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**UNIDROIT Working Group on  
Best Practices for Effective Enforcement**

***Ninth session (hybrid)***  
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**SECRETARIAT'S REPORT ON THE BACKGROUND, STATUS OF THE PROJECT AND  
INTERSESSIONAL DEVELOPMENTS**

1. This report provides an update of Study LXXVIB – W.G. 8 – Doc. 2 (Secretariat's Report on the Background, Status of the Project, and Intersessional Developments).
2. The update is based on the outcome of the eighth session of the Working Group, held on 15-17 April 2024, as well as the extraordinary session of the Working Group, held on 23-24 September 2024, which discussed substantive issues on the basis of revised reports and draft recommendations prepared by Working Group members. It also provides information on the intersessional activity of the Working Group and the Secretariat following the eighth session and the September extraordinary session of the Working Group. Updates are provided, particularly, in the following paragraphs: 47-55 (eighth and extraordinary Working Group sessions, with respective intersessional work); 63 (Terminology and Translations); 68 (Working Group); 74-75 (Drafting Committee); 79-80 (Provisional timetable, period of consultations, and date and venue of the final session), and 147-158 (substantive issues arising from the eighth and the extraordinary Working Group sessions).
3. This report is accompanied by a Master Copy of the draft instrument, divided into three separate documents, and containing Part I on enforcement by public authority (Doc. 3), Part II on Enforcement of security rights (Doc. 4), and Part III on Enforcement on digital assets (Doc. 6). Working Group participants will also receive two additional documents, Doc 5 containing the revised recommendation on online auctions, and Doc 7 offering a draft of the section of the Introduction on the impact of technology on enforcement. Finally, the Report of the eighth session of the Working Group, and the Report of the extraordinary session of the Working Group, which were approved through email confirmation procedure, are also included.

**TABLE OF CONTENTS**

|             |  |           |
|-------------|--|-----------|
| <b>I.</b>   | <b>PRELIMINARY MATTERS</b>   | <b>3</b>  |
|             | A. Background  | 3         |
|             | B. Target audience   | 12        |
|             | C. Format of the instrument  | 12        |
|             | D. Title of the instrument   | 13        |
|             | E. Terminology and translations  | 13        |
|             | F. Organisation of the work  | 14        |
| <b>II.</b>  | <b>ISSUES RELATED TO THE SCOPE OF THE INSTRUMENT</b>                     | <b>16</b> |
|             | A. General mandate received  | 16        |
|             | B. Definition of the meaning of “enforcement” in relation to the project | 17        |
|             | C. Types of claims included in the scope of the project                  | 19        |
|             | D. Consumer transactions   | 19        |
|             | E. Insolvency related enforcement  | 19        |
|             | F. Enforcement of provisional and protective measures                    | 20        |
|             | G. Additional factors influencing enforcement procedures                 | 20        |
| <b>III.</b> | <b>SUBSTANTIVE ISSUES</b>  | <b>21</b> |

## I. PRELIMINARY MATTERS

### A. Background

#### *Preliminary work*

4. At the 95<sup>th</sup> Session of the Governing Council in 2016, the Secretariat included a proposal to undertake work in the field of enforcement, developing “Principles on Effective Enforcement” in the draft Work Programme 2017-2019 (UNIDROIT 2016 – C.D. (95) 13 rev.). The proposal was designed to fill in the gap of existing UNIDROIT instruments, particularly the ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute/UNIDROIT Study Group and adopted in 2004. It was accompanied by a preliminary Feasibility Study conducted by Rolf Stürner, Emeritus Professor at the University of Freiburg (Germany) and former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure ([UNIDROIT 2016 – C.D. \(95\) 13 Add. 2](#)). At its 75<sup>th</sup> session the General Assembly endorsed the recommendation of the Governing Council to include this topic in the UNIDROIT Work Programme for the 2017-2019 triennium with a low level of priority in view of the priority given to the completion of the ELI-UNIDROIT project on regional rules of civil procedure.

5. In December 2018, the Secretariat received a proposal for the 2020-2022 Work Programme by the World Bank regarding a project on the “Development of a Working Paper to Outline Best Practices on Debt Enforcement”, which the Secretariat presented in the context of the discussion of the 2020-2022 Work Programme at the 98<sup>th</sup> Session of the Governing Council. The proposal was presented as a continuation of, and a refinement of the scope of, the “Principles of Effective Enforcement” project. The project was included in the new Work Programme by the General Assembly ([A.G. \(78\) 12](#), paras. 41 and 51, and [A.G. \(78\) 3](#)), confirming the recommendation of the Governing Council (C.D. (98) 17, para. 245). While there was substantial agreement on the importance of the topic and on the legal, social and economic impact of the work to be conducted, the Secretariat was asked to produce a more refined scope of the project to be presented at the 99<sup>th</sup> session of the Governing Council in 2020.

6. During the first part of that session, held remotely in April-May 2020, Council Members commented on the revised Secretariat’s paper ([C.D. \(99\) A.3](#)) and authorised the setting up of an Exploratory Working Group to receive expert feedback on the questions raised (C.D. (99) A.8, paras. 43-44).

7. In response to this mandate, the UNIDROIT Secretariat developed a [Consultation Document](#) containing a set of questions based on the comments received during the session. The document was designed to better define the most appropriate guidance for the future Working Group in determining the type of envisaged instrument and the scope of the project, and formed the basis for a first round of remote consultations with selected international experts and organisations. The Secretariat received answers and feedback from several individual experts in comparative civil procedure, secured transactions, insolvency, contract law, and technology as applied to law, and from a number of intergovernmental and international organisations. In addition, the Secretariat organised an Internal Consultation Workshop with participation of experts, relevant organisations and members of the Governing Council, which was held on 21 September 2020 and focused on issues of scope of the future instrument and the impact and relevance of technological developments for enforcement.

8. At the September meeting of its 99<sup>th</sup> session (23-25 September 2020), the Governing Council discussed the Secretariat’s revised document, including the outcome of the consultations ([C.D. \(99\) B.3](#)), approved the guidelines provided by the Secretariat regarding the proposed scope of the project, confirmed the high priority status assigned to the project, and authorised the establishment of a Working Group (for the composition of which, see below, **subsection F**).

***First Working Group session (November-December 2020)***

9. The first meeting of the Working Group was held in Rome and on Zoom on 30 November–2 December 2020. Ms Kathryn Sabo, Deputy Director General and General Counsel of the Constitutional, Administrative and International Law Section of the Department of Justice (Canada), and member of the UNIDROIT Governing Council, was appointed as the Chair. The Working Group discussed a document prepared by the Secretariat ([LXXVIB – W.G. 1 – Doc. 2 \(Issues Paper\)](#)), which focused, for the most part, on the scope of the project, as well as methodology and organisation of the work. The Working Group further discussed a document on the impact of technology on enforcement (LXXVIB – W.G. 1 – Doc. 3). The [Report of the first Working Group](#) session is available on the UNIDROIT website. For the deliberations regarding the scope of the project, see below, **section II**.

***Intersessional work after the first Working Group session (December 2020 – March 2021)***

10. At the first Working Group session, in order to facilitate the organisation of the work, the Chair suggested setting up informal subgroups that would be active during the intersessional periods. They would be structured as open-ended, and both experts and observers were to be invited by the Secretariat to express their interest in participating in one or more of them. The subgroups, supported by the Secretariat as necessary, would nominate one or more focal points, identify problems in existing procedures, and start looking at possible solutions. Subgroup topics were not meant to be exhaustive, nor to reflect the final structure of the instrument, but to represent a starting point for the deliberations of the Group.

11. Three subgroups were set up accordingly, with the following provisional titles: Subgroup 1 - Enforcement of adjudicated claims or post-adjudication (later renamed Enforcement by way of public authority), with focal points Fernando Gascón Inchausti and Rolf Stürner; Subgroup 2 - Enforcement of secured claims (later renamed Enforcement of security rights), with focal point Neil Cohen; and Subgroup 3 - Impact of technology on enforcement, with focal point Teresa Rodríguez de las Heras Ballell.

12. In the intersessional period, the Chair, most Working Group members, and a number of observers were involved in an intense working schedule set up by the focal points and supported by the Secretariat. Moreover, the Secretariat set up coordination meetings between representatives of Subgroup 3 and the other two subgroups to discuss common issues and coordinate the documents for the second session of the Working Group.

***Second Working Group session (April 2021)***

13. The second session of the Working Group took place remotely on 20–22 April 2021, and its deliberations focused on Reports prepared by the three subgroups.

14. Subgroup 1 had prepared a detailed document on post-adjudication enforcement, focusing on the questions to be discussed and providing some (alternative) recommendations on the possible way forward.

15. Moreover, the focal points of Subgroups 1 and 3 had coordinated their input in advance. As a result, the Report of Subgroup 3 was reorganised to follow the structure of the Report of Subgroup 1, and the related parts of each Report were discussed in connection with each other.

16. Finally, the Working Group considered the Report prepared by Subgroup 2 on enforcement of security rights. The Subgroup had particularly focused on enforcement of security rights on movables and had drafted a comprehensive set of proposals for recommendations of best practices

in the form of answers to a list of practical questions, which had been allocated to different teams among Subgroup members.

17. For more information on specific issues discussed at the second Working Group session, see below, **section III**, and the [Report](#) of the second Working Group session.

#### ***Intersessional work after the second Working Group session***

18. Pursuant to the mandate received at the second session of the Working Group, the Secretariat continued to provide support to the Chair and Working Group members and observers for the organisation of several intersessional subgroup meetings to advance the understanding of certain issues and/or the preparation of draft documents. More general, informal coordination meetings with participation of the Chair, the coordinating member and the focal points of the subgroups were organised to exchange views and advance consistency of outputs. Special virtual meetings were also held on specific issues such as automation. Moreover, the Secretariat liaised with the UNIDROIT Working Group on Digital Assets and Private Law, particularly with the chair of the subgroup on security rights over digital assets, to ensure coordination as regards enforcement of security rights on digital assets.

#### ***Third Working Group session (November-December 2021)***

19. The third session of the Working Group was held in a hybrid format on 29 November–1 December 2021, and its deliberations focused on the following topics:

- Focus on enforcement by way of authority over receivables (Study LXXVIB – W.G.3 – Doc. 3, Annex 1, part IV 1 b - Third Party Debt Orders or Garnishment Proceedings);
- Focus on enforcement over receivables and automation (Study LXXVIB – W.G.3 – Doc. 4, Annexes 1 and 2 - Report of focal points of Subgroups 1 and 3);
- Focus on enforcement of security rights over receivables and automation (Study LXXVIB – W.G.3 – Doc. 5, Annex C, pp. 18-24 (Report of Subgroup 2 and focal point Subgroup 3); and
- Additional issues from Reports of Subgroups 1 and 2 (Study LXXVIB – W.G.3 – Doc. 3, Annex 1, parts IV 1 c and IV 1 d - enforcement and charging orders on land; Study LXXVIB – W.G.3 – Doc. 5 (Annex B on disposition of collateral and Annex D on variation of rules by party autonomy)).

20. For more information on the specific issues discussed at the third Working Group session, see below, **section III**, and the [Report](#) of the third Working Group session.

#### ***Intersessional work after the third Working Group session***

21. Following the mandate received at the third session of the Working Group, the Secretariat continued to support Working Group participants towards the advancement of the project and to produce research materials on specific topics.

