))**

**(a) First and Second Vice-Presidents of the Governing Council ([C.D. \(103\) 1 rev.](#))**

6. *The Secretary-General* explained that the Statute provided for the appointment of Vice-Presidents to serve in the event that a President was not available during the course of her mandate. The First Vice-Presidency was assigned to the Doyen of the Council, as longest-serving Member, in this case Mr Jorge Sánchez Cordero Dávila, who had been in office since 1989. The position of Second Vice-President was also traditionally assigned by seniority. Because of a tie in the number of years of service, and owing to the subsequent appointments to be made for Permanent Committee members, the Secretary-General proposed that the role be assigned to Mr Antti Leinonen.

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<sup>1</sup> Ms Karen BANKS (Ireland), Ms Stefania BARIATTI (Italy), Mr Jean-Christophe BOULET (Belgium), Mr Yusuf ÇALIŞKAN (Türkiye), Mr Alfonso Luis CALVO CARAVACA (Spain), Ms Eugenia DACORONIA (Greece), Mr Rémi DECOU-PAOLINI (France), Mr Daniel DENMAN (United Kingdom), Mr Lars ENTELMANN (Germany), Mr Eesa Allie FREDERICKS (South Africa), Mr Hideki KANDA (Japan), Mr Inho KIM (Republic of Korea), Mr Antti LEINONEN (Finland), Mr Niklaus MEIER (Switzerland), Mr Attila MENYHÁRD (Hungary), Mr José Antonio MORENO RODRÍGUEZ (Paraguay), Ms Sharon ONG (Singapore), Ms Monika PAUKNEROVÁ (Czech Republic), Mr Lauris RASNACS (Latvia), Ms Kathryn SABO (Canada), Mr Jorge SÁNCHEZ CORDERO (Mexico), Ms Uma SEKHAR (India), Ms Carla Heleen SIEBURGH (Netherlands), Mr Andrzej SZUMAŃSKI (Poland), Ms Maria Ignacia VIAL UNDURRAGA (Chile).

7. *The Governing Council gratefully acknowledged former Vice President and Doyen of the Council, Mr Arthur Hartkamp, for his 41 years of service. The Governing Council then appointed by consensus Mr Jorge Sánchez Cordero Dávila as standing Doyen of the Council and First Vice-President, and Mr Antti Leinonen as the Second Vice-President, both of whom will serve in these positions at least until the 104<sup>th</sup> session of the Governing Council.*

**(b) Members *ad honorem* of the Governing Council** ([C.D. \(103\) 1 rev.](#))

8. *The Secretary-General, upon invitation of the President, illustrated the role of the *ad honorem* Members of the Governing Council. He explained that the role had been traditionally attributed to former Members of the Governing Council by default, and that the status conferred upon such persons made them essentially ambassadors of the Institute with the highest level of seniority, above that of Correspondents. He proposed that the role be conferred upon Mr Hans-Georg Bollweg, who had served for 20 years; Ms Baiba Broka (15 years); Ms Bénédicte Fauvarque-Cosson (5 years); Mr Henry Gabriel (20 years); Mr Arthur Hartkamp (41 years); Mr Patrick Kilgarriff (5 years); Mr Alexander Komarov (10 years); Mr Ricardo L. Lorenzetti (10 years); Mr Luc Schuermans (5 years); Ms Shi Jingxia (10 years); and Ms Carmen Tamara Ungureanu (5 years).*

9. *The Governing Council appointed by consensus the following as Members *ad Honorem*: Mr Hans-Georg Bollweg, Ms Baiba Broka, Ms Bénédicte Fauvarque-Cosson, Mr Henry D. Gabriel, Mr Arthur S. Hartkamp, Mr Patrick Kilgarriff, Mr Alexander S. Komarov, Mr Ricardo L. Lorenzetti, Mr Luc Schuermans, Ms Shi Jingxia, and Ms Carmen Tamara Ungureanu.*

**(c) Members of the Permanent Committee** ([C.D. \(103\) 1 rev.](#))

10. *The Secretary-General illustrated the role of the Permanent Committee for the benefit of the new Members. He explained that it was a core delegate committee of the Governing Council dedicated to certain administrative matters related mostly – albeit not only – to personnel, as described in the Regulations. It would be called upon to meet at least once, and on an *ad hoc* basis, if necessary, in between sessions. Although its composition was not defined expressly in the Regulations, appointments had traditionally been made of Governing Council Members with the most seniority and familiarity with the Institute, while seeking to observe global representation.*

11. *Proposing to renew the already sitting members of the Permanent Committee (Mr Jorge Sánchez Cordero Dávila and Ms Kathryn Sabo), the Secretary-General proposed that the Governing Council appoint, consistent with geographical representation and seniority, Mr Hideki Kanda (Japan), Ms Monika Pauknerová (Czech Republic), and Mr José Antonio Moreno Rodríguez (Paraguay).*

12. *The Governing Council renewed by consensus the appointments of Mr Jorge Sánchez Cordero Dávila and Ms Kathryn Sabo. To replace former members Mr Hans-Georg Bollweg, Mr Henry D. Gabriel and Mr Arthur S. Hartkamp, the Governing Council appointed by consensus Mr Hideki Kanda, Mr José Antonio Moreno Rodríguez and Ms Monika Pauknerová.*

**Item 3: Reports**

**(a) Annual Report 2023** ([C.D. \(103\) 2](#))

13. *Concerning the year 2023, the Secretary-General noted the Institute's remarkable stability amidst continuous growth, highlighting its renewed governance, progress in terms of existing instruments (including the entry into force of the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock), the development of legislative projects to a greater extent than ever before, increased dissemination efforts, and enhanced academic work.*

14. Institutionally, UNIDROIT had welcomed two new Member States in 2023: Mongolia and Singapore, bringing the total to 65 Member States. The Secretary-General highlighted that the Institute continued to concentrate efforts to bring in more Member States, with a special focus, where possible, from the continents of Africa and Asia. He informed that India had chaired the General Assembly in 2022-2023, and South Africa was chairing for 2023-2024. He discussed the global representation of the Members of the Governing Council but called attention to the fact that Governing Council Members were appointed as individuals in their personal capacity and therefore not representing their countries.

15. Institutionally, the Secretary-General emphasised how the Institute had managed to increase its staff, noting an increase of 6% in contributions, a surplus in the budget, and an increase in extra-budgetary sources of revenue, as well as a great reduction in arrears. He acknowledged how the workload of each staff member had expanded along with the overall increase in activity, expressing gratitude for everyone's commitment and hard work in the face of the Institute's growing functions, spanning – but not limited to – seven normative projects, three governance bodies, implementation activities, and the execution of the functions of the various areas of the UNIDROIT Academy.

16. He then gave an overview of the status of the Cape Town Convention on International Interests in Mobile Equipment, celebrating that as of May 2024 it counted 86 States Parties and one Regional Economic Integration Organisation. He drew attention to the impressive endurance of the Aircraft Protocol to the Cape Town Convention, especially considering the very difficult context for the aviation industry in terms of litigation and insolvency inevitably arisen as a consequence of the pandemic. He also acknowledged that the year 2023 had seen the completion of the preparation for the entry into force in early 2024 of the Luxembourg Rail Protocol to the Cape Town Convention. He pointed out that the crucial fourth ratification had occurred in 2023, that two more ratifications (South Africa and Paraguay) were imminent, and that the ratification of the United Kingdom was ever closer on the horizon. He observed that the full functionality of the International Registry for railway rolling stock had been ascertained and that the Supervisory Authority, a new international organisation, had been founded. In terms of the Mining, Agricultural and Construction (MAC) Protocol to the Cape Town Convention, he underlined that negotiations with the preferred bidder for the future Registry had been completed and that the Working Group and the Ratification Task Force had been very active.

17. The Secretary-General next discussed the three instruments which had been approved by the Governing Council in 2023: the Model Law on Factoring (MLF), the Principles on Digital Assets and Private Law (DAPL Principles), and the Model Law on Warehouse Receipts (MLWR). As regards the MLF, he stated that one Working Group session had been held in 2023, along with the ever-crucial consultation process prior to finalisation. He noted that the MLF had been published in both French and English and translated into Mandarin Chinese in 2023. He highlighted that the MLF had also been unveiled and promoted at the main conference of Factors Chain International (FCI), and that the instrument had already been incorporated into the standards of both the World Trade Board and the New Finance document of the European Bank for Reconstruction and Development (EBRD). With regards to the DAPL Principles, he reminded the Governing Council that the Working Group had held two sessions in 2023 and that the publication had been launched in October 2023 with substantial institutional and industry support. Then, the Secretary-General introduced the progress regarding the MLWR, the first full draft of which had been approved by the Governing Council in 2023 and had then proceeded to State negotiations within the United Nations Commission on International Trade Law (UNCITRAL) since then. In parallel, work on the MLWR's Guide to Enactment was being carried out, which was also foreseen to be finalised and approved in 2024.

18. Additionally, the Secretary-General addressed the Institute's ongoing legislative projects. First, he showcased the project on Bank Insolvency, the Working Group of which had analysed responses to a stock-taking exercise on bank liquidation frameworks across 17 jurisdictions and already developed a first full draft of the Legislative Guide. Second, he briefly updated the Governing

Council on the progress of the Working Group on the project on Best Practices for Effective Enforcement (BPEE), which had developed advanced drafts on enforcement by way of authority, enforcement of security rights, and enforcement on digital assets, and had made progress on drafts on security rights over immovables and receivables, in addition to a preliminary draft on expedited procedures in extra-judicial enforcement. Third, he outlined the progress achieved by the Working Group on Collaborative Legal Structures for Agricultural Enterprises (CLSAE), which was notably incorporating empirical evidence provided by the local offices of the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD). He noted that the erstwhile Chair of the CLSAE Working Group (Mr Ricardo Lorenzetti) was no longer a Member of the Governing Council and that therefore the Working Group was in need of a new Chair. Fourth, he addressed the topic of sustainable development and the progress of the Working Group on the Legal nature of Voluntary Carbon Credits (VCCs) which was being undertaken in close collaboration with the World Bank Group. He outlined that in 2023, UNCITRAL and UNIDROIT had worked in partnership and jointly drafted a paper on VCCs which would be presented to the UNCITRAL Commission in June 2024. Fifth, the Secretary-General gave a brief update on the UNIDROIT Principles of International Commercial Contracts (UPICC) and Investment Contracts project, noting that it had generated a lot of interest and therefore the Working Group had created a Consultative Committee composed by States to provide local and regional feedback.

19. Sixth, he outlined the importance of UNIDROIT's cooperation, as well its academic activities, which differentiated UNIDROIT from other organisations active in the same field. He shared information on the participation of UNIDROIT in special events organised by other international organisations. He outlined the numerous instances of cooperation that UNIDROIT had established during 2023, illustrating some of the agreements that had been established or enhanced, including with, among others, the European Law Institute (ELI), the Asian-African Legal Consultative Organization (AALCO), the Space Court Foundation and 14 universities worldwide, including China's top four universities. He went on to highlight the strengthened cooperation with the Queen Mary University London in the form of the Queen Mary-UNIDROIT Institute of Transnational Commercial Law and noted that the UNIDROIT-Roma Tre Centre for Transnational Commercial Law and International Arbitration had been founded in 2023.

20. In addition, the UNIDROIT Centre for Nordic Studies (Nordic Law Centre) had been founded. The second edition of the International Programme for Law and Development (IPLD), a joint venture with the Italian Ministry of Foreign Affairs and International Cooperation (MAECI) had been attended by 22 judges, public lawyers and legal drafters from 17 African countries. The third edition of the IPLD would start in June 2024, having received nearly 70 applications. He also summarised the vast number of scholars, researchers and interns hosted in the UNIDROIT Library. He lastly highlighted that despite not having a specialised communications team, the Institute continued to grow across all its social media accounts.

21. *Mr Jorge Sánchez Cordero Dávila* welcomed the new Members of the Governing Council and congratulated the President, the Secretary-General and Deputy Secretary-General, as well as the Secretariat staff for the impressive work conducted in 2023.

22. *Ms Uma Sekhar* expressed her gratitude for being elected as a new Member of the Governing Council and willingness to learn from the experience of re-elected Members. She acknowledged the importance of UNIDROIT's projects and made herself available to contribute towards further dissemination and promotion of the instruments developed at the country level.

23. *Mr José Antonio Moreno Rodríguez* welcomed the new Members of the Governing Council and congratulated the Secretariat for the activities undertaken in 2023. He recalled the intense collaboration between UNIDROIT and the Organization of American States (OAS), particularly with its International Legal Department and the Inter-American Juridical Committee. He also appreciated the

involvement of Ms Jeannette Tramhel, former Senior Legal Officer of the OAS, as a new Senior Legal Consultant with the UNIDROIT Secretariat.

24. *Ms Stefania Bariatti* noted that she had witnessed the increased amount of work done by the Secretariat over the past years. She recommended the new Governing Council Members to participate in the Working Groups established for the development of the legislative projects. Additionally, she stimulated the Governing Council Members, in particular those who worked for their Governments, to encourage additional financial support for the Secretariat.

25. *Mr Rémi Decout-Paolini* extended his congratulations to the Secretariat for the remarkable and effective work undertaken in 2023 and expressed his satisfaction on becoming a new Member of the Governing Council.

26. *Ms Sharon Ong* expressed her delight that Singapore had become a member of UNIDROIT in 2023, and that she was privileged and grateful to join the august Governing Council.

27. *The representative from the People's Republic of China, acting in the Council in a consultative capacity*, lauded the remarkable work done in 2023. He noted the increasing interest within Chinese universities regarding UNIDROIT's instruments and expressed his availability to continue collaborating for their further promotion.

28. *The representative from the United States of America, acting in the Council in a consultative capacity*, recognised the importance of the leadership and of the efforts made by all Secretariat staff for such a productive 2023. She emphasised that she looked forward to the continued progress in 2024.

29. *The representative from the EBRD, attending as an observer*, thanked the Secretariat for the excellent report regarding the activities in 2023. He drew participants' attention to the long-lasting collaboration between UNIDROIT and EBRD, noting some of the projects that both organisations had jointly worked on, such as the MLF, Bank Insolvency, and BPEE. He recalled the workshop that had been organised in 2023 in London between EBRD and UNIDROIT to discuss new avenues for collaboration, such as in the field of corporate sustainability due diligence in supply chains.

30. *The Council took note of the Secretary-General's report on the activities of the Institute during 2023. The Council expressed its appreciation to all members of the Secretariat for their extraordinary dedication and hard work in the implementation of the Institute's mandate, as reflected in the numerous activities, undertaken with excellence.*

#### **(b) Report on the UNIDROIT Foundation ([C.D. \(103\) 3](#))**

31. *Mr Jeffrey Wool (the President of the UNIDROIT Foundation)* explained that the UNIDROIT Foundation was a non-profit organisation founded in 1996 to support UNIDROIT's activities. He noted that the Foundation was a separate legal entity, with its seat in the Netherlands, aimed at facilitating and supporting UNIDROIT's work, in particular by raising funds from private donors. Donors could provide earmarked funding for a specific project or activity, or funds to generally support UNIDROIT. In 2023, the Foundation had donated around € 180,000 to UNIDROIT, the bulk of which had been provided by one donor in support of the UNIDROIT Library. In addition to fundraising, the Foundation also supported UNIDROIT by means of three substantive projects on topics that were directly relevant to UNIDROIT's work. Mr Wool explained that the Foundation was governed by a Board of Governors, which, given the close relationship with UNIDROIT, included the Secretary-General and the President of UNIDROIT, as well as Ms Carla Sieburgh, Governing Council Member from the Netherlands.

32. *Legal Consultant Ms Benedetta Mauro* introduced the first substantive project on Best Practices in Electronic Registry Design and Operations (BPER Project). This project had initially



emerged from the Cape Town Convention, which provided for the establishment of international registries for interests in different categories of equipment covered by its Protocols. The BPER project aimed at identifying best practices in the field of registry design and operation. Given its connection with the Cape Town Convention, the project had initially focused on best practices for electronic collateral registries, resulting in the publication of the Guide on Best Practices for Electronic Collateral Registries in September 2021. That Guide had identified 17 Critical Performance Factors (CPFs) against which electronic collateral registries could be measured. Following the publication of this Guide, the focus of the Project had switched to developing best practices for electronic business registries. Following two workshops on this topic in 2021-2022, an external consultant had been hired in 2023 to undertake substantive work on a prospective Guide on Best Practices for Electronic Business Registries. In February 2024, the seventh workshop for the BPER Project had been held at UNIDROIT, featuring the presentation of a detailed outline of the prospective Guide as well as a discussion on its scope, content, and structure. This workshop had also included a review of the existing CPFs, with the purpose of identifying any adaptations or additional CPFs for business registries. The eighth workshop for the BPER Project would take place in September 2024.

33. *Legal Consultant Ms Theodora Kostoula* introduced the second substantive project on Economic Assessment of International Commercial Law Reform (EA ICLR Project), which aimed at developing a Guide to assist in the systematic evaluation of the economic impact of law reforms. The Guide was expected to be useful for UNIDROIT and other international organisations or governments that were developing harmonised legislative solutions, as it sought to provide guidance on measuring the economic impact and benefit of law reforms. Guidance would be provided on how to prove such benefits, which variables and data to consider in order to capture the different aspects of economic impact, and the methodology to establish economic benefits. The latest workshop had been held in February 2024 and had benefited from the participation of experts with legal and economic backgrounds, reflecting the interdisciplinary nature of the project. During that workshop, the participants discussed an updated preliminary draft of the future Guide, prepared by the UNIDROIT Secretariat in cooperation with an external consultant with an economic background. It was decided, among other things, to focus on *ex-ante* evaluations, i.e., providing guidance on how to evaluate the expected economic impacts of a legal instrument prior to its adoption and implementation. The next workshop for this project was scheduled for September 2024.

34. Ms Kostoula explained that the third substantive project was on the Implementation of, and Compliance with International Commercial Law Treaties (Treaty Project). The purpose of this project was to offer guidance to facilitate implementation and compliance in relation to international commercial law treaties in order to increase their effectiveness. This project had commenced with a first planning session in February 2024, which had focused on the scope of the project, the possibility to learn from experiences with implementation and compliance in treaty areas beyond commercial law, and a basic methodology to facilitate a comparative analysis.

35. *Mr Wool* indicated that the three substantive projects were conducted in cooperation with the University of Cambridge in the context of the Cape Town Convention Academic Project. He emphasised the supplementary nature of the Foundation's projects to the benefit of UNIDROIT's core work. The Treaty Project aimed at assessing the implementation and compliance with treaties by examining a range of treaties in different areas and identifying possible lessons learned for the context of international commercial law treaties. He was very pleased that the Lauterpacht Centre of International Law at the University of Cambridge was a key collaborator in this project.

36. *Legal Officer Ms Myrte Thijssen* mentioned the Foundation's efforts in the field of education and research. She highlighted that, thanks to a generous donation to the UNIDROIT Foundation, in 2023 a brand new Library annexe had been created on the first floor of Villa Aldobrandini. In addition, the donation had allowed the Library to purchase physical books and more than 3,000 new e-books. Furthermore, an earmarked donation had allowed a research assistant to conduct research on the implementation of the Cape Town Convention and its Protocols in Africa, and in 2023-2024 the

Foundation donated €15,000 of its general funds to UNIDROIT's Scholarship, Internship and Research Programme. Furthermore, the law firm MadrugaBTW had agreed to fund a Research Scholarship for a Brazilian national in 2024. This law firm had already facilitated several internships and scholarships, for which the Foundation was most grateful. Finally, the UNIDROIT Foundation had recently concluded an agreement with Yingke Law Firm in support of the establishment of new law centre focused on Asian legal systems, on which further information would be provided in the context of the agenda item on the UNIDROIT Academy.

37. *Ms Mauro* added that the UNIDROIT Foundation had also facilitated essay competitions on UNIDROIT's instruments. In 2023, the results of an essay competition on "UNIDROIT and Sustainable Development" had been announced. The articles of the top five winners had been published on the UNIDROIT website and the authors had presented their research during a webinar, while the top three winners had also received prize money. In January 2024, an essay competition on "Thirty years of the UNIDROIT Principles of International Commercial Contracts" had been launched, and *Ms Mauro* was pleased to note that more than 100 essays had been received. She thanked the International Law Institute for its support for these essay competitions.

38. *Ms Kathryn Sabo* welcomed the new Members of the Governing Council and looked forward to working with them. She thanked the Foundation for all its work in support of UNIDROIT and noted that the aims of the Asian Transnational Law Centre were supportive of UNIDROIT's work and presence in Asia. She suggested discussing how the Foundation's activities could be integrated into thinking about UNIDROIT's strategic goals over the next years. Furthermore, she asked whether the essay competitions were only in English and, if so, whether they might be expanded to submissions in French, considering the Institute's working languages.

39. *Ms Mauro* confirmed that the essay competition generally accepted submissions in both English and French. She believed that the last edition had received one or two submissions in French. *Mr Wool* explained that the envisaged law centre would be an UNIDROIT centre, while the Foundation only played a role in securing funding. He also confirmed that he looked forward to continuing working with the Governing Council in facilitating and promoting the Institute's work.

40. *The Governing Council took note of the update on the activities of the UNIDROIT Foundation and commended its work.*

#### **Item 4: Ongoing legislative activities carried over from the 2020-2022 Work Programme**

##### **(a) Best Practices for Effective Enforcement [\(C.D. \(103\) 4](#))**

41. *The Deputy Secretary-General Ms Anna Veneziano* firstly joined the President and the Secretary-General in welcoming and congratulating the newly-elected Governing Council Members, expressing her eagerness to work with them over the next five years.

42. She briefly presented Document [C.D. \(103\) 4](#) on the BPEE project, which focused on the progress that had been made since the 102<sup>nd</sup> session of the Governing Council in May 2023 and the current status of the project, but also contained a short overview of the project for the benefit of the new Council Members. She noted that, as the project was now approaching completion, with eight sessions held from December 2020 to April 2024 and the expected conclusion in 2025, the Chair and the Working Group had authorised the Secretariat to submit the draft preliminary outline and several sections of the Best Practices and Commentary to the Governing Council on a confidential basis for their information. Although not finalised, these sections had undergone thorough discussions and had largely achieved consensus within the Working Group.

43. *The Deputy Secretary-General* recalled that the project had stemmed from a proposal of the World Bank Group and partially built on UNIDROIT's previous work on procedural law. She noted that the project was based on the recognition that the effective enforcement of creditor claims was crucial to facilitate access to credit and promote overall economic development, but was hampered by common challenges such as excessive length, complexity, costs, and lack of transparency in enforcement procedures. Despite their importance, there was a lack of uniform international guidance to address these issues. The project aimed to provide national legislators with global standards to enhance their domestic legal frameworks.

44. Underscoring the broad scope of the instrument, she stated that it covered both enforcement of unsecured claims by way of authority and extrajudicial enforcement of secured claims. Given the variety of issues involved, the Working Group comprised experts specialised in procedural law, secured transactions, technology and law, which had implied the need to find a common language and understanding of the issues addressed. The project also benefited from the involvement of key observers, including the World Bank Group, the EBRD, and professional associations such as the *Union Internationale des Huissiers de Justice* (UIHJ), as well as intergovernmental organisations such as UNCITRAL and the HCCH. She recognised and expressed gratitude for the effort made by the Chair of the Working Group, Ms Kathryn Sabo, and the participants in the Working Group and Drafting Committee, as well as her colleague Ms Yuan He.

45. In relation to the progress that had been achieved since the latest session of the Governing Council, it was highlighted that (i) two Working Group sessions had been held in December 2023 and April 2024; (ii) intersessional work had taken place involving multiple virtual meetings of and between the subgroups, supported by research conducted by the Secretariat; (iii) both online and in-person work had been carried out by the Drafting Committee; (iv) a series of consultations had taken place, such as interactions with experts from the EBRD and the World Bank Group, and (v) presentations had been made at a workshop for governmental officials co-organised with the Government of India, and at a workshop of the Asia-Pacific Economic Cooperation (APEC), and during the Secretariat's institutional visit to Mongolia.

46. Finally, the Deputy Secretary-General provided a brief overview of the Preliminary Outline and the draft Best Practices and Commentaries that had been submitted to the Governing Council. She recalled that, subject to potential changes, the structure of the draft BPEE would comprise Part I on enforcement by way of authority and Part II on enforcement of security rights. The instrument would also contain two additional parts: one on the enforcement of digital assets and another on the impact of technology on enforcement. The submitted drafts of Part I focused on general enforcement procedures carried out by public authorities, featuring recommendations for enforcement titles, enforcement registers, information on debtor's assets, and enforcement of obligations. Part II centred on extra-judicial enforcement of security rights over movable assets, but would also contain innovative harmonised recommendations for enforcement of security rights over immovables. In relation to the part on movable assets, the Working Group had underscored the importance of adhering to existing international standards, while also aiming to provide comprehensive guidance that filled existing gaps, including guidance on expedited procedures in extrajudicial enforcement to resolve disputes. Regarding enforcement on digital assets, the Deputy Secretary-General underscored the need for practical guidance extending beyond general enforcement measures and specified that in this context the Commentary would play a more significant role than the Best Practices themselves.

47. *Ms Kathryn Sabo (Chair of the BPEE Working Group)* extended her appreciation to the UNIDROIT Secretariat for its organisational efforts. She further conveyed gratitude to the Working Group members and observers for their committed contribution to the substantive work. She underlined that the BPEE project aimed to provide best practices rather than harmonising procedural laws, and identified four primary challenges. First, it catered to a heterogeneous audience of both national legislators and practitioners. Second, it required navigating the boundary between

substantive and procedural law while avoiding delving into substantive matters. Third, it dealt with different areas of law, including extrajudicial enforcement of security rights, with the Working Group drawing on UNCITRAL's work on secured transactions and ensuring consistency therewith. The most significant challenge was the selection of best practices from a plethora of options available worldwide. Despite these inherent challenges, the Working Group had been integrating approaches from different legal systems while focusing on how to reach best practice solutions, also thanks to the participation of experts from institutions such as the World Bank Group, the EBRD, and the UIHJ, whose valuable assistance was aiding the Working Group to focus on how to address practical needs.

