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## REPORT

(prepared by the UNIDROIT Secretariat)

### **Item No. 1 on the draft Agenda:** Welcome by the President of UNIDROIT

1. The 60<sup>th</sup> session of the General Assembly was held at the headquarters of UNIDROIT on 1 December 2006 and was attended by the diplomatic representatives in Italy of 49 member States and three observers (*cf.* the list of participants in Appendix I). The meeting was opened by *Mr B. Libonati*, President of UNIDROIT.
2. The *President* welcomed the participants and thanked them for their presence. He recalled that the General Assembly offered an opportunity for the Secretariat to present to the representatives of the member States the work accomplished over the past year, to inform them of any difficulties encountered and to submit proposals to solve these difficulties; in 2002 and 2003, the General Assembly had held joint brainstorming sessions with the Governing Council and on those occasions the Secretariat had presented a *memorandum* containing proposals to increase Governments' involvement with the life of the Institute. However, the heavy workload of diplomats posted in Rome and of their respective Ministries probably explained why these proposals were never followed up.
3. The President expressed his profound gratitude to H.E. Ambassador Valente who, in his capacity as President of the General Assembly in the year 2005/2006, had given freely of his advice and support, both essential to the work of the Institute. The President then thanked Mr J. Renggli, who had served the Institute as President of the Finance Committee and who had now returned to Berne; Mr Renggli, who never lost his calm and was unfailingly efficient and thorough, was always at the Secretariat's disposal, an attitude which reflected the staunch generosity of the Swiss Government *vis-à-vis* the Organisation. The President expressed his gratitude to Mr K. Vachon, Counsellor at the Embassy of Canada, who had agreed to take over from Mr Renggli.
4. The President then went on to remind those present of the invitation to participate in the diplomatic Conference for the adoption of a Rail Protocol to the Cape Town Convention in February 2007 issued by the Government of the Grand Duchy of Luxembourg, and requested the representative of the Grand Duchy to express to his Government the Institute's sincere gratitude.
5. The President recalled that the Institute had been able, in 2006, to fill the key position of Deputy Secretary-General, thanks to the backing of the Government of the United Kingdom, and that the Institute's most important project in economic terms – the draft Convention on intermediated securities – had attracted support from the private sector; as a consequence, cautious optimism was in order as to the future activities of the Organisation.
6. The President wished the Assembly every possible success in its deliberations.

**Item No. 2 on the draft Agenda:** Statement by the President of the General Assembly for the year 2005-2006

7. The *President of the General Assembly for the year 2005/2006, H.E. Mr Vasco Taveira Da Cunha Valente, Ambassador of Portugal in Italy*, thanked UNIDROIT and congratulated it on the excellent work that had been done in 2006. It had been a great honour to serve as President of the UNIDROIT General Assembly for the past year. He recalled that 2006 had seen, in particular, the accession of a new member State, Lithuania, and invited all participants to join him in welcoming Lithuania, represented by *H.E. Mr Sarunas Adomavicius, Ambassador of Lithuania in Italy*.

**Item No. 3 on the draft Agenda:** Appointment of the President of the General Assembly for the year 2006-2007

8. The *President of the General Assembly* recalled that there was a well-established practice for the presidency of the General Assembly of UNIDROIT to be held on the basis of a system of rotation, by a Member State from one of the five continents. For the year to come it was the turn of the Americas and, following informal consultations, he was pleased to propose *H.E. Dr Gabriel Valdéz, Ambassador of Chile in Italy*, to be elected President of General Assembly for the year commencing with today's session. He recalled that Ambassador Valdéz was a distinguished lawyer, a leading political figure in his country and that he served for many years as Minister of Chile and as Under-Secretary General of the United Nations, and that he contributed greatly to the restoration of democracy in his country.

9. *The General Assembly accepted the proposal.*

**Item No. 4 on the draft Agenda:** Statement by the President of the General Assembly

10. Taking the chair, *Ambassador Valdéz* expressed his gratitude for the trust which was placed in him. It would be a pleasure for him to chair the General Assembly at its 60<sup>th</sup> session and to be at the disposal of the Institute for the year to come.

11. He recalled that Chile acceded to the UNIDROIT statute more than half a century ago, and that there existed strong cultural, and in particular legal, links between Chile and its neighbours and friends in the Western hemisphere and the Old World, notably with Rome. However, the work of UNIDROIT tended to be at that time somewhat eurocentric, and that had changed dramatically in recent years. He affirmed that the Institute was contributing, with the instruments finalised recently or to be adopted in the near future, to the modernisation of the law in financial and commercial matters in developing countries, economies in transition and in the so-called tiger States.

12. The President expressed his desire briefly to introduce himself and to share with the members of the Assembly a few thoughts regarding their common mission. After his studies in Italy, in Chile and in Paris, he had been for 14 years the head of the legal department of the greatest Chilean steel company, was then appointed Minister of Foreign Affairs and thereafter Assistant Secretary-General and Director of the UNDP in New York. Back in Chile, he organised the fight against the dictator Pinochet, spent a long time in jail, and after the change of regime was elected to the Senate and served as President of the Senate until the previous month. At the end of his life he had been sent to Rome as Ambassador, and he considered it a great honour now to serve as President of the UNIDROIT General Assembly. He wished to state, both as a former businessman and a former legislator, that new horizons were beckoning, and that the world was facing unprecedented challenges. Globalisation could either be a very dangerous development or produce significant benefits for mankind, depending on the legal framework. He recalled that Joseph Stiglitz, the economist and Nobel laureate, had warned that globalisation would produce more problems than benefits if a few multinational groups of companies were allowed to eliminate true competition. Modern and functional frameworks for international commerce and finance were

needed. Moreover, international law – both public and private – had an impact on the environment and the common heritage of mankind. Activities in the Arctic and Antarctic, which he watched closely in his capacity as Senator from the South of Chile, called for adequate regulation. The law was essential and aimed at organising three values: property, freedom and efficiency. He added that legal education should remain a priority in this Organisation. The combination of the scholarly and the practitioner's approach distinguished the activity of UNIDROIT. He concluded that with everybody's help, he would do his best to support UNIDROIT's activities in the coming year.

**Item No. 5 on the draft Agenda:** Adoption of the agenda (A.G. (60) 1 rev.)

13. *The draft Agenda was adopted as proposed (it is reproduced in Appendix II).*

**Item No. 6 on the Agenda:** Statement regarding the Institute's activity in 2006 and Implementation of the Strategic Plan (A.G. (60) 2)

14. In introducing this item, the *Secretary-General* focused on the continuing tension between the high expectations Governments nurture as regards the Organisation's ability to deliver large-scale technical assistance (developing countries) and highly sophisticated instruments for the world's financial markets (Europe, north America, east Asia), at the same time. While UNIDROIT was flattered by the trust in its capacity to develop first-rate legislative instruments and provide a whole range of documentation services and research resources, the Secretariat kept reminding Governments, in particular Governments in developing countries contemplating accession to the Organisation, that its budgetary and, therefore, human resources were very limited and that, consequently, the Secretariat was forced rigorously to prioritise. At the same time, he wished to remind everybody that, on the occasion of the joint brainstorming sessions, agreement had been placed on record that UNIDROIT's distinct identity required to prioritise *within both* areas, legislative work and outreach-services, rather than narrowing the scope of its activities to just one of the two principal branches. The Secretary-General elaborated further on such requests for capacity-building services by ASEAN Member States, in particular Indonesia. He underlined the leading role Member States from the Asia-Pacific region would ideally assume in shaping and supporting initiatives of this nature and expressed his gratitude to the Governments of Australia, China, Japan and Korea who had indicated their willingness to assist the Institute in its efforts to broaden its membership basis in Asia and the Pacific.