22. In particular, the Secretariat organised two workshops to discuss issues related to the interaction between technology and enforcement, namely:

- an internal, virtual Workshop on Enforcement on Digital Assets on 19 January 2022, in which participants discussed two papers provided by Carla Reyes and Teresa Rodríguez de las Heras Ballell, respectively on “Technology-Enhanced Enforcement: Issues

Related to Digital Assets” and on “Illustration of Electronic Warehouse Receipt Enforcement”. The Secretariat produced a Summary Report of the Workshop. The three documents will be sent to the Working Group as Annex II to Study LXXVIB – W.G.4 – Doc. 6 on “Enforcement on Digital Assets”; and

- a virtual Workshop on “Technology in Enforcement: recent developments and opportunities” on 8 March 2022, with the participation of Amna Al Owais, Chief Registrar, DIFC Courts (UAE); Lina Lontone, Council of Sworn Bailiffs of Latvia; Jos Uitdehaag, Secretary, UIHJ; Veronica Bradautanu, MoJ Moldova (on leave from EBRD); Teresa Rodríguez de las Heras Ballell; Diana Talero, Secretaria Técnica- Comité de Implementación de Garantías Mobiliarias, Colombia; and Carlos Riaño, Confecámaras, Colombia as speakers, and several members and observers of the Working Group as discussants. The video of the Workshop is available on [UNIDROIT’s YouTube channel](#).

#### ***Fourth Working Group session (April 2022)***

23. The fourth session of the Working Group was held in a hybrid format on 26-28 April 2022, and its deliberations focused on the following topics:

- Discussion of first best practices on enforcement by way of authority, in particular relating to central electronic registries, enforceable documents, disclosure of debtors’ assets, and revised best practices on enforcement of third-party debt orders (Study LXXVIB – W.G.4 – Doc. 3);
- Discussion of a paper on enforcement on digital assets, which was based on the intersessional Workshop held in January 2022 and a research paper prepared by the UNIDROIT Secretariat (the Secretariat’s team for enforcement in cooperation with the Secretariat’s team responsible for the Digital Assets and Private Law Working Group) on case law regarding issues connected to the enforcement on digital assets (Study LXXVIB – W.G.4 – Doc 6);
- Discussion of a paper on online auctions, based on research conducted by the Secretariat (Study LXXVIB – W.G.4 – Doc. 5), with the discussion enriched by a presentation of two individual experts who were invited to act as special reporters for the Colombian legal system; and
- Discussion of a document containing the updated best practices on enforcement on security rights and presenting the way forward for this part of the project.

24. The Working Group also benefited from a presentation by Mr Nick Chan, Vice Chairman, eBRAM (Electronic Business-Related Arbitration and Mediation) International Online Dispute Resolution Centre, an NGO registered in Hong Kong, dedicated to promoting the use of technology to assist with deal-making and to resolve disputes cost-effectively, including facilitating enforcement of creditors’ rights (including across borders).

25. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the fourth Working Group session.

#### ***Intersessional work after the fourth Working Group session***

26. After the fourth session of the Working Group, the Secretariat continued to support Working Group participants towards the advancement of the project and to produce research materials on specific topics.

27. In particular, the Chairs of the Digital Assets and Private Law and the Best Practices for Effective Enforcement Working Groups (Professor Hideki Kanda and Ms Kathryn Sabo, respectively) took the initiative of a joint Workshop, with participation of experts from the two Groups as well as additional experts. The joint Workshop was held on the last day of the UNIDROIT Governing Council session (10 June 2022). Featuring three roundtables, the Workshop shed light on various issues linked to enforcement on digital assets. The first roundtable, which examined remedies generally available in relation to digital assets, was led by Professor Carla Reyes and featured presentations from Hin Liu (Lecturer of Law at St Hugh’s College, Oxford University, and a Legal and Business Consultant at Fusang), Professor Jason Grant Allen, and Andrew M. Hinkes (Partner at K&L Gates and Associate Professor at Leonard N. Stern School of Business). The second roundtable, which focused on enforcement of creditor rights in digital assets, was led by Professor Louise Gullifer, QC (Hon) FBA (Rouse Ball Professor of English Law at the University of Cambridge) and featured presentations from Dr Marek Dubovec (University of Arizona, James E. Rogers College of Law), Professor Neil Cohen, and Andrea Tosato (Associate Professor at the University of Nottingham and the University of Pennsylvania Law School). The third roundtable, which focused on judicial enforcement of digital assets, was led by Professor Geneviève Saumier and featured presentations from Professor Rolf Stürner, Patrick Gielen (Secretary International Union of Judicial Officers), and Professor Teresa Rodríguez de las Heras Ballell. The Workshop was concluded by closing remarks delivered by the two Chairs. The recording of the Workshop is available on the [UNIDROIT YouTube channel](#).

#### ***Fifth Working Group session (December 2022)***

28. The fifth session of the Working Group was held in a hybrid format on 12-14 December 2022, and its deliberations focused on the following topics:

- (partly redrafted) best practices on enforcement by way of authority, accompanied by extensive comments, in particular relating to general provisions, organisation of enforcement, enforceable documents, disclosure of debtor’s assets, and central electronic registries (Study LXXVIB – W.G.5 – Doc. 3);
- enforcement of security rights over movables, in particular:
  - o Redrafted best practices and comments on extra-judicial repossession of tangible movable collateral (Annexe 1),
  - o Redrafted best practices and comments on disposition of collateral (Annexe 2), and
  - o A paper on policy issues regarding “expedited” judicial procedures in the context of extra-judicial enforcement (Annexe 3);
- an updated paper on enforcement on digital assets, containing preliminary best practices (Study LXXVIB – W.G.5 – Doc 6); and
- an updated paper on online auctions, based on additional research conducted by the Secretariat (Study LXXVIB – W.G.6 – Doc. 5).

29. The Working Group also benefited from a presentation by Ms Nina Mocheva, Senior Financial Sector Specialist, WBG, on the use of alternative dispute resolution in the enforcement of security rights.

30. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the fifth Working Group session.

***Intersessional work after the fifth session of the Working Group***

31. After the fifth session of the Working Group, the Secretariat continued to support the Working Group's development of the project. In particular, the following activities were carried out, among others, by those Working Group participants who had been active in drafting texts within subgroups and/or were part of the Drafting Committee, by the Chair and by the Secretariat:

- (i) Coordination meetings with representatives of the Working Group on Digital Assets and Private Law regarding enforcement on digital assets (14 and 16 December 2022);
- (ii) Drafting Committee work and meeting on 31 January 2023 (for more information, see paras. 64-65 below);
- (iii) Meetings on judicial proceedings in the context of extra-judicial enforcement of security rights (21 and 23 February 2023);
- (iv) Coordination meetings among focal points and of members within Subgroup 2;
- (v) Drafting of support documents for the Working Group, as mandated to the Secretariat at the fifth session (W.G.5 Docs. 3 and 4, annotated with comments and decisions taken by the Working Group; collated drafts on enforcement of security rights, annotated with comments and decisions made at different sessions of the Working Group; flow-chart on Sections III and V of W.G.5 Doc. 3).

***Sixth Working Group session (March 2023)***

32. The sixth session of the Working Group was held at UNIDROIT in a hybrid format on 14-16 March 2023, and its deliberations focused on the following topics:

- (i) Consideration of the documents reviewed by the Drafting Committee, i.e., draft best practices on repossession of collateral in extra-judicial enforcement of security rights, draft best practices on repossession of collateral, draft best practices on information regarding debtor's assets, and general discussion on Drafting Committee's methodology (W.G.6 – Doc 4, Annexe 1 rev – Doc 4, Annexe 2 rev-Doc 3, section IV);
- (ii) First discussion on a position paper on a special expedited procedure for resolution of disputes over possession of collateral (W.G.6 – Doc 4, Annexe 3 rev);
- (iii) Review of draft best practices on enforcement by way of authority (W.G.6 – Doc. 3) and its accompanying flow-chart for Sections III-IV-V (W.G.6 – Doc. 3 Annexe 1);
- (iv) Review of draft best practices and comments on Enforcement on Digital Assets (W.G.6 – Doc 6);
- (v) Consideration of the general structure of the instrument.

33. The session was further enriched by a presentation on draft best practices on online auctions by Mr Massimiliano Blasone, an international expert in the Cyber-Justice working group responsible for developing Guidelines for judicial e-auctions for the Commission for the Efficiency of Justice of the Council of Europe.



34. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the sixth Working Group session.

#### ***Intersessional work after the sixth session of the Working Group***

35. The Drafting Committee of the project met in person around the sixth session of the Working Group, specifically on March 14, 16 and 17. It continued its work through email exchanges and ad-hoc virtual meetings.

36. At the request of the Subgroups' focal points and following the mandate received by the Working Group, the Secretariat organised several virtual meetings of Subgroup 2 on enforcement of security rights, as well as ad-hoc coordination meetings on specific topics (in particular, enforcement on digital assets, and open issues related to enforcement by way of authority). The Secretariat further continued to prepare support research and documentation on various topics, including online auctions, enforcement on digital assets, and the organisational aspects of enforcement.

37. In the intersessional period, the project was presented on several occasions, including at a workshop for governmental officials co-organised with the Government of India on 3-4 July 2023 and at the APEC ODR Workshop on International Instruments Landscape to Facilitate Trade, Contract Enforcement, and APEC Online Dispute Resolution Framework, held on 14-15 June 2023. It was also the object of conferences and lectures, including at the International Law and Development Programme sponsored by the Italian Ministry of Foreign Affairs and Cooperation, and for a group of Georgian lawyers on an official visit to UNIDROIT in June 2023. The Secretariat presented the project during its institutional visit to Ulaanbaatar (Mongolia) on 23-24 November 2023.

38. Furthermore, the Secretariat had a very fruitful interaction with the team at the European Bank for Reconstruction and Development (EBRD) to gain and exchange information on the organisation of enforcement proceedings in various countries of operation of the EBRD and more generally on the project. In addition, the EBRD Legal Transition Programme at the EBRD organised, at its headquarters in London, a Workshop dedicated to UNIDROIT instruments on 25 September 2023, where the project on enforcement was presented and discussed with EBRD officials.

#### ***Presentation at the 102<sup>nd</sup> Session of the UNIDROIT Governing Council (May 2023)***

39. Upon authorisation by the Drafting Committee, the Secretariat confidentially shared with the UNIDROIT Governing Council, by way of example, the preliminary texts of two sections revised by the Drafting Committee, respectively the section of Part I on information regarding the debtor's assets, and the section of Part II on the secured creditor's right to obtain possession of collateral after default.

#### ***Seventh Working Group session (November-December 2023)***

40. The seventh session of the Working Group was held at UNIDROIT in a hybrid format on 29 November-1 December 2023, and its deliberations focused on the following topics:

- (i) Further discussion on revised draft best practices regarding enforcement by way of authority (W.G.7 – Doc 3, sections III-IV-V);
- (ii) Review of the annexes of best practices regarding enforcement of security rights, i.e., secured creditor's right to realise on collateral after default, recommended best practices for the enforcement of security rights over rights to receive payment and credit instruments (including issues on automation), revised recommended best practices for the variation of the rules governing the

realisation of collateral, recommended best practices for the enforcement of security rights over immovables (W.G.6 – Doc. 4 rev, Annexe II, Annexe III, Annexe IV, Annexe V);

(iii) Review of revised draft best practices regarding enforcement on digital assets (W.G. 7 – Doc. 6);

(iv) Consideration of Secretariat’s document on online auctions (W.G. 7 – Doc. 5).

41. The session was further enriched by a presentation on EBRD’s current work on enforcement law reforms by Ms Veronica Bradautanu, representative of the European Bank for Reconstruction and Development (EBRD). (The slides of the presentation are attached to W.G. 7 – Doc. 7 as Annexe III).

42. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the seventh Working Group session.