48. Ms Sabo concluded by outlining the Working Group's future plans. A Working Group session was to be held in December 2024 to consider a final draft of the Best Practices, with the aim of then proceeding with consultations involving relevant stakeholders, experts, and governments. Completion of the instrument was expected for adoption by the Governing Council at its 104<sup>th</sup> session in 2025.

49. *Ms Eugenia Dacornia* expressed her endorsement and congratulations to the Working Group and the Secretariat for their remarkable accomplishments, and reaffirmed the importance of taking all the necessary steps to finalise the instrument.

50. *Mr Jean-Christophe Boulet* acknowledged the inherent sensitivity of extrajudicial enforcement of security rights and raised two specific comments regarding the submitted drafts. Firstly, he questioned the suitability of the language in Part II, Section I, Recommendation 2, regarding the prohibition of "overly aggressive" behaviour when creditors sought to obtain tangible collateral extrajudicially. Secondly, he highlighted a potential issue with Part II, Section IV, which permitted variations of the rules governing the enforcement of security rights through agreements or unilateral waiver after default.

51. *Mr Jorge Sánchez Cordero Dávila* extended his congratulations to Ms Sabo and the Deputy Secretary-General for their remarkable contributions to the project. He encouraged them to continue their efforts to further advance the work.

52. *The representative of UNCITRAL* highlighted potential areas of overlap between various ongoing projects of UNCITRAL and this project, including the enforcement of automated contracts, the enforcement aspect of platform-based dispute resolution, the enforcement of electronic arbitral awards, and potential future work on security rights over new types of assets. She emphasised UNCITRAL's commitment to monitoring and actively participating in UNIDROIT Working Groups to contribute and remain informed. She encouraged close cooperation in areas of common interest for future endeavours

53. *The representative of the Permanent Bureau of the HCCH* extended her greetings to the Governing Council and expressed appreciation for the HCCH's role as an Observer. She highlighted the constructive relationship between the HCCH and UNIDROIT, expressing gratitude for their cooperative efforts. She congratulated UNIDROIT, its Secretariat, the BPEE Working Group and its Chair, Ms Kathryn Sabo, for their successful work over the past years. She informed the HCCH Permanent Bureau closely monitored the Working Group's discussions and remained available to assist on matters of private international law. She noted that the project would complement the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention), which had entered into force on 1 September 2023 with 29 contracting States, particularly as its Article 13 deferred enforcement procedures to the law of the requested State. This would be aligned with the aim of the UNIDROIT project to provide guidance for enforcing judgments within national legal systems.

54. In response to remarks of the representative of UNCITRAL, *Ms Sabo* emphasised the importance of any future work maintaining consistency with previous work regarding intangible

assets, thereby avoiding conflicts with the BPEE project. Regarding arbitral awards under the New York Convention and platform-based dispute resolution, it was clarified that these areas would fall outside the scope of the recommendations. The Working Group would nevertheless monitor UNCITRAL's progress in these areas with interest.

55. With respect to Mr Boulet's comments, *Ms Sabo* acknowledged the importance of carefully reviewing the language of the drafts to prevent any implication that aggressive behaviour would be acceptable when enforcing security interests. She noted that all texts would undergo thorough scrutiny to ensure clarity and alignment with intended policies. Addressing the issue of allowing parties to modify the rules governing the enforcement of security rights through agreements, she emphasised that these rules were designed to maintain compatibility with UNCITRAL's work.

56. As a follow up to the remarks of the representative of the HCCH, *Ms Sabo* underlined that while the Best Practices did not address the enforcement of foreign judgments, the general procedural framework being developed would aid in the enforcement of foreign judgments. This framework would not only complement the HCCH 2019 Judgments Convention but also the Convention of 30 June 2005 on Choice of Court Agreements (HCCH 2005 Choice of Court Convention).

57. *The Deputy Secretary-General* added that the Secretariat planned to convene one additional virtual intersessional Working Group meeting to ensure the timely completion of the work, which would be used to address open policy issues, to be ratified at the hybrid December session.

58. *The Governing Council* took note of the significant progress of the project since the 102<sup>nd</sup> session and noted the Secretariat's intention to submit an advanced draft instrument to the Governing Council via remote procedures after the Working Group session in December 2024. The Governing Council further authorised the Secretariat to initiate public consultations with relevant stakeholders upon finalisation of the draft instrument.

#### **(b) Bank Insolvency (C.D. (103) 5)**

59. *The Secretary-General* informed the Governing Council that the Bank Insolvency project was now in its final stages; the Governing Council had received, on a confidential basis, the full draft of the Legislative Guide on Bank Liquidation, on which the Secretariat proposed to launch a consultation process. He further explained that Members of the Governing Council were welcome to participate in any of the Institute's projects by attending meetings of Working Groups or intersessional meetings.

60. The Secretary-General recalled that the project had been proposed by the Bank of Italy and the European Banking Institute and explained that it was a special project for several reasons. First, it involved a mix between private law and regulatory law. Therefore, the project was undertaken in partnership with the Bank of International Settlements' Financial Stability Institute (FSI), with its seat in Basel. The Secretariat was grateful for the excellent cooperation with the FSI and proud that, to its knowledge, this was the first time that guidance in this area was being produced outside Basel. Second, the size and composition of the Working Group was different from other projects; in addition to ten academic experts, the Working Group benefited from the active participation of 39 observers, which included central banks, banking supervisors, and deposit insurers from all over the world, as well as international organisations such as the International Monetary Fund (IMF) and the World Bank Group. In total, around 100 experts participated in each Working Group session, with expertise both in general insolvency law and regulatory law. Six Working Group sessions had been held, two of which had been hosted by other organisations (the FSI and the Single Resolution Board). After the first session, thematic Subgroups had been established to focus on specific issues and following the third session, a Drafting Committee had been tasked with the development of the Legislative Guide. A challenge in this project was that different types of bank liquidation regimes and practices existed across jurisdictions. Thanks to the active contribution of the Working Group participants, the

Drafting Committee had been able to identify different options and solutions for the consideration of legislators.

61. *Legal Officer Ms Myrte Thijssen* explained that the draft Legislative Guide consisted of ten chapters and focused on the liquidation of failing non-systemic banks, since there was already an international standard governing the failure of banks that were systemic in nature. As a Legislative Guide, the instrument was addressed to legislators and policymakers seeking to update or introduce a bank liquidation framework. Depending on a jurisdiction's broader legal framework and policy choices, provisions on bank liquidation could be introduced in a dedicated bank liquidation law, or by means of bank-specific modifications in the general insolvency law or the banking law. Each chapter of the draft Guide contained a discussion of issues and a set of legislative Recommendations.

62. Ms Thijssen then touched upon some of the key building blocks for an effective bank liquidation framework as advocated in the draft Guide. The first concerned effective liquidation powers: Chapter 6 emphasised the importance of having more options to deal with a failing bank than a "piecemeal" liquidation. For banks, to avoid a sudden disruption of depositors' access to their funds and to maintain trust, it should be possible to transfer part of the assets and liabilities to another bank. Chapters 4 and 6 underscored the need for the legal framework to allow preparatory steps to be taken before the liquidation proceedings were formally opened, which might include a valuation and a bidding process whereby potential acquirers could conduct due diligence, under strict confidentiality safeguards. The draft Guide also provided guidance on what modifications to general insolvency law would be advisable for an effective piecemeal liquidation of an entire bank (for cases in which a sale as a going concern was not feasible or desirable) or of part of a bank following a partial ongoing sale. For instance, the liquidator should be able to make advance payments to depositors, allowing them to withdraw a limited amount from their bank account to minimise disruption.

63. The second building block was an appropriate institutional set-up. Chapter 2 discussed two models: administrative and court-based models. It explained that an administrative model, whereby the banking supervisor, bank resolution authority or (under some circumstances) the deposit insurer was the liquidation authority, could have clear benefits. However, a balanced approach was followed, and guidance and recommendations were also provided for jurisdictions with a court-based model. Chapter 3 provided guidance on the liquidator (a natural or legal person) including its remuneration, oversight, and liability.

64. The third building block covered provisions to enable a swift and timely opening of the liquidation process. Chapter 5 recommended that the grounds for opening bank liquidation proceedings be broader than ordinary insolvency grounds and include forward-looking elements. Chapter 3 emphasised that banks should timely notify their supervisor if they were approaching the point of non-viability and that the legal framework should encourage coordination among the involved authorities. It also advised that the liquidation process be started by a banking authority or on the petition of a banking authority.

65. In her capacity as Chair of the Working Group on Bank Insolvency, *Ms Stefania Bariatti* explained that a fourth building block concerned funding and creditor hierarchy, discussed in Chapters 7 and 8. In line with the lessons learned from the Global Financial Crisis, the draft Guide recommended that the legal framework not envisage the use of fiscal funding in bank liquidation. Instead, the deposit insurer could use funds that were raised from banks, either to pay out insured depositors or to facilitate a transfer of deposits to another bank. Chapter 8 provided guidance on the relative ranking of certain creditor classes, including depositors, related party claims, and secured creditors.

66. A fifth building block consisted in provisions governing the liquidation of banks that were part of a banking group, as well as cross-border aspects. For instance, if several group entities were

liquidated, Chapter 9 recommended that the bank liquidation authority be heard before a liquidator be appointed for another group entity, and that it be given legal standing in the parallel liquidation proceeding. Where feasible, the same liquidator could be appointed for several entities within the same group. Chapter 10 provided guidance on cross-border aspects such as cooperation between home and host authorities, and cross-border recognition and support. The guidance reflected a “modified universalism” approach, which had gained importance in the past decades.

67. Finally, the draft Guide advocated that there should be adequate safeguards, since the liquidation of a bank will often have a great impact. The liquidation authority should be independent and the legal framework should provide adequate accountability mechanisms, including of a non-judicial nature. It should specify the processes for legal scrutiny, ensuring effective access to court and remedies. The design of these mechanisms should take into account that an effective bank liquidation process would generally require timely and swift action. Experience with actual bank failures had shown that measures often needed to be taken during the weekend. The Guide recommended that the standard of judicial review of administrative decisions involving complex technical assessments be limited to matters of law and procedure and that the review of an administrative decision should not suspend that decision pending the court’s judgment.

68. Ms Bariatti noted that this project, similar to the project on BPEE, had faced challenges due to the divergences in national laws and regulatory rigidity, starting from the institutional model that was followed in some jurisdictions and the public interest concerns involved in banking activities. The challenges had to be overcome and solutions had to be found to close the gaps that existed at the international level. She was pleased and grateful that the experts in the Working Group had been willing and active in finding appropriate solutions for these complex issues. Finally, she thanked the Secretariat for the excellent and hard work throughout the project.

69. *The Secretary-General* thanked Ms Bariatti for her great leadership of the Working Group on Bank Insolvency. He explained that Annexe I to Document C.D. (103) 5 contained the draft Legislative Guide which, in the Secretariat’s opinion, was ready for a consultation process. For the sake of transparency, the Secretariat had shared in Annexe II an overview of comments that had been made by Working Group participants during a fatal flaw review of the draft Guide within the Working Group. Most of those comments were minor and could easily be addressed by the Secretariat, and if needed in cooperation with some of the participants that had submitted comments. Following this, the Secretariat envisaged the launch of a consultation process, whereby the draft Legislative Guide would also be sent to specific stakeholders and presented publicly. After the consultation, the Working Group would meet at least one more time to discuss the feedback. The final draft Guide would be submitted to the Governing Council for adoption in 2025.

70. *The President* explained that the Governing Council was asked to take note of the progress made in this project and to authorise the Secretariat to commence a consultation on the draft instrument.

71. *Mr Hideki Kanda* congratulated the Working Group for having produced such a comprehensive and sophisticated draft instrument. He noted that Recommendation 39 of the draft Guide proposed that the legal framework could permit a delay in the public disclosure of the information that a bank was approaching non-viability, as an exception to possibly applicable disclosure requirements under the applicable law. He observed that the language on this matter was cautious and asked whether the possibility of a delay in public disclosure represented the majority view within the Working Group and, if so, what the envisaged time period for the delay was. He cautioned that in case of such a delay of disclosure, creditors and investors might act on the basis of the information available to them, possibly including rumours and misinformation, which could lead to unintended consequences.

72. *Ms Thijssen* explained that this matter had been discussed extensively within the Working Group, which had recognised that there were trade-offs between public disclosure, on the one hand,

and delaying such disclosure, on the other hand. The main argument for allowing a delay was that the public disclosure of information that a bank was approaching non-viability could accelerate its failure. This risk was greater with banks than with other companies, since depositors were able to withdraw their funds in a very short time frame. At the same time, the Working Group had recognised that delaying disclosure of such information would prevent counterparties of the bank from making informed decisions about whether to continue transacting with the bank. This explained the nuanced approach in the main text, which advised jurisdictions to consider these trade-offs when designing their bank liquidation framework. Furthermore, the draft Guide emphasised that the legal framework should allow coordination to take place between the different authorities involved, including the securities regulator, to achieve an adequate solution. Regarding the time period, the draft recommended that the delay be limited in time to the period that was strictly necessary to complete the preparation of the liquidation.

73. *Ms Bariatti* added that interventions with failing banks were usually taken during the weekend, so the delay was expected to be rather in the range of hours. *The Secretary-General* explained that the main intention was to warn authorities that coordination was needed between securities regulation and bank liquidation so that a liquidation strategy could be implemented successfully.

74. *Mr Kanda* asked whether this guidance was intended to apply only to banks or whether it might also apply to other regulated sectors.

75. *The Secretary-General* responded that the draft Guide was limited in scope to banks. He noted that the risk that the value of securities of a company would significantly decrease if information on its likely failure was disclosed was common across sectors. However, banks were subject to specific risks given the maturity mismatch between their assets and liabilities.

76. *The Governing Council* noted the significant progress made by the Working Group on *Bank Insolvency and the full draft Legislative Guide on Bank Liquidation*. *The Governing Council* authorised the Secretariat to commence a targeted consultation on the draft Legislative Guide.

### **(c) Collaborative Legal Structures for Agricultural Enterprises (C.D. (103) 6)**

77. *The Secretary-General* introduced the CLSAE project by recalling that it was the third legal guide developed in partnership with two Rome-based international organisations, FAO and the IFAD. He recalled that the project had been proposed by the United States Department of State and the Ministry of Justice of Hungary for inclusion in UNIDROIT's 2020-2022 Work Programme and that it had been extended to the 2023-2025 Work Programme with high priority. He noted that a Working Group had been set up in 2022 and that until 2024 the Working Group had been chaired by Governing Council Member *ad honorem* Mr Ricardo Lorenzetti. He invited the new Members of the Governing Council to express any potential interest in becoming the new Chair of the CLSAE Working Group.

78. He further explained that the Working Group was composed of ten members selected for their expertise in contract law, company law, and cooperative law, as well as for their knowledge in economics, finance, digitalisation and sustainability with regard to the agricultural sector and global value chains. He noted that FAO was represented by experts from the Legal Department, the Agrifood Economics Division, the Food Systems and Food Safety Division, and the Inclusive Rural Transformation and Gender Equality Division. IFAD was also represented with experts from the Legal Department, the Research and Impact Division, and the Sustainable Production, Markets and Institutions Division. Additionally, as institutional and individual observers, the Working Group included participants from other international organisations and the private sector. He informed that five Working Group sessions had been held and that an average of 40 participants attended each session. He also noted that four Subgroups had been established to advance the work in



intersessional periods. Finally, he welcomed the involvement of Ms Jeannette Tramhel as a new Senior Legal Consultant and expressed his gratitude for her work on the CLSAE project.

79. *Legal Officer Ms Priscila Pereira de Andrade* provided further information on the substantial progress made in the development of the CLSAE project, in particular since the last session of the Governing Council in May 2023. She informed the new Governing Council Members that, similar to the Legal Guide on Contract Farming and the Legal Guide on Agricultural Land Investment Contracts, the CLSAE project aimed at developing a soft-law international guidance instrument to support smallholders and agri-MSMEs to enhance sustainable agricultural development in value chains and contribute to the transformation of agri-food systems. She noted that since the first session of the Working Group, the experts had agreed to focus the analysis of the project on “collaborative legal forms”. She explained that the Working Group presupposed that the needs of smallholders and agri-MSMEs could be addressed through collaboration by: (i) improving access to viable markets, market resources and inclusive financial services; (ii) exploring the enormous innovation opportunities while giving due consideration to the risks created by technology; (iii) addressing power imbalances and increasing participation in decision-making; and (iv) proposing remedies for unfair commercial practices.

80. Regarding the target audience of the CLSAE project, she informed that the future instrument was being drafted for legal professionals, legislators, and policymakers (i.e., actors in an advisory capacity and certain stakeholders with a role in drafting legislations and policies, as well as in delineating bylaws, internal regulations, and contracts). She noted that the prospective legal guide would also be useful for representatives of international organisations, chambers of commerce, local associations of agricultural entrepreneurs and organisations of producers, as these actors would be in a position to provide guidance to smallholders and agri-MSMEs. She further explained that the scope of the CLSAE project was mainly to cover four categories of “collaborative legal forms”: Multiparty Contracts, Cooperatives, Companies and Digital Platforms.

81. She stated that the Working Group also considered certain “endogenous” and “exogenous” factors including digitalisation, sustainability requirements and access to credit, and how they influenced the choice of collaborative legal forms. She noted that Document [C.D. \(103\) 6](#) summarised some of the key issues already discussed by the Working Group and noted that further information regarding the topics discussed in each session of the Working Group could be found in the summary reports published on the [CLSAE project’s dedicated webpage](#) on UNIDROIT’s website.

82. She explained that the analysis was premised on the complementarity of the collaborative legal forms rather than considering them as alternatives. Lastly, she highlighted that a functional and needs-based approach, based on empirical evidence, had been adopted to structure the main findings of the Working Group. She informed that a preliminary draft structure of the future instrument had been added to the Annexe of Document [C.D. \(103\) 6](#) and contained a list of topics that were being covered in each chapter of the legal guide. To illustrate, she noted that each chapter would highlight the fundamental differences between the collaborative legal forms considered, in particular regarding their purposes, formation and entry requirements, governance and decision-making procedures, scope of liability, remedies and sanctions for breach, and challenges regarding exit and dissolution.

83. Lastly, she shared that the tentative calendar of the CLSAE project envisaged seven Working Group sessions, followed by a consultation period before adoption by UNIDROIT, FAO and IFAD. She informed that the sixth session of the Working Group would take place in October or November 2024 and that the seventh session would be organised for early 2025.

84. *A representative of FAO* welcomed the continued partnership with UNIDROIT and IFAD in the field of private law and agriculture development. She expressed FAO’s satisfaction with the continued progress for the development of the CLSAE project and congratulated the UNIDROIT Secretariat on the

success of the fifth Working Group session held in March 2024. She emphasised the strong interconnection between the CLSAE project and the strategic framework of FAO, the Sustainable Development Goals and the overall goal towards sustainable agrifood systems. She highlighted FAO's support to continue the project and make good use of the final legal guide developed in FAO's projects in the future.

85. *A representative of IFAD* emphasised the value of the CLSAE project and expressed IFAD's contentment with the results so far achieved by the Working Group. He noted that the experts acknowledged the heterogeneous landscape of smallholders and agri-MSMEs and were making the effort to develop a flexible and user-friendly legal guide. He congratulated the UNIDROIT Secretariat and reiterated IFAD's support and willingness to continue providing the empirical evidence required for the finalisation of the project.

86. *Ms Kathryn Sabo* informed the new Members of the Governing Council that UNIDROIT's work in the field of private law and agriculture development was not historically an area that UNIDROIT had been involved in and that it had been established more or less ten years ago. She emphasised that this area of work was unique to UNIDROIT among the three international private law organisations, and it enabled UNIDROIT to develop cooperation with other Rome-based international organisations, adding tremendous value to this area of law. She noted the relevance of the CLSAE project for rural development and welcomed the progress made since the last session of the Governing Council.

87. *The Governing Council* acknowledged the important progress made by the Working Group for the development of the joint UNIDROIT/FAO/IFAD Legal Guide on Collaborative Legal Structures for Agricultural Enterprises.

#### **(d) Private Art Collections** ([C.D. \(103\) 7](#))

88. *The Secretary-General* recalled that this project had been upgraded to medium priority in the last iteration of the Work Programme, with a focus on orphan objects, and that the first meeting of the Working Group – after some preparatory work conducted in 2023 – took place only five days before the 103<sup>rd</sup> session of the Governing Council. He also indicated that this was a unique project under UNIDROIT's methodology, developed in partnership with the University of Geneva and the *Fondation Gandur pour l'Art*.

89. *Mr Marc-André Renold (University of Geneva)* summarised the first meeting of the Working Group. He made a brief presentation of the members of the Working Group, composed of lawyers, judges, practitioners, analysts and representatives of the art market, with wide geographical representation, although currently Africa was not yet represented. Mr Renold indicated that the Working Group had started its work on the basis of case studies, which were very helpful for the discussion. He informed the Council about the various themes examined by the Working Group: (a) definitions; (b) applicable law (i.e., in case of a transaction on an orphan object, whether it should be subject to the law where the object is located or to the law of the country of origin); (c) provenance of the object (to be defined); (d) due diligence in the particular field of cultural objects, which had been defined by the 1995 UNIDROIT Convention's Article 4(4); and (e) evidence (i.e., what should be proven in order for an orphan object not to be an orphan anymore). The Working Group would also have to deal with fake provenance made by traffickers, and a very important point would be to determine what could be done to "clear" a provenance, to "de-orphanise" an object (e.g., use some database, publish the object, put in on a platform where it could be claimed if it had to be claimed, etc.). He stressed that the Working Group would at this stage seem to have a preference for adopting principles (or guidelines) on orphan cultural objects, in an analogy to the 1998 Washington Principles on Nazi-Confiscated Art.

90. Finally, Mr Renold indicated that the next session of the Working Group would likely be held in October and thanked the Working Group for being very dynamic and receptive and also thanked

the Secretary-General and the Deputy Secretary-General of UNIDROIT for their active participation in the session.

91. *Mr Jorge Sánchez Cordero Dávila (Chair of the Working Group)* recalled that the 1970 UNESCO Convention and the 1995 UNIDROIT Convention were the two main conventions on cultural property and that the 1995 Convention had been the first international instrument to introduce the mechanism of due diligence. He added that the United Nations Security Council had asked international bodies to introduce certainty to the international art market. This was why the work on orphan objects was so important, complex and sensitive, with the goal of bringing certainty to the international art market. He expressed the hope of the Working Group to have a draft to be discussed at its next session, with an enlarged composition.

92. *The representative from the People's Republic of China* stated that his country was very interested in this subject and would provide necessary support.

93. *Ms Monika Pauknerová* indicated that the outcome of this subject might bring important implications to the discussion regarding the trade of historical artifacts, which was more and more often discussed in international institutions and that it was important that the project be in line with other international institutions such as UNESCO.

94. *The representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)* thanked UNIDROIT for the invitation to attend the meeting as a testimony of the synergies between organisations. She indicated that her organisation had participated in the first session of the Working Group and would give full support to the project.

95. *The Governing Council appreciated the progress made since the project had been upgraded to medium priority with a focus on orphan objects, endorsed the Working Group's results thus far, and expressed a keen interest in following the next steps of the discussion.*

#### **(e) Principles of Reinsurance Contracts [\(C.D. \(103\) 8](#))**

96. *The Deputy Secretary-General* introduced Document C.D. (103) 8 on the Principles of Reinsurance Contract Law (PRICL). She underscored the economic relevance of the international market covered by the project and explained that it had been classified as a low-priority activity solely because it was financially self-sufficient and thus, UNIDROIT'S input was limited to providing the expertise on the UNIDROIT Principles of International Commercial Contracts (UPICC), which were treated as best practices concerning general rules of contract and obligations law. She recalled that the project had started at the initiative of an international academic group now led by the Universities of Zurich and Frankfurt a.M. (Professors Helmut Heiss and Manfred Wandt) and assisted by representatives of the insurance and reinsurance markets, with the purpose of developing a "restatement" and best practices of global reinsurance law. She further recalled that the first part of the instrument, which had already been published in 2019, had referred to the UPICC as the rules of law that parties could choose in conjunction with the PRICL, and had used the UPICC as background contract law for the new instrument. Such a use of the UPICC represented a good example of their promotion in relation to their application to specific contracts, which would be discussed under Document C.D. (103) 19.

97. Regarding past activities, the Deputy Secretary-General noted that the last meeting of the Working Group had been hosted by the Max Planck Institute in Hamburg (Germany) and dedicated to the memory of the late Professor Jürgen Basedow, a contributor to the project and the original organiser of the meeting. The Working Group had addressed issues specific to reinsurance contracts, such as back-to-back cover, but also topics that were more directly connected to general contract law, including limitation periods, for which the Working Group had decided to directly refer to the general rules contained in the UPICC.

98. Concerning future steps, the Deputy Secretary-General, referring to the outline of the instrument that had been confidentially shared with the Governing Council, announced that the finalisation of the draft was expected by the end of 2024 after a series of industry consultation events organised over the summer. The Working Group had planned various promotional activities, including a conference co-sponsored by UNIDROIT to be held in January 2025, and the setting up of an association funded by industry stakeholders to further promote the instrument and consider any future need for revisions. Finally, the Deputy Secretary-General thanked the Directors and the Working Group for their work and cooperation.

99. Replying to Ms Kathryn Sabo's query on the timeframe within which the finalised instrument would be submitted to the Governing Council, the Deputy Secretary-General confirmed that the Secretariat would keep the Governing Council informed on the progress in the preparation for the publication of the PRICL, and was planning to provide the finalised draft to the Council with a request for authorisation to refer to the text of the PRICL on the UNIDROIT website as soon as it was available.