*Legislative activities: preparation of instruments*

15. With respect to the second protocol to the 2001 Cape Town Convention, i.e. the railway-financing protocol, the *Secretary-General* reminded the Assembly that, in July, the Government of the Grand Duchy of Luxembourg had invited all Member States of the United Nations to attend the diplomatic Conference for the adoption of the instrument from 12 to 23 February 2007. He emphasized that it was one of the most sophisticated financial centres that had thereby acknowledged the potential of the draft Protocol for the future of transportation infrastructure in many parts of the world. The Government of Luxembourg had, moreover, funded the preparatory seminar for African countries held on 17 November 2006 in Lomé (Togo).

16. The Secretary-General reported on the status of the Cape Town Convention and the Aircraft Protocol (13 Contracting States) and on the 1<sup>st</sup> Asia-Pacific Cape Town Convention organised by the Chinese Civil Authority and the Aviation Working Group and attended by Government representatives and experts from all Chinese and major Asian airlines. At the meeting, the CFOs of airlines had given testimony regarding the economic benefits of ratifying the instruments provided the right declarations with respect to remedies and the insolvency regime were made.

17. With respect to the draft Space Protocol, work was held up due to various factors, most importantly Mr Stanford, Principal Research Officer in charge of the project having temporarily been forced to carry out the functions of Deputy Secretary-General *ad interim* and chief

administrator. He would now again be free to devote his unique talents and his attention to getting the draft Protocol back on track. The lesson to be learnt was that an apparently quick and inexpensive fix of a structural staffing problem could create significant extra cost in terms of delay to member States.

18. The Secretary-General further reported that the draft Convention on intermediated securities had been before the Committee of governmental experts which had held its third session from 6 to 14 November 2006. A very short fourth session, entirely devoted to specific issues such as the so-called “transparent systems”, would be held in May 2007. The diplomatic Conference was expected to be held in early 2008. How important this draft and the other capital-market related projects were, was evidenced by a special conference on stability of financial markets organised by the International Monetary Fund (IMF) in mid-October for specialists from central banks and regulatory agencies where the UNIDROIT work had featured prominently.

19. With respect to the draft Model Law on leasing, the Secretary-General briefly outlined the envisaged timetable for the intergovernmental consultation process and referred for details to Mr Stanford’s presentation.

20. The Working Group for the preparation of five new chapters to be added to the UNIDROIT Principles of International Commercial Contracts had held its first session. The Group had commenced to discuss a number of basic issues and appointed reporters who would submit their reports for the next session in June 2007.

21. The Secretary-General considered that a fair assessment of the Organisation’s legislative activities from the point of view of criteria set forth in the Strategic Plan would conclude that:

- ◆ the quality criteria were being met;
- ◆ the delays from which the Rail and the Space Protocol had suffered during 2005 and into the first months of 2006 had almost been recovered.

#### *Depositary functions and follow-up work*

22. In the course of his overview of follow-up work, the Secretary-General described in detail the highly demanding and time-consuming depositary functions under the Cape Town Convention and the Aircraft Protocol. Given that the majority of States engaged in the implementation of the instruments were developing countries with little legal infrastructure and public-international-law know-how, the consultations as a rule were spread over many months and required Mr Atwood, the officer in charge of the depositary functions, not infrequently to spend nights and weekends in the office.

#### *Publications*

23. With respect to the *Uniform Law Review*, whose role as the most effective among the Institute’s tools employed in its efforts to disseminate its texts and to reach out to developing countries and transition economies was undisputed, the Secretary-General acknowledged that certain Governments had difficulties in accepting that more than one member of the staff was fully assigned to the journal. He indicated that discussions with members of the Review’s advisory board were under way with a view to identifying appropriate strategies capable of saving resources while maintaining the periodical’s quality.

#### *Staffing/ internal organisation of the Secretariat*

24. The Secretary-General noted that eleven months after the arrival of a new Deputy Secretary-General, it had become clear that a sound organigramme that included a skilled administrator was the foundation if one saw the Institute and its activities as a building. He submitted that only in solid foundations would prudent owners venture to anchor a sophisticated building in which complex and expensive processes designed to produce first-class instruments and services were to

take place. Experience had shown that this was not sustainable without key administrative functions being carried out by a person with specific skills. In his personal view, one might even put a legislative or other project which had not the highest priority temporarily on hold if only such a sacrifice permitted the full re-instatement of a post which – generously but unwisely – had been taken care of by its retired former holder on an almost voluntary basis.

25. The *representative of Canada* expressed her thanks to the Secretary-General for his presentation and recalled that her Government had a strong interest in the development of the Strategic Plan, considering that it was an important tool both for medium and long-term planning for the Institute and for the member States. Canada believed that the prioritization of the activities still needed work; therefore it strongly urged the Secretary-General and the Secretariat to make sure that the Governing Council understood that when all of the activities were given high priority, the result was that there was no prioritization, and this did not help in making decisions about which activity should proceed in the context of the availability of budgetary resources. It would be helpful to have a more detailed breakdown of priorities in the context of certain initiatives; for example, for what concerned the International Interests on Mobile Equipment, it would be helpful to separate activities relating to the Convention itself and the Protocols. She indicated that the promotion of the Aircraft Protocol was a higher priority item, and that the Rail Protocol should obviously be given a high priority. In terms of the Space Protocol, the representative of Canada appreciated the explanation that was given by the Secretary-General as to the reason for this project not advancing as quickly as the Secretariat or the Governing Council might have wished. Canada however suggested that progress on that Protocol might be also due to a lack of interest on the part of member States; the Government of Canada would attribute a much lower level of priority to the Space Protocol and would suggest that the Secretariat not devote significant resources to that Protocol for the foreseeable future. For what concerned other priorities, the Convention dealing with intermediated securities was a high priority matter which should go ahead. She indicated that, as most of the non-legislative activities were indicated as high priority, it was essential that the Governing Council re-examined its approach to strategic planning and considered to assign priorities more selectively.

26. The *representative of the Russian Federation*, having expressed his appreciation for the intervention of the Secretary-General, informed the General Assembly that its Government approved the main provisions of the Strategic Plan of UNIDROIT for the years 2006-2007, and in particular the elaboration of the draft Protocols to the Cape Town Convention, the Model Law on leasing, the Convention on substantive rules regarding intermediated securities as well as the new chapters of the Principles of International Commercial Contracts. He indicated that his Government wished that UNIDROIT prepare the draft Space Protocol as soon as possible; he was able to declare officially that in case of successful termination of the work on the draft, the Government of the Russian Federation could consider the possibility of hosting the Diplomatic Conference for its adoption.