### ***Intersessional work after the seventh session of the Working Group***

43. After the seventh session of the Working Group, the Secretariat continued to prepare support research and documentation on various topics, including enforcement on digital assets. In particular, the following activities were carried out, among others, by Working Group participants who had been active in drafting texts within subgroups and/or were part of the Drafting Committee, by the Chair and by the Secretariat:

(i) The Drafting Committee of the project met in person on 29 November – 2 December, and continued its work through email exchanges and ad-hoc virtual meetings;

(ii) Meetings to discuss expedited procedure in the context of extra-judicial enforcement of security rights (21 December 2023 – 23 February 2024)

44. During the intersessional period, best practices for enforcement of security rights were also discussed at the annual International Coordination Conference on Secured Transactions Reform on 16-17 January 2024, hosted by the International Finance Corporation (IFC) at its headquarters in Washington, DC.

45. Additionally, the project was fruitfully discussed within the framework of the cooperation with the World Bank Group (WBG), on 18-19 January 2024, when a delegation from UNIDROIT visited the headquarters of the World Bank Group in Washington, D.C. The meeting, with participation of Nina Pavlova Mocheva, Fernand Dancausa and Sergio Muro, focused on the practical challenges of enforcement by way of authority in various jurisdictions where the WBG operates.

46. Furthermore, at the dissemination conference on the ELI-UNIDROIT Model Rules of European Civil Procedure, held on 5-6 February 2024 in Vienna, the challenges and opportunities provided by digitalisation and new technology were discussed also in relation to enforcement issues.

### ***Eighth Working Group session (April 2024)***

47. From 15 to 17 April 2024, the Working Group met for its eighth session at the seat of UNIDROIT in Rome and online. The Working Group continued its consideration of the advanced revised draft on best practices on enforcement by way of authority (focusing on modes of enforcement of monetary claims in tangible assets and non-monetary claims), enforcement of security rights

(focusing on the new general provisions, disposition of assets, and enforcement of security rights over immovables), and the latest draft of enforcement on digital assets.

48. Moreover, the overall structure of the final instrument was discussed along with the organisation of future work for the project, including the selection of the draft best practices and commentary to be confidentially submitted to the 103<sup>rd</sup> session of the Governing Council in May 2024, and the organisation of a consultation phase prior to the last session of the Working Group, to be held in March 2025.

49. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the eighth Working Group session.

***Submission of selected draft best practices and commentary to the 103<sup>rd</sup> session of the Governing Council (May 2024)***

50. The Chair and the Working Group authorised the Secretariat to submit to the 103<sup>rd</sup> session of the Governing Council, on a confidential basis, together with the draft outline of the entire instrument, several sections of Best Practices and related Comments that had already been discussed and agreed upon by the Working Group. In particular, the Governing Council received drafts of the following completed Sections from Part I: III on enforceable instruments, IV on information regarding the debtor’s assets, and V on digital registration of enforceable instruments and enforcement measures and their outcome. In relation to the part on enforcement of security rights, the Governing Council received drafts of an introduction containing two best practices applying generally to enforcement of security rights over movables and of the following sections on the secured creditor’s right to obtain possession of collateral after default, on the secured creditor’s right to realise on collateral after default, and on the variation of the rules governing the realisation of collateral. Finally, the draft of Part III on enforcement on digital assets was also submitted to the Governing Council. The Secretariat conveyed the feedback provided by Governing Council Members to the Working Group.

***Intersessional work after the eighth session of the Working Group***

51. Pursuant to the mandate received at the eighth session of the Working Group, the Secretariat continued to provide support to the Chair and Working Group members and observers for the organisation of several intersessional subgroup meetings to advance the understanding of certain issues and/or the preparation of draft documents. More generally, informal coordination meetings with participation of the Chair, the coordinator, and the focal points of the subgroups were organised to advance consistency of outputs. Special remote meetings were also held on specific issues, with participation of selected members and observers, such as online auctions and a draft best practice on an expeditious relief for extra-judicial enforcement of security rights.

52. In addition, the project was presented and/or discussed at the following events:

- (i) At the Cape Town Convention Academic Project Annual Conference (Cambridge, 11-12 September 2024), where the draft best practice on the expeditious relief for extra judicial enforcement of security right was presented, and
- (ii) In the context of International Programme for Law and Development 2024, with particular focus on the interplay between technology and enforcement.

***Extraordinary Working Group session (September 2024)***

53. In order to facilitate the advancement of the work on the project in its final phase, the Secretariat agreed with the Chair on convening an extraordinary Working Group session, which was held remotely, with in-person participation of Drafting Committee members only, on 23-24 September 2024. Particular consideration was given to the sections of the part on enforcement by

way of authority covering modes of enforcement of monetary and non-monetary claims, costs, and enforcement organs. In relation to the part on enforcement of security rights, the Working Group focused on the revised draft of the best practice on expeditious relief for extrajudicial enforcement. Moreover, it discussed the finalised part on enforcement on digital assets. Finally, the Working Group considered the structure of the final instrument, which included a discussion on the appropriate placement of the part on the impact of technology on enforcement. The translation of the Best Practices into French was also addressed.

54. For more information on the specific issues discussed, see below, **section III**, and the [Report](#) of the extraordinary Working Group session.

### ***Intersessional work after the extraordinary session of the Working Group***

55. After the extraordinary session of the Working Group, the Secretariat continued to support the Working Group's development of the project. In particular, several remote meetings were carried out by those Working Group participants who had been active in drafting texts within subgroups and/or were part of the Drafting Committee, by the Chair and by the Secretariat, on substantive issues as well as on the structure of the instrument.

## **B. Target audience**

56. The general aim of the project is to develop a legal tool to address the current challenges to a well-functioning domestic law system for enforcement by offering a set of global standards and best practices to national legislators, designed to improve the domestic normative framework applicable to enforcement. The Working Group agreed that the primary addressees would be legislators seeking to reform, or refine, their enforcement laws. However, the instrument would also be addressed to policy makers in general, including entities and organisations with the authority to develop secondary legislation or regulations, other organisations actively supporting legal reform in specific regions of the world, and stakeholders that may be influential in the development of law reform. It was noted that the spectrum of potential direct addressees should not be widened further, otherwise it would be more difficult to strike the right balance in the terminology and structure of the instrument.

## **C. Format of the instrument**

57. There was general agreement that it would be neither appropriate nor feasible to draft a binding international instrument (i.e., a Convention), or a legislative instrument such as a model law, or detailed Principles or Rules structured as a comprehensive code. A guidance document containing best practices avoiding "one-size-fits-all" solutions was considered to be a better option. The following main reasons were cited for choosing this type of instrument: the close interconnection of enforcement with several areas of the law (property law, insolvency, constitutional law, etc.) where there is a divergence of national legal concepts and approaches; divergent national cultural, social and economic situations; and the dynamism of technological developments applied to enforcement. It was not excluded, however, that a non-binding guidance instrument may, with time, pave the way for future international legislative activity.

58. Participants in the consultations noted that there should be a sufficient level of detail in suggesting potential regulations to national legislators (e.g., sufficiently detailed best practices for some specific issues). This would render the instrument more useful and attractive and reach beyond the existing guidance documents. It was also proposed that the level of detail of the suggested best practices may be differentiated in relation to the various issues which will be addressed by the instrument. It was clear, however, that best practices should be drafted only for issues that represented obstacles to and concerns in reaching the goal of effective enforcement in various

jurisdictions; contextualisation should be provided, if and where necessary, in the comments to the best practices.

59. While any decision on the format of the final instrument was considered to be premature, the majority of the experts favoured the development of best practices followed by comments explaining and justifying them. The comments would explain the background and provide the reasons why one particular best practice had been followed. Whether comments should also explain how to implement the best practices and identify the potential pitfalls and problems in their application, and whether they should further contain specific references to national laws, was debated. In relation to this point, it was noted that giving advice on the practical implementation of the instrument within domestic law would be more appropriate in an instrument such as a Guide to Enactment, that could be developed after the conclusion of this project with an additional mandate from the Governing Council.

60. The need to harmonise the work going forward by agreeing on a tentative standard format of presentation was also raised. Additionally, the usefulness of including illustrations in the comments was suggested.

61. At the fifth session of the Working Group, participants agreed that the Drafting Committee should start its work intersessionally, with a preliminary discussion on the standard format and language of the best practices.

#### **D. Title of the instrument**

62. As mentioned above, the Working Group confirmed that the instrument should be in the form of a soft best practice guide. The Working Group accepted the suggested provisional title of the instrument, “Best Practices for Effective Enforcement”. The Governing Council’s endorsement may be sought, if necessary, for any revisions of the title.

#### **E. Terminology and translations**

63. One of the challenges of uniform law is how to ensure that the planned instrument adopt sufficiently technical and precise terminology while also being as neutral as possible with respect to specific legal systems and accessible to users with different legal and linguistic backgrounds (or at least capable of translation into different languages). This is particularly important in the case of instruments aimed at providing guidance to national legislators.

64. More specifically, while the Group’s only working language is English, consistent with UNIDROIT’s practice the final instrument will be approved in two language versions: English and French. At the extraordinary session of the Working Group, held in September 2024, the way forward for the translation of the finalised draft of the instrument into French was discussed, with a view to permitting a circulation of a French text for the purpose of consultations before finalisation of the instrument.

65. Moreover, there should be consistency, as far as possible and reasonable, with the terminology used in other UNIDROIT instruments and current projects. The need to align terminology to the one used in existing global standard-setting instruments developed by sister organisations (in particular UNCITRAL’s instruments on secured transactions) was constantly taken into account, with particular regard to enforcement on security rights, bearing in mind, however, the different scope of the present project (which does not purport to harmonise substantive secured transaction laws).

66. Finally, the Working Group discussed the usefulness of developing a glossary of shared terms and definitions. While such a glossary was not considered to be a necessary addition to the final instrument, nor was it considered to be feasible, the need to keep track of the different terms used and to harmonise terminology was highlighted.

## **F. Organisation of the work**

### ***Working Group***

67. Consistent with UNIDROIT's established working methods, a Working Group has been set up, and is composed of participants selected in their personal capacity for their expertise in the fields of comparative procedural law, contract law, secured transactions, insolvency, and technology and the law. The members were also selected based on their representation of different systems and geographic regions of the world. Following UNIDROIT practice, the Working Group did not adopt any formal rules of procedure and will seek to make decisions through consensus under the Chair's guidance.

68. UNIDROIT has invited several global and regional organisations with expertise in the specific and related fields to participate as observers in the Working Group. While observers do not have voting rights, they are entitled to full participation in the Working Group's discussions and are considered an integral part of the working team. The participation of these organisations should ensure that different regional perspectives are considered in the development and adoption of the instrument. Such organisations can also channel relevant input from experts with a specialised background, also allowing for interdisciplinary synergies. Moreover, it is anticipated that the cooperating organisations may assist in regional promotion, dissemination, and implementation of the guidance document, once it has been adopted. Finally, UNIDROIT may also invite other experts or professional associations to participate as observers in the Working Group or in subsequent consultations.

69. The Working Group is currently composed of the following members: Kathryn Sabo (Chair) - Deputy Director General and General Counsel, Constitutional, Administrative and International Law Section, Department of Justice (Canada); Geneviève Saumier (Coordinating Expert) – Dean of the School of Law, Faculty of Law, Montreal University (Canada); Neil Cohen - Jeffrey D. Forchelli Professor of Law, Brooklyn Law School (US); Valeria Confortini, Professor of Law, University of Naples, L'Orientale (Italy); Fernando Gascón Inchausti - Professor at the Procedural and Criminal Law Department, Faculty of Law Universidad Complutense de Madrid (Spain); Carla L. Reyes - Assistant Professor of Law, SMU Dedman School of Law, Dallas (US); Fábio Rocha Pinto e Silva – Pinheiro Neto Advogados, São Paulo (Brazil); Teresa Rodríguez de las Heras Ballell –Professor of Commercial Law, Universidad Carlos III Madrid (Spain); Felix Steffek - Professor of Law, Faculty of Law, University of Cambridge, Co-Director of the Centre for Corporate and Commercial Law, Senior Member & Director of Studies, Newnham College (German National); and Rolf Stürner - Emeritus Professor of Law, Albert-Ludwigs-Universität Freiburg (Germany).

