

## **Fifth Conference on International Coordination of Secured Transactions Reform**

*4 – 5 October 2022*

### **Summary Report**

1. Between 4 – 5 October 2022, the Joint Network for Coordinating and Supporting Secured Transactions Reforms (the Joint Network) held the 5th International Coordination of Secured Transactions Reform Conference (STCC5) at the UNIDROIT Headquarters in Rome, Italy. STCC5 was hosted by UNIDROIT in its capacity as the 2022 Chair of the Joint Network. Over two days, 40 panelists and 70 experts (participating both in-person and virtually) discussed a variety of issues associated with the coordination of secured transactions reform.
2. At the start of the Conference, UNIDROIT Secretary-General Ignacio Tirado, UNCITRAL Secretary Anna Joubin-Bret, IFC Global Chief Industry Specialist Hans Koning, OAS Director Dante Negro and NatLaw CEO Ignacio DeLeon all delivered opening remarks welcoming participants to the Conference.

#### **Panel 1 – Coordination in the legislative development of secured transactions instruments – an overview**

3. Ignacio Tirado (UNIDROIT), José Angelo Estrella Faria (UNCITRAL), and Gérardine Goh Escolar (HCCH) provided a high-level overview of the three primary legislative organisations' current projects and future anticipated projects related to the development of secured transactions instruments.

#### **Panel 2 – Coordinating new instruments under development and the existing international framework**

4. Moderated by Anna Veneziano (UNIDROIT), panel 2 consisted of speakers William Brydie-Watson (UNIDROIT), Monica Canafoglia and Jae Sung Lee (UNCITRAL), Louise Gullifer (University of Cambridge), and Neil Cohen (Brooklyn Law School).
5. The panel addressed the issue of the coordination of current projects of UNIDROIT and UNCITRAL on, or which covered, secured transactions, with the existing global uniform law

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framework, with particular reference to UNIDROIT's and UNCITRAL's adopted instruments in this field. The following projects were discussed: the Model law on Factoring (UNIDROIT); the Principles on Digital Assets and Private Law (UNIDROIT); Best Practices for Effective Enforcement (UNIDROIT); and UNCITRAL's project on access to credit for SMEs.

6. Two main questions were discussed by the panel. The first question posed to the panelists was how their projects were to be coordinated with existing UNIDROIT or UNCITRAL instruments and what the added value of the projects were against the backdrop of the existing international legal framework. The second question referred to the biggest challenges in coordinating the new projects.

### **Panel 3 – Joint Network for Coordinating and Supporting Secured Transactions Reform: further steps to improve coordination**

7. The overarching objective of this panel was to discuss how the Joint Network could further support the coordination of secured transactions reform through possible initiatives, such as the development of an online platform maintained by the network. The panel was comprised of a representative from each of the Joint Executive Committee members: Ignacio Tirado (UNIDROIT), Jae Sung Lee (UNCITRAL), Elaine MacEachern (IFC), Jeannette Tramhel (OAS), and Spyridon Bazinas (NatLaw). A summary of discussions relating to the establishment of an online platform for the Joint Network is available in Annexe 1 of this report.

8. The panel also discussed Joint Network membership. Ignacio Tirado (UNIDROIT), on behalf of the Executive Committee of the Joint Network, noted that the International Law Institute (ILI) would become a member of both the Joint Network and the Executive Committee. UNIDROIT further noted that all major organisations participating in the Conference and willing to contribute to the Joint Network would be invited to become Joint Network members.

### **Panel 4 – Coordinating secured transactions reforms with the private sector and non-governmental organisations**

9. Panel 4 was moderated by Spyridon Bazinas (NatLaw). Speakers included Monica Blanco (FCI), Bob Trojan (World of Open Account), Richard Kohn (Secured Finance Network), and Chris Wohlert (APFF-FIDN). The panel examined how private sector and non-governmental entities

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participated in the design and implementation of secured transactions reforms and considered how such arrangements could be improved.

### **Panel 5 – Implementation of secured transactions reforms in the agricultural sector**

10. Panel 5 was moderated by José Angelo Estrella Faria (UNCITRAL). Speakers included Teemu Viinikainen (FAO), Elaine MacEachern (IFC), Philine Wehling (UNIDROIT), and Marek Dubovec (ILI). The panel had the objective of exploring the implementation of reforms that increased access to credit in the agricultural sector, which a specific focus on financing along the agricultural supply chain, warehouse receipts and crop receipts.

11. The panel discussed different projects, international standards and guides related to agrifinance from international bodies including EBRD, IFAD, IFC, FAO, UNCITRAL, UNIDROIT and World Bank covering the areas of crop receipts finance, contract farming, equipment leasing, warehouse receipts finance, exchange-based finance and secured agriculture production loans. The panel considered the Model Law on Secured Transactions (UNCITRAL), the Model Law on Electronic Transferable Records (UNCITRAL), the Working Group for Adoption of a Model Law on Warehouse Receipts (UNCITRAL/UNIDROIT, ongoing), the Working Group for Adoption of a Model Law on Factoring (UNIDROIT, ongoing), Good or Sound Practices for Commodity Storage and Delivery Infrastructures (IOSCO), the Legal Guide on Contract Farming (UNIDROIT, FAO, IFAD), Crop Receipts: A New Financing Instrument for Africa (IFC), Enabling the Business of Agriculture (World Bank, 2019), and Agricultural Lending: A How to Guide (IFC), Agricultural Value Chain Finance (FAO) etc.