27. The *representative of Italy* expressed satisfaction at the success of the activities accomplished in the current year, and appreciation for the efforts undertaken by the Secretary-General. He affirmed that the Government of Italy strongly supported the call of the Diplomatic Conference for the adoption of the draft Rail Protocol to the Cape Town Convention in Luxembourg in 2007 in which Italy intended to participate with a large delegation. He stated that the Government of Italy was interested in the adoption of a draft Model Law on leasing and strongly encouraged the rapid finalisation of the work on the draft Convention on intermediated securities and hoped that it would be possible to have a Diplomatic Conference for its adoption in 2007 or 2008.

28. The *representative of Switzerland* expressed his gratitude for the way in which the activities of the Institute had been presented; he went on to state that the Swiss Government endorsed the need to prioritise raised by the representative of Canada. His Government attached very high

priority to the intermediated securities project, and the diplomatic Conference for its adoption, which was to take place in the first half of 2008, might be held in Switzerland. The Swiss Government's decision in this connection might be expected in the Spring or Summer of 2007.

29. The *representative of the United Kingdom* thanked the Secretary-General for his useful and informative report, and indicated that she was interested in what was said on reforms on budget planning, accounting and internal audit. The Government of the United Kingdom endorsed what had been said by the representative of Canada regarding the need to prioritise and for the Governing Council to be more rigorous. She indicated that for the United Kingdom the project on intermediated securities was a high priority and that it considered the Space Protocol a low priority.

30. The *representative of Nigeria* indicated that his Government accorded the highest priority to the timely completion of work on the draft Protocol to the Cape Town Convention on Matters Specific to Space Assets. He recalled that the meeting which took place in London in April showed clearly the need for this Protocol and the importance of active participation of all the representatives of the international commercial space financial communities in the remaining stages of this work. He wished to stress the particular importance of the future Space Protocol for developing countries. His Government also supported the preliminary draft Model Law on leasing, because the project was specifically intended for developing and transition economies in general, and for African countries in particular, and hoped that this project could be completed without delay.

31. The *representative of the United States of America* expressed the appreciation of its Government for the hiring of a new Deputy Secretary-General, because that administrative position, that had been vacant for a long period, was essential to UNIDROIT. He affirmed that he had listened with great interest to the intervention of the Secretary-General explaining the document on the Strategic Plan, and that he believed that that living document could help refine the direction of UNIDROIT. Although the opinions expressed by the representatives of the member States would obviously not always match, in particular as concerned priorities, he expressed the view that it was an extremely valuable document. He indicated that the Government of the United States of America attributed a high level of priority to the Space Protocol, and that substantial support was evidenced for this work in London in 2006. He wished to commend the Secretary-General for showing leadership and vision in having proposed and shaped the investment securities treaty project and that his Government strongly supported the 4<sup>th</sup> session of the Committee of Governmental Experts to take place in 2007. He expressed the hope that the draft Model Law on leasing could be concluded in 2007. He concluded that the Institute had to fund many activities with an extremely tight budget. Having designed and further developed the Strategic Plan had helped to carry through an ambitious work programme with a much smaller staff than other Organisations. His Government was confident that, on the basis of the Strategic Plan, the Governing Council, the General Assembly and its Finance Committee and the Secretariat would be able to provide leadership and to chart the map for the way forward, maintaining UNIDROIT's distinct identity. It was, in his Government's view, this distinct identity which was at the heart of the Organisation's very good work.

32. The *representative of Colombia* expressed the pleasure of its Government at the nomination of Dr Gabriel Valdéz, the good and experienced Ambassador of Chile, as President of the Assembly. He congratulated the Secretary-General on his report and announced the participation of his Government in the Diplomatic Conference in Luxembourg and all the other highly topical UNIDROIT meetings in the year to come.

**Item No. 7 on the Agenda:** (a) Presentation of the draft Protocol on Rail Financing to the Cape Town Convention and the Preparation of the Diplomatic Conference for its Adoption (Luxembourg, 12-23 February 2007)

33. *Ms Marina Schneider (UNIDROIT Secretariat)* illustrated the content of the draft Protocol on Rail Financing to the Cape Town Convention, adopted in 2001. She recalled that a diplomatic Conference to adopt the draft Protocol was to be held in Luxembourg at the invitation of the Government of the Grand-Duchy of Luxembourg from 12 to 23 February 2007.

34. The Cape Town Convention was a framework Convention containing basic provisions capable of being modified by equipment-specific protocols (aircraft, rail, space ...), with a view to ensuring that the specific needs of the sector concerned would be met. A first such Protocol, the Aircraft Protocol, had been adopted alongside the Convention in 2001 and had entered into force in March 2006 (bringing the number of Contracting States to 13). A Space Protocol was being put together. The drafting of the prospective Rail Protocol had got underway prior to the Cape Town diplomatic Conference and the Final Act adopted on that occasion, in 2001, contained a Resolution (No. 3) urging that work on the Rail Protocol and its adoption should proceed at speed. Work on the Protocol benefited from the fruitful co-operation between Unidroit and another international Organisation, the Intergovernmental Organisation for International Carriage by Rail (OTIF), which had 42 member States and was headquartered in Berne (Switzerland). One of its objectives was to develop the uniform systems of law which apply to the carriage of passengers and freight in international through traffic by rail. The rail sector, which covered not only passenger vehicles and freight, engines and specialised equipment, but also light underground railways and urban underground railways and tram systems, was in dire need of capital investment. Cutting the cost of financing railway rolling stock was in the interests of the railway companies, equipment manufacturers, banks, the railways and States, in particular where the latter intended to scale down their financial involvement in this sector. The lower cost of financing railway rolling stock would also make an important contribution to increasing the competitive edge of railways vis-à-vis their competitors, primarily road carriers. Finally, for many Governments, the Rail Protocol would be an invaluable tool in terms of supplying development aid to countries whose railway infrastructure is vital to their economic development, and a highly efficient instrument to distribute food aid. The fact was, however, that existing rolling stock was often obsolete and in need of private finance. These different elements had been cited and stressed by the World Bank (through its transport department) which had pledged formal support for the Protocol by indicating that the latter, once adopted, would have contributed to a series of growth targets which were important for its own work. The World Bank intended to be represented at the diplomatic Conference.

35. The text of the draft Rail Protocol as it stood today was the outcome of a lengthy consultation process involving a Committee of Governmental Experts, which had met on three occasions, as well as industry, which had always followed developments closely through the Rail Working Group so as to ensure that the text of the future Protocol would properly reflect the commercial realities of the rail sector. This Group had met frequently and had set up a sectoral discussion forum on the Internet which might be accessed at <[www.railworkinggroup.org](http://www.railworkinggroup.org)>. The draft Protocol – which one rolling stock manufacturer had dubbed “a historic opportunity for the rail sector” – enjoyed broad support in the industry: the International Railway Union had called upon States to accede to the Protocol (see its Internet website). The Registry was a key feature of the mechanism to be set in place, not least because, unlike the aircraft sector, there existed few national registry systems for railway rolling stock that might afford some (limited) protection for investors. A special Working Group on the Rail Registry had therefore been set up which had met regularly and made concrete proposals. Finally, the governmental experts had actively encouraged the organisation of regional seminars with a view to raise awareness of the draft Rail Protocol and of the benefits that might accrue therefrom precisely in those countries which were patently in need of foreign private investment for their railway infrastructure but which had not participated in the governmental expert meetings. Three such seminars were in fact organised, the first in Warsaw

aimed at the countries of Central and Eastern Europe, the second in Mexico for the American continents and the last, on 17 November 2006, in Lomé geared to the African countries.