70. Starting with the sixth session, LIU Junbo, Associated Professor, China University of Political Science and Law (China) joined the Working Group, while John Sorabji, Associate Professor, Faculty of Law, University College London (UK), joined both the Working Group and the Drafting Committee.

71. The following organisations are also part of the Working Group as observers: European Bank for Reconstruction and Development (EBRD) - European Commission (DG JUST); European Law Institute (ELI) - Hague Conference on Private International Law (HCCH) - International Association of Legal Science (IALS) - Secured Finance Network – Supreme Court of China - Union Internationale des Huissiers de Justice (UIHJ) - Jos Uitdehaag, Secretary; United Nations Commission on

International Trade Law (UNCITRAL) – World Bank Group (WBG) – formerly, Zengale Regional Court.

72. The following experts were further invited to participate in the Working Group: Massimiliano Blasone, international expert, Cyber-Justice working group (Council of Europe); Carlos Riaño, Confecámeras, Colombia; Diana Lucía Talero, Secretaria Técnica – Comité de Implementación de Garantías Mobiliarias, Colombia.

### ***Drafting Committee***

73. At its fifth session, the Working Group discussed the setting up of a Drafting Committee to review the draft best practices on which an agreement on the policy was attained. The Secretariat was mandated by the Chair to reach out to selected experts to invite them to be part of the Drafting Committee, and it received a positive answer from Prof. Neil Cohen, Prof. Teresa Rodríguez de las Heras Ballell, Prof. Geneviève Saumier, Prof. Rolf Stürner, and Prof. Fernando Gascón Inchausti. At the seventh session of the Working Group, the group was further enriched by participation of Prof. John Sorabji.

74. The Drafting Committee started to work remotely and met in its full composition, including the Chair and UNIDROIT Secretariat, on 31 January 2023. It discussed preliminary matters of tone, style, structure, and procedure on the basis of documents prepared by Prof. Geneviève Saumier. The Drafting Committee agreed to continue its work through email exchanges, which would be preceded by bi- or trilateral exchanges between the reviewer(s) and the original authors. The formal meetings for Drafting Committee work were held on 23-24 February, 14-17 March, and 23 August 2023 respectively. Two preliminary drafts issued by the Drafting Committee were attached to the project Report presented at the 102<sup>nd</sup> session of the UNIDROIT Governing Council in May 2023. The Drafting Committee met in person from 29 November through 2 December 2023 alongside the seventh session of the Working Group and held remote meetings in February and March 2024.

75. The Drafting Committee has continued working both around the April Working Group session and the extraordinary session of the Working Group (23-24 September 2024). Subsequently, the Drafting Committee convened remotely for an additional session on 28 October 2024 and planned to meet again around the ninth session of the Working Group (2 and 5 December 2024), on 9 December 2024 for a post-Working Group wrap-up session, and then again on 5 March 2025 for a session prior to the tenth and final session of the Working Group (10-12 March 2024) and 17 March 2025 for another post-Working Group wrap-up session.

### ***Consultation procedure with additional experts***

76. The individual experts originally involved in the Working Group represent both common law and civil law jurisdictions and possess ample knowledge of comparative law. As mentioned, however, more input was needed to reflect useful and necessary additional information from other regions that are not (yet) represented in the Working Group, as well as from individuals who have a specific professional expertise. Besides providing valuable information, such consultations represented the means of identifying a pool of relevant experts who could be invited to share their expertise on an *ad hoc* basis at one or more Working Group meetings, or be consulted on the draft instrument.

77. The Secretariat, following up on the mandate received from the Working Group, and in cooperation with the European Bank for Reconstruction and Development (EBRD), has conducted consultations in the form of interviews and questionnaires in order to gather data on challenges, regulatory options and practices for effective enforcement in diverse jurisdiction (among others, Egypt, Greece, Japan, Kazakhstan, Latvia, Mongolia, and Ukraine). Moreover, the Secretariat has conducted background research in relation to additional legal systems (among others, Brazil, China, Finland, France, India, Mozambique, Portugal, Russia, Rwanda, and Singapore). The outcome of this

consultation has been collected in two internal documents, one containing the answers to the Questionnaire on General Enforcement, and the other grouping together the answers to the Questionnaire on Technology and Enforcement. Finally, the Secretariat has organised *ad hoc* consultations with additional experts from various jurisdictions (including Colombia and UAE).

78. The Secretariat has continued its fruitful interaction with the EBRD in gathering information on developments in EBRD target countries.

### ***Provisional timetable, period of consultations, and date and venue of the final session***

79. The preparation of Best Practices for Effective Enforcement is a high-priority project on the UNIDROIT Work Programme.

80. The Secretariat had originally envisaged that the preparation of a first draft of the proposed instrument be conducted over four sessions of the Working Group (one in December 2020, two in 2021, and one in 2022, possibly in connection with a wider consultation event). This calendar was, however, already tentative and subject to revision in view of various factors, including the evolution of the international context and the extent of research needed to develop a practically useful instrument in this complex and vast area of law. The Governing Council of UNIDROIT, at its 100<sup>th</sup> session (second meeting) in September 2021, authorised the Working Group to postpone, where necessary, the completion of a full draft of the instrument by one year. To this end, the Secretariat invited the Governing Council at its 101<sup>st</sup> session (June 2022) to recommend that the General Assembly allow for the continuation of the project during the 2023-2025 Work Programme, to ensure its completion in the first part of the next Triennium. The Governing Council approved the recommendation, which was adopted by the General Assembly at its 81<sup>st</sup> session (15 December 2022). The Working Group presented a first draft of several sections of the instrument to the Governing Council at its 103<sup>rd</sup> session. After the present session of the Working Group, and upon finalisation of the completed draft of the instrument, the Secretariat will seek the authorisation of the Governing Council to proceed with consultations (provisionally envisaged for January and February 2025). The outcome of the consultations would be considered at the last session of the Working Group, which is planned for 10-12 March 2025, with a view to submitting a final text for approval at the 104<sup>th</sup> Session of the Governing Council (May 2025).

## **II. ISSUES RELATED TO THE SCOPE OF THE INSTRUMENT**

### **A. General mandate received**

81. The Working Group is invited to develop a best practice instrument on mechanisms and procedures of enforcement of creditors' claims. A more precise determination of the types of procedures and claims to be included in the scope of the project was left to the appreciation of the Working Group, subject to the initial guidance deriving from the outcome of the preliminary consultations conducted by the Secretariat and from the input of the Governing Council at its 99<sup>th</sup> session.

82. The background of the project lies in the recognition of the need to ensure timely, predictable and affordable enforcement, particularly of contractual rights, for a developed credit market, and an improved access to credit, for an increase in trade and investment and for overall economic and social development and sustained growth in all jurisdictions. The Working Group has thus been invited to consider the current challenges for effective enforcement and the most suitable solutions (procedures, mechanisms) to overcome such challenges. The goal of the project is to draft best practices designed to improve the effectiveness of enforcement combating excessive length, complexity, costs and lack of transparency, while at the same time ensuring sufficient protection of all parties involved. Such best practices should consider the impact of modern technology on



enforcement, both as an enabler of suitable solutions and as a potential source of additional challenges to be addressed.

83. The importance of drafting an introduction to the best practices was acknowledged at the first Working Group session. The experts noted that such an introduction could fulfil various functions: set forth the underlying reasons and drivers for the development of the best practices; state the goals of the instrument; and contain the general principles on which the best practices would be based, which could be used as parameters for the interpretation of the instrument. It was also noted that the introduction should be written in consideration of its intended audience and the need to explain the purposes and goals of the instrument as well as their practical importance.

84. The Working Group held a preliminary discussion on the role to be played by general principles and by constitutional principles in the development of the best practices. For a summary of the discussion, see UNIDROIT 2020 – LXXVIB – W.G.1 – Doc. 4 (Report of the first session), paras. 10 and 11.

## **B. Definition of the meaning of “enforcement” in relation to the project**

85. One of the issues discussed during the consultation procedure regarded the meaning of the term “enforcement”. A suggestion to shape this discussion that had emerged during the consultation process was to use a functional notion of enforcement, which did not necessarily coincide with the technical meaning of the term under any specific domestic law. This notion could embrace a number of different procedures and mechanisms through which a creditor may obtain satisfaction of its claim over assets of the obligor or collateral, be it by reaching and applying the value of the asset, or by obtaining rights on, or control of, the assets. The usefulness of developing best practices in relation to each of those procedures should be assessed on the basis of the concrete obstacles and challenges they face at present in various jurisdictions.

### ***Procedures falling within the scope of the project***

86. At the first Working Group session, experts expressed different opinions on how to classify enforcement proceedings for the purposes of defining the scope of the project, and some concerns on the exact definition of the contours of the project, as well as on the terminology used in the Issues Paper (for a summary of the discussion see the Report of the first session, [LXXVIB – W.G.1 – Doc. 4, paras. 12-22](#)). There was, however, substantial consensus on the fact that the three basic scenarios described in para. [25 of LXXVIB – W.G.1 – Doc. 2 \(Issues Paper\)](#), were examples of situations that would be included in the scope of the project. These scenarios were to be used as a practical starting point for the Group’s deliberations, regardless of what the final structure of the instrument would be. It was also agreed that the use of emerging technologies in enforcement proceedings should be an integral part of the project.

87. In relation to enforcement following an adjudication, it was clarified that the project would have to address a vast array of questions, both connected with the concrete mechanisms of enforcement, as well as with its governance and organisation. A non-exhaustive list of potential issues was discussed by the Working Group (see Report, paras. 18-19 and 23-24) and considered as a starting point in developing the report of Subgroup 1 (see Doc. 3).

88. There was unanimous support for the idea of covering both judicial and extra-judicial enforcement. In this regard, it was noted that many jurisdictions have introduced hybrid proceedings with participation of private actors, or public/private actors, or with enhanced party autonomy. It was also noted that there are significant interconnections between judicial and extrajudicial enforcement, and that the drafters of the instrument may wish to consider alternative ways to balance the competing interests in the latter, e.g. by promoting the use of specific fast-track procedures to deal with opposition.

89. Finally, there was unanimous support for the idea of covering the enforcement of both secured and non-secured claims. It was mentioned that secured debt plays an important role in all economies but is especially relevant for emerging economies and in developing credit markets, which present higher risks and fewer options. It was also mentioned that innovative and useful best practices for extra-judicial enforcement could be found in modern secured transaction laws. Because of its importance, enforcement of secured claims was identified as the subject matter of Subgroup 2 (see Doc. 4).

#### ***Exclusion of recognition and enforcement of foreign decisions***

90. It was agreed that the project would not cover the rules and mechanisms through which a decision rendered in one country is recognised as enforceable in another country (for example through the operation of a treaty or regional legislation dealing with the recognition and enforcement of judicial decisions, e.g.: *Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, N° 1215/2012 recast; *2019 HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*; *1958 New York UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*; *2019 UN Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)*). Those instruments (or the otherwise applicable domestic international procedural rules), however, do not regulate the domestic law procedures and mechanisms that are triggered upon recognition of the enforceability of such decisions. Thus, the project needs to address the specific “execution” or enforcement phase of the decision, irrespective of whether it derives from a cross-border or a purely domestic situation. In this way, the future instrument would be complementary to the existing regulations on the international recognition and enforcement of decisions and would contribute to the practical implementation of the goals of such instruments.