100. *The Governing Council took note of the latest developments of the project on Principles of Reinsurance Contracts and of the expected finalisation of the instrument by the end of 2024.*

## **Item 5: Update on certain high-priority projects on the 2023-2025 Work Programme**

### **(a) Model Laws and Guides to Enactment**

#### **i. UNIDROIT Model Law on Factoring and Guide to Enactment** [\(C.D. \(103\) 9.1\)](#)

101. *The Secretary-General* noted that following the adoption of the MLF by the Governing Council at its 102<sup>nd</sup> session (Rome, May 2023), the Secretariat had begun work on a Guide to Enactment for the MLF. He explained that as the MLF was a highly technical instrument which covered a complicated area of law, it would not be easy for States to implement it without guidance. He further explained that several concepts in the MLF such as (i) the notice-based registry and (ii) the equal treatment of outright transfers of receivables and the transfer of receivables by way of security could be relatively alien to certain civil law jurisdictions. He emphasised that the MLF was being prepared in consistency with four key principles: (i) targeted to its key audience of Government officials, (ii) accessible to readers without a deep understanding of secured transactions law, (iii) concise enough to allow it to be utilised to guide legislative development, and (iv) based around key principles underpinning a fair, efficient and effective legal framework for receivables financing.

102. *Senior Legal Officer William Brydie-Watson* noted that the MLF Guide to Enactment would be the first stand-alone guide to enactment that UNIDROIT had ever produced in its 98-year history. He explained that the Guide to Enactment was being prepared by a Working Group comprised of the same ten world-leading international experts in secured transactions law that had prepared the MLF itself, with participation from key institutional stakeholders such as the AFREXIMBANK, APEC, EBRD, EXIMBANK, FCI, ICC, IFC, ILI and UNCITRAL. He summarised the initial work undertaken on the project, which included (i) a comprehensive analysis of the 139 issues referred to the Guide to Enactment during the negotiation of the MLF itself between 2020 and 2023, (ii) two planning meetings on the structure and content of the instrument, and (iii) the first Working Group session (Rome, 8 – 10 April 2024), which had been attended by 36 participants. Mr Brydie-Watson explained that during its first session, the Working Group had made good progress in further defining the content of the Guide to Enactment and identifying the five core policy objectives underpinning the MLF. He noted that the Working Group had also decided to propose that the Guide to Enactment be accompanied by a "Digital Economy Supplement" that would address important technology issues associated with factoring (such as the increasing use of digital invoice selling platforms and the use

of digital assets to tokenise receivables), so that it could be easily updated to reflect technological changes.

103. *Mr Andrzej Szumański* expressed his gratitude to the Secretariat for its initial work on the preparation of the MLF Guide to Enactment. He enquired about the relationship between the UNIDROIT Model Law on Factoring and the 1988 UNIDROIT Convention on International Factoring. *The Secretary-General* clarified that the Factoring Convention was an international treaty for international factoring transactions between parties in different States, whereas the MLF provided a comprehensive legal framework covering domestic factoring transactions, accompanied by conflict of law rules to govern cross-border transactions.

104. *A representative of the EBRD* explained that the EBRD Legal Transition Programme had been involved in the negotiation of the MLF and its Guide to Enactment, and was actively promoting its implementation. He noted that the EBRD was supporting the implementation of the MLF in Jordan, Ukraine, Uzbekistan and the West Bank and that feedback from the ongoing implementation processes was being provided to the Working Group preparing the Guide to Enactment. He concluded by noting that one issue that had arisen in implementing the MLF was the law's application to both outright transfers of receivables as well as security interests in receivables.

105. *The Governing Council noted the initial work undertaken by the Secretariat and the Working Group to prepare the Guide to Enactment for the UNIDROIT Model Law on Factoring.*

**ii. Proposed amendment to the Model Law on Factoring ([C.D. \(103\) 9.1 bis](#))**

[Confidential discussion; paragraphs 106 to 114 are restricted.]

115. *The Governing Council decided to amend Articles 11 and 52 of the UNIDROIT Model Law on Factoring to rectify an error in the transition rules. The Governing Council requested that the Secretariat expeditiously republish the amended English and French texts and notify relevant stakeholders of the amendment.*

**iii. UNCITRAL/UNIDROIT Model Law on Warehouse Receipts and Guide to Enactment ([C.D. \(103\) 9.2](#))**

116. *The Secretary-General* highlighted that the project originated from a proposal received by UNCITRAL, which had this project in its own work programme and had offered to develop the project jointly. He underscored the historical significance of the drafting process, which commenced at UNIDROIT, with Ms Eugenia Dacoronia serving as the Chair of the Working Group, and with substantial participation from the UNCITRAL Secretariat. The Secretary-General also noted the subsequent, highly satisfactory collaboration with UNCITRAL throughout every phase of the preparation of the joint Model Law and the accompanying Guide to Enactment.

117. Although the draft Model Law had previously been presented to and unanimously adopted by the Governing Council in 2023, the Secretary-General underscored that the newly presented version included changes resulting from State negotiations at UNCITRAL, which had taken one year, as originally foreseen. Unlike the MLF, the Guide to Enactment had been developed together with UNCITRAL in conjunction with the Model Law, forming a vital aspect of the project. He noted that the work had been conducted in parallel in Rome, New York, and Vienna.

118. The Secretary-General explained that the document presented to the Governing Council was the 2023-approved Model Law as amended in the iterations by the State negotiations at UNCITRAL. He assured the Council that the changes were not substantial and that the core elements of the Model Law remained unchanged. Additionally, he brought attention to the Guide to Enactment, which

had not yet been presented to the Council. Together with the Model Law, it was scheduled for approval by the UNCITRAL Commission in July 2024.

119. *Legal Officer Ms Philine Wehling* briefly introduced the project and work accomplished thus far. She explained the rationale of the project, which emerged from the lack of harmonised legal guidance at the international level for countries seeking to introduce or reform their existing warehouse receipt legislation. The project's objective was to offer a Model Law that was aligned with relevant international instruments, as well as compatible with civil and common law systems. Importantly, the Model Law aimed to provide an enabling legal framework for both paper-based and electronic warehouse receipts and, correspondingly, supported the transition to a genuinely electronic warehouse receipt system.

120. Ms Wehling drew the Governing Council's attention to the progress achieved on the project. Starting with the draft Model Law text, she reported that it had been conveyed to UNCITRAL for intergovernmental negotiations and that its respective Working Group had held two sessions, resulting in some revisions to the text. She stated that the Secretariat and the UNIDROIT Working Group found the changes made to the text acceptable.

121. Addressing the revisions in more detail, she referred to the red-line version of the draft Model Law, enclosed in Annexe I of Document C.D. (103) 9.2, which highlighted all revisions made since the Council's approval of the draft Model Law in May 2023. She pointed out that the overall structure and the underlying approaches, including the technological neutrality approach, had been retained. She noted that the adoption of the technological neutrality approach, a novelty to UNCITRAL instruments, took into account that, in practice, electronic warehouse receipts were already considered equivalent to paper-based warehouse receipts, resulting in not having to prove that the former fulfil the same requirements as the latter.

122. Regarding the substantive revisions, she observed that, for a considerable part, these did not constitute changes as such but additions. As to the content of the provisions concerning electronic warehouse receipts, the Model Law had been streamlined to fully implement the medium neutrality approach, which had prompted the inclusion of new provisions. Notably, she explained the inclusion of two new provisions that were adopted *verbatim* from the UNCITRAL Model Law on Electronic Transferable Records (MLETR) in Articles 6 and 7 of the draft Model Law. The scope of the Model Law remained unchanged with one exception: the self-identification of the warehouse receipt which had been part of the definition of a warehouse receipt, and thus of the scope, was removed from the definition and instead included as one of the mandatory content requirements to be inserted in a warehouse receipt according to Article 10. Article 10 was moreover modified to include an expanded list of information to be included in a warehouse receipt. Moving on to Chapter III on transfers of warehouse receipts, which constituted a core part of the Model Law, she noted that it had remained virtually unchanged. On the contrary, Chapter V on pledge bonds had undergone considerable alterations, partly attributed to its addition only late in the drafting process at UNIDROIT, resulting in fewer prior internal revisions. Chapter V aimed at accommodating the two different warehouse receipts systems – the single and the dual receipt system – to ensure the Model Law would be useful for countries wishing to reform their domestic legal warehouse receipts framework regardless of the system they followed.

123. Additionally, Ms Wehling reported on the work on a Guide to Enactment of the Model Law, referring to the draft text of the Guide enclosed in Document C.D. (103) 9.2, Annexe II. Starting with its drafting process, she highlighted that the work on the Guide had commenced in tandem with the work on the Model Law itself. While the work on the Guide officially commenced in May 2023, the matters to be included in the Guide had been noted throughout the work on the Model Law. Thus, the Working Group had already had a structure and many of its elements at its disposal even before May 2023. Consequently, the UNIDROIT Working Group was able to conclude the drafting process by October 2023 and discussed the draft in one session, held in November 2023. Afterwards, the draft

Guide was conveyed to UNCITRAL, where the assigned Working Group considered it during its session in February 2024. The draft Guide was submitted by the UNCITRAL Secretariat to the attention of the UNCITRAL Commission, to meet in June 2024.

124. Turning to the structure of the draft Guide, she noted that it had remained the same as that developed by the UNIDROIT Working Group and already presented to the Governing Council in May 2023. In conclusion, Ms Wehling noted that the draft Guide presented to the Governing Council was not the final version, since the UNCITRAL Secretariat might make further changes before submission to the UNCITRAL Commission.

125. *Ms Eugenia Dacornia*, in her capacity as Chair of the UNIDROIT Working Group, expressed her profound gratitude to the Secretariat, particularly to the Secretary-General and Ms Wehling, for their work on the project and for the opportunity to chair the interesting project. She also thanked the Working Group for its exceptional accomplishment and commended the interesting and fruitful discussions during the six Working Group sessions held at UNIDROIT. She emphasised her indebtedness, particularly to UNCITRAL's participation and especially Mr José Angelo Estrella-Faria in those sessions and to the input received from other international organisations, such as the International Finance Corporation (IFC) and United Nations Trade and Development (UNCTAD). She noted that the outcome of the project was excellent and highlighted that the Governing Council had already approved the draft Model Law during its session in May 2023.

126. She continued, adding that the Model Law had been conceived as an independent legal instrument for States that promised to be especially useful for small and medium enterprises of the agricultural sector, as it would allow warehouse receipts to be used as collateral to obtain credit. Moreover, the Model Law was compatible with civil and common law systems alike, incorporating single and dual-use warehouse receipts systems and covering paper-based and electronic warehouse receipts, making it very innovative. She underscored the excellent collaboration with UNCITRAL. She also highlighted the practicality of the Model Law and of the Guide, which contained not only article-by-article commentary but also guidance for States to develop complementary legislation.

127. *The representative of UNCITRAL* thanked UNIDROIT for the seamless cooperation between the two organisations during every stage of the joint project. She elaborated on the background, which stemmed from a proposal UNCITRAL had received five years ago from the United States of America to work on a model law on warehouse receipts. She noted that UNCITRAL representatives were involved in the drafting process at UNIDROIT and that once UNCITRAL had received the draft Model Law from UNIDROIT, two UNCITRAL Working Group sessions devoted to the Model Law had taken place.

128. Moreover, the representative of UNCITRAL noted that the preparation of an accompanying Guide to Enactment was an essential feature of UNCITRAL model laws. She accentuated the interesting exchanges and added value thanks to the two organisations' combined efforts, particularly in the realm of digitalisation and the electronic aspects of the documents, which, importantly, were in line with UNCITRAL's other recently adopted instruments. The joint project had much in common with other UNCITRAL instruments, which ought to ensure consistency with the UNCITRAL framework on e-commerce that supported paperless trade, among other things. She stressed that it was with great pleasure that the UNCITRAL Secretariat proposed the Model Law and the annexed Guide to Enactment for the UNCITRAL Commission for adoption. The latter would dedicate more than two full days to discussing and resolving any remaining unclear points of the Model Law and the annexed Guide during the first week of its next session in June 2024. Lastly, she thanked UNIDROIT for the fruitful collaboration on the project.

129. *Ms Kathryn Sabo* inquired about the consequences if the UNCITRAL Commission decided to amend the draft texts (in case the Governing Council adopted the texts) and what this would entail for UNIDROIT. She emphasised that she fully supported the draft as amended by UNCITRAL and



currently presented to the Governing Council. *The Secretary-General* reasoned that this project was not conceived as a stand-alone UNIDROIT project to be then approved by the UNCITRAL Commission. Still, UNIDROIT had conducted part of the work, and it was for the UNCITRAL Commission to decide on the final shape of the instrument. He noted that the texts as adopted by the UNCITRAL Commission would be presented to the Members of the Governing Council, not for approval or reconsideration, but solely for information. *Ms Sabo* thanked the Secretary-General for this explanation and assured the Governing Council of her full support for the process. She also congratulated the Working Groups at UNIDROIT and UNCITRAL on the excellent quality of the results achieved.

130. *The representative from the People's Republic of China* thanked the Secretariat for clarifying the process of the project. He congratulated UNIDROIT on the project's successful conclusion and expressed his agreement with the texts presented to the Governing Council.

131. *Ms Stefania Bariatti* noted that the two draft texts were excellent, apart from some typographical errors. *The President* affirmed that these errors would be removed.

132. *Ms Uma Sekhar* thanked the Secretariat for the overview of the draft MLWR. She stated that this was a very important project for her country, India, which had such legislation which was currently under amendment. She asked whether the draft Model Law was consistent with other international instruments, such as the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea or the United Nations Convention on International Bills of Exchange and International Promissory Notes.

133. *The representative of UNCITRAL* provided clarification by referring Ms Sekhar to the different and separate UNCITRAL project on Multimodal Transport Documents. *The President* reassured the Governing Council that ensuring consistency among various similar instruments was of utmost importance and always given due consideration.

134. Replying to Ms Sekhar's intervention, *Ms Sabo* noted that an important element to emphasise with this project, and other ongoing UNCITRAL projects, was that they all involved legislation that permitted the electronic negotiability of documents, making it consistent with UNCITRAL's and UNIDROIT's work.

135. *Sir Roy Goode*, acting in his capacity as Governing Council Member *ad honorem*, observed that the draft texts were of a very high standard. He raised the question of whether the meaning of a warehouse receipt was so universally known that it would warrant omitting a definition in the Model Law's text. *Ms Wehling* replied that extensive discussions had been held in the UNIDROIT Working Group on where to precisely locate the definition of the term. Ultimately, the Working Group had decided to include it in paragraph 2 of Article 1, "Scope of application", as that definition was a determinant of the Model Law's scope.

136. *Mr José Antonio Moreno Rodríguez* congratulated UNIDROIT and UNCITRAL on their cooperation. He noted that the OAS Inter-American Juridical Committee had already been working on a similar project when UNIDROIT started its drafting process. The rapporteur at that time was Professor David Stewart from the United States of America, who had accomplished an important task, making it also somewhat of an initiative by the United States of America. The OAS had the wisdom not to continue with the project once it was taken to a global level at UNIDROIT, in order to avoid two instruments on the same topic with potential inconsistencies. He conveyed the OAS's full support for the Model Law and reported that the OAS had already adopted a resolution of the endorsement of the draft Model Law upon its approval by the UNIDROIT Governing Council in May 2023.



137. *The Governing Council took note of the excellent progress made on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project and expressed its appreciation of the final text. Furthermore, the Council approved the draft text of the Guide to Enactment to the Model Law on Warehouse Receipts.*

**(b) UNIDROIT Principles of International Commercial Contracts and Investment Contracts ([C.D. \(103\) 10](#))**

138. *The President (also co-Chair of the Working Group) provided a general introduction for the project on UPICC and International Investment Contracts (IICs), explaining that it was a joint project in partnership with the International Chamber of Commerce (ICC)'s Institute of World Business Law. The project, which brought together contract law experts, international law experts and international arbitrators, would aim to develop principles with commentary and potential model clauses. Due to the wide array of interests involved, not only had care been taken to ensure both geographic representation and the involvement of different stakeholders' points of view, but a Consultative Committee had also been established to ensure the feedback of Member States throughout the process. To date, the Working Group had held two sessions, one at the seat of UNIDROIT and one at the headquarters of the ICC in Paris.*

139. *Legal Officer Ms Myrte Thijssen reiterated that the composition of the Working Group did indeed ensure that the views represented were balanced but also made it challenging to achieve consensus, but that such challenge was a positive sign. She also touched upon the role of the Consultative Committee; all UNIDROIT Member States had been invited to nominate experts thereto, and now the Consultative Committee counted experts from 27 Member States.*

140. *Senior Legal Officer Mr Rocco Palma outlined the scope of the project as trying to standardise, harmonise or clarify contractual legal categories concerning IICs, as contracts between States or State entities and private foreign investors. He added that the project also aimed to tackle considerations and trends stemming from investment treaty law at the contractual level, especially further obligations on the part of investors, including sustainable development and human rights commitments. At this stage, the Working Group had designated various Subgroups to examine specific issues and prepare reports thereon for wider deliberation. He shared that Subgroup 0 was discussing the general underpinnings of the instrument, including definitional issues, the legal nature of IICs, the general terms of the application of the UPICC to IICs and their relation with treaty law; Subgroup 1 was discussing pre-contractual issues, parties, remedies, and transfer; Subgroup 2 was discussing change of circumstances; Subgroup 3 was discussing policy goals; and Subgroup 4 was discussing choice of law clauses and dispute settlement clauses. In general, the project took UPICC provisions as a starting point to see whether they could apply to the context of investment contracts, and particularly if they could apply directly or, otherwise, what degree of adaptation would be necessary to meet the specificities of IICs. In the latter case, the Working Group would draw from the current experience of arbitral tribunals in applying the UPICC to IICs and from States' and investors' contract practice, in order to distil adapted principles. He added that in addition to the Working Group, a parallel Research Team had also been established in the framework of the Roma Tre-UNIDROIT Centre for Transnational Commercial Law and International Arbitration in order to acquire useful insights from contract practice.*

141. *The President went on to say that the Working Group also involved institutional observers from UNCITRAL, UNCTAD and various other international organisations, and that care was required in order to not overlap or create inconsistencies with their work in the field, reiterating that the remit of this project was focused only on contracts.*

142. *Sir Roy Goode asked for an elaboration on the relationship between the project and the International Centre for Settlement of Investment Disputes (ICSID). The President replied that the project did indeed relate to ICSID arbitration and that, in fact, ICSID participated as an institutional*

observer to the Working Group. Furthermore, alongside the ICC, ICSID was providing examples of contractual language that had been encountered in actual arbitration. In any case, she noted that the project would not be dealing with issues such as enforceability of awards, which evidently fell outside its scope.

143. *Mr Yusuf Çalışkan* recalled how the UPICC could apply through alternative dispute resolutions (ADR) mechanisms. He stated that the UPICC (and also the resulting instrument to be developed by this Working Group and ultimately adopted by the Governing Council) could be applied by virtue of Article 42 of the ICSID Convention.

144. *Ms Monika Pauknerová* stated that the Working Group's project had great potential to promote harmonisation in an area where differing views still predominated. She emphasised that it would remain important to monitor the work of other international bodies focusing on international investment law, including UNCITRAL and the OECD. In terms of the form of the future work product, she supported the idea of principles supplemented by comments and potential model clauses.

145. *The representative from the People's Republic of China* asked for an explanation of how the Working Group and the Consultative Committee would interact. *The President* stated that this same structure had already been used in a previous project (Digital Assets and Private Law) and that the Institute had therefore been establishing a methodology. *The Secretary-General* shared that the idea of Consultative Committees had arisen as a result of the enormous interest engendered by the Digital Assets and Private Law project, as an attempt to preserve the decision-making power and deliberations of the Institute's main substantive body (to wit, the Governing Council) while reaching out to Member States' Governments to a greater extent, the result of which would in turn be factored into the decision-making process of the Working Group and ultimately the Governing Council. He explained that the documents (e.g., an iterated issues paper) would be submitted to the Consultative Committee for feedback when sufficient, concrete progress had been made by the Working Group, most likely after two or three Working Group meetings. He noted that the feedback from the Consultative Committee would not necessarily have to be implemented, but it would at least have to be considered, and if not implemented, due justification would have to be provided. He stated that the idea would generally be to make Consultative Committees the rule and not the exception (apart from cases where the project was particularly small).

146. *Ms Thijssen* expressed thanks to Governing Council Member Mr José Antonio Moreno Rodriguez for having accepted to chair the Consultative Committee.

147. *The Governing Council recognised that the project on the UPICC and International Investment Contracts had made significant progress since the Governing Council's 102<sup>nd</sup> session.*

### **(c) Legal nature of Voluntary Carbon Credits [\(C.D. \(103\) 11](#))**

148. *The Secretary-General* introduced the project noting that it was a project that had generated significant interest and thus one for which a Consultative Committee would be established to ensure domestic and regional feedback throughout the process. In this regard, Member States - and perhaps selected non-Member States from the Global South - would be contacted in the immediate future to nominate experts for the Consultative Committee. The Secretary-General reminded the Governing Council that the project had been initiated following a proposal submitted by the International Swaps and Derivatives Association (ISDA). ISDA was concerned that voluntary carbon credits (VCCs) were being traded without the market fully understanding their legal nature, thus creating instability and potentially hampering the scaling of these markets and ultimately the achievement of the Paris Agreement Article 6 goals. The World Bank soon joined the project, which had been approved by UNIDROIT's Governing Council and General Assembly and designated as a high-priority project. The project began in 2023, first with an exploratory workshop, after which collaboration with UNCITRAL started. In particular, UNIDROIT and UNCITRAL produced a joint study on the legal nature of VCCs

(the “UNCITRAL/UNIDROIT Study on the legal nature of verified carbon credits issued by independent carbon standard setters”) which, among other things, built on the work of UNIDROIT’s first Working Group session and also benefited from a questionnaire that UNCITRAL sent to UN Member States concerning the treatment of VCCs in their jurisdictions. The UNCITRAL/UNIDROIT joint study was included as an Annexe to Document [C.D. \(103\) 11](#) and would be presented to the UNCITRAL Commission.

149. The Secretary-General shared the significant progress made by the Working Group at its second session, held in April 2024. He explained that the current objective was to draft principles with commentary addressing the possibility of establishing proprietary rights over VCCs with the aim of reducing volatility and helping scale the market for VCCs.

150. *Legal Officer Ms Giulia Previti* provided further details on the substance of the first sessions of the Working Group and the intersessional work carried out over the course of 2023. She recalled that the main objective of the project was to provide guidance on private law issues so as to enhance confidence in VCC transactions and support the development of a well-functioning voluntary carbon market which could play a central role in fighting climate change, achieving the goals of the Paris Agreement, and facilitating the fulfilment of the UN Sustainable Development Goals.

151. She reiterated that since the last Governing Council session, the project had been moving forward steadfastly in collaboration with the World Bank Group and UNCITRAL, and with the benefit of sophisticated engagement from legal experts and stakeholders from the private sector, as well as from other international organisations and institutions.

152. Ms Previti recalled that the first session of the Working Group took place in October 2023. At this session, the Working Group focused on clarifying the life cycle of a VCC, discussing the role played by independent carbon crediting programmes and registries, and identifying possible routes to concluding that VCCs can be the subject of proprietary rights, whether on the basis of their substance or their form. There was general agreement that, in order to help scale the market for VCCs, VCCs should be deemed capable of being the subject of proprietary rights with the Working Group focusing on addressing the reasons why.

153. An intersessional subgroup meeting had been held in December 2023 specifically to consider whether, and on what basis, VCCs could be the subject of proprietary rights. The subgroup focused in particular on the key characteristics of property rights common to most jurisdictions, these being individuation, exclusivity or control, and rivalrousness, and analysed how VCCs could be deemed to possess such characteristics, including on the basis that VCCs are recorded on a registry with an individual serial number and issued into the account of the holder, who then has the sole authority to instruct the registry in relation to that VCC, including with respect to transfers and retirement.

154. The Working Group then gathered intersessionally to consider the type of instrument to be developed. Given the need for flexibility, it had tentatively been agreed to proceed on the basis of a soft-law instrument in the form of principles and commentary, similarly to what had been done in the context of the UNIDROIT Principles on Digital Assets and Private Law.

155. A subgroup of the Working Group subsequently met to consider the proposed structure and content of such future instrument. The proposed structure and content of the future instrument was also the main subject of discussion during the second full session of the Working Group, held in April 2024 in Rome and online. The Working Group analysed the main steps in the life cycle of a VCC through a property law perspective, in order to ascertain the proprietary nature of VCCs and the effect of transfers and dispositions in VCCs on a holder’s proprietary rights. The Working Group discussed the definitions of key terms to be included in the instrument and addressed issues pertaining to the registration, transfer, retirement, reversal and cancellation of VCCs.

156. Of particular relevance was consideration of the role played by independent carbon crediting programmes and registries, including in relation to the issuance and registration of VCCs. To that end, the Secretariat had invited representatives from independent carbon crediting programmes to address the Working Group and to specifically answer a number of targeted questions that had been developed in advance by the Secretariat with the aid of Working Group experts. Representatives from Verra and Puro Earth, two leading independent carbon crediting programmes, had delivered presentations to the Working Group, addressing, among other things, how VCCs were issued, evidenced, individualised, transferred, encumbered, retired or otherwise cancelled. In addition, with input from the HCCH, the Working Group discussed relevant conflict of law issues to be addressed in the instrument.

157. Ms Previti outlined next steps in the project, noting that future efforts would focus on liaising intersessionally to advance on the drafting of proposed black-letter principles for the Working Group's consideration. She shared that the third session of the Working Group was scheduled to take place from 4 to 6 September 2024.

158. Finally, Ms Previti brought the Governing Council's attention to the request outlined in Document [C.D. \(103\) 11](#) to change the name of the project from *voluntary* carbon credits to *verified* carbon credits. She explained that use of the word "verified" would underscore that the instruments to be addressed in the project differed from other types of climate financing tools because the project-based emission reductions or removals represented by the carbon credit had been independently verified by a third party. Moreover, reference to verified carbon credits or units would potentially encompass credits verified by States as well as credits verified by independent carbon crediting programmes. She confirmed that this approach had been further discussed and endorsed by the UNIDROIT Working Group during its second session.

159. On the issue of applicable law, *the Secretary-General* shared that the HCCH's Permanent Bureau (PB) had received a mandate from its governing body, the Council on General Affairs and Policy (CGAP), to work on applicable law in matters concerning carbon markets. He reiterated the importance of ensuring adequate coordination between the two organisations and the value of the project benefiting from the expertise of the HCCH in this area. The Secretary-General noted that UNIDROIT's Secretariat had informally agreed with the HCCH PB that a limited group of experts jointly appointed by UNIDROIT and the HCCH would work together in order to ensure consistency in the applicable law analysis. He emphasised the need for both organisations to work with common experts from the outset, in order to ensure adequate output at a later stage.