36. At the invitation of the Government of the Grand-Duchy of Luxembourg, the diplomatic Conference for the adoption of the Rail Protocol would be held, as had already been recalled, in Luxembourg from 12 to 23 February 2007. Ms Schneider expressed her gratitude to H.E. Ambassador Faltz of Luxembourg, who was present at the General Assembly. She also mentioned the fact that the Government of Luxembourg had taken an active part in the work of and made a financial contribution to the Lomé Convention to which she had referred and expressed the gratitude of the Secretariat for this assistance. Invitations to the Diplomatic Conference had been sent to all the member States of the United Nations as had been decided at the Conference which had adopted the Cape Town Convention. Ms Schneider expressed her gratitude to the Luxembourg authorities for its faultless organisation and recalled the deadlines that had been set for delegations to submit comments and inform the competent authorities of the composition of their delegations.

37. The *representative of Luxembourg* thanked the President of UNIDROIT, its Secretary-General and Ms Schneider for their kind words addressed to his Government, and indicated he would pass these on. He then expressed his satisfaction that the representatives of two other member States had indicated their Government's availability to organise diplomatic Conferences for the adoption of two other projects. He congratulated Ms Schneider on her presentation. He confirmed that his Government was firmly convinced of the importance of the Rail Protocol, which would pave the way for investments impossible to envisage at present, and at much lower cost. He recalled that according to some calculations, it would be possible in future to save tens or even thousands of millions of euros per year in financing railway rolling stock once the new system was fully operational and that, therefore, the Protocol would have an impact on the economy worldwide, in particular in the developing countries, a point of particular importance to Luxembourg, one of the very few countries which had achieved and indeed exceeded the United Nations development aid target of 0.7% of GDP. He went on to emphasise that another reason which had persuaded his Government to organise the diplomatic Conference for the adoption of the Rail Protocol was related to the environment; the Government of Luxembourg took the view that rail transport was less polluting than road transport. He added that Luxembourg was the seventh largest financial centre in the world, and that his Government expected the implementation of the new Protocol to create new opportunities for private finance. He expressed the hope that the Conference would be a great success and that the system contemplated by the Protocol would be implemented without delay so that everyone could benefit as soon as possible, just as had been the case with the Air Protocol. He stressed that his Government had received efficient and highly motivated support from the Institute and OTIF in preparing for the Conference. Finally, he reiterated his invitation to participate in the Conference to all the representatives of the States attending the General Assembly, and thanked the representatives of Colombia and Italy who had already official confirmed their participation, as well as the Government of Germany which, as the next President of the European Union, would assist in mobilising the member States of the Union in connection with the Protocol.

(b) Presentation of the draft Model Law on Leasing and the Envisaged Procedure for its Adoption

38. *Mr Stanford (Deputy Secretary-General of UNIDROIT)* introduced the preliminary draft model law on leasing, which had been prepared by a UNIDROIT Advisory Board and authorised for transmission to Governments, for finalisation, by the UNIDROIT Governing Council. He noted that the relevance of UNIDROIT's recent work on cutting-edge issues in international business and financial practice had not always been perceived by the Institute's developing country members as relevant to their own situation. However, the main constituency for uniform law was the developing world, where the absence of modern legal rules affected access to foreign capital investment opportunities.

39. In relation to the preparation of a model law on leasing, lease financing had long been recognised for its potential to enable developing countries to develop their wealth-creating potential. Lease finance had over the years proven its special credentials for enabling countries to develop their wealth-creating potential, and in some countries it accounted for 30% of new equipment finance. The International Finance Corporation (I.F.C.) had quickly seen the special potential that leasing had to foster the development of the market in developing countries, in particular through private sector involvement, and had for a number of years assisted in the development of leasing in such countries. However, it had found that whilst the 1988 UNIDROIT Convention on International Financial Leasing had been adapted as a model by some States contemplating the preparation of a national law, it was nevertheless necessary to prepare a new law each time it moved into a new country and this was very time-consuming and inefficient. The I.F.C. had therefore expressed its desire to have a uniform standard available for use in the jurisdictions with which it was or would be involved, and lent its full support and encouragement to UNIDROIT for the preparation of such a model law. The World Bank, the Equipment Leasing Association of the United States and other major economic stakeholders also appreciated the potential for such work to alleviate major infrastructure financing shortfalls, and for it to serve as a model for those countries, such as the People's Republic of China, that were currently preparing national leasing legislation.

40. The decision by the UNIDROIT Governing Council and General Assembly in 2005 to authorise preparation of such a model law came at a time when Mr Ronald DeKoven had indicated his willingness to provide UNIDROIT with the benefit of his assistance on a complimentary basis. Mr DeKoven, a UNIDROIT correspondent and one of the experts responsible for the 1988 UNIDROIT Convention and a reporter on Article 2A of the Uniform Commercial Code of the United States of America, kindly offered both his time and that of an associate from his law firm, Jenner & Block, Washington D.C., for the project for the period October 2005 - June 2006. This generosity enabled the Secretariat to make unprecedented progress in preparing the text of a preliminary draft model law ready for finalisation by Governments, and in particular for the Secretary-General to request the Governing Council's agreement in 2005 that this project should be wholly self-financing and thus not a burden on the Institute's budget. Normally, once a UNIDROIT project got underway, a smaller or larger group of independent experts would meet to prepare a first draft, with all their expenses (both as regards travel and accommodation) being met by the Institute. On this occasion the Secretariat succeeded in persuading all 13 members of the Advisory Board entrusted with the preparation of the preliminary draft model law to finance their own participation. The Advisory Board included representatives, with direct economic expertise, from North America, Europe, sub-Saharan and North Africa, the People's Republic of China, Latin America and the countries of the former Soviet Union. Chief Mrs Tinuade Oyekunle (Nigeria) was elected Chairman of the Advisory Board and Mr DeKoven Reporter.

41. Over the course of three sessions, held in Rome in October 2005, February 2006 and April 2006, the Advisory Board developed a preliminary draft which was designed to meet the needs of developing and transition economies and, in particular, to cover both financial and operating leases. It also envisaged likely trends in developing and transition economies once leasing had had an opportunity to establish itself there. It dealt with all the key aspects of leasing agreements, in particular the effects of such agreements, their performance and remedies for default, and was structured as a model law to enable national legislators to adapt it to their specific needs.