### **Panel 6 – Coordinating the implementation of secured transactions reforms – the role of International Financial Institutions**

12. Panel 6 was dedicated to the key role played by international financial institutions in secured transactions reform. Moderated by Elaine MacEachern (IFC), with Milot Ahma (EBRD) and Catherine Marsh (ADB) as speakers, the panel discussed recent developments and experiences, with useful reflections on the challenges faced when implementing secured transactions reforms in developing countries.

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## **Panel 7 – Coordinating the implementation of secured transactions reforms at a regional level with a special focus on gender**

13. Panel 7 was moderated by Jeannette Tramhel (OAS). The other panelists were Sonja Kelly (Women’s World Banking), James Kashangaki (FSD Kenya), Maria del Pilar Bonilla (Consultant), and Mike Dennis (APEC consultant). The objective of the panel was to discuss secured transactions reform initiatives being undertaken at a regional level and to discuss how such reform supports women’s financial inclusion and economic empowerment.

14. The panel began with one panelist who provided an overview of the specific challenges that women faced in gaining access to credit. She presented global data about women outside the financial system and barriers to women’s access to credit (gender-disproportionate lack of ID, discrimination by lenders, and property ownership) and then outlined the benefits and challenges associated with three alternative lending options: use of movable collateral, digital credit and person-to-person lending.

15. Given that gender lens perspective, other panelists outlined the secured transactions reform initiatives in Kenya, Latin America and the Caribbean and regional reforms being undertaken through the APEC Economic Committee.

16. The panel had two key take-aways. First, there was need for capacity-building at various levels throughout the reform process. Not only was this required in order to enact and implement legislation, it was also required by the various users in the system – lenders, lawyers, judges – and borrowers too. Secondly, although work on reforms could be done on a regional basis, there was a consensus that implementation should generally be undertaken on the basis of international, rather than regional, instruments.

## **Panel 8 – Coordinating secured transactions reforms with regulatory agencies**

17. Moderated by Mark Walter (ILI), panel 8 featured speakers Giuliano Castellano (University of Hong Kong), Marek Dubovec (ILI), and Avery Belka (Federal Reserve Bank of San Francisco) and explored the design and coordination of secured transactions reforms with regulatory agencies.

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**Panel 3 – discussions regarding the establishment of a Joint Network online platform**

1. The concept of an online platform had previously been discussed by the Joint Network on the basis that it would be useful to have a platform with accurate data regarding the status of secured transactions reforms across the globe. The platform would allow Joint Network members to coordinate their efforts in assisting countries with secured transactions reforms and avoid overlapping reform efforts.
2. The representative from UNCITRAL noted the difficulty that even UNCITRAL itself had, given limited resources, to determine whether a State has adopted the UNCITRAL Model Law on Secured Transactions. It was noted that support by the Joint Network members to inform the Joint Network of the status of the implementation of secured transactions reforms in different States could be very valuable, since such information was not always easy to obtain.
3. The panel discussed various matters related to the possible establishment of a Joint Network informational platform in the form of a website. Discussions focused on whether the platform should include information such as: (i) whether a particular secured transactions reform has taken place in a certain State, (ii) whether reform projects were currently underway, and (iii) whether a hard law or soft law instrument had been adopted. The panel further discussed the basic types of information that could be included on the website in relation to a reform, including: (i) the status of the secured transactions laws in a State, (ii) whether reform is ongoing in that State, and (iii) the relevant agency of that State responsible for the reform. It was suggested that the Joint Network could consider sharing capacity building information including publications, presentations, diagnostics, statistics and economic analyses.
4. The panel discussed whether the proposed platform should simply give notice of a secured transactions reform (based on information received from a State or a Joint Network member) and provide relevant links, or whether the platform should provide an actual assessment of the reform. While an assessment would be valuable, if it were the case that it was considered that a State had not implemented an instrument faithfully, there would be difficulties in publishing a negative assessment on the platform. A second problem was the ability of the Joint Network to assess the implementation of reforms in different languages.

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5. Several panellists emphasised that the online platform would not be a simple snapshot in time and would have to be kept up-to-date continuously. It was agreed that if the platform were to contain dynamic information (information other than links to the respective Joint Network members' websites), the information must be continuously updated, as featuring outdated information would mislead users and would be worse than having no information at all. It was noted that it would be difficult to balance the breadth and depth of the information to be contained on the platform with the platform's sustainability, cost, and maintenance.
6. It was suggested that the information could be compiled and updated on a regional basis, with data being uploaded and updated for one region per year. It was noted that an annual, region-based updating of the website could be linked with the Joint Network's annual Coordination Conferences.
7. The panel discussed whether parts of the website should have restricted access, including in relation to capacity building material and sensitive information regarding ongoing reforms.
8. It was noted that NatLaw had already established a global tracker on secured transactions reform. The representative from NatLaw indicated that NatLaw would be happy to undertake the preparatory work for the joint platform, on behalf of the Joint Network. NatLaw noted that Natlaw could be an operator, but not the owner, of the website and that the operator could change from time to time.
9. Several participants suggested that the platform should provide tools for reform, instead of merely providing information on what reforms were underway. Including such tools would make the platform significantly more useful for practitioners and prospective lenders. It was noted that while the platform might not be able to prepare assessments on secured transactions reforms, it could provide links to relevant academic and economic assessments. It was further suggested that the website could include a communication channel specifically for the secured transactions community, something akin to Slack or Microsoft Teams to enhance the communication between ST experts. Another suggestion was that the platform could provide a mechanism through which users could submit information regarding their experience in a particular country. It was suggested that this functionality could be useful in terms of keeping the information current and up-to-date.
10. Finally, several participants noted that the Joint Network would have to consider potential liability issues relating to inaccurate information on the platform.

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