160. *Mr Hideki Kanda* noted that he was honoured to chair the Working Group going forward. He extended his sincere thanks to the Secretary-General, UNIDROIT, the World Bank Group and UNCITRAL for the insightful discussion that had taken place over the past year. He stated that the focus of the Working Group would be on drafting, to be advanced through intersessional work. Mr Kanda noted that many of the challenging questions had already been addressed in the UNIDROIT/UNCITRAL joint study and noted that topics for further discussion included the scope of instrument and whether it would address only proprietary law issues or whether it would extend to some issues of contract law or limited public law and regulatory aspects where necessary. He concluded by noting the wonderful discussions that had been held in the past, which made the future look promising.

161. *The representative of UNCITRAL* recalled that the UNCITRAL Commission had asked that UNCITRAL work with UNIDROIT and other organisations to produce the joint study. She agreed that the UNIDROIT/UNCITRAL joint study was a very well-researched study on the legal nature of carbon credits. She stated that UNCITRAL had yet to hear from its Commission on how it should proceed. She then shared two points. First, she noted that at its last session in 2023, the UNCITRAL Commission had requested that UNCITRAL include in the joint study the results of the questionnaire that UNCITRAL had circulated to UN Member States in relation to VCCs. She explained that UNCITRAL received significant and detailed feedback on the different ways in which States treated VCCs, thus

adding value to the joint study by showing how the issue is already dealt with and helping identify the need for harmonisation. Second, she noted that the discussion at the Commission had generated strong voices on the part of developing countries on the need for a cautious approach to the topic of VCCs given its sensitive nature.

162. The representative of UNCITRAL cautioned against expanding the project beyond voluntary carbon credits for the time being, stating that VCCs were a different animal, not addressed under Article 6 of the Paris Agreement. She also sought clarification on the focus of the future instrument since VCCs were different from digital assets.

163. With respect to the scope of the project, *the Secretary-General* noted that the Working Group experts were quite clear that when it came to the determination of the legal nature and private law treatment of verified carbon credits there was no difference based on use of the credit. While confirming that the project would in principle not delve into regulation, he explained that the private law nature of verified carbon credits was the same independently of whether they were used in the voluntary market or in a compliance scheme. That was why the Secretariat was proposing the change in the name of the project. The Secretary-General stated that the final title of the instrument would be approved at a later stage; however, the change in project name did convey the substantive message that verified carbon credits had a substantive nature that was independent of their use.

164. He also noted that once it was established that verified carbon credits could be subject of proprietary rights, then it was possible to derive a number of consequences from that conclusion, including in relation to tradability, custodianship, security interests, and the insolvency of the holder. The Secretary-General further explained that while VCCs could be, but were not necessarily, digital assets, the type of analysis proposed to be carried out by UNIDROIT was similar to what had been done in the context of UNIDROIT's project on Digital Assets and Private Law, though certain areas might vary substantially, such as the topic of applicable law.

165. *The representative of the HCCH* congratulated UNIDROIT on the progress of its work to date, in which the HCCH had been participating as an observer. She recalled that in the context of bilateral consultations between the HCCH PB and the UNIDROIT Secretariat in 2023, the HCCH PB had noted that it did not yet have a mandate to work on VCCs and thus contributed as an observer under the framework for trilateral cooperation and coordination. Under that same framework, the HCCH PB contributed the applicable law section to the UNCITRAL/UNIDROIT joint study.

166. She also noted that the HCCH PB had sought, and in March 2024 received, a mandate from CGAP for further collaboration on this work. In particular, CGAP had mandated the PB to cooperate and coordinate with UNIDROIT, UNCITRAL and other organisations on their projects on VCCs, monitor developments on international private law aspects in VCCs, and report back in 2025. It was now with this mandate that the HCCH sat as observer to UNIDROIT's Working Group on VCCs and stood ready to contribute on questions of private international law, especially questions of applicable law. She reaffirmed the HCCH PB's intention to find coherent, coordinated solutions that were practical and harmonised. She noted that the HCCH was currently seeking subject matter experts to accelerate work on applicable law matters to try to meet the project timeline as identified by UNIDROIT. She noted that, if necessary, the PB would return to CGAP in 2025 to seek a mandate to continue the work on VCCs with aid of the identified subject matter experts.

167. *The Governing Council took note of the significant progress made by the Working Group on the Legal Nature of Voluntary Carbon Credits and expressed a positive view on the publication of the joint "UNCITRAL/UNIDROIT Study on the legal nature of verified carbon credits issued by independent carbon standard setters". The Governing Council also approved changing the project title to the "Legal Nature of Verified Carbon Credits", based on the experts' advice that the legal nature of carbon credits does not depend on the use ultimately given to the said credits.*

**Item 6: Update on other projects and exploratory work concerning the 2023-2025 Work Programme****(a) Development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains ([C.D. \(103\) 12](#))**

168. *Legal Officer Ms Philine Wehling* recalled that work on the topic of Corporate Sustainability Due Diligence (CSDD) had been proposed by the EBRD and by the International Development Law Organization (IDLO) in 2022. The General Assembly had followed the recommendation of the Governing Council and, at its 81<sup>st</sup> session, had included the project in the Work Programme with medium priority. The Secretariat was allowed to conduct exploratory work.

169. She noted that CSDD aimed to foster sustainable and responsible corporate behaviour throughout global value chains, advancing the green transition and protecting human rights. Ongoing regulatory developments, in particular at the EU level, as well as at the domestic level within Europe in particular, took account of the increasing importance of this topic. This trend to oblige companies to adhere to a certain set of standards also took into account the fact that voluntary commitments by companies had not always proved fruitful. Nevertheless, the current legal landscape remained scattered, which made it difficult for companies to identify applicable requirements and ensure compliance.

170. The project proposal explored three potential forms for a future UNIDROIT instrument: (i) compliance guidance possibly together with a commentary on the UPICC elaborating on how far they could promote CSDD, coupled with model clauses which would mainly be addressed to the private sector; (ii) legislative guidance addressed to legislators; or (iii) a guidance document combining elements of the two previous options. In accordance with the Institute's practice, the future nature of the instrument would be decided once a Working Group was established.

171. Ms Wehling reminded the Council that the project could draw on existing instruments developed by UNIDROIT, in particular the UPICC, as well as contract law-based instruments developed based on the latter, such as the 2015 UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and the 2021 UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts and the ongoing UNIDROIT/FAO/IFAD project on Collaborative Legal Structures for Agricultural Enterprises. Moreover, the project had strong synergies with the ongoing project on International Investment Contracts and the UPICC which included corporate social responsibility and sustainability as one focus area.

172. Concerning the exploratory work conducted thus far, Ms Wehling reported that the Secretariat had prepared a comprehensive assessment of the main international and regional instruments and initiatives concerning CSDD, including model clause collections, in addition to an overview of domestic legislation, to identify the gaps and potential added value of a future UNIDROIT instrument. The main outcomes of this assessment were captured in a discussion paper prepared by the Secretariat as a basis for the first exploratory workshop, which would be held at the Institute on 27 and 28 May 2024. She invited the Council Members to take a look at the annotated draft agenda for that exploratory workshop, enclosed as Annexe I of Document C.D. (103) 12, which laid out the main items that the participants would be invited to discuss. The discussion paper for the workshop mainly covered three items: (i) an assessment of the existing instruments and initiatives, (ii) a discussion of issues with regard to the content of a future instrument, including the use and impact of new technologies on the various aspects of CSDD, and (iii) a discussion of possible forms for the future instrument. She shared with the participants that the Secretariat had exchanged on the topic with a broad range of experts and institutions and had invited a limited number of those to the workshop for a small brainstorming session. The invited participants included university professors who led, or were involved in, the development of the American Bar Association's model clauses as well as the draft European model clauses, and representatives from the OECD Centre for Responsible Business Conduct and FAO, amongst others.



173. Lastly, Ms Wehling outlined the next steps for the project. The Governing Council would be informed of the results of the exploratory workshop, depending on which the Secretariat might request an upgrade of the project's priority level from medium to high priority in order to allow for the establishment of a Working Group. In the interest of time, the Secretariat might address such a request for an upgrade to the Council intersessionally by written procedure.

174. *The Secretary-General* thanked the EBRD and IDLO for having proposed the project. He underscored that the work fit exactly within the framework of the Institute's line of work on law and sustainability, towards where UNIDROIT was slowly but firmly moving with its instruments. CSDD was such a topical subject matter that the European Union was directly legislating on it as this session occurred. He highlighted that UNIDROIT was a global institution and that precisely what was required was global consensus on the matter. UNIDROIT would take the European legislation and the broader context into consideration and seek to provide a global standard to the extent possible, mostly from a contractual, private law standpoint. Importantly, the aim was not to define human rights or environmental standards, but address the private law part of CSDD. The project had been a candidate for normative work, if and when resources would become available by the conclusion of another project, as had happened with the Model Law on Warehouse Receipts project. Accordingly, the main condition had been met, and an upgrade of the project was now possible. The workshop with experts was the next step to discuss the desirability and scope of a potential instrument, without pre-empting any decisions. Furthermore, he underscored that the project would consider the impact of technology, and that, like in any of the Institute's activities, all Governing Council Members were welcome to participate in the workshop.

175. Lastly, the Secretary-General explained the relevance of the different priority levels of projects, which was based on a customary unwritten rule taking account of the Institute's scarce resources. Accordingly, there were two stages: firstly, every three years, new projects were proposed to the Governing Council and to the General Assembly, which could accept or reject their inclusion in the Work Programme. Secondly, the Council and the Assembly decided the priority level (low, medium, or high). Low-priority projects did not have resources allocated to them but could be funded externally. Medium-priority allowed exploratory work with resources allocated to the project, for example for organising a workshop. However, only if the Governing Council and the General Assembly upgraded a project to high priority, were resources allocated to the project and could a Working Group be established. Currently, this project was assigned medium priority, and if the workshop produced positive results, the Secretariat would reach out to the Council Members by written procedure to request an upgrade of the project.

176. *Ms Stefania Bariatti* stated her full support for the project. She noted that since the project was approved with medium priority two years ago, the subject matter had become a very hot topic internationally, nationally, and at the European level. She suggested leaving aside the European level because it was usually challenging to address European needs in a global arena like UNIDROIT. She reported that a number of cases had emerged all over the world, judicial cases with different solutions and different standards, sometimes with no rules at all in certain countries. Accordingly, the idea of providing guidance was very important. Referring to paragraph 7 of Document C.D. (103) 12, she observed that different options had been proposed and the workshop was precisely meant to indicate the direction of the work. She observed that these were very different options: a model law would be addressed to the legislator, while a compliance guide would be addressed to private parties. A compliance guide would also concern risk assessment and compliance with rules that sometimes did not exist, as well as with contracts and contractual clauses that existing rules would be applied and respected. She stated that she was very interested in the exploratory work and would aim to participate in the workshop. She suggested that the group of participants in the workshop be expanded because there were many aspects of these possible options, and she believed that they had to be examined in depth. She highlighted matters of compliance, control, liability, jurisdiction, and applicable law if legislative parties were concerned. If the project addressed rules in contracts between parties, the issue was how to ensure the counterparty abided by the rules. She concluded

that these matters were challenging and that UNIDROIT was in the best possible position to discuss these issues.

177. *Mr Lars Entelmann* thanked Ms Wehling and the Secretary-General for the presentation of this exciting project. He agreed with Professor Bariatti that the project was very interesting and challenging. Reporting that his division was part of the EU negotiations, he imparted that those had been some of the most difficult negotiations he had experienced in Brussels in a long time. He cautioned that the topic was political and ought to be approached carefully. It would be important to establish a good Working Group that represented all the different views. Concerning the option of legislative guidance, he doubted that there was such interest from the European perspective at the moment. Rather, he could see room for contract tools and technology to help companies dealing with new frameworks emerging in Europe. He expressed a preference for concentrating on the compliance part to help companies to face new regulations.

178. *The Secretary-General* recalled the discussion of the project at the Council two years ago, and the preference to keep away from politically controversial issues but concentrate on the contractual part, which was indeed the project's natural remit within UNIDROIT. When it came to legislative, normative work, he clarified that this meant to describe instruments which might help legislators. It did not mean proposing a model law, but rather an analysis or a set of recommendations together with the necessary considerations. He concluded that the Secretariat had taken note of the potential limitations.

179. *Ms Monika Pauknerová* enquired about the expected timeline for the project.

180. *The Secretary-General* responded that the timeline depended on the workshop and its results, which would be presented to the Council. If the Council then agreed to upgrade the priority level, the Secretariat could start work in the coming months, and at least three years could be envisaged for the project.

181. *The Deputy Secretary-General* intervened to state that the Secretariat would like to link the project to the UPICC, which underscored the contractual aspect of the project and would be fully aligned with UNIDROIT's working methodology.

182. *The representative of the EBRD* thanked UNIDROIT for following up on the EBRD's and the IDLO's proposals, submitted some time ago. He reported that this project initiative had generated a lot of interest within the EBRD, not only in the legal department but also in other parts of the institution, as it would be highly relevant to their own investment operations. He confirmed the EBRD's participation in the workshop in May 2024.

183. Thanking the Secretary-General and Ms Wehling for their work and for the introduction, *the representative from the People's Republic of China* stated that he was looking forward to participating in the forthcoming workshop. He concurred that the discussion of this challenging topic required sensitivity, and that the terms "supply chain", "sustainability", "corporate responsibility", and "due diligence" had become popular in recent years. Studying the topic from a different perspective, namely from an international trade and trade rules perspective, he noted that company policies and trade rules between different countries sometimes conflicted. While those topics were not within the portfolio of UNIDROIT, they could be addressed from a private law perspective at UNIDROIT. In his view, the main purpose of the UPICC was to facilitate and promote transactions by harmonising contract law throughout different regions of the world. During the celebratory conference on the UPICC's anniversary earlier that same week, most of the speakers had considered the UPICC to be very balanced in protecting the rights and obligations of both parties to a contract. This was the beauty and charm of the UPICC and the reason for their wide acceptance. From the perspective of an academic, the discussion of due diligence and supply chain issues would not be a one-way but a two-way perspective. In other words, the issue ought to be considered from the perspective of the head



of the supply chain downstream, but also from the perspective of the downstream companies and how their rights and obligations could equally be protected. Adopting such stance would achieve a balanced outcome. Lastly, he echoed other experts that this project dealt with a very important issue. He recalled that Members of the Governing Council could participate in the workshop, underlining that experts from many different regions with diverse backgrounds should participate in order to ensure the representation of diverse perspectives and subsequently a globally acceptable outcome.

184. *Ms Eugenia Dacornia* enquired whether, since the project would only deal with the contractual part, and normally a breach of contract would entail liability, the question of liability ought to be addressed by the project.

185. *The Secretary-General* replied that this issue ought to be discussed.

186. *The President* concluded that the Secretariat had taken note of all comments and would acknowledge the feedback from the Governing Council, which would receive further update on the project. Finally, she highlighted that in the context of this project, in addition to the EBRD, for the first time, UNIDROIT would work together with IDLO on a project. This was in line with the Institute's general aim to expand its cooperation with other international institutions working on similar subject matters.

187. *The Governing Council* took note of the progress made on the project to develop a guidance document on Corporate Sustainability Due Diligence in Global Value Chains and underlined the topicality and relevance of the project. Governing Council Members asked to receive an invitation to the Exploratory Workshop to be held at the Institute on 27-28 May 2024.

**(b) European Law Institute project proposal in the area of technology and global value chains (C.D. (103) 12 bis)**

188. *The Secretary-General* stated that it filled the Secretariat with joy to present this project, as it allowed for the possibility of cooperating with another organisation with which UNIDROIT already enjoyed an excellent relationship. He noted the related nature of the ELI's proposal to the UNIDROIT project on the development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains. The President of ELI had sent a letter to the Secretariat after the last session of the Governing Council in May 2023, proposing to jointly work on technology and global value chains. This proposal aimed to incorporate the technological element in the supply chain and, therefore, would touch upon UNIDROIT's ongoing project in this area.

189. He noted that the project would analyse the subject matter from three perspectives, namely: the impact of technology on the design, structure, and functioning of global value chains; the role of technology in enabling human rights and environmental due diligence; and preventing and mitigating technology's risk of adverse impacts in value chains. Upon examination, the Secretariat realised that this sub-project aligned with UNIDROIT's current Work Programme since it touched upon several ongoing projects, such as the UNIDROIT/FAO/IFAD project on Collaborative Legal Structures for Agricultural Enterprises.

190. Moreover, he underlined the ELI project's connection to the ongoing work on UNIDROIT's Corporate Sustainability Due Diligence project, as technology formed a key part of the supply chain. The experts of the exploratory workshop, convening at the end of May 2024, would have to analyse whether the technology aspects warranted a distinctive project or could be incorporated into the ongoing UNIDROIT project. He continued by noting that the Secretariat perceived merit in conducting stand-alone exploratory work on collaborating with ELI's group of experts to analyse the element of technology in the supply chain generally. The Secretary-General emphasised that the Governing

Council would receive the report of the outcome of the exploratory workshop on the Corporate Sustainability Due Diligence project with the experts' conclusions.

191. At this stage, he clarified that the Secretariat would not ask the Governing Council to approve normative work but rather invite ELI experts to participate in the exploratory workshop and the UNIDROIT/FAO/IFAD project on Collaborative Legal Structures for Agricultural Enterprises. He stressed the idea of the two secretariats joining forces to prepare a paper on technology and the supply chain to explore cooperation avenues. Potential outcomes the Secretary-General mentioned could be presenting an entirely new project, producing a joint secretariat paper, or simply considering technology aspects in ongoing UNIDROIT projects. However, he stressed that under each scenario, the Governing Council would receive a report on the research conducted for its next session in 2025.

192. *The representative of ELI* congratulated the Secretariat on the incredible number of ongoing projects conducted, especially in light of the small staff. He underlined the excellent collaboration between UNIDROIT and the ELI, which had recently been strengthened through the renewed Memorandum of Understanding and through the respective positions as observers and members over the years in specific projects, which had significantly enhanced the collaboration and, to some extent, the results. He also underlined the great success of the conference jointly organised by ELI and UNIDROIT on 5 and 6 February 2024 in Vienna, Austria. The conference's topic had been the ELI-UNIDROIT Model European Rules of Civil Procedure. High-profile participants, including the American Law Institute's (ALI) director, Judge Diane P. Wood, several Supreme Court judges across Europe, and a wide range of university professors and practitioners had attended the conference. The event had highlighted the importance of the Model European Rules for both legislative work and legal practice. Moreover, it had evidenced the importance of enforcing digital assets and any judgment linked to digital assets. One of the current ELI projects was on the Digitalisation of Civil Justice Systems in Europe, which would also address these aspects. He indicated that UNIDROIT, in an observer function, would also be able to contribute to this private law project.

193. He explained the envisioned threefold aspects, namely the impact of technology on the design, structure, and functioning of global value chains forming an aspect of contracting as well as of algorithmic contracting to some extent, or, put differently, technology-driven value chains. The second aspect would encompass the fundamental role of technology in enabling human rights and environmental due diligence compliance, examining to what extent technology might be used in this area. Lastly, the third element would deal with the risks technology could entail. He noted that the first aspect was linked to the network-based, or new ecosystem of due diligence, meaning that the global value chain was no longer a contractual cascade but would be ensured through platforms and multiparty agreements, resulting in a decentralisation. Thus, this created the need to examine the contractual structure or multi-contractual perspective driven by the enabling factor of technology. The second important aspect would be to what extent improving the design of these obligations to allow for incorporating these in the new contractual design in order to make it easier and more efficient would be feasible. He reasoned that technology would entail risks, not limited to solely massive surveillance and other implications for fundamental rights.

194. He noted that the ELI would welcome joining forces with UNIDROIT and emphasised the presence of two of ELI's experts at the exploratory workshop at the end of May 2024.

195. *The President* thanked the representative of ELI for his presentation and emphasised that the Governing Council had taken note of his comments and would be informed of the exploratory workshop's results.

196. *The representative from the People's Republic of China* raised concerns regarding the inclusion of the non-traditional private and commercial law issues that this joint project would like to address, namely supply chain and technology matters. According to him, neither area fell within UNIDROIT's work and expertise, and addressing these might be inadequate.

197. Moreover, he raised concerns over the legal issues at stake. He reasoned that the global value of this project for UNIDROIT's wide range of Member States was unclear. Presenting the broader value of technology aspects would be appreciated so that the Governing Council could better ascertain this project's global value. He reasoned that technology-related issues such as data privacy and consumer protection were inherently public policy concerns, not private law issues, and thus outside the scope of UNIDROIT's work. He cautioned that perhaps UNIDROIT was not the right forum to discuss these issues, which might be better suited to a different organisation. He continued by noting that the preliminary discussions at the exploratory workshop on the other project at the end of May 2024 might be able to shed more light on the matter.

198. *Ms Kathryn Sabo* stated her agreement with the interventions of the other Governing Council Members. She underscored the merits of conducting exploratory work for the Governing Council to obtain more information, though she conceded that the project was situated in a promising area. She highlighted the imperative of this exploratory work to also consider UNCITRAL's work in the area of automatic contracting and other elements. She noted that she would look forward to the results of the exploratory workshop on the other project and to the report on the proposed ELI sub-project.

199. *Ms Uma Sekhar* raised similar concerns related to the project's rationale. She questioned whether this fell within UNIDROIT's mandate, especially concerning human rights aspects in the supply chain and sustainable due diligence in the global value chain. This proposal was still under examination in her country, even though this was an exploratory exercise. She underscored that in light of UNIDROIT's diverse Member States, each project approved would have to consider its geographical variety to ensure the outcome of each project was smooth and added value to domestic legislative frameworks. She requested to receive information on the participants of the exploratory workshop. She noted her scepticism of the proposed project as it currently stood.

200. *Mr Antti Leinonen* agreed with previous interventions, noting that from his personal experience, having been involved in deliberations on this topic, he emphasised the tricky nature of this project. He expressed his confidence in the exploratory workshop and its outcome regarding the next steps. Moreover, as with other topics, he expressed his confidence in the coordinated cooperation with UNCITRAL on this matter, which was very important.

201. *The Secretary-General* noted that, according to his understanding, the interventions, with one exception, were more generally concerned with UNIDROIT's Corporate Sustainability Due Diligence project, not the ELI proposal. However, he conceded that the projects were not separable. Addressing the concerns raised about the project's perceived non-globality due to ELI's involvement, he emphasised that ELI's work transcended the boundaries of Europe and the European Union, resulting in a global scope. Focusing solely on the European Union would be moreover superfluous in this area. He underscored technology's growing importance and ubiquity, which also influenced the supply chain, though he acknowledged that UNIDROIT did not consist of engineers. This, in turn, mandated examining the legal side of the application of technology. The Secretariat would not seek to revise the content from a technical standpoint but to examine the private law aspects of technology in the supply chain. He emphasised that UNIDROIT's task was not to define human rights or deal with regulatory issues or labour law standards. If a contractual clause containing private law aspects did refer to respecting certain labour law standards, this would merely mean referring to the labour law standards of another organisation. By no means would UNIDROIT define labour law or environmental standards.

202. He reassured the Governing Council that UNIDROIT would not enter into the regulatory part but solely examine the contractual part. He continued that including references to compliance with human rights standards was no novelty of this project but enjoyed a long history at UNIDROIT. Several instruments incorporated such concerns, including every instrument related to Private Law and Agricultural Development, as well as the ongoing UPICC and International Investment Contracts project. He highlighted that work on sustainability and private law was a firm part of UNIDROIT's

current Work Programme, as adopted by the Governing Council and the General Assembly, and that UNIDROIT would therefore not be entering uncharted territory. Finally, he expressed the opinion of the Secretariat that the technological component would substantially enrich the discussions, and that the assistance of the ELI would be very important for a global perspective. He drew the attention of the Governing Council to the possibility of organising an online intersessional meeting of the Governing Council to decide on the project and potentially upgrade the project's priority level.

203. *The representative of the ELI* reassured the Governing Council of ELI's non-affiliation with the European Union. In the past, ELI had conducted similar joint projects, such as the American Law Institute-ELI Principles for a Data Economy, which had required broader perspectives. He underscored the crossroads nature of ELI's sub-project proposal, situated between contractual instruments and investments on the one hand and the efficiency of all due diligence aspects and how to efficiently report on due diligence on the other hand. This unique mixture might trigger an interesting result, but he admitted that the exploratory workshop would clarify the pertinent aspects. He explained and apologised that while ELI had worked with the European Union on consumer laws, this was only mentioned to highlight ELI's expertise in algorithmic contracting, not to create the impression that this would be part of the sub-project. He shared many of the concerns raised by the previous interventions on the focus on contract law.

204. *The Secretary-General* invited the Governing Council members and invited national experts to participate in the exploratory workshop to address any concerns at an early stage.

205. *The representative from the People's Republic of China* expressed his gratitude for the explanations by the Secretary-General and the representative of the ELI. He emphasised his support for UNIDROIT's cooperation with other agencies but cautioned that, in this instance, the ELI might not be the ideal partner. He thanked the Secretary-General for clarifying the private law perspective of the project, but he found that this was not clearly reflected in Document C.D. (103) 12 bis, creating the impression that approving this proposal would authorise examining many things, not exclusively private law aspects. He reasoned that for UNIDROIT's experts, private law and commercial law matters would be appropriate.

206. *The President* confirmed proceeding with the exploratory workshop at the end of May 2024 and noted that the Secretariat gave due consideration to every intervention. Lastly, she emphasised that the Governing Council would receive an update soon on the exploratory work and on the ELI proposal.

207. *The Governing Council took note of the proposal received from ELI and expressed a positive opinion on the proposal presented by the Secretariat to conduct joint exploratory work with the ELI at the Secretariat level.*

**(c) Conclusion of the exploratory work conducted on the HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens (C.D. (103) 13)**

[Confidential discussion; paragraphs 208 to 213 are restricted.]