42. The UNIDROIT Governing Council at its 85<sup>th</sup> session, held in May, authorised the transmission of the preliminary draft established by the Advisory Board to Governments for finalisation. In line with the initial decision taken regarding the conduct of the work being without effect on UNIDROIT'S budget, the Secretariat had obtained assurances as to the availability of the necessary financial support, in particular from the I.F.C., and was therefore working closely with a member Government in Africa to see whether that Government would be prepared to host the first session of governmental experts for the finalisation of the preliminary draft. The Secretariat considered it

particularly important that the intergovernmental consultation process on this project be commenced in Africa, having regard both to the difficulties that member States with developing and transition economies had in fielding experts to participate in the intergovernmental consultation processes, and the importance of such States having the opportunity to participate in the finalisation of an instrument intended for their use.

43. It was hoped to hold the first session of governmental experts in April 2007, as a four-day session starting with a half-day seminar in which members of the Advisory Board would present the basic features of the preliminary draft. Both member Governments and those non-member Governments considered as Governments of countries with developing or transition economies received copies of the preliminary draft for comment in July, and a considerable body of comments had already been received, from Austria, Bolivia, Bulgaria, Cameroon, the People's Republic of China, Germany, Japan, Latvia, Mongolia, Morocco, the Russian Federation, Tunisia, the United Kingdom and the United States of America, as well as from the relevant international Organisations and professional associations, thus testifying to the wide degree of interest that the project had succeeded in arousing among the countries for which it was principally intended. It was further hoped that two sessions of the Committee of governmental experts would suffice and that thereafter the Secretariat would be able to bring what would then be a draft model law to the General Assembly, in extraordinary session, for adoption, at some time during the second half of 2007.

44. The *representative of Canada* thanked Mr Stanford for his presentation of the draft Model Law on leasing, a project of great value to a number of countries. She then asked which steps had been undertaken to meet the comments received from UNCITRAL in the context of the work of that Organisation in developing a legislative guide on secured transactions, and if the draft had subsequently been amended to reflect that need of coordination.

45. *Mr Stanford* replied that those issues had been addressed with satisfaction by both organisations, that a proposal was submitted to the UNCITRAL Secretariat at the beginning of November that would be discussed by the UNCITRAL Working Group on secured transactions in the following weeks. The two Organisations would then be in a position to submit a common proposal to Governments.

46. *The General Assembly took note of the presentation of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock and of the draft Model Law on leasing and the envisaged procedure for its adoption.*

**Item No. 8 on the Agenda:** Presentation of the work of the Uniform Law Foundation and the United Kingdom and United States of America Foundations for International Uniform Law

47. *Sir Roy Goode (President of the Uniform Law Foundation)* expressed his gratitude for being given the opportunity to address the General Assembly on the activity of the three Foundations that had been established with a view to raising resources to supplement the funding of the Institute, in order to help with matters that cannot be covered adequately by the registered budget. He recalled that the oldest foundation was the Uniform Law Foundation, which was specifically established in the Netherlands to raise funds and to promote the work of UNIDROIT, and indicated that more recently the UK Foundation for International Uniform Law and the American Foundation for International Uniform Law had been established. He explained that the three Foundations had their own separate Boards and were expected to raise funds to promote uniform law and in particular the work of UNIDROIT and that brochures and information leaflets containing full details were available. He indicated that, as an order of priority of the interventions had to be established, the Foundations were active, firstly, on the information services, i.e. the databases which were an essential tool for research and scientific work, the Library and the Uniform Law Review, and on the scholarship programme. He informed that the UK Foundation established a

scholarship which would support a young lawyer for four months in Rome and would do that every year. The Foundations were collecting funds from trusts and foundations, the legal profession, the corporate sector, individuals, conferencing income, and publications. On this last issue, he recalled that the income of his own "Official Commentary on the Cape Town Convention" went to the Uniform Law Foundation. He explained that the activities of these Foundations were largely without expense, because many highly prepared professional were willing to give their time freely in order to support UNIDROIT, which was recognised as a top Institution; he added that even those who were generally extremely critical on the drafts produced by international organizations were really impressed by the achievements of UNIDROIT and by its attention for the needs of all legal systems, and in particular for those from developing countries, and that they felt confident about the quality of the financial management and efficient running of the Organisation.

48. *The General Assembly took note of the presentation of the work of the Uniform Law Foundation and the United Kingdom and United States of America Foundations for International Uniform Law.*

**Item No. 9 on the Agenda:** Final adjustments to the Budget, and approval of the Accounts for the 2005 financial year (A.G. (60) 3 and Accounts 2005)

49. *The Deputy Secretary-General* introduced this item. As shown in Document A.G. (60)3, the Budget for the 2005 financial year, approved by the General Assembly at its 58<sup>th</sup> session on 26 November 2004, provided for actual expenditure of € 1,963,850.00 to be met by receipts of € 1,943,850.00 and an estimated surplus from 2004 of € 20,000.00. The Budget also provided for receipts and expenditure in the special accounts to balance at € 15,000.00. The accounts for the 2005 financial year indicate that actual receipts (excluding the 2004 surplus) totalled € 2,028,684.49 and actual expenditure € 1,979,428.08, yielding a surplus for the year as a whole of € 49,256.41. Since at the close of the 2004 financial year there was a surplus of € 24,854.08, the surplus standing to the Institute's credit at the close of the 2005 financial year amounted to € 74,110.49 as opposed to the € 20,000.00 estimated by the Secretariat.

50. In asking the General Assembly to approve the accounts for the 2005 financial year, the Deputy Secretary-General noted that, at its 61<sup>st</sup> session, held on 6 October 2006, the Finance Committee had given an opinion favourable to their approval.

51. *No observation having been made, the President concluded that the Assembly approved the Accounts for 2005.*

**Item No. 10 on the Agenda:** Adjustments to the Budget for the 2006 financial year (A.G. (60) 4)

52. *The Deputy Secretary-General* recalled that it was customary for the Secretariat to submit, first, to the Finance Committee and then to the General Assembly a paper indicating any adjustments that might need to be made to the Budget for that financial year, on the basis of the Accounts available for the previous financial year, the partial accounts available for that financial year and any other modifications due to exceptional circumstances. She indicated that the Secretariat had deemed it necessary to formulate some adjustments to the budget for the 2006 financial year, as illustrated in detail in the document A.G. (60)4.

53. In asking the General Assembly to approve the adjustments for the 2006 financial year, the Deputy Secretary-General noted that, at its 61<sup>st</sup> session, held on 6 October 2006, the Finance Committee had given an opinion favourable to their approval.

54. *The representative of Canada* thanked the Deputy Secretary-General for her presentation, and then requested clarification of the fairly substantial increase in Chapter 2, Article 1, referring to salaries, and of how this increase was to be met.

55. The *Deputy Secretary-General* explained that this was a matter of presentation of the budget and of the accounts. The salary of the staff member in charge of the Institute's depository function, who was appointed in 2004, had not been included in previous budgets nor did it appear in the accounts. The Secretariat took the view that, since this particular function formed part of the Institute's ordinary activities, its cost should be reflected in the ordinary budget. The cost of this entry was covered by contributions made specifically for this purpose by four member States, which effectively provided corresponding cover for the item of expenditure until end-2006.