#### ***Relationship with the procedure to obtain a decision against a defaulting obligor***

91. The “execution” phase was distinguished from a potentially broader concept of enforcement of a creditor’s claim against the obligor. “Enforcement” in a broad sense could cover the process of obtaining a legal judgment against a defaulting obligor (e.g. initiating a lawsuit against the buyer to obtain payment of the outstanding monies and being granted by the court the right to payment). This falls outside of the scope of the project and is indeed covered by other instruments developed by UNIDROIT, such as the ALI-UNIDROIT Principles of Transnational Civil Procedure and the ELI-UNIDROIT Model Rules on Civil Procedure. It was noted, however, that the project should consider the possible relationship with the process of determination of the merits (i.e., whether the creditor’s claim is founded, or whether the obligor can exercise a defence against the creditor’s claim). In other words, the Working Group should address, with some prudence, the extent to which best practices on the interconnections of these different phases could be developed (see Report, para. 30).

#### ***Relationship with contractual remedies***

92. At the first Working Group session, the potential difficulties in drawing a clear distinction between issues determined by substantive contract and secured transactions law, and issues connected to the mechanisms for the execution of creditors’ rights, were highlighted. This was considered to be particularly true for self-help remedies based on a security agreement, for which attention should be paid to the possible overlap with existing international instruments. Other experts referred to remedies that a creditor could directly enforce according to the applicable law on the basis of a contractual clause (e.g., a right to set-off). Technology applied to enforcement would be another area where clear distinctions might prove difficult to implement. It was noted that a clear-cut distinction may not always be possible, and that these issues would have to be concretely and carefully addressed when dealing with each situation.

### **C. Types of claims included in the scope of the project**

93. The scope of the project was also discussed in relation to the types of claims that would be covered.

94. The Working Group agreed to not limit the types of claims to be enforced *a priori*. There was a common understanding, however, that the logical place to start working would be to focus on contractual B2B claims, with the caveat that, especially for enforcement of adjudicated claims, distinguishing between types of claims would not appear to be wholly justified. The opportunity to develop special best practices for family or succession matters could be addressed at a later stage of the project (for the inclusion of B2C, C2B or P2P claims, see below, **subsection D**).

95. The Working Group agreed to include non-monetary claims within the scope of the project but highlighted the need to proceed with caution when dealing with them. It was noted that the difficulty would be to decide on the degree of detail to be provided for specific best practices for the enforcement of non-monetary claims, while other best practices would find a more general application to all types of claims.

### **D. Consumer transactions**

96. At its first session, the Working Group agreed not to exclude consumer debtors or creditors from the scope of the project. However, in line with the mandate received by the Governing Council to proceed with caution in this matter, it agreed to consider at a later stage of the project whether their inclusion warranted the development of specific best practices, or whether, as a number of experts suggested, a more general mention of possible limitations or restrictions at the domestic law level, particularly for the case of consumer debtors, would suffice (for more details on the debate, see Report of the first session, para. 42). Another issue raised by the experts, particularly in connection with technology as applied to enforcement, was the inclusion of peer-to-peer contracts (P2P). It was noted that, in a P2P scenario, a consumer could be either a creditor (including a lender) or a debtor, and it would be difficult, moreover, to distinguish between consumers and non-consumers. The P2P scenario also raised the need to revisit traditional notions of vulnerability and protection of the weaker party, on which special regimes to protect consumers in domestic law were based. The experts agreed not to exclude P2P scenarios from the project, and to consider them in the context of digital technology.

### **E. Insolvency related enforcement**

97. Different opinions were expressed during the consultation on the question of whether to include or exclude insolvency-related enforcement from the scope of the project. Most commentators supported the inclusion of enforcement of claims in insolvency because coherence and consistency between insolvency-related and non-related mechanisms were instrumental to effective creditor protection, and because excluding insolvency proceedings from the scope would undermine the usefulness of the project and send the wrong message. Some concerns, however, were also expressed, and reiterated during the discussion at the Governing Council, in particular regarding the relationship with existing instruments that already set standards in insolvency proceedings, such as the UNCITRAL Legislative Guide on Insolvency Law and the World Bank Group Principles for Effective Insolvency and Creditor/Debtor Regimes.

98. The Working Group agreed on the suggestion to focus on enforcement in general, and to revert to insolvency-related enforcement at a later stage, and with some caution. Emphasis should be placed on those issues which are common to general enforcement and enforcement in insolvency, and on mechanisms more than conditions. The Working Group may consider, at a later stage of the project, whether specific procedural mechanisms already used or identified as best practices for

general enforcement would be also useful in the different context of insolvency to facilitate liquidation (such as, for example, platforms for the liquidation of the value of the assets) and, if so, how to adapt the general enforcement mechanisms to the concrete insolvency procedure. It was confirmed that the project should avoid issues of material insolvency law, while bearing in mind that the distinction between substantive law and procedural mechanisms may not always be clear, and any future work in this area should proceed with caution. Finally, the identification of efficient mechanisms to transition between individual and collective enforcement could be, among others, a good topic to address at a later stage.

## **F. Enforcement of provisional and protective measures**

99. The experts unanimously supported the proposal to include consideration of provisional and protective measures in the instrument, considering the great practical importance of interim relief and the close interconnections with general enforcement proceedings. Particularly in relation to provisional and protective measures, it was noted that limiting the scope of the project to monetary claims would not cover some of the most effective and relevant remedies, such as orders for sequestration, or injunctions not to dispose of assets or accounts.

100. The project would have to be coordinated with existing UNIDROIT instruments covering provisional and protective measures, in particular the most recent ELI-UNIDROIT Rules, which devoted an entire chapter (Part X) to model rules accompanied by comments on this topic. Another existing regime concerning interim or advance relief pending final determination of the case, and dealing with enforcement matters, is contained in the Cape Town Convention on International Interests in Mobile Equipment and its Protocols (Art. 13 Conv.; Arts. X Aircraft Prot., VIII Rail Prot., XX Space Prot., IX MAC Prot.). While this latter regulation presents peculiarities linked to the specialised nature of the treaty, it could provide interesting elements for discussion when considering enforcement of secured debt. In relation to this coordination, experts noted that best practices on the enforcement of provisional and protective measures should be sufficiently detailed as to constitute an added value in respect to this instrument, but that the project should start with the assumption that a certain type of provisional measure had been granted and look at how to properly enforce that measure. For more details on the debate, see the Report of the first session, paras. 55-56.

## **G. Additional factors influencing enforcement procedures**

101. The operation of enforcement procedures in a specific jurisdiction is influenced by the broader legal context and by the interconnection with other areas of the law. While the envisaged instrument cannot address the specificities of each legal system, the consultation confirmed that it should at least point to those factors that may play a significant role in shaping enforcement. Many jurisdictions have, for example, introduced mechanisms that may serve as an incentive not to default on obligations, thereby limiting the need to resort to enforcement proceedings, such as debtor registries (either kept by the State or by private companies). These mechanisms could also serve to facilitate compliance with enforcement orders, though they would not be part of the procedure as such. Recent reforms of enforcement laws have introduced more specific tools that could be used by bailiffs to be able to successfully enforce claims. For example, bailiffs may be authorised to obtain information about the debtor's financial circumstances, and a defaulting debtor can be obliged to disclose his or her income and financial situation at the beginning of the enforcement proceedings.

102. The Working Group agreed that additional factors and mechanisms should be considered. A list of potential issues was provided, including: the existence of “soft” enforcement methods like post-judicial mediation, or mediation after obtaining an enforceable title; the role played by debtor registries, or attachment registries; the importance of ensuring effective information on the potential outcome of an enforcement procedure; and the topic of the costs of enforcement. For more details, see Report of the first session, paras. 58-61.

### III. SUBSTANTIVE ISSUES

103. **For the second session of the Working Group**, Subgroup 1 had prepared a detailed document focusing on general and specific issues to be discussed and providing options and several recommendations on the possible way forward. Among the substantive issues, the discussion at the second session covered: the treatment in the project of documents or titles recognised by national law which give creditors the right to enforce (“enforceable titles” - *summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 12-18](#)*); the challenges posed by the enforcement of claims for payment on tangible assets (among others, the need for the legal system to provide information on judicial liens and execution liens, the setting of fair and expedited procedures for the valuation of goods, when necessary, or ways to make participation in public sales more attractive – *summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 19 and 26](#)*); the simplification and increased efficiency of enforcement regarding third-party debt orders or garnishment proceedings - *summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 27-28](#)*; issues related to complex enforcement of special assets and receivership (for which the postponement of discussion on enforcement on digital assets was decided - *summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, para. 32](#)*); charging orders on land (*summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 33-35](#)*); Priority or equality governing the satisfaction of multiple unsecured creditors of claims for payment (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 39-41](#)*); the proportionality of enforcement of claims for payment and incentives for the debtor to cooperate in the enforcement, and exemptions (*summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 42-44](#)*); the disclosure of the debtor’s assets (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 45-47](#)*); creditor, debtor and third party remedies (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 53-56](#)*); and post-adjudication settlement (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, para. 57-58](#)*). The Working Group also briefly considered the organisational aspects of enforcement (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 48- 52](#)*).

104. In order to render the discussion on recommended best practices more effective, the focal points of Subgroup 1 and Subgroup 3 had coordinated their input in advance. For this reason, the Report of Subgroup 3 was organised in such a way as to follow the structure of the Report of Subgroup 1, and the related parts of the former Report were discussed in connection with the corresponding issues in the latter. The Working Group focused its attention on the use of platforms to conduct auctions and create secondary markets (with discussion on the structure of the governance of the platforms, possible limitations as to their use, and questions of applicable law - *summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 20-26](#)*) and on the use of technology to enhance notifications and communications (*summary of discussions in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6, paras. 29-31](#)*). The relevance of automation was also emphasised but not discussed in detail.

105. Finally, the Working Group considered the Report prepared by Subgroup 2 on enforcement of security rights. The Subgroup had particularly focused, for the time being, on enforcement of security rights in movables, and had drafted proposals for recommendations of best practices in the form of answers to a list of practical questions, which had been allocated to different teams among Subgroup members. As a general working method, the Subgroup had started from the assumption that, while the Working Group would be free to develop the most appropriate best practices in this field, the rules on enforcement that had already been developed in instruments that had achieved consensus through intergovernmental negotiations at a global level (such as the instruments adopted by UNCITRAL, e.g., the Legislative Guide or the Model Law on Secured Transactions) should be treated as presumptively valid when addressing issues within the scope of the project. The Working Group would therefore bear the burden of justifying any inconsistencies between the recommendations of the Working Group and those of prior instruments. At its second session, the Working Group focused on the recommended best practices for obtaining possession of tangible

collateral (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6](#), paras. 67-76*), the recommended best practices for realising upon collateral without judicial process (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6](#), paras. 78-83*), and the recommended best practices for the variation of the rules governing realisation of collateral (*summary of discussion in Report of WG2, [Study LXXVIB – W.G.2 – Doc. 6](#), paras. 84-86*).

106. **For the third session of the Working Group**, the experts focused in particular on enforcement on receivables, in view of the commercial relevance of this type of asset and the connection with the use of automated procedures. The discussion was conducted on the basis of detailed documents prepared by Working Group members that addressed: (a) third-party debt orders or garnishment proceedings, (b) necessary steps in the enforcement of monetary claims by third party debt orders to integrate automation, (c) suggested best practices for automation in the enforcement of monetary claims by third-party debt orders, and (d) revised best practices on enforcement of security rights over receivables and automation.