214. *The Governing Council took note of the exploratory work conducted concerning the HCCH-UNIDROIT Joint Project on the Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens, and of its conclusion following the HCCH's decision to discontinue the project.*

**Item 7: International Interests in Mobile Equipment****(a) Implementation and status of the Cape Town Convention and the Aircraft Protocol**

215. *The Secretary-General* informed the new Members of the Governing Council about the relevance of the Cape Town Convention, as one of the most successful international commercial law treaties ever adopted. He explained that the Protocol was aimed at facilitating access to credit by creating a system of security interests over high-value movable equipment recognised internationally.

216. He went on to explain how, due to the Covid-19 pandemic and the damage to the commercial airline industry, the Protocol had been put to the test and had been successful in protecting creditors as well as offering a workable solution for most airlines, with a very positive outcome for all parties involved. He shared that in 2023, Cyprus and Iraq had acceded to the Protocol, bringing the total of Contracting States to 83, with both Georgia and Zimbabwe in the immediate pipeline. With regards to dissemination and implementation, the Secretary-General shared that the Cape Town Convention Academic Project (CTCAP) had begun a moot court in the United Kingdom and was preparing to replicate that success. Lastly, he thanked Sir Roy Goode for his ongoing contributions and the revised fifth edition of the Official Commentary to the Aircraft Protocol.

217. *The Governing Council took note of the activities undertaken regarding the Cape Town Convention and the Aircraft Protocol.*

**(b) Implementation and status of the Luxembourg Rail Protocol  
([C.D. \(103\) 14](#))**

218. *The Deputy Secretary-General* presented Document [C.D. \(103\) 14](#), particularly underlining the achievement of the entry into force of the Luxembourg Rail Protocol to the Cape Town Convention (the Rail Protocol) on 8 March 2024. She noted that the Rail Protocol expanded the scope of the Cape Town Convention treaty system to include the rail sector, thereby facilitating access to private financing for the acquisition and use of railway rolling stock. The Rail Protocol was expected to generate significant economic benefits while promoting sustainability and advancing social objectives.

219. The Deputy Secretary-General reported that since the last session of the Governing Council, the second condition for the Rail Protocol to come into force pursuant to its Art. XII had been fulfilled, as the Secretariat of the Supervisory Authority (the Intergovernmental Organisation for International Carriage by Rail, OTIF) had deposited a certificate with the Depositary (UNIDROIT) confirming the full operational status of the International Registry. She extended her gratitude to all the individuals and entities whose invaluable efforts had significantly contributed to the entry into force of the Rail Protocol seventeen years since its adoption, including the two Co-Chairs of the Preparatory Commission, Mr Peter Bloch of the United States of America and Mr Antti Leinonen of Finland; the co-sponsoring organisation, OTIF, with Secretary General Mr Wolfgang Küpper and Head of Administration and Finance Department Ms Lunesterline Andriamahatahitry; Professor Sir Roy Goode, former Rapporteur and author of the Official Commentary to the Protocol; the new Registrar owner (the Canadian company Information Services Corporation); the representatives of the Contracting States; and last but not least the tireless work of the Rail Working Group and its Chairman, Mr Howard Rosen.

220. The Deputy Secretary-General then provided a brief overview of the intense activity that had been undertaken since the 102<sup>nd</sup> session of the Governing Council, referring to Document C.D. (103) 14 for further details. First, she recalled the institutional follow-up work in preparation for the 12<sup>th</sup> and last session of the Preparatory Commission, which had involved tasks such as preparing for the

establishment of the Supervisory Authority, revising the draft Registry Regulations and Procedures, and ensuring the operational status of the International Registry and the finalisation of all required technical and financial documentation. Secondly, she referred to the work of the Ratification Task Force (RTF), an informal group established to facilitate the implementation and acceptance of the Protocol, which had held two virtual meetings, the latter of which had set the target date for the Protocol's entry into force.

221. The Deputy Secretary-General then reported that the 12<sup>th</sup> and final session of the Preparatory Commission had been held in Bern on 7 March 2024, followed by the inaugural session of the Supervisory Authority on 8 March 2024. During its final session, the Preparatory Commission had approved the necessary draft documentation and resolved the establishment of the Supervisory Authority as an international organisation possessing international legal personality as provided by Article 27(1) of the Cape Town Convention, in accordance with Resolution 1 of the Final Act of the diplomatic Conference. At its inaugural session, the Supervisory Authority had been established through a Resolution signed by the designated representatives of the members in accordance with Article XII of the Protocol, confirming the Preparatory Commission's decision on this matter. The Supervisory Authority was composed of the representatives appointed by the States Parties (Luxembourg, Spain, Sweden, and the EU as a regional economic integration organisation<sup>2</sup>) and representatives appointed by the States designated by OTIF and UNIDROIT (Algeria, France, South Africa, United Kingdom, and Türkiye). Following its establishment, the Supervisory Authority had approved its Statutes and Rules of Procedure, proceeded with the election of officers (with a representative of Spain elected as Chair and representatives of Sweden and South Africa, respectively, as first and second Vice-Chairs), approved the Agreement between the Supervisory Authority and OTIF concerning the functions of the Secretariat, and established the Registry by approving the transfer of the contractual positions from the Preparatory Commission, the Registry Regulations and Procedures, the Fee Schedule, and the Model Rules for the Permanent Identification of Railway Rolling Stock as adopted by the United Nations Inland Transport Committee and revised after the first meeting of the Revisions Committee, for the purpose of their use by the Registry. The Supervisory Authority had also established a Commission of Experts tasked with advising on its activities.

222. Lastly, the importance of promoting wider adoption of the Rail Protocol was emphasised. An update on the current prospects of additional ratifications was provided, mentioning the imminent ratifications expected from Paraguay, the parliamentary approval of the ratification in South Africa, and the commitment to ratification by the United Kingdom. Other states such as Türkiye had also expressed a strong interest in the Rail Protocol during the recent meeting of the Supervisory Authority. The Deputy Secretary-General highlighted the importance of cooperation with other intergovernmental organisations, particularly the United Nations Economic Commission for Africa (UNECA), the African Union, the European Union, and the United Nations Economic Commission for Europe (UNECE) in promoting the Protocol. She also summarised the promotional activities undertaken by the UNIDROIT Secretariat, including various workshops and presentations.

223. *The representative of OTIF* highlighted two significant aspects of the Protocol's entry into force. First, he emphasised its importance for the international transport sector, since the promotion of railways would contribute to creating a green and sustainable transport system. He noted that allowing private sector financing for rolling stock would meet the needs for substantial investment while alleviating the financial burdens on governments. Secondly, he noted that assuming the role of Secretariat of the Supervisory Authority of the Protocol would enhance OTIF's global visibility and recognition. He then concluded by expressing gratitude to all those who had been involved in facilitating the Protocol's entry into force and reiterated OTIF's commitment in fulfilling its new role.

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<sup>2</sup> Gabon, while a State Party, did not participate in the meeting.

224. *Mr Daniel Denman* congratulated the Secretariat on the entry into force of the Protocol, acknowledging that it had been the result of significant efforts. He then confirmed the United Kingdom's intention to ratify the Protocol, noting that the Parliament's legislative procedure would require some time, particularly as the United Kingdom could no longer utilise the simplified procedure for implementation that had been used for the Aircraft Protocol. He concluded by expressing gratitude to everyone for their close collaboration and engagement in this endeavour.

225. *Mr José Antonio Moreno Rodríguez* expressed appreciation for the Secretariat's invaluable support in Paraguay's ratification process and extended gratitude to the professional staff of the UNIDROIT Secretariat. He announced that the Paraguayan Congress had approved the ratification of all four Cape Town Protocols, which would make Paraguay the first country to have all four instruments in force.

226. *Mr Antti Leinonen* acknowledged the successful entry into force of the Protocol and thanked all contributors, including the UNIDROIT Secretariat, OTIF, State representatives, and the Rail Working Group. He concluded by expressing gratitude for everyone's hard work and hope that Finland would ratify the Protocol in the not too distant future.

227. *Ms Sharon Ong* congratulated the Secretariat on the Rail Protocol's entry into force and its efforts and activities in disseminating information and promoting the Protocol. She sought an update on the reception of the Rail Protocol at various international fora, such as the United Nations.

228. In response to Ms Ong's question, *the Deputy Secretary-General* noted that UNIDROIT was cooperating with a number of UN agencies that recognised the value of the Rail Protocol in facilitating sustainable economic growth, which resulted in those organisations actively and openly supporting ratification of the Rail Protocol. In particular, she mentioned the cooperation with UNECA and UNECE, the latter having approved, through the UN Inland Transport Committee, Model Rules that were complementary to the Rail Protocol in allowing the practical use by the industry of the permanent identification number necessary for uniquely identifying railway rolling stock for the purpose of registration of the international interests. *Sir Roy Goode* conveyed his congratulations to the Secretary-General and the Deputy Secretary-General for their adept handling of all the technical issues. He highlighted the contribution of the United Nations Inland Transport Committee in implementing the Unique Rail Identification System (URVIS). He then provided an update on the progress of the Official Commentary on the Convention on International Interests in Mobile Equipment and Luxembourg Protocol, noting that its second edition was under review by UNIDROIT and would hopefully be available within a few weeks.

229. *The Governing Council* noted with enormous satisfaction the entry into force of the Protocol on 8 March 2024 with the constitution of the Supervisory Authority and the entry into operation of the International Registry, commended the excellent and hard work conducted by the Secretariat and partner organisations, and supported the activities proposed by the Secretariat for the further promotion of the Luxembourg Rail Protocol.

### **(c) Implementation and status of the Space Protocol (C.D. (103) 15)**

230. *The Deputy Secretary-General* introduced the topic, highlighting that the Space Protocol was not yet in force. Noting that the Space Protocol had been ahead of its time when it was adopted in 2012, she highlighted the most recent developments in the space industry, particularly an increase in private sector involvement for smaller entities and the related need for private financing, which currently rendered the Space Protocol particularly useful. The Deputy Secretary-General concluded by reiterating the Secretariat's commitment to the instrument, the future of which looked more hopeful than in the past.



231. *Legal Officer Mr Ian Li* reported on the current status of the Space Protocol, specifically mentioning Paraguay's imminent ratification, which would be the Protocol's first. He updated the Governing Council on the Secretariat's activities in the promotion of the Space Protocol, including continuing to conduct academic lectures and publishing articles and book chapters. He also highlighted the Secretariat's approach to promoting the Space Protocol in the main fora for States and the private sector, in particular the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and the International Astronautical Congress (IAC), respectively. He highlighted that UNIDROIT had been invited by the International Astronautical Federation, organisers of the IAC, to become an observer at its Committee for Liaison with International Organizations and Developing Nations and expressed hope that this would pave the way to further collaboration.

232. *Ms Sharon Ong* queried whether informational and promotional materials on the Space Protocol were accessible, as they would be useful for Governing Council Members to use in consultations with their Governments.

233. *Ms Uma Sekhar* noted that there had been a shift in the space industry, as private actors were now very active in the space sector and many Governments now considered it important to look into ways to enhance private actors' participation. She also echoed Ms Ong's view that it would be useful if there were resources available which would serve as a reference for stakeholders.

234. *Sir Roy Goode* noted that the current developments in the space industry focused on small satellites, which might increase the attractiveness of the Space Protocol. He also noted that the primary attractiveness of the Space Protocol rested in the value of the debtor's rights in the satellite as opposed to the value of the satellite itself, which should be borne in mind when promoting the Space Protocol.

235. In response to Ms Ong's and Ms Sekhar's queries, *the Deputy Secretary-General* noted that the Secretariat has previously produced a document containing answers to the most common doubts and questions received from Governments and stakeholders, with topics ranging from the more general to the technical and specific, in order to clarify issues in relation to the Space Protocol. She noted that this document, together with additional materials and case studies, was already available on the UNIDROIT website but the Secretariat would put effort into ensuring that the material was more easily accessible and updated.

236. *The President* encouraged all Governing Council Members to endeavour to facilitate the adoption of the Space Protocol. Noting that two out of four Protocols of the Cape Town Convention had now entered into force, she expressed the hope that the other two Protocols might soon achieve this goal.

237. *The Governing Council acknowledged the updates provided by the Secretariat as to the recent activities undertaken to promote and implement the Space Protocol.*

**(d) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) [\(C.D. \(103\) 16](#))**

238. *The Secretary-General* recalled that the MAC Protocol had been adopted almost five years ago in November 2019, and had been signed by five States to date (the Republic of Congo, The Gambia, Nigeria, Paraguay and the United States of America), as well as a Regional Integration Organisation (the European Union). He noted that the MAC Protocol covered three different sectors that were particularly important in developing economies, and that the implementation of the MAC Protocol would support the achievement of several of the Sustainable Development Goals. He explained that as the application of the Cape Town Convention and its Protocols depended on the location of the debtor, it was particularly important for countries that wanted to lower the cost of credit of MAC equipment to ratify the treaty. In relation to the European Union, he noted that the EU



had competency for several minor aspects under the treaty, which meant that European Union members could not ratify the MAC Protocol until the EU had done so. It was further noted that the EU had already ratified the Cape Town Convention, Aircraft Protocol and Luxembourg Rail Protocol, and that there was no known opposition to the EU ratifying the MAC Protocol. The Secretary-General explained that the European Commission had responsibility for the matter, and suggested that if several EU States contacted the Commission and expressed their support for the ratification of the MAC Protocol, then the matter would likely be prioritised soon after the upcoming European Parliament elections. In concluding, the Secretary-General noted that the private sector had increased its activity in promoting the MAC Protocol, which would be key to the success of the treaty, and that the Secretariat was working with a number of countries that had expressed an interest in the treaty, including China, Brazil, India and Japan.

239. *Senior Legal Officer Mr William Brydie-Watson* reiterated the economic significance of the MAC Protocol, which covered over \$123 billion USD worth of MAC equipment traded internationally per year and was predicted to increase global GDP by \$30 billion USD, if widely implemented. He noted that the implementation of the MAC Protocol was overseen by the Preparatory Commission, which was a body composed of 16 States and several institutional observers which acted as interim Supervisory Authority of the MAC Protocol Registry until the treaty entered into force. He further explained that the Preparatory Commission had three core responsibilities: (i) the designation of a Supervisory Authority, (ii) the appointment of a Registrar to design and operate the International Registry for International Interests in MAC equipment, and (iii) to establish Regulations for the future MAC Registry.

240. Noting that a separate document had been provided on the Supervisory Authority ([C.D. \(103\) 17](#)), Mr Brydie-Watson provided an overview of the work undertaken to appoint a Registrar. He explained that the Secretariat had supported the work of the negotiation team established by the Preparatory Commission to prepare a draft contract with the entity that had received the highest evaluation score for their bid as part of the international procurement process to select a Registrar, which had been undertaken in 2022. He noted that the draft contract had been approved by the MAC Preparatory Commission at its sixth session (Rome, 11 April 2024), subject to a final external review by DLA Piper.

241. In relation to the preparation of the registry regulations, he explained that the Preparatory Commission had also approved an updated version of the regulations which formed part of the draft registry contract, and noted that the regulations would be further developed once the contract had been completed and the Registrar began developing the Registry. In relation to the promotion of the MAC Protocol, Mr Brydie-Watson noted that the MAC Ratification Task Force (RTF), comprised of interested States and institutional stakeholders, had held three meetings in the preceding six months to develop strategies to support the ratification of the MAC Protocol. These strategies included the development of shared promotional resources and economic data, cooperation with international and regional fora to adopt the MAC Protocol as a policy priority, assistance to individual States, coordination with the private sector and the organisation of future promotional events. He provided a brief overview of the 12 promotional activities undertaken by the Secretariat during the preceding year. He noted that Paraguay had indicated that it was very close to becoming the first State ratifying the MAC Protocol, thanks also to the extensive work undertaken by Governing Council member Mr Jose Antonio Moreno Rodríguez. Finally, he concluded that ratification efforts were intensifying due to the increasing interest in the treaty from the private sector.

242. *Mr José Antonio Moreno Rodríguez* thanked the Secretariat for supporting Paraguay in its efforts to ratify the MAC Protocol.

243. *Mr Eesa Allie Fredericks* thanked the Secretariat for its work in progressing the implementation of the MAC Protocol. He noted that the MAC Protocol was of particular importance for regions like Southern Africa where the mining, agricultural and construction sectors represented

a large portion of domestic production, and where access to credit for machinery was constrained. He noted that the Cape Town Convention had been ratified by 25 African States and had become one of the most successful commercial law treaties in Africa, and expressed his hope that the MAC Protocol could replicate that success. He queried (i) which entity had been confirmed as the preferred bidder for appointment as MAC Registrar, and (ii) whether he would be able to participate in the MAC RTF. *The Secretariat* responded that a Canadian publicly listed company with a strong history in Registry development was the preferred bidder. It was noted that the company had proposed to establish the MAC Registry through a special purpose vehicle in Ireland. The Secretariat confirmed that the RTF was an informal group of interested stakeholders, and encouraged any Governing Council Members interested in supporting the ratification of the MAC Protocol to join the RTF.

244. *Ms María Ignacia Vial Undurraga* noted that, in a recent publication for the *Elgar Companion to UNIDROIT*, she and a colleague had identified the MAC Protocol as one of the most important UNIDROIT instruments for Latin America. She suggested that UNIDROIT should cooperate with relevant regional organisations and structures such as the OAS, Mercosur and the Alianza del Pacifico to promote the ratification of the MAC Protocol in Latin America. She concluded that she would be pleased to lobby for the ratification of the MAC Protocol in Chile, Peru, Bolivia and Uruguay, noting that several of these countries were yet to ratify the Cape Town Convention itself but could be encouraged to do so because of the importance of the MAC sectors to their economies.

245. *Mr Niklaus Meier* noted that while he supported the promotion of the MAC Protocol, it was a difficult treaty for governments, as it related to the competencies of several different government agencies. He explained that it was often unclear which government agency should lead the ratification efforts. He concluded that he would be pleased to continue to advocate for the Protocol within Switzerland, but would appreciate assistance in identifying the right counterparts to approach. *The Secretary-General* agreed that one of the most challenging aspects of promoting the MAC Protocol was trying to identify which government agency was best positioned to champion ratification within any given State.

246. *Ms Karen Banks* congratulated the Secretariat for its work on implementation of the Protocols to the Cape Town Convention. She noted that as the future MAC Registry was likely to be based in Ireland, she would try to advocate for the Irish Government to consider ratification, and contact the European Commission to advocate for the European Union to prioritise ratification. *The Secretary-General* thanked Ms Banks, and noted that a demonstration of policy support for ratification of the MAC Protocol from several EU Member States should be sufficient to move the matter forward.

247. *Ms Kathryn Sabo* noted that while the Canadian Government had not been involved in the selection process of the MAC Registrar, the preferred entity was a reputable company in Canada. She explained that the ratification of the MAC Protocol by Canada would require multiple levels of legislation to implement, although this had not proven a barrier to Canada ratifying the Convention and the Aircraft Protocol. She noted that while Canada tended not to be an early adopter of international commercial law instruments, the MAC Protocol was on a list of instruments to be considered by the Canadian Government, and that ratification of the MAC Protocol by the EU would be an incentive for Canada to consider moving forward on ratification. *The Secretary-General* thanked Ms Sabo, and noted that the Secretariat often encountered the problem of States not wanting to be among the first adopters. He concluded that while it was difficult to identify potential early adopter States, it was essential for five States to demonstrate leadership in being the first to ratify the MAC Protocol.

248. *The Governing Council took note, with appreciation, of the activities undertaken by the MAC Preparatory Commission, the Ratification Task Force and the Secretariat to implement the MAC Protocol.*

**(e) The designation of UNIDROIT as Supervisory Authority for the MAC Protocol Registry (C.D. (103) 17)**

249. *The Secretary-General* summarised the previous work undertaken in relation to the designation of a Supervisory Authority for the International Registry for interests in mining, agricultural and construction equipment to be established under the MAC Protocol. He explained that while it had been originally anticipated that the International Financial Corporation of the World Bank Group would be designated as the Supervisory Authority, due to a change in management and a move away from advisory work, the IFC decided in 2020 to not take on the role. After strenuous attempts to identify an alternative existing body were unsuccessful, the MAC Preparatory Commission had asked UNIDROIT to consider accepting the role of Supervisory Authority, or consider whether a new international entity could be established to perform the role, with UNIDROIT as its Secretariat (as consistent with the approach adopted under the Luxembourg Rail Protocol). After several years of deliberations, in 2023 both the UNIDROIT Governing Council and the UNIDROIT General Assembly had agreed that it would be preferable for UNIDROIT to be directly appointed as Supervisory Authority. The Secretary-General noted that the main decision still to be made by the Governing Council related to how the Supervisory Authority functions should be distributed between UNIDROIT organs, and whether new sub-committees should be established to perform certain functions. He concluded that there was no need for the Governing Council to make any decisions at this current session, but that it might be useful to have an initial discussion of the matter.

250. *Senior Legal Officer Mr William Brydie-Watson* provided a brief history of the process to appoint UNIDROIT as Supervisory Authority under the MAC Protocol. He explained that while UNIDROIT had been formally designated as Supervisory Authority by the MAC Preparatory Commission in April 2024, UNIDROIT would not formally begin the function until the MAC Protocol entered into force, and in the meantime the Preparatory Commission would continue in its role as provisional Supervisory Authority. He noted that there were two main matters that UNIDROIT needed to confirm in preparation to begin its role as Supervisory Authority. First, as noted by the Secretary-General, UNIDROIT needed to decide how the Supervisory Authority functions should be distributed between UNIDROIT's organs. Second, UNIDROIT needed to determine the budget for the Supervisory Authority functions, noting that all costs associated with UNIDROIT performing the Supervisory Authority role would come from extra-budgetary contributions. In relation to the Supervisory Authority functions, Mr Brydie-Watson made a distinction between *formal functions*, *general functions* and *administrative functions*. He noted that public international law advice provided by an independent expert in 2022 had stated that the UNIDROIT Statute did not create any barriers as to how UNIDROIT could discharge the Supervisory Authority functions, and that it was up to the Governing Council to decide and the General Assembly to approve the preferred approach. He briefly described several different possible structural approaches that had been set out in an earlier paper provided to the Governing Council in 2022, and welcomed any initial comments from Governing Council Members on the matter. In relation to the financial costs of the role, it was noted that the paper provided an initial cost estimate for UNIDROIT to undertake the function, which was equivalent to 9% of the anticipated annual costs of operating the MAC Registry. He emphasised that once the Registry was fully operational, it was anticipated that the entirety of UNIDROIT's costs for performing the Supervisory Authority function would come from registry fees. He explained that in the interim period during which registry fees were not sufficient to cover UNIDROIT's costs, a transitional arrangement had been negotiated which would allow UNIDROIT to recover a certain percentage of its costs from registry fees, and the rest of its costs from interested parties. He concluded that the Secretariat was continuing to work on both the structural and financial matters, and would provide a detailed report to the Governing Council at its 104<sup>th</sup> session in 2025.

251. *Ms Kathryn Sabo* thanked the Secretariat for the large quantity of high-quality work on this matter that had been undertaken over a number of years. She noted that such work had clarified that there was no problem with UNIDROIT undertaking the Supervisory Authority functions from a legal perspective, and now it was important for UNIDROIT to determine how best to discharge the

Supervisory Authority functions. She noted that it was difficult to allocate the Supervisory Authority functions, because neither the Governing Council Members nor the General Assembly representatives were likely to have the relevant expertise. She suggested that given that the Supervisory Authority role related to the administration of an international treaty and could affect the rights of private parties if a problem with the registry emerged, it would be preferable to have States involved in discharging the most important functions. She noted that many of the administrative functions could be discharged by the Secretariat, and that it might be appropriate to find a role for the Governing Council in relation to certain elements. In relation to costs, she noted that the cashflow issues related to the initial years after entry into force, and the costs related to the work that needed to be undertaken before entry into force of the MAC Protocol should be further discussed at the Council's next session in 2025.

252. *Mr Eesa Allie Fredericks* raised a concern regarding how UNIDROIT could get assurances from interested parties regarding the provision of initial costs during the interim period before registry fees would fully compensate UNIDROIT for undertaking the Supervisory Authority function. *The Secretariat* clarified that UNIDROIT had made upfront compensation for projected Supervisory Authority costs a precondition to accepting the Supervisory Authority role. He explained that the draft MAC Registry contract provided a legal right for UNIDROIT to be reimbursed for its Supervisory Authority costs from registry fees, before the Registry itself could recover its own operating costs, although UNIDROIT's rights in this regard were limited to some extent during the first five years of the operation of the Registry. It was further explained that the Secretariat was in discussions with private industry, who were fully aware that some bridge funding would need to be provided during the initial years of operation, in order for UNIDROIT to begin the Supervisory Authority role and thus for the treaty to enter into force. It was noted that discussions were ongoing, several possible solutions had been canvassed, and that the Secretariat was confident that a solution would be found.

253. *Ms Eugenia Dacornia, Ms Monika Pauknerová and Mr Jean-Christophe Boulet* queried how the functions might be structured within UNIDROIT's organs, and requested that the Secretariat provide further details. *The Secretariat* clarified that it was clear under the UNIDROIT institutional documents that the organisation had flexibility in deciding how UNIDROIT should discharge the Supervisory Authority functions. It was further clarified that the Statute permitted the creation of sub-committees by the General Assembly and Governing Council. The Secretariat confirmed that it would provide a paper with various options that set out the advantages and disadvantages of the different approaches. *The Secretary-General* recalled that the functions to be discharged had been classified into three categories: (i) formal functions (appointment and dismissal of the registrar, approval of the regulations and setting of the fees), (ii) general functions (supervision of the registry, approval of reports, establishing of procedures), and (iii) administrative functions (circulation of documents). He noted that as a body comprised of 65 States, the General Assembly was probably not well suited to perform several of the functions, although a sub-committee of the General Assembly composed of interested States might be better suited to discharge the formal functions.

254. *Ms Dacornia* queried how other bodies had discharged the Supervisory Authority functions in relation to other Cape Town Convention Protocols. *The Secretariat* explained that under the Aircraft Protocol, the Council of the International Civil Aviation Organisation (ICAO) performed the Supervisory Authority role. It was noted that the ICAO Council was a permanent body made up of 36 representatives of Member States elected for three-year terms, and that it made decisions in relation to the Supervisory Authority functions based on advice from a committee of experts (CESAIR) and documents provided by the ICAO Secretariat. It was noted that the ICAO General Assembly performed no role in relation to ICAO's Supervisory Authority functions under the Aircraft Protocol. The Secretariat concluded that the ICAO model was more closely aligned with the UNIDROIT Governing Council undertaking the majority of the Supervisory Authority functions on advice from a committee of experts, however it was not a perfect analogy because the ICAO Council was made up of elected State representatives, whereas the UNIDROIT Governing Council was made up of elected officials acting in a personal capacity.