56. The *General Assembly approved the adjustments to the budget for the 2006 financial year.*

**Item No. 11 on the Agenda:** Arrears in contributions of member States (A.G. (59) 5)

57. The *Deputy Secretary-General* commented on the state of arrears as at 30 October 2006, as set out in Appendix II to Document A.G. (60)5. She pointed out that seven member States were in arrears; of those States, three owed only their contribution for the 2005 financial years, while the position of the other four States gave more cause for concern. She informed the members of the General Assembly that the Secretariat had approached both the Embassies in Rome and the competent authorities of the member States in question on this issue. She assured the General Assembly that the collection of arrears remained high on the Secretariat's agenda, and that nothing would be left undone to redress the situation.

58. The *Chairman of the Finance Committee* recalled that the General Assembly and the Secretariat had adopted the Resolution appended to Document AG (60) 4), which provided a series of measures that were not designed to be punitive, but to serve as a wake-up call for countries that were not paying their dues in a timely fashion. It was also considered that these countries constituted a burden on the others, not least because of the cost in terms of the time the Secretariat had to devote to this issue. He wished to recall that the Finance Committee and the Secretariat had drafted this Resolution, and that the General Assembly had approved it, in order to equip the Secretariat to send signals to member States with outstanding contributions.

59. The *Secretary-General* recalled that when the Resolution was adopted a few years previously, this had been done with the need for considerable flexibility in its implementation in mind, since it was deemed important not to estrange any member States from the Organisation and that it was necessary to proceed very cautiously. As he had already announced to the Finance Committee, for the first time ever the Government of Bolivia, notwithstanding its difficult situation, had indicated, at its own initiative, its particular interest in one of UNIDROIT's projects, i.e. the Model Law on leasing. He expressed the hope that the concrete interest of that Government in one of the projects would help to improve the situation.

60. The *President of the General Assembly* indicated that he would take the initiative of talking to the Government of Bolivia. He recalled that that Government, the first-ever democratic Government in the history of that country, was in a difficult position, and that it might take time for it to comply with its international obligations.

61. *The General Assembly took note of the report of the Secretariat on arrears.*

**Item No. 12 on the Agenda:** Approval of the draft Budget for 2007 and fixing of the contributions of member States for that financial year (A.G. (60) 6)

62. In introducing this agenda item, the *Deputy Secretary-General* noted that, in accordance with Article 31 of the Regulations of the Institute, in March 2006 the Secretariat had prepared first estimates of expenditure and receipts for 2007 which had been submitted to the Sub-committee of the Finance Committee at its 105<sup>th</sup> session held in Rome on 23 March 2006 (F.C./S.C. (105) 2/Rev.); some members of the Sub-committee had expressed the concern of their Governments at the increases in certain chapters of the draft budget, and had requested more detailed information

on some aspects of the Institute's organisation. The first estimates had subsequently been submitted to the Governing Council at its 85<sup>th</sup> session held in Rome from 8 to 10 May 2006. At that session, the Secretariat gave the Governing Council an oral report of the Sub-committee's reactions to these first estimates at its 105<sup>th</sup> session. The Council had approved the first estimates. The 106<sup>th</sup> session of the Sub-committee of the Finance Committee had taken place in Rome on 6 July 2006; the purpose of that session had been the presentation by the Secretariat of supplementary documents for a more thorough analysis of the issues raised by the members of the Sub-committee at its 105<sup>th</sup> session. The draft Budget resulting from this procedure, in line with the Institute's budgetary practice, had been submitted to the Governments of UNIDROIT member States for comment by 30 September 2006. Only the Japanese Government submitted observations, recalling the need to exercise the utmost budgetary discipline. At its 61<sup>st</sup> session, the Finance Committee was called upon, again in accordance with Article 31 of the Regulations, to express its opinion on the draft Budget. The Finance Committee made a qualified recommendation to the General Assembly to adopt the draft budget, on condition that the Secretariat make additional efforts to contain certain items of expenditure. Following the discussion in the Finance Committee, the Secretariat amended certain aspects of the draft budget, cutting expenditure and thus reducing the proposed increase in contributions of member States other than Italy, and it was this amended version which had been transmitted to the General Assembly for its approval.

63. The Deputy Secretary-General indicated that the Secretariat had made every effort to contain expenditure, notably in line with the insistence of member Governments on the Institute's observance of the principle of zero budgetary growth; she had however judged it necessary to propose increases in some chapters. During the session of the Governing Council, the members of the Council, whilst recalling that Governments were increasingly foreseeing budget restrictions, nevertheless encouraged the Secretariat to ask for the necessary increases in the Budget, and this for the following reasons:

- the Budget of the Institute had always been the object of extremely prudent management, based on savings, and this rendered it very difficult to effect cutbacks;
- the principle of zero growth in nominal terms had already caused a reduction in expenditure in certain chapters in real terms, namely the Library and staff missions, and this was a cause for concern as to its repercussions, on the one hand, on the important heritage constituted by the Library and, on the other hand, on the organisation and promotion of the Institute's activities;
- in particular, the problem of financing the position of Deputy Secretary-General had arisen and been drawn out through the years by the desire not to burden the Budget, but now the Secretariat had had to act on the decision taken by the organs of the Institute to fill this post by external selection;
- the very small number of officers and employees on the other hand made it extremely difficult to envisage staff reductions.

64. At the sessions of the Sub-committee of the Finance Committee which were held on 23 March and 6 July 2006, some members of the Sub-committee submitted proposals of which the Secretariat took note, with a view to following them up. Subsequently, the Permanent Committee appointed out of its members a Committee entrusted with the review of the Regulations of the Institute, in particular of the part dealing with the staff, and efforts were being made to reduce the expenditure of the Institute.

65. Concerning expenditure, the requirements of the Institute and the implementation of the Work Programme for the 2006-2008 triennial period drawn up by the Governing Council at its 58<sup>th</sup> session compelled the Secretariat to propose an increase in certain chapters of the budget. In particular, in respect of Chapter 2 (Salaries and allowances), Article 1 (Salaries of Categories A, B and C staff) of the draft budget, as well as Chapter 3 (Social security charges) which was linked to

the aforementioned Chapter, the Secretariat proposed expenditure higher than that of the 2006 budget. At the end of 2005, the Governing Council had appointed two new Deputy Secretaries-General. One of these was recruited from within the ranks of the Secretariat, without any change in Category or salary. The other, who was also given the function of Chief Administrator, was recruited from outside the ranks of the Secretariat and took office on 1 January 2006. This was made possible thanks to a substantial contribution by the Government of the United Kingdom which, through Mr Anthony Inglese, had now offered to renew this contribution also for 2007. However, the Institute, who expressed its gratitude to the Government of the United Kingdom, had in 2007 – as in 2006 – to cover the difference between the British extra-budgetary contribution and the total salary, social charges included, of the new Deputy Secretary-General, for whom it was not possible for 2006 to guarantee the level of remuneration foreseen for her post. also recalled that the function of Depositary of the Cape Town Convention and Aircraft Protocol was carried out by an Officer remunerated by contributions from certain member States which made it possible to finance this post until mid-2007. The Secretariat felt that, considering the importance of the depositary function, the balance required to renew this contract should be found under the regular budget of the Institute. Chapter 2, and, as a consequence, Chapter 3, had been increased also because the system of remuneration of the officials of the Institute was linked to the system of the Coordinated Organisations (OECD) (albeit applied with a six-month delay and a 20% reduction). At the meeting of the Sub-committee of the Finance Committee certain participants asked whether the Institute needed to remain linked to this system. It was not up to the Secretariat to propose that this system be modified. It had however to be noted that it permitted a small organisation like UNIDROIT to count on technical assistance which was impartial and suited to the needs of an international organisation. For the variations in budgetary appropriations proposed under headings other than Chapter 2, Article 1, and Chapter 3, referred to the explanatory notes attached to the draft budget. Overall, the Secretariat had therefore proposed expenditure for 2007 amounting to € 2,199,850, representing an increase of 8.90% over that provided for under the Budget for 2006.