107. In relation to third-party debt orders, the Working Group generally agreed with the substantive issues that were presented. There was consensus on the fact that the best practices should include sale (outright assignment) of the receivable as an alternative method of disposal for the enforcement agent or other enforcing party, alongside the collection of the debt (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6](#), paras. 10-12*). The Working Group also addressed the question of whether the best practices should expressly endorse the principle of priority or the principle of equality of creditors. There was agreement that, in general, a rule of priority would be more advantageous, even if it could produce adverse effects on creditors' behaviour (e.g., race to enforcement); it was questioned, however, whether a specific best practice on this matter would be practically needed when the debtor was solvent (while the substantive law of insolvency would apply in case of insolvency) (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6](#), para. 13*).

108. Regarding enforcement on receivables and automation, an issue that elicited much discussion concerned the need for the creditor to access information on the debtor's assets and the desirability of using an interconnected platform facility to gather information from relevant authorities and bodies. In this context, the more general point of balancing such need to obtain information with the necessary data protection, as well as protection of other fundamental rights, was raised. In conclusion, the Working Group agreed that the automated system should avoid putting non-performing debtors in the privileged position of choosing whether, and to what extent, to provide information, but should at the same time ensure adequate protection of debtors' data (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6](#), paras. 15-19*). The Working Group then had the opportunity to consider a set of tentative best practices in relation to automation (both general recommendations on the use of automated systems, partly based on existing international and regional best practices, and more specific best practices for automated enforcement on receivables). While the fundamental principles embodied in the best practices were generally supported, the Working Group agreed that more details and concrete examples could be helpful, at least in explanatory commentaries; it was also felt that more specific issues related to automation in enforcement proceedings needed to be further explored and discussed by the Working Group (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6](#), paras. 20-29*).

109. With regard to the revised best practices on enforcement of security rights over receivables, the draft was generally well received. The discussion focused on two main points:

- (i) the definition of "receivable" and the scope of the enforcement project in relation to the coverage of other intangibles. No consensus was reached on whether the project should only focus on the most common forms of receivables or include other, more sophisticated assets for which special best practices would have to be developed. Experts warned of the risk of repeating existing international rules applying to such specific assets less

comprehensively, without providing added value for enforcement issues (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, para. 32](#)*); and

(ii) The interconnection between the general rules on disposition of collateral and the special rules on enforcement on receivables, for which more clarity in the best practices themselves or in the comments was suggested (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, para. 33](#)*).

110. The Working Group considered two additional sets of issues from the Report of Subgroup 1 for the second session, in particular those contained in the parts on charging orders on land and on complex enforcement on special assets. Regarding the first topic, the Working Group agreed on the desirability of including a recommendation that the legal system introduce some form of registration of rights over immovables to facilitate enforcement and to allow for the proper functioning of automation, though the difficulties of suggesting a specific type of registry system were underscored (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, para. 36](#)*). There was also agreement on the inclusion of a general best practice providing for minimal requirements on supervision or control by public bodies over e-auctions on immovables but not imposing public ownership or direct management by public authorities, nor a specific manner of supervision or control (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, para. 37](#)*). The Working Group further agreed on the desirability of enhancing the use of automation in the framework of public enforcement over land, while various positions were expressed on the appropriate degree of such automation (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, para. 38](#)*). Concerning complex enforcement on special assets, there was an informative discussion on the proposed content of this section as well as on enforcement on digital assets; for the latter, the Secretariat's suggestion to hold a dedicated workshop was endorsed (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, paras. 39-42](#)*).

111. The Working Group finally addressed additional issues from the Report of Subgroup 2 for the third session, namely the revised best practices on disposition of collateral and on the extent of party autonomy in enforcement. As regards disposition of collateral, the revised recommendations were, to a large extent, not controversial, being based on well-respected international guidance instruments on the subject matter. The Working Group discussion centred on the possibility for the creditor to be the purchaser in a public sale using credit bidding, or else to appropriate the collateral, and on the desirability and practical feasibility to introduce a more precise description of the "expedited judicial proceedings" that would facilitate dealing with opposition in enforcement (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, paras. 44-47](#)*). Concerning the role of party autonomy, the Working Group generally agreed on the policy of the revised recommendations, which had been amended to reflect the Working Group's preference, expressed at the second session, to introduce more limitations to ex-ante party autonomy (*summary of discussion in [Study LXXVIB – W.G.3 – Doc. 6, paras. 48-49](#)*).

112. For the **fourth session of the Working Group**, the experts started their deliberations on the basis of the document produced by the focal points of Subgroup 1, which suggested an outline for the final instrument in relation to its Part 1 on enforcement by way of authority. The draft already contained proposals for general recommendations (Section I) on which the more specific best practices were based, on the organisation of the enforcement proceedings and organs of enforcement (Section II), on central electronic registries (Section III), on enforceable documents (section IV), and on disclosure of debtor's assets (Section V). It also provided revised best practices on enforcement of third-party debt orders (Section VI).

113. In relation to central electronic registries (Section III), the document provided draft guidance on the setting up of three different registries that were meant to ensure the necessary transparency and information for enforcement proceedings to be undertaken even in an automated or semi-automated manner: a registry for enforceable documents, a registry for results of disclosure



(collecting the outcome of inquiries on the assets of the debtor), and a registry for enforcement measures and their outcome.

114. The Working Group discussed several issues connected with this topic, including: the authority that would administer and supervise them (for which a preference to allow legal systems to consider different models of management and/or supervision of the registry involving public authorities was expressed), structure of the registries (for which some clarification on the meaning of “centralised” entry point/registry was asked), and legitimation to access the different registries. For more details, see *Report of the fourth session, paras. 12-15*.

115. The Working Group further discussed the proposed third registry (recording all enforcement measures levied against a specified debtor and their outcome), as well as the need to ensure that such registry be interconnected with other existing domestic registries of contractual and legal liens on debtors’ assets. It was understood that the purpose of this registry was not to determine priorities as among rights or liens on debtors’ assets, nor to allow for simultaneous registration in two or more different registries, but to provide (automated and electronic) information to enforcement authorities and select third parties in relation to the content stored in existing domestic registries set up for different purposes (e.g., secured transactions registries, land registries). The Working Group proposed that the best practices clarify the purpose for which the interconnection between registries was suggested, and did not mandate a specific way in which registries should interconnect. It was also noted that a common system of data management would facilitate the operation of the three registries and their interconnection with data contained in other registries. Additional practical challenges were discussed, in particular the fact that existing domestic registry systems that could be relevant for this provision were structured differently, that they did not always provide a complete picture on existing or potential encumbrances in relation to specific assets, and that they were often not interconnected with each other. For more details, see *Report of the fourth session, paras. 16-22*.

116. Regarding enforceable documents (Section IV), it was clarified during the discussion that this section’s purpose was to accommodate the practice that existed in a number of legal systems granting enforceability to private documents (e.g., invoices or other comparable documents), while at the same time preserving the need for such enforceable documents to achieve a degree of trustworthiness. An additional purpose of this section was to promote the use of electronic enforceable documents that could be used in automated proceedings. The Working Group addressed several issues with regard to Section IV, noting that the language of the recommendations gave rise to many doubts as to their interpretation (particularly regarding the relationship among the three registries, their practical functioning, and the decision-making process of acceptance or denial of registration) and suggested that it should be revised in order for those provisions to be discussed at the next session. For more details, see *Report of the fourth session, paras. 23-31*.

117. In relation to Section V on disclosure of debtors’ assets, the Working Group discussed the four draft best practices provided in the document, which were meant to transform such rights, duties and obligations that were generally accepted in relation to this matter, into best practices, finding a good balance between efficiency and fairness, applying the general principle of proportionality, compelling public authorities to share information, and restricting debtors’ actions so as to prevent fraud. While the underlying policy of the provisions was generally well understood, the Working Group noted that some clarifications and reformulations should be introduced, and that it would be useful to provide a clearer reference to the general principles contained in the first part of the instrument, and examples of balance between the general rule and the exceptions in the comments, as well as examples of current practices that the recommendations sought to overcome. The challenge was to find the right balance between being sufficiently general, so that legislators would be able to use the best practices, and the need to be more detailed and prescriptive (for example, singling out the debtor from third parties in terms of obligations to disclose or cooperate and related sanctions). For more details, see *Report of the fourth session, paras. 32-41*.



118. As regards Section VI, it contained the transposition of the discussion paper prepared for the third session of the Working Group on enforcement on receivables and the feedback received, purposely addressing only those issues for which best practices would be useful. The proposed best practices were thoroughly discussed by the Working Group, which raised some queries and suggested the need for some reformulations and clarifications (for more details, see *Report of the fourth session, paras. 42-50*).

119. The Working Group further discussed Document 6, on enforcement on digital assets, which had been prepared by the focal point of Subgroup 3 on the basis of intersessional work and research work done by the Secretariat. The purpose of the paper was to find consensus on the main legal questions that should be the object of best practices in this field. Several key issues were discussed. The Working Group participants agreed on the use of a broad concept of digital assets, on avoiding the introduction of a specific definition, and on postponing issues of terminology. The Working Group further agreed that existing enforcement methods applied for some of these assets under a functionally equivalent principle, and should not be modified by the best practices, while for other assets (such as, for example, cryptocurrencies) different measures, or a combination of different measures, might be needed, including consideration of combining *in rem* measures with personal sanctions, such as contempt of court in case of failure to cooperate, or freezing orders. On the issue of location of the digital asset, which would be relevant not only for jurisdiction and applicable law, but also for tracking and seizure of the assets, the Working Group concluded that the best practices should refer to issues related to location, but that this reference may be put in the commentary to a more general best practice (such a recommendation containing a duty of cooperation for the parties). On the more general issue of identification and tracing of the assets, the Working Group discussed existing mechanisms to ensure access to the value of digital assets, such as multi-signature arrangements, escrow accounts, or surrender of control by the debtor. For more details, see *Report of the fourth session, paras. 51-58*.

120. In relation to online auctions (Document 5 and presentation by the Colombian individual experts), the Working Group discussed several issues, including: platform governance for online auctions (for which the approach of providing a list of minimum prerequisites, while the comments would incorporate the analysis and discussion on existing models, was preferred); the opportunity to introduce a general best practice recommending that online auctions should be recognised; the issue of whether the best practices should allocate the responsibility for the filing and accuracy of the information regarding the assets, and provide for sanctions for non-compliance; the introduction of a reasonable procedure to allow inspection of the assets; and the opportunity to introduce specific best practices for online auctions as disposition method for the enforcement of security rights. See *Report of the fourth session, paras. 60-71*.

121. The Working Group considered, moreover, the proposed structure of the future instrument, which was generally well received but was the object of several comments as well as suggestions for modification and reconsideration of terminology. In particular, no consensus was reached on the final placement of the recommendations relating to the impact of technology in enforcement, and this issue was left open for the Working Group to address at a later time. For more details, see *Report of the fourth session, paras. 73-78*.

122. The **fifth session of the Working Group** started with consideration of draft best practices on enforcement by way of authority, which had been revised after the fourth session and enriched by comments.

123. While the Working Group, following a suggestion of the drafters, decided to postpone consideration of Parts I and II of Document 3, some thought was given to Recommendation 2, para. (II), particularly in relation to the reference to mediation. There was clear support for developing the idea of mediation, particularly in conjunction with Recommendation 2 (II) of the General

Recommendations, and of giving more thought on how the use of ADR could be useful in the extra-judicial enforcement of security rights (*Report of the fifth session, paras. 92-94*).