255. *Mr Lars Entelmann* suggested that a structural solution should be found that would allow UNIDROIT's organs to discharge the Supervisory Authority functions without being distracted from their main body of work. He noted that the Governing Council Members would be unlikely to bring much added value in performing Supervisory Authority functions due to their lack of expertise, which would mean that any role for the Governing Council would likely be very formal. He further suggested that a sub-committee of State experts might be better equipped to discharge the Supervisory Authority functions. He concluded that the ICAO precedent might not be of great assistance to UNIDROIT, as it was a very different organisation with a different structure. *The Secretary-General* agreed that the Governing Council already had a very full load in relation to its annual three-day meeting. He clarified that the Secretariat would hire a new staff member to support the Supervisory Authority role, in order to ensure that the Secretariat's main body of work would not be compromised.

256. *Mr Boulet* suggested that a closer analogy to the ICAO Council model would be for the UNIDROIT General Assembly to establish a sub-committee of interested States to perform the Supervisory Authority functions. *The Deputy Secretary-General* agreed, noting that the UNIDROIT General Assembly was composed of diplomats, whereas the ICAO Council was composed of aviation experts, even if they did not necessarily have expertise in registries. She noted that the role played by CESAIR in advising ICAO in discharging the Supervisory Authority role was an essential element of the ICAO model. *Sir Roy Goode* explained that CESAIR itself also received advice from the International Registry and a separate committee of experts from the private sector, which were both very influential in providing recommendations in relation to the functioning of the Aircraft Protocol Registry.

257. *The Governing Council noted the decision of the MAC Preparatory Commission to designate UNIDROIT as the Supervisory Authority of the Registry for interests in mining, agricultural and construction equipment to be established under the MAC Protocol. The Governing Council requested that the Secretariat prepare a report for consideration by the Council at its 104<sup>th</sup> session in 2025 regarding how to allocate the different functions of the Supervisory Authority between UNIDROIT's organs as well as to determine any auxiliary committee to be appointed.*

**Item 8: International Protection of Cultural Property: Implementation and status of the 1995 Convention ([C.D. \(103\) 18](#))**

258. *The Secretary-General* recalled that the 1995 Convention was one of the signature treaties of UNIDROIT and currently had 54 Contracting States, and he indicated that several countries were in the final phases of the process of accession (namely, Iraq, Mauritania, the Central African Republic and Uruguay). He also reminded the Governing Council that this instrument was also related to the session on Private Art Collections held the day before.

259. As to cooperation and promotional activities, the Secretary-General underscored the success of being invited to the G20 Working Group on Culture in India in 2023. The "Kashi Culture Pathway" document adopted called for "a strengthened and effective global coalition to bolster the fight against illicit trafficking of cultural property, particularly by encouraging the ratification and effective implementation of international agreements and conventions as relevant notably the UNIDROIT Convention on Stolen or Illegally Exported Cultural Property". He also highlighted the excellence of the cooperation with a number of institutions, among which in particular UNESCO, INTERPOL, ICCROM, ECOWAS, the European Union and ICOM, as well as the growing number of lectures requested in universities all around the world.

260. *Mr Jorge Sánchez Cordero Dávila* indicated that the 1995 UNIDROIT Convention had become very popular worldwide and that most Latin American countries were already States Parties, together with Mexico. He also reminded the Governing Council that Mexico had hosted the UNESCO MONDIACULT conference in 2022, which had been attended by 140 Ministers of Culture and to which

UNIDROIT had been invited, giving the Secretary-General an opportunity to remark the importance of the ratification of the 1995 UNIDROIT Convention. Mr Sánchez Cordero also stressed the links with the project on Orphan Objects, recalling the remaining challenges to be faced, mostly because of the documents of provenance, how to understand due diligence in modern terms, and other issues. He concluded by emphasising that at UNIDROIT, cultural property was an important work in progress.

261. *The Governing Council showed appreciation for the activities undertaken, the new publications, and the partnerships developed for the promotion of the 1995 Convention.*

**Item 9: Promotion Strategy for other UNIDROIT Instruments (C.D. (103) 19)**

262. *The Deputy Secretary-General emphasised that promotion was a high priority task in the Secretariat's Work Programme, which the Secretariat took very seriously despite limited human and financial resources. Also for this reason, the key elements for the promotion of UNIDROIT instruments, apart from the numerous activities exclusively led by the Secretariat, had been the collaboration with partner organisations (such as, for example, FAO and IFAD in promoting the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (LGCF) and the UNIDROIT/IFAD Legal Guide on Agricultural Investment Contracts (ALIC) in their regional and national projects in the field) and the cooperation and support of Governing Council Members, Governments, Correspondents, and experts involved in the projects.*

263. She explained that this document focused on two instruments, namely the UNIDROIT Principles of International Commercial Contracts (UPICC) and the ELI/UNIDROIT Model Rules of European Civil Procedure (ELI/UNIDROIT Model Rules), while the promotional activities implemented for other UNIDROIT instruments could be separately found in the dedicated documents submitted to the Council.

264. In relation to the UPICC, the Deputy Secretary-General emphasised its relevance as one of UNIDROIT's flagship instruments, highlighting its significant impact on the development of contract law in many jurisdictions. She further expressed gratitude for the participation and contribution of many Governing Council Members in the successful two-day conference marking UPICC's 30<sup>th</sup> anniversary which had taken place on 6-7 May. The conference had been an excellent opportunity not only to celebrate and reflect on the past, but also to look toward the future and to test the implementation of the promotion strategies for the UPICC that the Governing Council had discussed and approved at its last session. First of all, conference participants had stressed the importance of disseminating knowledge on the UPICC and their versatile uses by contractual parties and adjudicators (including arbitrators, mediators, and judges). In this regard, the Deputy Secretary-General referred to the numerous activities undertaken by the Secretariat in professional and academic circles and in capacity-building programmes, also in cooperation with other organisations such as ITCILO and ICC, which were detailed in C.D. (103) 19. Secondly, the conference had discussed their use as background general contract law for the development of new instruments focusing on specific contracts or on specific issues (such as the LGCF, the ALIC, and the Principles of Reinsurance Contract Law (PRICL), but also more recent projects, including the projects on the UNIDROIT Principles of International Commercial Contracts and International Investment Contracts and Corporate Sustainability Due Diligence in Global Value Chains, and in relation to the region-based approach for the promotion of the UPICC (notably concerning the MENA region).

265. Turning to the future, the Deputy Secretary-General pointed to other possible avenues to keep the UPICC alive and responsive to practical and legal developments that had been discussed at the conference. These could range from revisiting the UPICC commentaries, incorporating illustrative notes, to developing practical guidelines focusing on specific topics, such as optimising the procedures to react to supervening circumstances, integrating the impact of new technologies, or specifying how they would apply to multi-party contracts. At the conference, it had also been suggested that the Secretariat should continue to explore the possibility of adapting the UPICC to



other special contracts, such as construction contracts, by engaging with specialised organisations in the field. The Secretariat remained open to considering all these suggestions as future promotional efforts and potential future work.

266. Finally, the Deputy Secretary-General briefly referred to the joint dissemination conference held in Vienna and hosted by the European Law Institute in February 2024, which had provided the opportunity to further expand knowledge on the ELI/UNIDROIT Model Rules on Civil Procedure and take stock of their practical impact so far.

267. *Mr Jorge Sánchez Cordero Dávila* emphasised the importance of promotional work, which was a necessary element to ensure the success of uniform law, and urged Governing Council Members to advocate the organisation's work on a global scale.

268. *Ms Kathryn Sabo* referred to the wealth of suggestions and ideas for further work which had been discussed at the 30<sup>th</sup> Anniversary Conference and which would benefit from some consideration in the way forward. She further proposed enhancing UNIDROIT's YouTube presence by adding content related to the UPICC, including recordings of seminars and conferences, explanatory videos which could also be used for academic purposes, and a series of brief interviews with experts around the occasion of the 30<sup>th</sup> Anniversary.

269. Similarly, *Mr Lauris Rasnacs* expressed support for expanding UNIDROIT's YouTube publications.

270. *Mr José Antonio Moreno Rodríguez* highlighted the practical application and the influence of the UPICC in two recent Guides of the Organisation of American States (OAS), namely the OAS Guide on the Law Applicable to International Commercial Contracts in the Americas, approved by the General Assembly of the OAS, and the recently adopted Guide on International Investment Contracts, which was in the final stages for approval by the General Assembly, and thanked the Secretariat for its comments on the drafts.

271. *Ms Eugenia Dacoronia* warmly congratulated the Secretariat for the organisation of the Anniversary Conference and for the excellent choice of speakers.

272. *Sir Roy Goode* emphasised Professor Michael Joachim Bonell's crucial role in the success of the UPICC and suggested that his contribution should be properly highlighted. In response, *the Deputy Secretary-General* agreed with Sir Roy's remarks and announced plans to publish the conference's outcomes, including Professor Bonell's keynote speech, in a dedicated volume as part of the series of publications towards the Centenary of UNIDROIT.

273. In concluding the discussion, *the President* thanked the Council Members for their suggestions and noted that the Anniversary Conference had generated a lot of interesting input which would be considered by the Secretariat in reporting back to the Council.

274. *The Council took note of the promotion strategy and future activities proposed by the Secretariat.*

#### **Item 10: UNIDROIT Correspondents ([C.D. \(103\) 20](#))**

275. *The Secretary-General* recalled that the institution of UNIDROIT Correspondents had been created long ago to obtain information on legal developments in States which at the time had not yet become Member States of the Institute. He stressed that Correspondents were conceived as the Institute's eyes and ears in a country – even more useful if not a Member State – to be reached, being from the government or the academic community, as a source of information on countries' legal systems but also a source of input for UNIDROIT's instruments. He explained that the system

had been revised in 2021 and the Office for Correspondents (a specific structure within the Institute to ensure a seamless, continuous dialogue with Correspondents), a Permanent Committee for Correspondents within the Governing Council, and a dedicated section for Correspondents on the Institute's website had all been established. Moreover, a combination of different criteria had been developed and changed over time. The Secretary-General emphasised how important correspondents were for UNIDROIT, and that the Institute would like to give them more prominence, in particular in view of the celebration of the first 100 years of UNIDROIT.

276. The Secretary-General recalled that the Correspondents were classified by regions as follows: Africa: 4, MENA: 4; North America: 13, South and Central America: 31; Asia: 13, Pacific: 11; Europe; 33, plus institutional correspondents, for a grand total of more than 100. As UNIDROIT wished to increase the number of Correspondents in the Asia-Pacific region, a proposal to nominate two new correspondents from Asia who fully met the requested criteria was brought to the Permanent Committee for Correspondents, who had agreed, and so the Governing Council was invited to confirm the appointment.

277. Regarding Europe, the Secretary-General indicated that Ms Carla Sieburgh had been elected Member of the Governing Council and would therefore no longer be a Correspondent. Also, Mr Herbert Kronke, former Secretary-General of UNIDROIT, preferred to be referred to as a Member *ad honorem* of the Governing Council and thus no longer a Correspondent.

278. *Ms Kathryn Sabo* congratulated the Secretariat for the institution of Correspondents and the internal division by region. She indicated that she was happy to support the two nominations of additional Asian Correspondents.

279. *The representative from the People's Republic of China* indicated that he had the honour to be one of the two Chinese Correspondents and recalled that being appointed Correspondent entailed several obligations. He explained how he was raising awareness on UNIDROIT and its activities in academic circles in China.

280. *Mr Eesa Allie Fredericks* echoed the preceding speakers and also supported the appointment of the two new Correspondents. He congratulated the activities of Correspondents as reported in the Annexe of the document and wondered why he could not find some activities relating to a correspondent of South Africa who had issued three of the most important decisions in the history of South Africa in recognition of UNIDROIT.

281. *The Secretary-General* recalled that being a Correspondent was not just an appointment – it came with duties. If they were inactive, there was a procedure that had been approved by the Governing Council a couple of years prior. All correspondents had been invited to submit a short summary of their activities and the answers were reported in the Annexe of the document, but this did not mean that those not appearing had not done anything. *The Deputy Secretary-General* also indicated that not all Correspondents had sent their specific areas of expertise to be inserted on the dedicated webpage and that UNIDROIT would send a reminder, as the information needed to be provided by them. It was a work in progress.

282. *The Governing Council acknowledged the efficient implementation of the Plan for Correspondents and approved the proposal of the Permanent Committee for Correspondents to appoint Ms Meiling Huang (PRC) and Mr Paul Ng (Singapore) as two new Correspondents for the Asia-Pacific region.*



**Item 11: UNIDROIT Academy ([C.D. \(103\) 21](#))****(a) UNIDROIT Academic Projects****i. Cape Town Convention Academic Project**

283. *The Secretary-General* recalled that the CTCAP was a joint undertaking between UNIDROIT and the University of Cambridge Faculty of Law, under the auspices of the Centre for Corporate and Commercial Law (3CL) and with the Aviation Working Group as its founding sponsor. Professor Ignacio Tirado (UNIDROIT), Professor Louise Gullifer (University of Cambridge), and Professor Jeffrey Wool (Aviation Working Group) served as its Directors.

284. The Secretary-General informed that in 2023, the first edition of the Cape Town Convention International Moot Court Programme (CTC Moot Court) had been held at the University of Cambridge, involving students from the Universities of Cambridge and Oxford. The 12<sup>th</sup> annual CTCAP Conference had also taken place at the University of Cambridge in hybrid format on 27 and 28 September 2023, with 153 registered participants, 88 of which attended in person. Furthermore, the three projects overseen by the CTCAP (the Economic Assessment of International Commercial Law Reform (EA ICLR) Project, the Best Practices in the Field of Electronic Registries Design and Operation (BPER) Project, and the Implementation of, and Compliance with, International Commercial Law Treaties Project (Treaty Project)) had continued to make progress, with the seventh Workshop on the BPER Project, the ninth Workshop on the EA ICL Project, and a planning session on the Treaty Project having taken place at the seat of UNIDROIT in hybrid format between 13 and 15 February 2024.

**ii. The 1995 UNIDROIT Cultural Property Academic Project**

285. *The Secretary-General* recalled that the UCAP was an online platform which aimed at increasing awareness and knowledge of the 1995 UNIDROIT Convention and promoting and linking relevant (inter)national research carried out by universities and other entities teaching in the field of cultural heritage law, with 14 universities over the world as institutional partners, and 43 professors, researchers, lawyers, PhD candidates, etc., as individual partners. Most academic activities (conferences and lectures) on the 1995 UNIDROIT Convention on Stolen or Illegally Exported Objects and on the Model Provisions on State Ownership of Undiscovered Objects were organised under the framework of UCAP by universities, as had been detailed in the 2023 Annual Report ([C.D.\(103\) 2](#)). A number of events had already been planned for 2024.

**(b) Academic Institutes and Law Centres****i. Queen Mary University London (QMUL) - UNIDROIT Institute of Transnational Commercial Law**

286. *The Deputy Secretary-General* briefly reported on the activities of the Queen Mary-UNIDROIT Institute of Transnational Commercial Law, originally founded in 2016 following an initiative of Professor Sir Roy Goode and the late UNIDROIT President Professor Alberto Mazzoni, and formally relaunched in 2023 with the signing of the renewed Concordat and Regulations, establishment of new governance (including Co-Directors Professor Rosa Lastra and Professor Anna Veneziano, Deputy Director Dr Franziska Arnold-Dwyer, Professor Sir Roy Goode as Founding Director and Honorary Chair of the Institute, and UNIDROIT Secretary-General Professor Ignacio Tirado on the Executive Board), and an enhanced international Advisory Board, composed of renowned academics and practitioners. The Institute had continued to fulfil its new mandate, particularly focusing on the organisation of joint Centre for Commercial Law Studies (CCLS)-UNIDROIT events for practitioners and/or students and academics, and on collaboration in the presentation and promotion of UNIDROIT instruments, as well as through participation of QMUL experts in UNIDROIT projects. The Deputy Secretary-General referred Governing Council Members to Document C.D. (103) 21, Part III, Section

A for further details on the most recent activities, for which she thanked her Co-Director and Deputy Director, highlighting in particular a workshop on the Principles on Digital Assets and Private Law (DAPL) organised in London with the participation of the Secretary-General and Professor Louise Gullifer.

**ii. Roma Tre - UNIDROIT Centre for Transnational Commercial Law and International Arbitration**

287. *The President* informed that in 2023 UNIDROIT had established the Roma Tre-UNIDROIT Centre for Transnational Commercial Law and International Arbitration, which she co-directed together with Mr Giacomo Rojas Elgueta (Roma Tre University School of Law).

288. *Mr Giacomo Rojas Elgueta* recalled that the Roma Tre-UNIDROIT Centre had been established with the intention to implement the Memorandum of Understanding signed between the two institutions in November 2021, which was the recognition of a long-standing and fruitful relationship. He noted that, through the promotion of research and scholarly debate on transnational commercial law and international arbitration, with a primary focus on topics related to UNIDROIT's initiatives, projects, and instruments, the newly established Centre aimed to create a bridge between academia, institutions and practice, as well as to give more exposure to UNIDROIT's instruments.

289. As to the Centre's governance, he explained that in addition to the two Co-Directors, the Centre had an Executive Committee including representatives from the academia (William Burke-White, University of Pennsylvania Carey School of Law; Gabrielle Kaufmann-Kohler, Geneva University Law School; Herbert Kronke, Heidelberg University), representatives from Italian (Stefano Cappelletto, Ministry of Economy and Finance; Gabriella Palmieri, Attorney General; Marino Perassi, Bank of Italy) and international (Stanimir Alexandrov, ICCA; Ida Caracciolo, ITLOS; Meg Kinnear, ICSID) institutions, and representatives of the private sector (Federico Bonaiuto, Leonardo; Pasquale Salzano, CDP Group; Francesco Puntillo, Enel).

290. Mr Rojas Elgueta further noted that the activities of the Roma Tre-UNIDROIT Centre revolved around four main pillars: (i) research projects, including the Global Crises and Contract Remedies Academic Project and a task force on UNIDROIT's project on the UPICC and international investment contracts; (ii) publications, either stemming from such research projects or authored by the Fellows of the Centre; (iii) teaching, including the "Certificate in International Commercial and Investment Arbitration" (a summer school organised yearly since 2014, together with the Italian Association for Arbitration, and with the support of the Milan Chamber of Arbitration, the ICC International Court of Arbitration and ICC Italy), and the University of Roma Tre-UNIDROIT Annual International Arbitration Lecture (the summer school's closing event); and (iv) conferences and events, including the organisation of an Annual Conference (the first edition of which would take place on 8 November 2024 at the Bank of Italy's premises on the legal issues arising from climate change, with a focus on dispute settlement) and seminars on various topics (the first having been organised on 25 March 2024, on UNIDROIT's project on the Legal Nature of Voluntary Carbon Credits).

291. *The President* concluded by remarking that the Centre was additionally intended to foster debate on possible new projects, as it provided for the possibility to collect ideas from representatives from the market and academia.

**iii. Nordic Law Centre and dedicated Library Section**

292. *Legal Consultant Ms Theodora Kostoula* provided an update on UNIDROIT's Centre for Nordic Studies and Transnational Private Law (Nordic Law Centre) activities. She recalled that the Centre, established in 2023 under the auspices of the UNIDROIT Academy, aimed to foster cooperation between UNIDROIT and the legal community of the Nordic region, encompassing the legal systems and institutions of Norway, Sweden, Finland, Denmark, and Iceland. In line with the UNIDROIT's

harmonisation activity, the Centre aimed at promoting research in private law from a comparative law perspective and with a connection to UNIDROIT's work and transnational private law generally. She noted that, through different dissemination activities such as seminars, workshops, and conferences, the Centre sought to increase international awareness of Nordic law and mobilise interest in UNIDROIT instruments in the Nordic region. Following its launch event in the context of the 102<sup>nd</sup> session of the Governing Council in May 2023, a Workshop on "Contra Profentorem in Nordic Contract Law" had been held in December 2023 at UNIDROIT, with the participation of academics from the Nordic region.

293. Ms Kostoula further noted that the Centre was governed through a three-tier structure consisting of an Advisory Board, an Academic Board, and an Academic Council. The Centre was supported by UNIDROIT's Library, which housed a dedicated section for Nordic studies, offering a collection of Nordic law literature and research space for scholars from Nordic countries or with a comparative law interest in the relationship between private law and Nordic law.

#### **iv. UNIDROIT Asian Transnational Law Centre**

294. *Senior Legal Officer Mr William Brydie-Watson* introduced a new initiative under the UNIDROIT Academy, the UNIDROIT Asian Transnational Law Centre (ATLC). Building upon the successful establishment of the Rome Tre-UNIDROIT Centre for Transnational Commercial Law and International Arbitration and the Nordic Law Centre, it was explained that the ATLC would be the third law centre established as part of the UNIDROIT Academy. The objectives of the ATLC would be to promote the work of UNIDROIT in the Asia-Pacific region and strengthen connections with relevant academic stakeholders in Asia. It was noted that the ATLC would achieve its objectives through (i) the translation of UNIDROIT instruments into Asian languages, (ii) the provision of legal publications from the Asia-Pacific region for the UNIDROIT Library, (iii) the sponsorship of legal scholars and interns from the Asia-Pacific region to come to UNIDROIT, (iv) the facilitation of legal experts from the Asia-Pacific region to participate in UNIDROIT projects, and (v) the organisation of promotion and consultation events in the Asia-Pacific region on UNIDROIT projects. It was explained that the ATLC would be based at the seat of UNIDROIT in Rome and managed and operated by the UNIDROIT Secretariat, namely by two co-Directors (Professor Meiling Huang, who had been seconded to UNIDROIT from the Zhongnan University of Economics and Law, and Senior Legal Officer William Brydie-Watson), they both would act under the supervision of the UNIDROIT Secretary-General. It was further explained that a consultative committee of relevant stakeholders would also be established to support the ATLC in achieving its objectives. Mr Brydie-Watson noted that the ATLC would be fully funded by extra-budgetary contributions, and that the UNIDROIT Foundation had already concluded a sponsorship with the preeminent Chinese law firm YingKe, which had generously agreed to provide €300,000 over three years to support the operation of the ATLC. He concluded by announcing that the first donation of €100,000 to support the ATLC's work in 2024 had just been received, which would allow the ATLC to begin its work in the coming months.

295. *The Secretary-General* further explained that the funding provided for the ATLC would be treated as a non-budgetary contribution to the Institute, and as such would be subject to the normal transparent UNIDROIT budgetary process, which included oversight from the Finance Committee, Governing Council and General Assembly. He noted that because Chinese interns and scholars were already generally funded through extra-budgetary contributions provided annually by the Ministry of Commerce of the People's Republic of China, the ATLC would be able to provide funding to non-Chinese applicants from the Asia-Pacific region.

296. *The representative from the People's Republic of China* congratulated UNIDROIT on the achievements of the already-established UNIDROIT academic institutes and centres, as well as on the establishment of the ATLC. He noted that the ATLC would be able to strengthen academic ties with stakeholders in Asia and improve the study of Asian law at UNIDROIT.

297. *The representative from the United States of America* congratulated UNIDROIT on the work of the UNIDROIT Academy and noted that the work of the Academy was consistent with the mandate and history of UNIDROIT. She asked two follow-up questions. First, she queried whether the Secretariat had criteria or rules for considering when to conclude memoranda of understanding (MoUs) with universities or create academic institutes or centres. Second, in relation to the ATLC, she queried what would happen to the ATLC after three years, once its initial funding from the YingKe law firm had finished. *The Secretary-General* noted that while there were no formal rules for the conclusion of MoUs with universities or the establishment of academic institutions or centres, the Secretariat had established a vetting process for the conclusion of academic cooperation MoUs. He explained that when an academic institute proposed the negotiation of a cooperation agreement, the Secretariat undertook a vetting process of the university to determine whether it was well respected in the relevant academic fields, whether its staff and students had contributed to the work of UNIDROIT, and whether it was considered to be prestigious in the relevant country or region. He noted that UNIDROIT experts and stakeholders were often involved in this vetting process. When an academic institute passed the vetting process, an MoU was negotiated on the basis of a UNIDROIT template that ensured the agreement would have no financial consequences for UNIDROIT and that the organisation of any UNIDROIT-related activities would require authorisation from UNIDROIT. He noted that this approach ensured that the conclusion of academic cooperation MoUs did not create any risks for UNIDROIT. In relation to the funding of the ATLC, he noted that once the initial three-year funding agreement had expired, the Secretariat would seek out additional sponsorship partners to continue the work of the ATLC. He explained that if the ATLC was successful in its first three years of operation, it would likely be able to attract further sponsorship. He concluded that if the ATLC was not able to secure any additional funding after three years, its activities would effectively become dormant, as consistent with the approach to the Nordic Law Centre. It was emphasised that the funding of the ATLC would never be transferred to the Institute's regular budget and thus never become the financial responsibility of Member States.

298. *Mr Antti Leinonen* thanked the Secretariat for the update on the academic institutes and law centres established under the UNIDROIT Academy. He expressed appreciation to the Institute and Professor Giuditta Cordero-Moss for their work in relation to the Nordic Law Centre, and noted that it was now up to the Nordic countries, academic institutions and the Nordic Council of Ministers to provide funding to ensure that the Nordic Law Centre could achieve its objectives. As a general matter, he suggested that it would be useful for UNIDROIT to consider developing a future framework or strategy in relation to the expansion of the UNIDROIT Academy, and in particular for its academic institutes, law centres and cooperation agreements.