66. Concerning receipts, the Secretariat proposed to increase the contributions of the member States, excluding Italy, by 2.57%, to assess the Italian contribution at € 270,000.00, to assess the surplus to be carried over from the 2006 financial year at € 50,000.00 (including part of the extra-budgetary contributions made by a group of member States in 2004 and deployed towards the salary of the officer in charge of the depositary function – see § 9 above), to assess the miscellaneous receipts for 2007 (Chapters 2 and 3) at € 91,548.00 and, finally, to anticipate the Institute's gaining one new Category VIII member State (the contribution of which would amount to € 11,825). Accordingly, the Secretariat proposed that the statutory contributions of member States other than Italy for 2007 be calculated on the basis of a unit of contribution amounting to € 2,365 representing an increase of 2.57% over the unit of contribution approved by the General Assembly for the statutory contributions of member States other than Italy for 2006 (€ 2,305). Under this proposal, the statutory contributions of member States would rise in comparison with the year 2006 as follows: Category I € 118,250; Category II € 52,030; Category III € 42,570; Category IV € 30,745; Category V € 26,015; Category VI € 21,285; Category VII € 18,920; Category VIII € 11,825; Special Category € 2,365. As regarded the contribution of Italy, the amount indicated was an estimation by the Secretariat based on the amount of the Italian contribution for 2006. Concerning miscellaneous receipts, the Deputy Secretary-General referred to the explanatory notes appended to Document A.G. (60) 6.

67. The Deputy Secretary-General accordingly invited the General Assembly to adopt the draft budget for 2007, in particular given that the proposed increase in the contributions of member States other than Italy corresponded to the current inflation rate in Italy and in the Euro zone (running at about 2.5%) as well as to the projected rate for 2007 (between 1.9 and 2.9%).

68. The *representative of Portugal* thanked the Deputy Secretary-General for her interesting and exhaustive explanations, and urged the Secretariat to maintain its efforts to reorganise and

economise, recalling that all member States were subject to budgetary constraints. He indicated that the Government of Portugal was ready to approve the budget, despite the fact that the financial authorities felt that the proposed increase for member States in Category VI somewhat exceeded the average growth rate in the European Union.

69. The *representative of France* thanked the Secretariat for the draft budget for 2007 and expressed especial satisfaction at its continued efforts to reduce the volume of arrears in contributions by certain member States which, he pointed out, remained a high priority. He stated that his country was deeply attached to the Organisation and, even though some of its priorities might be questioned, French experts considered that UNIDROIT's achievements were excellent, that they met real needs, particularly in economic circles, and that this was why France was honoured to be among the contributors in Category I along with Germany, the United States of America, Japan and the United Kingdom. He recalled that France, on top of its annual contribution, had also for the past several years made it possible for a young lawyer to work at the Institute under France's international volunteer scheme, thus providing a useful addition to the Organisation's dynamic legal team. As to the content of the budget for 2007, the representative of France admitted to being greatly puzzled since this budget was in flagrant contradiction with the general trend in most of the countries in the OECD zone, as well as with national approaches to matters of budget and public finance, which had changed radically in the last few years and which targeted virtually zero growth in expenditure and much stricter accounting and economic planning methods. He stated that while the UNIDROIT Secretariat had indeed heeded the concern expressed by certain member States, including France, about the rise in budget expenditure, scaling it down from the 9.7% originally proposed for 2007 to 8.9%, this still amounted to a 2.57% increase over the 2006 budget after this adjustment had been taken into account. He pointed out that this meant that a country such as France would be paying € 3,000 more and although this was not in itself a huge amount, he nevertheless felt that a principle was at stake. He stated, in this connection, that it would be entirely out of the question for member States to agree, on a permanent basis, to a budget which, like that put forward for 2007, proposed an expenditure increase over the previous year's budget that was so far in excess of a simple adjustment to the rate of inflation. He also drew attention to the fact that Document AG 60 4) entitled "Adjustments to the budget 2006" invited the General Assembly to agree to a proposed 6.6% increase in expenditure compared to the previous year's budget, and that almost 64% of that rise, i.e. € 86,000, referred to Chapter 2 on staff remuneration, a sum that was to be added to the € 57,000 supplementary expenditure included in the 2006 budget compared to that of 2005 under the heading "remuneration" to cover the salary of the new deputy Secretary-General, € 72,475 of which, as stated in footnote 4, was to be covered by an extrabudgetary contribution by the United Kingdom. He noted that Document AG 60 4) did not indicate how this adjustment was to be financed once there was no special British contribution and that while this had been specified in the presentation of the document, it would have been preferable to make this clear from the outset. Finally, he added that the French Government could not agree to point 11 of said document which referred that "[i]t is at this stage difficult to indicate more precisely these adjustments", and that he took the view, on the contrary, that this was a practice not compatible with sound management and lent credence to the idea that the Secretariat, by means of an apparently technical decision, was getting round one of the prerogatives of the General Assembly of the member States that financed the Organisation. He concluded that since a careful reading of these documents revealed a large number of gaps in the way in which the expenditure was justified, his Government could not, as a consequence, under these circumstances subscribe to a budget that exceeded zero growth. The representative of France illustrated these points with some comments as to method. He stated that, without in any way retracting what he had previously said as to the contribution and unique nature of the Organisation and its hitherto satisfactory functioning, there had been a tendency in the last few months for the budget to slip control. Although the member States' prerogatives were in truth quite modest and the Secretariat and the Governing Council were no doubt better placed to assess the real needs of the Organisation, he quoted Article 11 of the Statute, which states that the Governing Council draws