124. The Working Group devoted much time to redrafted Section III (enforcement instruments), both in order to obtain clarifications on the scope and functioning of the recommendations and their interaction with Section V on Registers, and to discuss specific policy issues, in particular regarding Recommendation 1 (IV) on “private” documents. There was consensus on the suggestion to improve the current text of Recommendation 1 (IV) in light of the language contained in the commentary. There was still, however, a difference in opinion among participants as to whether Recommendation 1 (II) should be amended to include some types of private documents that had sufficient elements of reliability according to the laws of the enacting State (specifying, however, a common minimum threshold), or whether it should be limited to the public documents listed in the provision. See *Report of the fifth session, paras. 12-22*.

125. In relation to Section IV, the Working Group agreed on the policy expressed in Recommendation 1 and suggested that the comments should be more explicit on the positive duties entailed, and that the relationship between Recommendation 1 (II) and (III), as well as with Recommendation 4, should be better clarified. Regarding paragraph (III), there was consensus in the Working Group that such a provision would not impose a case-by-case application unless it was required by the register to be consulted, and that it would be a useful best practice to incentivise a more complete acquisition of information regarding debtor assets. The Working Group also addressed the question of whether the best practices should suggest that limited-access registers be made more accessible to enforcement organs, as well as the usefulness of looking at those legal systems which have developed well-functioning digitised and interoperable storage of information accessible to courts. The Working Group further agreed on the importance of the reference to protection of confidentiality and to data protection rules.

126. Recommendation 2 (II) was the object of much debate, particularly regarding the meaning of “invasive measures”, which were considered inadmissible in the factual circumstances mentioned in the recommendation, and the limits to the action of enforcement authorities at the stage of disclosure in more general terms. It was agreed that though there appeared to be consensus on the policy of this recommendation, the current wording of the provision gave rise to doubts as to its meaning; thus, the matter was deferred to the Drafting Committee, which would then send the provision and its commentary back to the Working Group. Finally, regarding Recommendation 3, it was clarified that this provision, which took constitutionally protected rights into account, did not apply to the situation where the enforcement authority enters private property to seize assets with a known location, but only to situations where the only purpose of entering is to search for potentially available assets. Doubts were raised, however, on the possibility to clearly demarcate the two activities in practice. It was suggested that language that could be interpreted broadly should be avoided. For more information, see *Report of the fifth session, paras. 84-96*.

127. Concerning the redrafted Section V, to which extensive commentary had been added, the Working Group generally supported the recommendation to introduce electronic registers. Two main issues were raised, however. First of all, the Working Group agreed that the possibility for a State to adapt an existing well-functioning register to be fully consistent with the best practices, if it did not wish to completely revamp its entire registry system, should be included, at least in the commentary. Secondly, it was suggested that, though the best practices could express a preference for the involvement of courts in the supervision and/or management of the registers, the language of the recommendation should allow legal systems to consider different modes of management and/or supervision of the register involving public authorities. Discussion on the specific functioning of the registers was postponed. For more details, and information on additional issues discussed by the Working Group on this topic, see *Report of the fifth session, paras. 23-31*.

128. As to the best practices on the taking of possession of tangible collateral and the disposition of collateral, which had been extensively redrafted and to which commentary had been added (Doc. 4 Annexes 1 and 2), the Working Group reiterated its general support for the best practices while, at the same time, pointing to the need to introduce some amendments, clarifications, and illustrations (the latter particularly regarding general expressions such as “reasonable amount of time”, or “breach of the peace” or “breach of public order”). Other issues addressed by the Working Group pertained to the optimal relationship between “black letter” best practices and the comments, as well as the need to consider the overall structure of the part of the project devoted to enforcement of security rights, and ensure coordination with the general best practices on enforcement by way of authority, particularly when referring to procedures such as injunctions. Finally, it was noted that the current texts had not yet integrated the impact of technology, which had been agreed upon. For more details on the comments and suggestions of the Working Group, see *Report of the fifth session, paras. 32-64*.

129. In relation to Document 4, Annexe 3, on “expedited” judicial procedures in the context of extra-judicial enforcement of security rights, a common understanding was reached on the need to provide recommendations along the lines suggested in the document. The Working Group agreed that the matter needed the cooperation of Subgroup 1 and asked the Secretariat to facilitate intersessional work on this topic. For more information, see *Report of the fifth session, paras. 62-64*.

130. The Working Group further briefly addressed the updated Documents 6 and 5. On Document 6, it was agreed that while general enforcement procedures and measures would be applicable to enforcement on digital assets, it was useful to develop specific best practices based on the extensive preparatory work already done and considering the outcome of the discussions at Working Group sessions. Such work was needed with some urgency, also to ensure optimal coordination with the project on Digital Assets and Private Law. In relation to Document 5, it was noted that there was a basic consensus that one best practice in the general part of the project, and possibly one in the part of enforcement of secured transactions, should be developed, without going into too many details as to the procedures. For more information, see *Report of the fifth session, paras. 65-73, and 74-76*.

131. The **sixth session of the Working Group** started with consideration of the parts of the draft revised by the Drafting Committee, in particular Doc. 4, Annexe 1 rev. – repossession of tangible collateral. The new draft had slightly rearranged the order of the conditions under which a creditor would have the right to obtain possession extra-judicially, to improve the accessibility and readability of the text in light of the type of instrument (best practices), the scope (general recommendations on enforcement) and prospective readers (including non-specialists in the area of secured transactions). However, it was reiterated that the substance was intended to reflect the provisions of the UNCITRAL Model Law on Secured Transactions, except when more detailed recommendations were introduced, and that this was to be highlighted in the introduction and in the commentary (see [Report of the sixth session, para 14](#)). The Working Group further discussed issues of clarity and presentation of the text, as well as the relationship with other parts of the instrument, and endorsed the suggestion to use more flexible language in view of the nature of the instrument, and to consider interaction with technological developments. It further asked the drafters to adapt the commentary to the modifications of the best practices (*Report of the sixth session, paras 16-28*).

132. The Working Group further addressed a revised version of Doc. 3 on enforcement by way of authority, initially focusing on an accompanying flow-chart prepared by the Secretariat, setting out the operation of Sections III to V in diagram form (Study LXXVIB – W.G.6 – Doc. 3, Annexe 1), and on the specific sections in Document 3 which had been modified. Regarding section III on Enforceable Instruments, there was consensus on various matters, including the underpinning policies of the procedure provided for private documents and of the provision on content

requirements, the information to be registered, the electronic form of enforceable instruments, and the need to make a reference to and include “data” or data sets. The Working Group asked for reconsideration of a few provisions (in particular, the special provision on co-owners of assets and creditors with security interests and the provision containing the exclusive attribution of the gatekeeper function to the court or notarial authority). The Working Group further underscored the necessity of a general linguistic revision to better clarify the intended policies, including the use of more flexible language, and asked the drafters to proceed with the adaptation of the comments (*Report of the sixth session, paras. 34-65*). In relation to section IV on information mechanisms on debtor’s assets, the Working Group generally agreed with the policy of the section and focused the discussion on refining the best practices on the mechanisms for disclosure of information by third parties, on the limitations in acquiring information, on the sanctions for non-cooperation, and on the optimal relationship between the best practices and the comments, particularly in relation to the respective roles of the actors involved (*Report of the sixth session, paras. 66-91*). Regarding section V (electronic registration), while the Working Group generally welcomed the innovative policy underlying this section and agreed on the caution in respect to the use of privately-owned registers, it suggested some adaptations in order to render the text less prescriptive and enhance the potential application of the best practices in different jurisdictions, including developing economies (*Report of the sixth session, paras. 92-98*).

133. Moreover, the Working Group considered a position paper which had been solicited at the previous Working Group session and which envisaged an expedited procedure to resolve disputes over possession in cases of disputes when a secured creditor seeks to take possession of tangible collateral extra-judicially (Doc. 4, Annexe 3 rev.). The draft was subject to much debate, regarding, in particular: the scope of the procedure; the interrelationship between the expedited procedure and national pre-existing procedures (provisional and/or protective measures and for determining the case on the merits); and the level of needed detail (with the choice between recommending a specific procedure or giving guidance to legislators through an illustration of one possible system). Whilst there was a consensus that recommendations on an expedited procedure would be a useful and innovative element in the best practices, many important substantive issues were raised and further intersessional work was considered necessary (*Report of the sixth session, paras. 99-118*).

134. In relation to Doc. 6 on enforcement on digital assets, the Working Group discussed a revised draft with commentary, focusing on the following issues: the style and language of the draft (including the optimal relationship between the best practices and the commentary); the relationship of the remedies with the content of the obligation to be performed; and the need to further coordinate this document with the general recommendations on enforcement.

135. The Working Group finally benefited from a presentation by Mr Massimiliano Blasone, acting as a special reporter on the (then) draft Guidelines for judicial e-auctions, which had been developed for the Cyber-Justice working group for the Council of Europe. The Guidelines, which are based on an extensive comparative study of the e-auction standards currently in force in all 46 Council of Europe States, aim at promoting a set of common standards (drawn from best practices identified in the study) without attempting to harmonise the practice across different States. The reporter further explained the methodology of the study, the main risk areas in the use of judicial e-auctions, and the existing best practices from a legal and technical perspective. The Working Group agreed to consider the Guidelines in the further development of potential best practices on e-auctions, a matter which had already been discussed at previous sessions.

136. The **seventh session of the Working Group** started with consideration of revised Document 3. The new draft incorporated the conclusions in the previous discussions of the Working Group and the Drafting Committee, and encompassed completed Sections III to V relating to enforceable instruments, information on debtor’s asset, and digital registration ([Study LXXVIB – W.G.7 – Doc. 7, para. 6](#)).

137. On enforceable instruments (Section III), the Working Group discussed the status of private documents as “enforceable instruments” under Recommendation 2, the clarification of the term “public authority” under Recommendations 2 and 3, the registration procedure for enforceable instruments and its feasibility (Recommendation 5), and appropriate rules to deal with challenges to the enforcement proceedings (Recommendation 6). The Chair concluded by proposing further intersessional deliberation on the status of private documents, and additional clarifications of the examples provided in the Recommendation. The Drafting Committee was tasked to refine the structure and language of Recommendations 5 and 6 and their commentaries ([Study LXXVIB – W.G.7 – Doc. 7, paras. 7-26](#)).

138. On the part relating to information on debtor’s assets (Section IV), the Working Group discussed the proper timing of disclosure of debtor asset (Recommendation 2), and the extent to which asset searches measures would be admissible (Recommendation 3), with a focus on the distinction between “ordinary” and “intrusive” measures and the associated burden of proof. ([Study LXXVIB – W.G.7 – Doc. 7, para. 29](#)). The Working Group also reviewed Recommendation 4 regarding sanctions for uncooperative debtors or those providing false information. It was agreed that the best practices should highlight the options provided by enforcement systems that encourage voluntary fulfilment. It was further suggested that a section on costs be added at the end of the part on enforcement by way of authority ([Study LXXVIB – W.G.7 – Doc. 7, paras. 27-32](#)).

139. On digital registration (Section V), the Working Group examined the structure and substance of Recommendation 1, including data access control and implementation methods for digital registers, and the provision’s interconnection with Recommendation 5 of Section III. The Chair proposed to add to the commentary wording to the effect that digital systems may be integrated into existing legal structures, and reference to the storage of the data for register users ([Study LXXVIB – W.G.7 – Doc. 7, paras. 33-36](#)). Clarifications were proposed for paragraph (I) of the Recommendation 2 to underscore that registration is needed only when enforcement was sought, and a general notice, rather than individual warnings, was required to inform debtors about enforcement actions, subject to special circumstances. It was agreed that the Drafting Committee would refine Recommendation 2 for clarity, reflecting the outcome of the discussion on the scrutiny level and the use of technology ([Study LXXVIB – W.G.7 – Doc. 7, paras. 37-40](#)).

