



**UNCITRAL International Colloquium on Civil Asset Tracing and Recovery
Vienna, December 6th 2019 - Panel 2: Perspectives of international organizations**

**UNIDROIT's present and future work
with relevance to asset-tracing and recovery**

(Prof. Anna Veneziano, Deputy Secretary-General, UNIDROIT)

Among the instruments developed by the Institute for the Unification of Private Law UNIDROIT, those which touch upon issues relating to enforcement of creditors' rights (including asset-tracing and recovery) fall into three main areas of work:

- (1) The work on security interests and financing of high value, mobile and uniquely identifiable equipment through the 2001 **Cape Town Convention on International Interests in Mobile Equipment and its Protocols** (2001 Aircraft, 2007 Luxembourg Rail, 2012 Space and 2019 Pretoria MAC - Mining, Agricultural and Construction - Protocols)
- (2) The work on **transnational civil procedure**, in particular the 2004 ALI-UNIDROIT Principles and the ELI-UNIDROIT project on European Rules on Civil Procedure (to be finalized in May 2020)
- (3) The project on **Principles of Effective Enforcement** (which was already included in the 2017-2019 Work Programme and has been reconfirmed, through a proposal by the World Bank with a wider scope, for the 2020-2022 Work Programme).

Cape Town Convention and its Protocols

The Cape Town Convention and its Protocols contain detailed provisions on creditors' remedies upon debtor's default. While the conventional regime does not generally address issues of enforcement of such remedies, Contracting States can make use of declarations to strengthen creditors' rights, which impact on their enforcement, e.g. allowing for out-of-court creditor's action; imposing specific timeframes to obtain relief within debtor's insolvency, including repossession of the asset; excluding discretion by the relevant authority in granting the remedy, with particular regard to advance relief pending final determination of the case; limiting or excluding oppositions or counter-actions.

There are however a few specific features of the treaty regime which have a more direct impact on asset-tracing and recovery. I will refer here to two sui-generis mechanisms contained, respectively, in the Space Protocol and the Luxembourg Rail Protocol to the Cape Town Convention. These mechanisms may offer an interesting model to be evaluated in the framework of more general rules on asset-tracing and recovery, bearing in mind that they were meant to operate within the specific framework of the Cape Town Convention treaty system as well as its specialized scope of application ("hard law" instrument; protection of creditor's interests on certain types of uniquely identifiable mobile equipment; asset-based registry...).

(a) The "ITT&C" enforcement mechanism

The Space Protocol takes into account the physical impossibility of repossession in the case of satellites and other space assets, by recognising the importance for the creditor of revenue streams in relation to the space asset. An interesting solution provided for in this regard is the "ITT&C" enforcement mechanism (Tracking, Telemetry and Control). The Protocol allows the parties to specifically agree to the placement of command codes and related data and materials with a third party so that the creditor may establish control over, or operate the space asset, subject to certain safeguards imposed by Contracting States.

(b) *The URVIS (Unique Vehicle Rail Identification System)*

The URVIS is a special feature of the Luxembourg Rail Protocol which will ensure unique identifiability of railway rolling stock through the issuance of a unique number by the International Registry – If coupled with modern technology, this mechanism has great potential in allowing traceability of railway rolling stock equipment around the world, and not exclusively for enforcement purposes.

Transnational Civil Procedure

The ALI-UNIDROIT Principles on Transnational Civil Procedure were mainly designed to give guidance for first instance procedures and only minimally did they address issues of enforcement. In particular, Principle 29 emphasises the need for speedy and effective enforcement, but the comment makes it clear that the topic as such was beyond the scope of the Principles.

The ELI-UNIDROIT European Rules on Civil Procedure represent the first regional project adapting the ALI/UNIDROIT Principles to the specificities of regional legal cultures. As such, they are more comprehensive and detailed than the Principles, and cover additional issues such as appellate procedures. They also, however, stop short of covering enforcement procedures. The most interesting part of the ELI-UNIDROIT Rules in this regard is the section on “Provisional and Protective Measures (Part X). This section’s goal is, inter alia, to “ensure or promote effective enforcement of final decisions concerning the substance of the proceedings (...) including securing assets” and “preserve the existence and value of goods or other assets” (cf Rule 184).

Principles on Effective Enforcement

Finally, UNIDROIT’s work programme already featured a project on “Principles on Effective Enforcement” focusing in particular on judicial enforcement. This project, based on a preliminary feasibility study conducted by Professor Rolf Stürner, was reconfirmed for the Triennial Work Programme 2020-2022 on a proposal by the World Bank and is expected to be granted a higher priority and a wider scope. Asset-tracing and recovery will certainly be considered within the enforcement measures.

Conclusions: main take-aways for the discussion

There is a notable gap in uniform law instruments relating to enforcement matters, and clear need for global guidance to concretise the general statements advocating for swift and effective enforcement proceedings. In this regard, the potential role played by technological developments in finding innovative solutions should be further explored. Mindful of the practical importance of this area of the law which is often underestimated, UNIDROIT has started work on Principles of Effective Enforcement and is open to exploring the potential synergies with UNCITRAL’s and other organisations’ work in this area.