299. *Ms Kathryn Sabo* thanked the Secretariat for its tremendous work on the UNIDROIT Academy, which had made visible a significant amount of UNIDROIT's work that had previously been underappreciated. She noted that the work of the UNIDROIT Academy was strongly connected to UNIDROIT's original mandate and purpose and played an important role in supporting the adoption of UNIDROIT instruments. Notwithstanding the important work being undertaken by the Academy, Ms Sabo suggested that, given the significant expansion of the Institute's workload, it was a good opportunity for UNIDROIT to pause and take stock of its current work. She noted that under the Academy initiative, UNIDROIT had concluded over 60 academic cooperation agreements which all had resource implication, in terms of maintaining the agreements and implementing activities under them. She noted that while many opportunities for cooperation with Asian stakeholders had arisen, focusing on the Asian opportunities could come at the cost of possibly expanding the Institute's work in Africa. Ms Sabo also queried what would occur once the three years of sponsorship funding for the ATLC had elapsed. She concluded that it was important for the Institute to ensure that the expansion of the Institute's activities were sustainable for the organisation and its staff.

300. *The Secretary-General* thanked the Governing Council Members for their comments. First, he explained that, in relation to cooperation agreements, the Secretariat followed the established transparent process in reporting regularly, both in the Annual Report and the various other Governing

Council documents. He noted that the Secretariat would be pleased to share the cooperation MoU template with Governing Council Members if it was of interest to them, and provide any additional clarifications requested. Second, in relation to managing sustainable growth of the Institute's work, he explained that the Secretariat had adopted strategies that would allow the Institute to expand its workload without requesting additional public funds from Member States. Such strategies included the renewal of retiring staff, the conclusion of secondment agreements with governments and third parties, and the utilisation of a higher number of scholars and interns to support the Secretariat's work. He explained that these strategies had allowed the Secretariat to almost triple its legal staff without requesting additional funds from Member States. He noted that the ongoing costs of maintaining cooperation agreements were very low, as the most resource intensive element was the recruitment process for scholars and interns, which had been centralised for all cooperation agreements and was only undertaken once per year. He noted that the Institute did not accept interns and scholars from all 60 cooperation MoU partners every year, as applicants from partners still had to go through the competitive selection process. Third and finally, the Secretary-General emphasised that the Secretariat remained very committed to outreach in Africa, and that taking advantage of opportunities in Asia did not come at the cost of its engagement with Africa. He explained that as UNIDROIT had only four Member States in Africa, engagement was difficult. He noted that various strategies for Africa had been developed, with the International Programme for Law and Development being the most successful. He concluded that the Secretariat was always enthusiastic to find additional ways of working with Africa and encouraged Governing Council Members to work with the Secretariat in identifying such opportunities.

301. *Sir Roy Goode* expressed his admiration for the work of UNIDROIT. He noted that he shared Ms Sabo's concern regarding the sustainability of the Institute's expanding workload and cautioned against taking on further projects. He suggested that UNIDROIT should consider trying to raise funds from outside sources with the help of professional fundraisers. *The President* thanked Sir Roy Goode for his comments and noted that these matters were very appropriate for consideration in the context of the preparations for the Institute's Centenary celebrations in 2026.

302. *Ms Sharon Ong* thanked the Secretariat for its report on the academic institutes and law centres established under the UNIDROIT Academy. Noting that the documents indicated that the role of the Asian Transnational Law Centre would cover the Asia-Pacific region, she sought clarification on the geographical mandate of the ATLC. *The Secretary-General* responded that the geographical mandate of the ATLC would be defined broadly to cover all Asian subregions (Central Asia, West Asia, South Asia, East Asia and Southeast Asia). He further explained that while the focus would very much be on Asia, the ATLC did not exclude the possibility of also supporting some limited outreach in the Pacific region, where UNIDROIT was very under-represented and had only one Member State.

### **(c) UNIDROIT International Programme for Law and Development**

303. *Director of the IPLD Programme Ms Maria Teresa Iaquina* emphasised the organisation's focus on Africa and the critical importance of adopting tailored approaches for each region. She provided an overview of the programme, highlighting its achievements since its inception in 2022, initially under the name "UNIDROIT International Summer School". This initiative, supported by the General Directorate for Development Cooperation of the Italian Ministry of Foreign Affairs, aimed to convene distinguished scholars and experts in a dynamic educational setting. Ms Iaquina noted that the IPLD had fostered robust relationships with African countries. She informed that the selection process for participants was rigorous and presented data from previous editions, noting that in 2022, participants came from 13 countries, while in 2023, the number had expanded to 20 participants hailing from 17 countries. For the 2024 session, candidates from 20 countries had applied, indicating growing interest in the programme. She further highlighted the unique opportunities the IPLD offered to participants to engage with experts.

**(d) UNIDROIT Chair Programmes and fellowships**

304. *Legal Officer Ms Myrte Thijssen* informed that the UNIDROIT-Bank of Italy Chair Programme had been renewed for a second edition. The aim of this Programme was to facilitate research and knowledge-sharing on areas of common interest. This was done by the provision of funding to allow an expert to join the Secretariat for a period of 12 months. The main area of common interest was the project on Bank Insolvency, for which the Bank of Italy was one of the proponents, but synergies existed also for the Principles on Digital Assets and Private Law and the project on Legal nature of Voluntary Carbon Credits. The Secretariat had welcomed Mr Hossein Nabilou as Chair of the first edition of the Programme (in 2021-2022) and since November 2023, Mr Iacopo Donati had joined the Secretariat as the second UNIDROIT-Bank of Italy Chair. Mr Donati was a Professor at the University of Siena and his profile was an excellent match for the Bank Insolvency project since his teaching and research interests covered both general insolvency law and bank crisis management. Mr Donati had participated in two sessions of the Working Group on Bank Insolvency and had assisted the Secretariat in the revisions of the draft Legislative Guide, especially Chapter 8 on Creditor Hierarchy. In addition, Mr Donati was conducting research on the treatment of contingent liabilities in bank liquidation, which was of direct interest for the project. Ms Thijssen expressed her gratitude to the Bank of Italy and to Mr Donati for the excellent and most useful cooperation.

305. *Legal Officer Ms Priscila Pereira de Andrade* noted the similarities between the UNIDROIT-Bank of Italy Chair Programme and the UNIDROIT-Italian Ministry of Foreign Affairs (MAECI) Chair Programme. She recalled that in 2022 UNIDROIT had received a grant from MAECI to host a Chair Programme in the field of Private Law and Agriculture Development to assist the Secretariat with comparative research and data collection, as well as with the specific analysis of gender equality in the various collaborative legal forms considered in the CLSAE project. Additionally, the Chair Holder would support the implementation and promotion of the other legal guides already developed by UNIDROIT, FAO and IFAD (Legal Guide on Contract Farming and Legal Guide on Agricultural Land Investment Contracts). She informed that since November 2022, the Secretariat had welcomed Dr Keni Muguongo Kariuki, a Kenyan lawyer and political economist with ten years of experience and a PhD from the School of Oriental and African Studies (SOAS) of the University of London. She noted that Dr Kariuki's appointment had been renewed for one more year in November 2023 and that since the beginning of his engagement with UNIDROIT, he had actively been involved in Working Group sessions and intersessional meetings of the CLSAE project, contributing with comparative analysis of different legislation adopted mainly in African countries regarding agricultural cooperatives and multiparty contracts. Lastly, Ms Andrade informed the Governing Council that as of February 2024, also in the framework of the UNIDROIT-MAECI grant, the Secretariat had welcomed Ms Jeannette Tramhel as a new Senior Legal Consultant. She noted that Ms Tramhel was a Canadian lawyer and former senior legal officer of the OAS. To conclude, she thanked both colleagues for their fruitful collaboration.

**(e) UNIDROIT Library**

306. *Librarian Ms Bettina Maxion* mentioned that one of the major activities of the UNIDROIT Library was collaboration with other foreign and Italian libraries. The UNIDROIT Library continued to strengthen its cooperation strategy with other libraries. Special mention was owed to the fruitful cooperation with the Library of the University of Rome "Sapienza" and the Library of the Max Planck Institute of Foreign Private and Private International Law in Hamburg. A cooperation agreement was entered into with the Library of the University of Regensburg (Germany) in December 2023, and the first steps were taken to create a future stable collaboration between the UNIDROIT Library, the Law Library of the University of Oslo (UJUR) and the Faculty of Law Library of the University Library in Bergen (Ubbjur).

307. Ms Maxion said that though the price of publications was very high and the available resources remained the same, in 2023 the Library's holdings increased by 1078 titles, of which 412

were purchased outright and 156 received on an exchange basis. Over 500 additional titles were received as donations, for a total value of about €50,000. In addition, UNIDROIT received the generous donation of the Cordero collection, with 11,000 volumes of enormous bibliographical value. In 2023, as in previous years, the Library received donations in kind from several institutions and individuals. In particular, the Institute wanted to offer its gratitude to the following donors: the Max Planck Institute for Comparative and International Private Law in Hamburg, Professor Giuditta Cordero-Moss, Professor Meiling Huang, and various publishing houses from the Nordic countries.

308. Ms Maxion also commented on another important donation to the UNIDROIT Library. On the occasion of UNIDROIT's "*Ricordando Gino Gorla*" event, which was organised by President Maria Chiara Malaguti on 19 October 2022, Professor Maurizio Lupoi donated numerous volumes from Professor Gorla's collection. The first part of the books had been transferred to the UNIDROIT Library in January 2024, for which cataloguing was ongoing, and had been integrated and shelved in the Library's Gorla collection room.

309. Ms Maxion referred to another important activity of the Library, the digitisation project. In 2023, work progressed on the digitisation project of the Library. Special attention was given to the digitisation of the collection on comparative law and unification of laws, and to the Scialoja collection, in order to preserve some of the Library's most valuable historical collections. She mentioned the very fruitful training project with the "Cooperazione HELP" (Rome), and thanked Mr Carlo and Mr Riccardo della Fazia for their collaboration on the digitisation of the library's electronic collection, which was increased by a total of 697 newly digitised titles in 2023.

310. She spoke about the generous donation of the Dutch Foundation "Largesse" to the UNIDROIT Foundation, thanks to which it had been possible to create new, functional work spaces for Library guests. Furthermore, in the first months of 2024, about 150 monographs regarding UNIDROIT's Work Programme and studies had been acquired to upgrade the Library's collection, and various publications had been switched to the relevant e-format. Some of the Library's loose-leaf collections, in particular legal encyclopaedias, which were less user friendly, had been substituted by their respective electronic versions, and now offered easy access to legal materials for the Library's guests from all over the world.

311. She briefly spoke about the upgrade of the Library's list of law reviews and about the scanned articles that had been added to the Library's online collection. The links to those publications had been included in the relevant bibliographic data sheet in the online catalogue. Over 200 journals were now available in the Library's public access catalogue. In addition, a large number of references to articles available in external databases (to which the UNIDROIT Library subscribed) had been added to the Library's online catalogue.

312. *Mr Alfonso Luis Calvo Caravaca* acknowledged the importance of the UNIDROIT Library and welcomed the evolution in the library usage, in particular the increase in digital funds and complimented the Library and the Librarian for ongoing professionalism.

#### **(f) UNIDROIT Scholarship, Internship and Research Programme**

313. *Senior Legal Officer Mr William Brydie-Watson* provided an update on the UNIDROIT Scholarship, Internship and Research Programme (USIRP). He recalled that the USIRP was one of the Institute's longest running and most successful academic programmes, having brought hundreds of legal experts to UNIDROIT from around the world since the 1990s. He noted that since 2014, the USIRP had been completely funded through extra-budgetary contributions and relied on generous donations from the Ministry of Commerce of the People's Republic of China, the UNIDROIT Alumni Association, Members of the Governing Council and private law firms. He explained that scholars and interns were selected annually through a robust and transparent competitive selection process, for which UNIDROIT received 420 applications in 2023. It was noted that approximately 20% of

applications were successful, and only approximately 5% of the total applications received programme funding. It was further noted that the programme attracted candidates from all around the world, with the majority of applications coming from female applicants. Mr Brydie-Watson concluded that the programme continued to grow each year and that the Secretariat was adopting new technological solutions in order to try to minimise the administrative burden of the programme on staff.

### **(g) Cooperation with academic institutions**

314. *Legal Officer Ms Philine Wehling* drew attention to Document C.D. (103) 21, which contained a summary of the Institute's cooperation with academic institutions, together with a list of new cooperation agreements concluded since the previous session of the Governing Council in May 2023. In total, at May 2024, the Institute had 71 agreements in place. In response to the questions raised by Governing Council Members concerning the financial implications of the cooperation activities, Ms Wehling underlined that all cooperation agreements were based on a Memorandum of Understanding (MoU) template which contained a clause stipulating that the MoU did not create any legal or financial obligations for UNIDROIT. With regard to the activities undertaken within the framework of UNIDROIT's cooperation agreements over the past year, she highlighted the contribution by the Secretariat to the partner institutions' academic programmes, *inter alia*, through the provision of guest lectures funded by the respective institution.

### **(h) UNIDROIT Publications**

315. *Uniform Law Review Managing Editor Ms Lena Peters* recalled that the *Uniform Law Review* was the ongoing publication of the Institute, which published articles and reports in both English and French on international uniform law, not exclusively on the works of UNIDROIT, but also on the works of other organisations, such as UNCITRAL, the HCCH and the OHADA. As from 2013 the *Uniform Law Review* was published by Oxford University Press (OUP). In March 2024 a new agreement had been negotiated with OUP, which envisaged a major modification: from the year 2027 the *Uniform Law Review* would be published *online only*. The paper edition would be discontinued.

316. A stage in this development was the introduction of the electronic system for the submission and reviewing of articles that had been envisaged in the contract concluded on 11 September 2022 ("ScholarOne"). ScholarOne began operation in June 2023. Ms Peters took the opportunity offered by the Council meeting to ask Members of the Council interested in acting as peer reviewers for the *Uniform Law Review* to reach out to her, indicating their preferred areas of interest.

317. Until the online-only option came into force, the *Uniform Law Review* would be available for subscription either in print or online (or both). Subscription data supplied by OUP indicated that there was a general trend towards online subscriptions, which seemed to justify the change to an online-only review. The special arrangement OUP had in place for developing countries, which offered online subscriptions to journals at lower rates and, in some cases, for free, was noted, as UNIDROIT did not have the means to reach out to all the developing countries touched by that programme.

318. Online visits to the *Uniform Law Review* pages on the OUP site which included at least one downloaded article had increased steadily. Divided geographically, the visits originated firstly in Europe (42.3%), followed by Asia (28.1%), North America (9.1%), Africa (11.7%), Oceania (5.8%), and Central and South America (2.8%). A rewarding development was that the Scientific Journal Rankings (SJR) had ranked the *Uniform Law Review* very highly.

319. Introducing the other publications, *Secretary Ms Alexandra Logue* recalled that the remit of the Institute's publications could be found, with mandatory language, in the very first Article of the UNIDROIT Statute: "the Institute shall [...] (e) publish works which the Institute considers worthy of wide circulation". In the autumn of 2023, the first print edition of two new UNIDROIT instruments, the



*Model Law on Factoring* and the *Principles on Digital Assets and Private Law*, had been published. The simple PDF versions of these instruments were available to download at no cost on the UNIDROIT website, and courtesy copies were also distributed *inter alia* during official visits, missions, and working group sessions. However, the Secretariat had also recently taken note of expressed interest on the part of private practitioners in purchasing hard copies thereof.

320. In addition to these new instruments, the last quarter of 2023 had also seen the publication of two special volumes which contained the interventions from exceptional events held at the Institute: first, *25 Years later... the 1995 UNIDROIT Convention – Cultural objects at the crossroad of rights and interests*, a bilingual English and French compendium of all the interventions held during the conference celebrating the 25<sup>th</sup> anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, held in October 2020; and second, *Ricordando Gino Gorla*, a publication mainly in Italian which featured essays based on the speeches made during the October 2022 conference of the same title. Moreover, UNIDROIT had also published *At the Origins of the International Institute for the Unification of Private Law*, a trilingual English, French and Italian collection of documents (and translations thereof) dating back to the very foundation of the Institute. A special event had also been held in December 2023 to launch the volume.

321. Ms Logue stressed that due mention and heartfelt thanks had to be expressed to Professor Sir Roy Goode. He had authored and held the copyright to the series of *Official Commentaries on the Cape Town Convention and its Protocols*. He generously donated the income therefrom directly to UNIDROIT, to the Sir Roy Goode UNIDROIT Scholarship.

322. A few months previously Sir Roy Goode had finished the revised fifth edition of the Aircraft Commentary, which had been published in March. This revised edition contained Sir Roy's analysis of questions that had continued to arise following the publication of the fifth edition in 2022, in addition to incorporating various corrigenda that had come to light. Importantly, this revised fifth edition also featured a completely retooled index, which aimed to render the lengthy tome easier to navigate for the reader. Furthermore, recently Sir Roy Goode had completed the third edition of the Rail Commentary, which was currently being finalised for printing. It would be the first edition since the entry into force of the Rail Protocol in March 2024. Sir Roy's Commentaries were available in paper format and in some cases in digital format. The Secretariat hoped to undertake the preparation of such digital editions as soon as time and resources permitted.

323. *The Governing Council took note of the developments in all the activities of the UNIDROIT Academy since the 102<sup>nd</sup> session, including: the progress and enhanced scope of the Academic Projects; the first steps of the Nordic Law Centre and the initiative of the Asian Transnational Law Centre; the success of the second – and preparation of the third – edition of the International Programme for Law and Development; the promotion of Chair Programmes and creation of academic fellowships; the improvements of the Library's catalogue and collections; the growth of the Scholarship, Internship and Research Programme; the continued cooperation with academic institutions; and the relevance of the Uniform Law Review and Publications. The Governing Council complimented the staff on the considerable number and quality of the initiatives undertaken.*

#### **Item 12: Communications strategy and social media outreach ([C.D. \(103\) 22](#))**

324. *Legal Consultants Ms Theodora Kostoula and Ms Benedetta Mauro* presented UNIDROIT's Communications strategy and social media outreach, explaining the role of both social media and the website in ensuring a steady increase in UNIDROIT's audience and users at a global level and across diverse demographics.

325. *Ms Kostoula* briefly recalled that UNIDROIT's social media was based on an internally adopted social media strategy, aiming at (i) raising awareness; (ii) promoting events; (iii) advertising

vacancies and internship and scholarship opportunities; (iv) building a community of researchers, interns, professionals, and other stakeholders who wished to maintain a connection with UNIDROIT; and (v) serving as a dynamic channel to communicate with the global community interested in UNIDROIT's work.

326. Ms Kostoula added that UNIDROIT's social media channels had continued to perform well since the last meeting of the Governing Council. As of 14 March 2024, the Institute had more than 32,563 followers on LinkedIn, 5,908 followers on Facebook, 2,373 followers on X (formerly Twitter), and 596 subscribers on YouTube. With regard to the Institute's "reach" across social media, over the past 12 months UNIDROIT content had been displayed on news feeds almost 1 million times on LinkedIn, receiving over 15,000 reactions. Additionally, videos on the UNIDROIT YouTube channel had been viewed more than 8,238 times in the past 12 months. She noted that the rapidly increasing number of followers and the high engagement rates had been achieved with very limited human and financial resources. In the absence of a dedicated budget for those activities, the UNIDROIT Secretariat occasionally received support through the UNIDROIT social media internship programme. The UNIDROIT Secretariat further benefited greatly from learning from its institutional partners in this respect, including through participating in the "Social Media Roundtable" organised every six months by the United States Mission to the UN Agencies in Rome. All Members of the Governing Council were encouraged to engage with the social media channels to increase the amount of awareness being generated for UNIDROIT instruments.

327. Ms Mauro referred to the website and indicated the most active user regions and the most frequently visited pages, based on statistics. She underlined the role of the website in raising awareness of UNIDROIT's work and noted that recent improvements, including a simplified navigation system and new functionalities such as password-protected webpages, had increased efficiency and accessibility to information on UNIDROIT's work.

328. Ms Kathryn Sabo expressed satisfaction with the substantial progress in UNIDROIT's digital presence. She acknowledged the challenges in maintaining it and the importance of continuing to benefit from interns and participating in social media networks, such as the "Social Media Roundtable". Regarding the website, she was pleased with the recent improvements and the proposed changes, but pointed out the necessity for a period of adaptation. She further submitted a request for the PDF files present on the website to be automatically opened in a separate tab or window.

329. The representative from the United States of America complimented the Secretariat and was pleased with the participation in the "Social Media Roundtable" supported by the United States Mission to the UN Agencies in Rome. She queried about the necessity of password-protected documents on the website and asked about the criteria for deciding which documents would be password protected. Ms Uma Sekhar shared this concern and further inquired if a procedure was available to allow working documents to be accessed without delay by relevant stakeholders during consultations.

330. The representative from the People's Republic of China expressed appreciation for the efforts, noting the importance of social media channels in allowing stakeholders to follow UNIDROIT's progress. While acknowledging the limited resources, he queried whether social media posting could be improved and made more timely after the events took place. Ms Kostoula explained that to enhance visibility, the Institute's social media activity was based on a posting schedule, aimed at managing multiple activities in a consistent manner while preventing overcrowding or gaps in social media activity.

331. Ms María Ignacia Vial Undurrada commended the website's functionality and the transparency it provided for UNIDROIT's work. Mr Yusuf Çalişkan thanked UNIDROIT for its successful efforts in this area and suggested adding Instagram as a social media channel to promote events. Ms Kostoula

explained that while Instagram could be an effective tool in promoting activities of general interest, its benefit for UNIDROIT might be limited due to the specific type of audience, which was primarily using LinkedIn. *Mr Niklaus Meier* applauded UNIDROIT's website and social media presence, and suggested that, if the Institute were to open an Instagram account, it could consider organising a "Story Take Over", as done by other organisations. This would entail giving access to UNIDROIT's account for one or two weeks to a researcher or intern, who would manage the account (under the Secretariat's supervision) and give their personal take on what UNIDROIT meant to them, and what their daily life at the Library looked like.

332. In thanking the Governing Council Members for their comments and suggestions, *the Secretary-General* briefly recalled that the work in this area was quite a homemade product, which, however, was achieving spectacular results. In the absence of a budget to externalise the activities related to the digital presence, the Institute relied on its own staff and on the media internship programme. Regarding the website, he noted that the proposed amendments were the result of ongoing learning and experience, highlighting the continuous efforts for improvement and modernisation. He further clarified that the purpose of password-protected documents was rooted in security concerns as well as on matters of confidentiality for certain topics. Despite UNIDROIT's commitment to transparency, documents related to internal administrative matters or work in progress prior to adoption were restricted to the Governing Council Members and required password protection to provide information on a confidential basis.

333. *The Governing Council noted the Secretariat's activities and commended its achievements in this area. The Governing Council further advised the Secretariat of possible improvements to the Institute's social media outreach and website and agreed to continue doing so in the future.*

### **Item 13: Implementation strategy for newly adopted UNIDROIT Instruments**

#### **(a) UNIDROIT Model Law on Factoring ([C.D. \(103\) 23](#))**

334. *Senior Legal Officer Mr William Brydie-Watson* introduced Document [C.D. \(103\) 23](#). He recalled that on adopting the UNIDROIT Model Law on Factoring (MLF) at its 102<sup>nd</sup> session (Rome, May 2023), the Governing Council had approved a four-part implementation strategy that involved (i) positioning the MLF as a tool for economic development, (ii) promoting the MLF at significant multilateral fora, (iii) partnering with larger organisations on providing technical assistance to implementing States, and (iv) ensuring the instrument would be widely disseminated. *Mr Brydie-Watson* explained that during the eight months since its publication in October 2023, UNIDROIT had already had significant success in implementing the MLF, as it had been recognised in three international guidelines, presented at six large international fora, implemented in eight jurisdictions, and translated into one additional language.

335. More specifically, it was noted that, as explained the previous day, the MLF had been prominently recognised as the international best practice instrument that provided private law rules for facilitating access to credit for supply chain finance and MSME finance in (i) the World Trade Board's Financial Inclusion in Trade Roadmap, (ii) the EBRD's New Finance Support report, and (iii) the IFC's Factoring Regulation Knowledge Guide. It was further noted that the MLF had been promoted at global events with different groups of stakeholders in London, Marrakesh and Washington, as well as through regional events for Europe, North Africa and the Asia-Pacific. He explained that the MLF was being used for law reform projects in Jordan, Malaysia, the West Bank, Georgia, Tajikistan, Ukraine, Uzbekistan and the UAE, and that a Chinese translation had been prepared and launched at a large event in Wuhan, China. *Mr Brydie-Watson* summarised the proposed additional implementation activities for 2024 and 2025, which included (i) the translation of the MLF into Arabic, Spanish, Japanese and Turkish, (ii) continued promotion at large multilateral fora, (iii) ongoing support for domestic implementation, (iv) focused efforts on implementation in

Africa, and (v) possible further cooperation with key stakeholders on utilising the MLF as the benchmark for a comparative assessment of factoring laws in 91 States, based on initial work undertaken by the FCI.