140. The Working Group’s discussions on the enforcement of security rights in Annex V of Document 4 centred on enforcement of security rights over immovables and underlined that the draft provisions were designed to apply regardless of how security rights were conceptualised in various jurisdictions (“functional approach”) ([Study LXXVIB – W.G.7 – Doc. 7, para. 44](#)). The Working Group compared the rules on movable and immovable collateral from various aspects, including the right to cure, redemption mechanisms, and handling of surplus and deficiencies, and agreed to keep the two sections separate ([Study LXXVIB – W.G.7 – Doc. 7, paras. 46-51](#)). The Working Group debated on the timing and conditions for transferring immovables as payment and expressed disagreement on the possibility to allow an agreement to this effect before default. Valuation complexities and the potential for delaying tactics were noted, with an agreement to offer guidance that avoids excessive detail and ensures independence of appraisal. The issue of single-purpose real estate entities was acknowledged, with a consensus to include references to prevent circumvention of the recommendations ([Study LXXVIB – W.G.7 – Doc. 7, paras. 52-54](#)). Regarding Recommendation 3 on the relief for the debtor, the Working Group agreed that only serious noncompliance should warrant a stay. Finally, the Chair asked the Subgroup to consider the Working Group’s suggestions on the restructuring of Annexe V ([Study LXXVIB – W.G.7 – Doc. 7, paras. 55-56](#)).

141. The Working Group further focused on Annexe III, on enforcement of security rights over receivables and other intangibles such as bank deposit and intermediated securities ([Study LXXVIB – W.G.7 – Doc. 7, para. 57](#)). For Recommendation 1, it was suggested that the provision on direct collection be emphasised, as a specific enforcement method for receivables. Moreover, the inclusion

of enforcement of non-monetary obligations was debated. The current draft addressed non-monetary obligations from the post-default perspective by stating “[i]f payment collected from the obligor is non-monetary...”. Furthermore, adjustments were suggested in order to align the terminology with that of the UNCITRAL Model Law on Secured Transactions (“MLST”) ([Study LXXVIB – W.G.7 – Doc. 7, paras. 59-60](#)). For Recommendation 3, consistency of the rules on non-assignment provision with the MLST and the UNIDROIT Model Law on Factoring (“MLF”) was flagged for further reflection. No comments were made on Recommendations 2, 4 and 5, and consideration of Recommendation 6 was postponed ([Study LXXVIB – W.G.7 – Doc. 7, paras. 61-63](#)).

142. The Working Group then reviewed Annexe II, noting the reorganisation of certain provisions to emphasise the purpose to guide enforcement as opposed to develop a comprehensive law on secured transactions, which is not the purpose of the instrument. The Working Group discussed relocating two unnumbered recommendations on relief for non-compliance and on the notion of commercial reasonableness. Further recommended modifications related to the need to synchronise the commentary with the black-letter recommendation, and to amend the title of the recommendation on commercial reasonableness. ([Study LXXVIB – W.G.7 – Doc. 7, paras. 64-68](#)). In addition, a reference to online auctions had been included in Recommendation 1 and its commentary, and the need for consistency with best practices on online auctions in the context of enforcement by way of authority was noted ([Study LXXVIB – W.G.7 – Doc. 7, paras. 69-70](#)).

143. Regarding Annexe IV, the Working Group discussed whether a waiver of judicial enforcement by the secured creditor was admissible, and whether the best practices should expressly refer to such matter. The question would be further considered intersessionally ([Study LXXVIB – W.G.7 – Doc. 7, para. 71](#)).

144. In relation to online auctions and Document 5, the Working Group agreed on integrating online auctions into enforcement procedures but discussed whether to explicitly recommend or simply acknowledge their use for all asset types, considering existing legal restrictions. A preference for a more proactive approach was noted. Suggestions included a special focus on immovables and land registry access and the setting of specific standards for different assets. An introductory framework addressing economic aspects and outlining the scope of recommendations was also proposed, but concerns were raised about oversimplifying the economics of auctions ([Study LXXVIB – W.G.7 – Doc. 7, paras. 84-88](#)).

145. The Working Group further refined Document 6 on enforcement on digital assets. The preference for neutral illustrations over jurisdiction-specific references was noted. The scope of the notion of “digital assets” was debated, with the majority leaning towards adopting the definition under the UNIDROIT Principles on Digital Assets and Private Law (“UNIDROIT DAPL Principles”), while at the same time, acknowledging the fact that the Best Practices could apply to assets falling out of the definition of the UNIDROIT DAPL Principles. Drafting suggestions were made for Best Practices 2-4, 7 and 9 to increase technology neutrality, accuracy, clarity, and practicality. The Chair encouraged ongoing review and feedback on Document 6 ([Study LXXVIB – W.G.7 – Doc. 7, paras. 72-81](#)).

146. The Working Group also benefited from a presentation by Ms Veronica Bradautanu, acting as the representative of the European Bank for Reconstruction and Development (EBRD), on the enforcement of commercial decisions within the framework of mixed systems involving both state and private entities. The presentation highlighted the benefits and challenges of different models of organisations of enforcement organs (public, private, and mixed) based on concrete experiences in several jurisdictions seeking to reform their enforcement systems. This presentation provided meaningful information and reference for the Working Group on the continued discussion of the important aspect of best practices in relation to enforcement organs ([Study LXXVIB – W.G.7 – Doc. 7, paras. 82-83](#)).



147. **At its eighth session**, the Working Group considered the revised draft best practices in the field of enforcement by way of authority, with particular regard to Section VI on modes of enforcement of monetary claims on tangible assets, and of non-monetary claims. In relation to the first topic, it addressed in particular the order of enforcement measures, enforcement on assets held in the possession of third parties, and modes of disposition of the assets. The Working Group then emphasised the importance of providing guidance on seizing assets in possession of third parties, distinguishing between different forms of control and custody. Regarding the second topic (non-monetary claims), the Working Group reviewed best practices on delivery of possession and eviction, with discussions centred on the challenges of ensuring effective enforcement while respecting third-party rights and prioritising creditor claims. An agreement was reached in adopting measures to facilitate the delivery of intangible assets, addressing the role of custodians or intermediaries, and providing clarity on valuation methods to maximise asset recovery ([Study LXXVIB – W.G. 8 – Doc. 7, paras. 1-42](#)).

148. The Working Group reviewed the new first section containing general principles, focusing in particular on the general recommendation on the duty to exercise all rights and obligations in the enforcement of security rights in collateral in good faith and in a commercially reasonable manner. The Working Group agreed with the proposal to refer to both general standards and to move the recommendation on commercial reasonableness from the part on disposition of the collateral to the introduction ([Study LXXVIB – W.G. 8 – Doc. 7, paras. 43-46](#)).

149. Regarding enforcement of security rights over immovables, the Working Group examined Annexe V, emphasising the right to enforce without first obtaining a judgment on the secured obligation, with protections for vulnerable debtors and provisions for residential immovables being highlighted. It was agreed that the commentary should address distinctions between repossession and eviction, and the use of appointed third parties for enforcement was discussed as a viable approach. Additionally, the Working Group suggested more explicit provisions in security agreements for methods of extrajudicial disposal and deliberated on procedural aspects, including notice requirements and the prioritisation of claims ([Study LXXVIB – W.G. 8 – Doc. 7, paras. 47-60](#)).

150. In relation to enforcement on digital assets, the items under discussion included the scope of the section, which was aligned to the UNIDROIT Principles on Digital Assets and Private Law (2023), defining “digital assets” as controllable digital records; debtor’s and third parties’ cooperation; valuation; transfer; liability rules for the enforcement agent. The discussion included also the role of specialised intermediaries in the enforcement on digital assets, and the debtor’s and third parties’ duty of cooperation, with the potential use of *in-personam* measures as a last resort to enforce compliance ([Study LXXVIB – W.G. 8 – Doc. 7, paras. 61-73](#)).

151. The Working Group finally discussed the proposed structure of the instrument, which would include an introduction modelled on the introductory part of the ELI-UNIDROIT Model Rules, Part I on enforcement by public authority, Part II on enforcement of security rights, Part III on enforcement on digital assets, and the possibility of adding a Part IV on the impact of technology on enforcement proceedings ([Study LXXVIB – W.G. 8 – Doc. 7, paras 74-84](#)).

152. The **extraordinary session of the Working Group** opened with the discussion on enforcement by public authority, in particular with recommendations on modes of enforcement of monetary and non-monetary claims, including enforcement on tangible assets and third-party debt orders. The Working Group agreed on the policy of the recommendations on enforcement on immovables balancing creditor’s rights with the protection of third parties, and the recommendations on exemptions based on minimum standards of human dignity ([Study LXXVIB – Ext. W.G. 2024, Doc. 7 - paras. 1-17](#)).

153. The Working Group further considered the recommendations on the realisation of the value of seized movable assets, where the agreement was reached to focus on disposal by public sales but allow for a wider range of options to be exercised by the public authority, and further allow for agreements between the creditor and the debtor with respect to the disposal of the seized assets ([Study LXXVIB – Ext. W.G. 2024– Doc. 7, paras 18-28](#)).

154. In relation to third-party debt orders, the Working Group discussed the legal process that they imply, in particular as to the responsibilities of third-party debtors and the implications of their failure to comply with such debt orders. The necessity of having mechanisms in place to verify the existence and amount of the debtor's claim was then highlighted, ensuring that third-party debtors provide accurate and timely information. The Working Group finally considered the potential for digital platforms and intermediaries to play a role, in order to reflect on the evolving nature of financial transactions and the necessity for modernised enforcement practices ([Study LXXVIB – Ext. W.G. 2024– Doc. 7, paras. 29-46](#)).

155. The Working Group also reviewed non-monetary enforcement, thereby addressing the distinction between possession and control and the implications for both tangible and intangible assets. The Working Group further analysed the distinction between enforceable instruments and enforcement orders, finally agreeing that the enforceable instrument established the initial obligation, while the enforcement order was issued when the debtor failed to comply. The necessity for a formal record of the condition of assets during enforcement procedures was also highlighted to promote efficient proceedings, and the discussion finally concerned the role of enforcement agents in managing and safeguarding assets to ensure proper execution of non-monetary claims ([Study LXXVIB – Ext. W.G. 2024– Doc. 7, paras. 47-53](#)).

156. The Working Group further considered the draft best practices on the enforcement of security rights, focusing in particular on the new guidelines on expeditious relief to support extrajudicial enforcement. It was decided that clear evidentiary thresholds would be important to provide predictability for creditors seeking such relief. The Working Group emphasised the scope of judicial orders in their role to support extrajudicial enforcement, and an agreement was reached on the necessity for orders that facilitate compliance with enforcement provisions, issue protective measures, and promote settlement efforts ([Study LXXVIB – Ext. W.G. 2024 – Doc. 7, paras. 54-64](#)).

157. The Working Group moved to the structure and responsibilities of enforcement organs, emphasising the need for public authority to oversee the enforcement process, regardless of whether agents were from the private sector or were civil servants. It was agreed that regulatory bodies should be distinguished from professional organisations that represent enforcement agents, although both could play a role in regulating and supervising agents. ([Study LXXVIB – Ext. W.G. 2024 – Doc. 7, paras. 65-76](#)).

158. On the final instrument's structure, the Working Group emphasised the need to finalise the sections related to enforcement and technology. There was a discussion on whether the instrument should include a separate part related to the impact of technology on enforcement. There was consensus on including a section in the Introduction on this topic, while specific recommendations regarding online auctions could be integrated within existing parts of the instrument. ([Study LXXVIB – Ext. W.G. 2024 – Doc. 7, paras. 77-82](#)).