336. *The Governing Council recognised the work undertaken in execution of the implementation strategy for the UNIDROIT Model Law on Factoring since its adoption in May 2023. The Governing Council further noted and endorsed the proposed implementation activities for 2024 and 2025.*

**(b) UNIDROIT Principles on Digital Assets and Private Law [\(C.D. \(103\) 24](#))**

337. *The Secretary-General introduced the DAPL Principles, noting that the instrument had been approved in 2023 following about three years of intense work by the Working Group. He emphasised that the Working Group had been composed of 16 members, half from common law jurisdictions and half from civil law jurisdictions. The Working Group had also included institutional observers from all across the globe. Following intense discussions, the resulting instrument was the result of consensus.*

338. *The Secretary-General noted two special features of the DAPL Principles. First, because the subject matter – i.e., property law over digital assets – was so new, there was no pre-existing standard from which to draw. Thus, in this case, the DAPL Principles themselves created the relevant standard. Second, in light of the absence of a general standard, the Working Group decided to be modest in its approach. The DAPL Principles did not purport to thoroughly regulate the private law system pertaining to digital assets. Rather, the instrument only addressed those areas as required by the special nature of digital assets. The goal was to set some basic principles that would allow national legislators to mesh the special features of digital assets with existing domestic legislation, whether that was based in civil or common law.*

339. *This approach, while useful, posed the *ex-post* problem of assessing the successful implementation of the instrument. It was difficult to assess when a country had actually implemented the DAPL Principles since the Principles were about filling the gaps in the puzzle. It was possible to say that several countries, such as the United States of America and the United Kingdom, already complied with the DAPL Principles. In addition, some countries that had legislated recently had expressly relied on the DAPL Principles as part of their process.*

340. *Legal Officer Ms Giulia Previti provided an update on the Secretariat's promotion and implementation efforts in relation to the DAPL Principles and illustrated a proposed future promotion and implementation strategy for the Governing Council's consideration.*

341. *As to the update on the Secretariat's promotion and implementation efforts, Ms Previti referred to the launch of the DAPL Principles publication in October 2023, an event that was widely attended and supported by both public and private stakeholders, including by representatives of the International Monetary Fund and the Association of Global Custodians. Despite the noted difficulties in tracking the implementation of a soft-law instrument such as the DAPL Principles, Ms Previti noted that the DAPL Principles had provided guidance in recent legislative efforts, in particular in the context of the Dubai International Financial Centre's new Digital Assets Law and recent amendments to the United States Uniform Commercial Code, both of which defined "control" consistently with DAPL Principle 6.*

342. *With respect to the proposed future implementation and promotion strategy, Ms Previti referred to the four-part strategy outlined in Document [C.D. \(103\) 24](#), namely: (i) position the DAPL Principles as the leading international standard on the proprietary aspects of digital assets; (ii) identify priority jurisdictions - meaning those jurisdictions that were best positioned to be open to, and to benefit from, the DAPL Principles - and engage with relevant stakeholders to support domestic awareness of the DAPL Principles; (iii) raise awareness of the DAPL Principles at relevant industry, academic and institutional fora in priority jurisdictions; and (iv) ensure that the DAPL Principles be*

broadly accessible, including by engaging with partner stakeholders to facilitate informal translations of the instrument into languages other than English and French.

343. *Mr Hideki Kanda (Chair of the DAPL Working Group)* noted that the instrument could be implemented by legislation, as well as by court or arbitration decisions. He reiterated that the DAPL Principles were different from other more traditional UNIDROIT instruments or projects, where a harmonisation attempt was made across different jurisdictions in which there were already existing laws. In the case of the DAPL Principles, there were almost no existing laws to harmonise, especially when it came to private law rules relating to digital assets. Mr Kanda also noted that the French version of the DAPL Principles was almost ready.

344. He then raised two points with the Governing Council. Firstly, Mr Kanda suggested that a methodology should be developed in order to judge implementation status of the DAPL Principles in various jurisdictions. Secondly, he noted that if any Governing Council Member had particular interest in this area he would greatly appreciate it if they could let the Secretariat know so that there might be opportunities to work together in advancing the instrument.

345. *The Secretary-General* referred to Point IV of Document [C.D. \(103\) 24](#) concerning the establishment of an Expert Committee. He noted that there had been a joint effort with the HCCH to develop a project addressing applicable law in digital assets but that, given a lack of consensus, the joint project would not be moving forward.

346. The Secretary-General went on to note that DAPL Principle 5 might be in need of completeness. He explained that the HCCH had made a proposal to perform work on tokens. Although the precise scope of the HCCH's work was yet to be defined, it was likely to overlap with DAPL Principle 5. Thus, in light of the excellent relationship and cooperation with the HCCH, UNIDROIT had accepted the HCCH's invitation and nominated Professor Louise Gullifer and the Secretary-General to follow the work of the HCCH in this area.

347. Nonetheless, the Secretary-General stated that it would be necessary for UNIDROIT to conduct an internal discussion through an Expert Committee on how to complete Principle 5 in the event of necessity. He stressed that this would be purely internal preparatory work. The Expert Committee would be restricted; it would be made up only of experts who had participated in the DAPL Working Group and would only meet remotely when needed. The Secretary-General emphasised the importance of considering whether and how to develop further work on digital assets following the excellent work performed in the context of the DAPL Principles. He noted the desire to build on the existing work and consider whether there might be a need for transnational law in the future in the area of digital assets.

348. *Ms Monika Pauknerová* noted that the Czech Republic welcomed the planned promotion activities for the DAPL Principles, since this was a project that had been initiated by the Czech Republic and Hungary. She expressed appreciation for the result despite the critics, as well as for all the support provided to this project by UNIDROIT and the Governing Council. With respect to the implementation of the DAPL Principles, she noted that in the Czech Republic it would be necessary to start an internal discussion with relevant State stakeholders, in particular the Ministry of Finance.

349. *Ms Kathryn Sabo* expressed support for the promotion strategy proposed. In terms of Part IV of the document, she noted that this was a proposal for the exploration of more substantive work, agreeing that it was work worth carrying on. With respect to the proposal for the Expert Committee to consider additional work on conflicts of law, she supported having the Committee consider what was currently happening and what would happen at the HCCH to determine whether something more would be required. Ms Sabo however cautioned against stepping into the field of private international law and stated that she looked forward to a report from the Expert Committee.

350. *Mr Yusuf Çalışkan* stated that the DAPL Principles represented one of the best instruments of soft law in this area. As to implementation in Türkiye, Mr Çalışkan noted that he had three legal scholars, two PhD students and one professor, working on digital assets. He observed that having legal scholars work in this area could help inform the government of relevant issues. He also noted that with a soft-law instrument such as the DAPL Principles, a government might choose not to implement all of the Principles and shared that in Türkiye the Securities and Exchange Commission was currently drafting a law on digital assets and using the DAPL Principles as a guideline, due to the scholars' work in this field.

351. *The Secretary-General* thanked the Governing Council Members for their positive remarks and thanked Ms Sabo for her comments and her flexible attitude towards Point IV which, he reiterated, was really about obtaining the advice of experts and allowing the Secretariat to consider further developing work in this area. He encouraged discussion within the Governing Council, including of substantive issues. The Secretary-General noted that the work of the proposed Expert Committee could include the possibility of opening up the discussion in a way which would not alter the approved final instrument or policy decisions made by the Governing Council, but perhaps would open up the commentary to differing points of view in an attempt to be flexible and accommodate concerns.

352. *The Governing Council took note with appreciation of the activities undertaken by the Secretariat for the promotion and implementation of the Principles on Digital Assets and Private Law and expressed support for the proposed future promotion and implementation strategy. The Governing Council also approved the Secretariat's request to convene an Expert Committee with the purpose of advising the Secretariat on possible developments in the area of digital assets.*

#### **Item 14: Institutional and Administrative matters**

##### **(a) Report of the Special Committee to update the UNIDROIT Regulations (C.D. (103) 25)**

[Confidential discussion; paragraphs 353 to 363 are restricted.]

364. *The Governing Council took note of the update on the activities of the Special Committee to update the UNIDROIT Regulations and approved the proposed timeline for amendments. Mr Antti Leinonen expressed his willingness to join the Committee. Furthermore, it was agreed that Mr Henry Gabriel would be invited to remain on the Special Committee in his capacity as Member ad honorem of the Governing Council.*

##### **(b) Preparation of the draft Budget for the 2025 financial year (C.D. (103) 26)**

365. *The Secretary-General* explained that, pursuant to the Institute's Statute, the Governing Council was responsible for drawing up a draft Budget for the next financial year. To this end, the Secretariat had prepared a proposal, which had been discussed and approved by the Finance Committee at its meeting in April 2024. Following consideration by the Governing Council, the draft Budget would be circulated to Member States for comments, be reviewed again by the Finance Committee, and finally be presented to the General Assembly for adoption.

366. He explained that the draft Budget for the 2025 financial year took into account the 6% increase in Member State contributions, as had been approved by the General Assembly at its 82<sup>nd</sup> session in December 2023. The draft Budget was slightly lower than the Budget for 2024 because the Secretariat followed a prudent approach based on the estimated receipts, which were expected to be higher in 2024 mainly since it was anticipated that a larger amount in arrears in Member State contributions would be settled in 2024.

367. The Secretary-General indicated that the draft Budget for 2025 was optimistic because it assumed that the Russian Federation would pay its annual contribution in 2025, while it had made a statement during the 83<sup>rd</sup> (extraordinary) session of the General Assembly that it would not be in a position to execute its financial obligations *vis-à-vis* the Institute if it was not part of the Finance Committee. Since the Secretariat had not received a formal communication to that effect, the draft Budget for 2025 assumed that the Russian Federation would pay its contribution. The Secretary-General expressed the hope that, in case the Russian Federation would not pay its contribution, other Member States – at least those that had voted against the re-appointment of the Russian Federation to the Finance Committee – would together consider filling the gap (without this cancelling the possible debt of the Russian Federation) so that it would not affect the Institute's functioning.

368. *Chair of the Finance Committee Mr Masamichi Yamashita* thanked the President for giving him the opportunity to speak in his capacity as Chair of the Finance Committee. He conveyed the views expressed by the Finance Committee on the draft Budget during its 97<sup>th</sup> meeting on 24 April 2024, when it had met in its new composition. He explained that the members had reviewed and approved the estimates of receipts and expenditure for the 2025 financial year as presented by the Secretariat. The Finance Committee had expressed appreciation for the Secretariat's continued efforts to keep the expenditure in check *vis-à-vis* the expected receipts. He noted that the Secretary-General had anticipated that upward adjustments in the draft Budget for 2025 might be necessary given the preparations for UNIDROIT's centenary. The Finance Committee had appreciated the advance notice and had asked the Secretariat to remain duly informed of such possible increase. He noted that the Finance Committee would await the draft Budget as established by the Governing Council for consideration during its next meeting in the autumn of 2024.

369. *Ms Kathryn Sabo* noted a distinction between cashflow and budget issues; she stated that arrears and the potential repayment of arrears fell in the former category, and that this should not have an impact on the budget, which reflected the needs of the organisation. She recalled that States had worked hard last year to obtain the approval for the 6% increase in contributions. She cautioned that if the Budget set for the following year were lower, States would naturally be pleased, but it would be harder to then potentially propose an increase in the Budget should the need for more funds become more acute. Next, she discussed the tension generated by the Institute's automatic salary increases. She regretted the limited funds available for IT matters and encouraged the Secretariat to consider adding further funding for additional IT improvement. She applauded UNIDROIT for being one of the most transparent and responsible organisations in its budgeting in her experience.

370. *The Secretary-General* replied that the Secretariat was not in fact asking for a smaller contribution from Governments; the difference was rather the envisaged payment of arrears. He added that the draft Budget was very cautious (perhaps overly so) in terms of interest rates but noted that the Finance Committee had authorised the Secretariat to invest to some extent in short-term Italian treasury bonds, with zero risk. He indicated that considering potential arrears led to a more realistic Budget. Furthermore, he clarified that the Secretariat would not be asking the Member States that would express willingness to contribute extra (in the case that the Russian Federation should not pay its contribution) to cover the resulting debt, but rather to provide financing in the interim. He agreed with Ms Sabo's point regarding the fact that the Institute's salaries were pegged to the United Nations salary system and the resulting automatic 2-2.5% increase in salary costs per year without any associated 2-2.5% annual increase in State contributions. Judging by the struggle that had been undertaken to obtain the one-off 6% increase in the Budget the previous year in the face of 10% inflation, introducing a standing contribution increase would appear highly unlikely.

371. *Mr Antti Leinonen* added that, in principle, the arguments in favour of increases in contributions should not be overly difficult for those present to convey in their respective capitals, and that in theory it should be easier to ask for modest annual increases instead of one-off larger increases.



372. *The Secretary-General pointed out that often Member States were in agreement regarding the necessity of increasing their contributions but stated that they could not make the exception for UNIDROIT because otherwise they would be bound to do so for all other organisations to which they belonged. He also noted that if a few States openly expressed their willingness to increase contributions, then it made it much easier for other States to do so.*

373. *The Governing Council considered the draft Budget for the 2025 financial year, agreed to deem it drawn up in accordance with Article 11.4 of the Statute, and authorised the Secretariat to transmit it to Member States for observations.*

**(c) Remote procedures for Governing Council (C.D. (103) 27)**

[Confidential discussion; paragraphs 374 to 382 are restricted.]

383. *The Governing Council approved the proposed remote procedure for interim application until entry into force of the new UNIDROIT Regulations in principle, with the understanding that the Secretariat would apply some suggested changes in the text of the rules of procedure proposed in Document C.D. (103) 27.*

**(d) UNIDROIT future stable regional outreach strategy (C.D. (103) 28)**

[Confidential discussion; paragraphs 384 to 399 are restricted.]

400. *The Governing Council agreed that the possible establishment of any future UNIDROIT stable regional presence must be considered in the context of broader strategic planning for the Institute, including potential financial implications over the longer term. The Governing Council expressed its gratitude to the Hong Kong Special Administrative Region (China) for its offer to consider establishing a UNIDROIT Asia-Pacific Liaison Office by 2026. The Governing Council took note of the Secretariat's initial report on the matter. The Governing Council requested that the Secretariat continue discussions and prepare a detailed report on the proposal for the Council's consideration at its 104<sup>th</sup> session in 2025.*

**Item 15: Preparation of the centenary of UNIDROIT (C.D. (103) 29)**

[Confidential discussion; paragraphs 401 to 411 are restricted.]

412. *The Governing Council took note of the illustrated plan for the Institute and provided further suggestions for its implementation and funding.*

**Item 16: Date and venue of the 104<sup>th</sup> session of the Governing Council (C.D. (103) 1 rev.)**

413. *It was proposed that the 104<sup>th</sup> session of the Governing Council could be held in Rome on either 7-9 May, 14-16 May, or 21-23 May 2025.*

414. *Ms Kathryn Sabo suggested considering holding the 104<sup>th</sup> session prior to May, when the Holy Jubilee would be officially opened and it would be particularly hard to find accommodations in Rome. Ms Stefania Bariatti proposed holding the session from Monday through Wednesday (as opposed to the traditional Wednesday through Friday) during the first week of May, since multiple holidays occurred in the preceding weeks. The Secretary-General queried whether the first week of June could be a possibility, but conceded that that would still be "high season" in terms of accommodations.*

415. *The representative from the People's Republic of China put forward the idea of considering holding the future Governing Council session in another city (or country). The Secretary-General*



stated that although the Secretariat would not be opposed to such an idea, holding a session abroad might prove more costly; the Budget allocation for the Governing Council could not be increased, but the Secretariat would be open to receiving funding for such an external session, whether abroad or in a different location in Italy.

416. *Legal Consultant Ms Benedetta Mauro* pointed out that the Jubilee would be technically running from December 2024 through January 2026.

417. *The Governing Council expressed no reservations for any of the dates proposed subject to a cost assessment in consideration of the Holy Jubilee that will take place in Rome in 2025.*

**Items 17, 18: Any other business, Concluding remarks of the President**

418. With no other matters raised, *the President* thanked all participants and concluded the session.

**ANNEXE I****AGENDA**

1. Adoption of the annotated draft agenda (C.D. (103) 1 rev.)
2. Appointments (C.D. (103) 1 rev.)
  - (a) First and Second Vice-Presidents of the Governing Council
  - (b) Members *ad honorem* of the Governing Council
  - (c) Members of the Permanent Committee
3. Reports
  - (a) Annual Report 2023 (C.D. (103) 2)
  - (b) Report on the UNIDROIT Foundation (C.D. (103) 3)
4. Ongoing legislative activities carried over from the 2020-2022 Work Programme
  - (a) Best Practices for Effective Enforcement (C.D. (103) 4)
  - (b) Bank Insolvency (C.D. (103) 5)
  - (c) Collaborative Legal Structures for Agricultural Enterprises (C.D. (103) 6)
  - (d) Private Art Collections (C.D. (103) 7)
  - (e) Principles of Reinsurance Contracts (C.D. (103) 8)
5. Update on certain high-priority projects on the 2023-2025 Work Programme
  - (a) Model Laws and Guides to Enactment
    - i. UNIDROIT Model Law on Factoring and Guide to Enactment (C.D. (103) 9.1)
    - ii. Proposed amendment to the Model Law on Factoring (C.D. (103) 9.1 bis)
    - iii. UNCITRAL/UNIDROIT Model Law on Warehouse Receipts and Guide to Enactment (C.D. (103) 9.2)
  - (b) UNIDROIT Principles of International Commercial Contracts and Investment Contracts (C.D. (103) 10)
  - (c) Legal nature of Voluntary Carbon Credits (C.D. (103) 11)
6. Update on other projects and exploratory work concerning the 2023-2025 Work Programme
  - (a) Development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains (C.D. (103) 12)
  - (b) European Law Institute project proposal in the area of technology and global value chains (C.D. (103) 12 bis)
  - (c) Conclusion of the exploratory work conducted on the HCCH-UNIDROIT Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens (C.D. (103) 13)

7. International Interests in Mobile Equipment:
  - (a) Implementation and status of the Cape Town Convention and the Aircraft Protocol (oral presentation)
  - (b) Implementation and status of the Luxembourg Rail Protocol (C.D. (103) 14)
  - (c) Implementation and status of the Space Protocol (C.D. (103) 15)
  - (d) Implementation and status of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol) (C.D. (103) 16)
  - (e) The designation of UNIDROIT as Supervisory Authority for the MAC Protocol Registry (C.D. (103) 17)
8. International Protection of Cultural Property: Implementation and status of the 1995 Convention (C.D. (103) 18)
9. Promotion Strategy for other UNIDROIT Instruments (C.D. (103) 19)
10. UNIDROIT Correspondents (C.D. (103) 20)
11. UNIDROIT Academy (C.D. (103) 21)
  - (a) UNIDROIT Academic Projects
  - (b) Academic Institutes and Law Centres
    - i. Queen Mary University London (QMUL)-UNIDROIT Institute of Transnational Commercial Law
    - ii. Roma Tre-UNIDROIT Centre for Transnational Commercial Law and International Arbitration
    - iii. Nordic Law Centre and dedicated Library Section
    - iv. UNIDROIT Asian Transnational Law Centre
  - (c) UNIDROIT International Programme for Law and Development
  - (d) UNIDROIT Chair Programmes and Fellowships
  - (e) UNIDROIT Library
  - (f) UNIDROIT Scholarship, Internship and Research Programme
  - (g) Cooperation with academic institutions
  - (h) UNIDROIT Publications
12. Communications strategy and social media outreach (C.D. (103) 22)
13. Implementation strategy for newly adopted UNIDROIT instruments
  - (a) UNIDROIT Model Law on Factoring (C.D. (103) 23)
  - (b) UNIDROIT Principles on Digital Assets and Private Law (C.D. (103) 24)
14. Institutional and Administrative matters
  - (a) Report of the Special Committee to update the UNIDROIT Regulations (C.D. (103) 25)
  - (b) Preparation of the draft Budget for the 2025 financial year (C.D. (103) 26)
  - (c) Remote procedures for Governing Council (C.D. (103) 27)

- (d) UNIDROIT future stable regional outreach strategy (C.D. (103) 28)
- 15. Preparation of the centenary of UNIDROIT (C.D. (103) 29)
- 16. Date and venue of the 104<sup>th</sup> session of the Governing Council (C.D. (103) 1 rev.)
- 17. Any other business

**ANNEXE II****LIST OF PARTICIPANTS /  
LISTE DES PARTICIPANTS**

(Rome, 8-10 May 2024 / Rome, 8-10 mai 2024)

**MEMBERS OF THE GOVERNING COUNCIL /  
MEMBRES DU CONSEIL DE DIRECTION**

Ms Maria Chiara MALAGUTI	President of UNIDROIT / <i>Présidente d'UNIDROIT</i>
Ms Karen BANKS	Former Deputy Director General EU Commission (Ireland)
Ms Stefania BARIATTI	Professor of International Law School of Law Università degli Studi di Milano Milan (Italy)
M. Jean-Christophe BOULET	Conseiller-expert Chef de service adjoint Service public fédéral Justice Bruxelles (Belgique)
Mr Yusuf ÇALIŞKAN	Professor of Law İbn Haldun University School of Law İstanbul (Türkiye)
Mr Alfonso Luís CALVO CARAVACA	Professor of Private International Law Carlos III University of Madrid Madrid (Spain)
Ms Eugenia G. DACORONIA	Attorney-at-Law Professor of Civil Law National and Kapodistrian University of Athens Law School Athens (Greece)
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Mr Daniel DENMAN	Division Director Government Legal Department (GLD) London (United Kingdom)

Mr Lars ENTELMANN	Head of Division Compensation Law; Civil Aviation Law Federal Ministry of Justice Berlin (Germany)
Mr Eesa Allie FREDERICKS	Academic Deputy Director Research Centre for PIL in Emerging Countries University of Johannesburg Johannesburg (South Africa)
Mr Hideki KANDA	Professor Law School Gakushuin University Tokyo (Japan)
Mr Inho KIM	Professor of Law School of Law Ewha Womans University Seoul (Republic of Korea)
Mr Antti T. LEINONEN	Director General Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland)
M. Niklaus D. MEIER	Co-chef de l'Unité de droit international privé Office fédéral de la Justice Bern (Suisse)
Mr Attila MENYHÁRD	Professor of Civil Law Head of department ELTE Law Faculty Civil Law Department Budapest (Hungary)
Mr José Antonio MORENO RODRÍGUEZ	Professor of Law Attorney Asunción (Paraguay)
Ms Sharon ONG	Director-General Ministry of Law (Singapore)
Ms Monika PAUKNEROVÁ	Professor of Private International Law and International Commercial Law Department of Commercial Law Charles University, Faculty of Law Prague (Czech Republic)
Mr Lauris RASNACS	Docent University of Latvia Riga (Latvia)

Ms Kathryn SABO	Deputy Director General & General Counsel, International Private Law Constitutional, Administrative and International Law Section Department of Justice Ottawa (Canada)
Mr Jorge SÁNCHEZ CORDERO DÁVILA	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)
Ms Uma SEKHAR	Additional Secretary (Legal & Treaties) Ministry of External Affairs New Delhi (India)
Ms Carla Heleen SIEBURGH	Judge Civil Senate Supreme Court (Netherlands)
Mr Andrzej SZUMAŃSKI	Professor Chair of Private Law Jagiellonian University Cracow (Poland)
Ms María Ignacia VIAL UNDURRAGA	Professor Coordinator of Community and Global Engagement Universidad de los Andes Santiago (Chile)

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\* \* \*

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) / *CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ* Ms Gérardine GOH ESCOLAR (*remotely*)  
Deputy Secretary General  
The Hague (Netherlands)

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) / *COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI)* Ms Anna JOUBIN-BRET  
Secretary  
International Trade Law Division

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) / *ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE* Mr Buba BOJANG  
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Ms Valerie JOHNSTON  
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Mr Teemu VIINIKAINEN  
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General Counsel

Ms Clare FITZPATRICK  
Partnerships and Governance Officer

Mr Beni SASTRANEGARA  
Partnerships and Governance Officer



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*INTERNATIONAL DE DÉVELOPPEMENT*  
*AGRICOLE (FIDA)*

Mr Jonathan N. AGWE (*remotely*)  
Lead Regional Technical Specialist  
Rural Finance  
East and Southern Africa (ESA)  
Sustainable Production, Markets and Institutions  
Division (PMI)

Ms Mira GHAZZOUL (*remotely*)  
Legal Intern

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ASIAN-AFRICAN LEGAL CONSULTATIVE  
ORGANIZATION (AALCO)

Mr Kamalinne PINITPUVADOL (*remotely*)  
Secretary General

EUROPEAN BANK FOR RECONSTRUCTION AND  
DEVELOPMENT (EBRD) / *BANQUE*  
*EUROPEENNE POUR LA RECONSTRUCTION ET*  
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Mr Michel NUSSBAUMER  
Director  
Legal Transition

EUROPEAN LAW INSTITUTE (ELI) / *INSTITUT*  
*EUROPÉEN DU DROIT*

Mr Pascal PICHONNAZ  
President

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BANK OF ITALY / *BANQUE D'ITALIE*

Mr Marino Ottavio PERASSI (*remotely*)  
General Counsel

UNIDROIT FOUNDATION / *FONDATION*  
*D'UNIDROIT*

Mr Jeffrey WOOL  
President

Ms Louise GULLIFER  
Member of the Board of Governors

\* \* \*

Ms Gabrielle COUDIN

Adjointe au Chef de département  
Point de contact du RJECC  
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privé et européen  
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Sir Roy GOODE

Emeritus Professor of Law  
Oxford University

M. Marc-André RENOLD  
(*remotely*)

Professeur honoraire  
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Chaire UNESCO en droit international de la  
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Mr Giacomo ROJAS ELGUETA  
Associate Professor of Private Law  
Faculty of Law  
Roma Tre University

Mr Masamichi YAMASHITA  
Chair  
UNIDROIT Finance Committee

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### **UNIDROIT**

Ms Maria Chiara MALAGUTI	President / <i>Présidente</i>
Mr Ignacio TIRADO	Secretary-General / <i>Secrétaire Général</i>
Ms Anna VENEZIANO	Deputy Secretary-General / <i>Secrétaire Générale adjointe</i>
Mr William BRYDIE-WATSON	Senior Legal Officer / <i>Fonctionnaire senior</i>
Mr Rocco PALMA	Senior Legal Officer / <i>Fonctionnaire senior</i>
Ms Philine WEHLING	Legal Officer / <i>Fonctionnaire</i>
Ms Priscila PEREIRA DE ANDRADE	Legal Officer / <i>Fonctionnaire</i>
Ms Giulia PREVITI	Legal Officer / <i>Fonctionnaire</i>
Ms Myrte THIJSSEN	Legal Officer / <i>Fonctionnaire</i>
Mr Ian LI	Legal Officer / <i>Fonctionnaire</i>
Ms Yuan HE	Legal Officer / <i>Fonctionnaire</i>
Ms Jeannette TRAMHEL	Senior Legal Consultant / <i>Consultant juridique senior</i>
Ms Theodora KOSTOULA	Legal Consultant / <i>Consultant juridique</i>
Ms Benedetta MAURO	Legal Consultant / <i>Consultant juridique</i>
Ms Lena PETERS	Managing Editor, ULR / <i>Directrice de la rédaction, RDU</i>
Mr Keni KARIUKI	MAECI Chair / <i>Chaire MAECI</i>
Mr Iacopo DONATI	Bank of Italy Chair / <i>Chaire Banque d'Italie</i>
Ms Bettina MAXION	Librarian / <i>Bibliothécaire</i>
Ms Alexandra LOGUE	UNIDROIT Publications / <i>Publications d'UNIDROIT</i>