up the budget, and Article 5 according to which the General Assembly of the Member States approves the budget. He noted that these two bodies stood on a strictly equal footing in matters concerning the budget, and that this was bound to promote a spirit of cooperation and dialogue that would be in the best interests of the Institute. He recalled that bodies had even been created on an *ad hoc* basis to meet throughout the year and so accompany the budgetary procedure: the Finance Committee and sub-Committee had been set up with the express purpose of promoting a harmonious dialogue, upstream of the General Assembly, between the Secretariat, the member States and the Governing Council. He stated that despite the commendable efforts deployed by successive Presidents of the Finance Committee, Mr Joseph Renggli and now Mr Kent Vachon, this body had not been functioning properly for some time; indeed, since early 2005 the prospective appointment of a new Deputy Secretary-General had been an issue of debate, and several member States had repeatedly expressed serious reservations focusing, in the main, on the long-term budgetary feasibility of such an appointment and on the fact that a temporary appointment should not pre-empt the member States' choices with respect to future budgets. He recalled that the appointment had been made possible on 1 January 2006 thanks to a one-off extra-budgetary contribution by the United Kingdom, which was subsequently renewed for 2007, but, as the representative of the United Kingdom – to whom he expressed his warm gratitude – had pointed out, this contribution was not intended to become permanent. He stressed that he had not received a satisfactory reply to the fundamental question as to how this position was to be funded without the British contribution and that no serious thought appeared to have been given to this issue, despite the reservations repeatedly made by several member States, reservations which had even formed the subject of a communication by the Secretary-General to the members of the Finance sub-committee dated 30 May 2005. He noted that the Assembly had before them a *fait accompli*, since its members had only learned that the position of second Deputy Secretary-General had become a permanent one in the course of the session. He added that he was pained to note that unfortunate and clumsy pressure had been brought to bear on the President of the Finance Committee, in his report on the Finance Committee meeting of 5 October 2006, to water down the impact of the comments made by the participants, and that this was not good enough. He made it clear that in his view, the answer to the question of how the position of Deputy Secretary-General was to be funded in the absence of a British contribution would no doubt turn out to be a request to the General Assembly to finance the depositary function of the Cape Town Convention from the general budget rather than by extra-budgetary allocations as had been the case so far, and that if the Institute were to take this same line with respect to the position of Deputy Secretary-General, matters would get out of hand. He said they would get out of hand if it were decided to allocate an extra-budgetary contribution to structural and staff expenditure on a long-term basis rather than to concrete and selective projects of sufficient importance to justify a special effort by the more open-handed member States. He stated that the documentation pertaining to the budget was insufficiently transparent on this issue and had sown doubt and confusion as to items falling under the general budget and others, and that under the circumstances, his Government could not agree to the position of second Deputy Secretary-General being made permanent, since the size of the Institute was not such as to justify such a large number of high-ranking officers to the detriment, no doubt, of openings for jurists. He again appealed to the Secretariat, in the interests of the Institute, to heed the concerns which he, on behalf of his Government, had been voicing for over a year and a half.

70. The *representative of Poland* stated that his Government did not agree to the increase in the contribution of countries in Category VI, mindful as it was of the appeal by the financial authorities to reduce State spending, and of the fact that it had only been in 2005 that Poland had been ranked in Category VI, thus increasing its contribution.

71. The *representative of Italy*, having recalled that his Government supported and appreciated all the activities of UNIDROIT, and would continue to sustain the Institute also financially within its possibilities, stressed, as the representative of Italy had done on the occasion of the last Finance

Committee in October, that at this stage, as the Deputy Secretary-General had pointed out, the Italian contribution for 2007 was an estimate made by the Secretariat on the basis of the 2006 contribution.

72. The *representative of the United Kingdom* affirmed that her Government supported UNIDROIT and was appreciative of its work, and that on that basis it gave the extra-budgetary contributions for 2006 and 2007. She thanked the Secretariat for the work done in providing further documentation on the budget and in containing the amount of the increase to 2.5%, and affirmed that on that basis, her Government was willing to accept the budget. She indicated that her Government would appreciate greater accountability for the resources that had been spent on projects, and that this would help in planning the budget.

73. The *Chairman of the Finance Committee* pointed out that he was intervening not as the Chairman, but as the longest-serving member on the Committee, since he had not co-ordinated his intervention with the other members.

74. He recalled, especially for the benefit, first, of the many members States who were not members of the Finance Committee, and second, of the members of the Governing Council who had joined the General Assembly, that there had been three consistent themes in the third of the three years during which he had served on the Committee: budget restraint, priority setting and transparency for accountability. He stated that in that time, he had seen very significant rises in expenditures, largely due to the full-time position of Deputy Secretary-General that had been created, and that this rise had been manageable thanks to the Government of the United Kingdom, but, as the representative of France and other colleagues had pointed out, a problem would arise if these donations were to be discontinued. He stressed that, as the Secretariat had given the Finance Committee assurances that there would be no rise in expenditure in 2008, this could only mean that a cheaper alternative to the full-time Deputy Secretary-General had to be found, or that there would have to be cuts elsewhere. He indicated that in order properly to inform a debate on where cuts should happen, a thorough-going debate on priorities was needed, and that, as the last Governing Council had started that debate, he wished to know whether some projects had been rejected. However, he recalled that the priority-setting exercise would only be deemed successful after UNIDROIT had had a sustained period of zero real growth in expenditure, and that transparency was required to help setting priorities, by indicating what resources were devoted to which activity, both legislative and non-legislative. As to the Library and the Uniform Law Review, he indicated that these were essential activities of the Organisation, and that questions regarding their cost were aimed at giving helpful suggestions as to how they might be produced more cheaply. He acknowledged the progress that had been made in recent times in terms of budget clarity and as to who did what within the Secretariat; he also joined the representative of the United Kingdom in asking to know exactly what resources were devoted to each activity of the Organisation. The Finance Committee wished to have a fully informed priority setting and accountability system in place and to put UNIDROIT on a sustainable footing, and to help the Organisation to survive in a period of tight government budgets. He affirmed that it would be a mistake to assume that UNIDROIT was somehow immune simply because it was small and did much very good work, and he thus encouraged the Secretariat to respond positively to such help. When he joined the Committee, the Senior Secretariat and the Governing Council decided everything and sent the member States the bill, and the Finance Committee had a minimal impact on budget figures, with the notable exception of this very last Finance Committee meeting, which obtained the down-scaling of the rise in 2006 expenditure to only 8.9% instead of the requested 9.6%. He recalled that member States had the following choices at the General Assembly: to vote the budget, to withdraw from the Organisation or to fall into arrears, as had happened all too often in recent times. He concluded that since a revision of the Statute was unrealistic, the only way to head off such unpleasant options was for the Governing Council and the Secretariat to pay close attention to the work of the Finance Committee and its call for prioritisation.

75. The *representative of Germany* indicated that his Government welcomed the fact that the 2007 draft budget had been revised both with respect to its expenditure in absolute figures and the planned percentage increase over the previous draft and that, despite that increase, it would accept the proposed budget for 2007. He indicated that his Government would suggest that UNIDROIT examine management procedures and opportunities for further economic improvement, for example cost of meetings or publication processes and the possible outsourcing of administrative tasks. His Government availed itself of this opportunity to emphasise that the work done by UNIDROIT was highly successful and that it had every intention to continue to support the Organisation. He pointed out that his Government believed that an organisation without proper funding could not operate successfully, and that UNIDROIT had a clear concept of its long-term strategic planning which included key projects and set priorities for them.

76. The *representative of the United States of America* expressed his Government's appreciation for the active participation and leadership of the Chair of the Finance Committee, and for his diligence and concern in scrutinising the budget. He recalled that, as had been pointed out by the representative of France, there was a difference between principles and practice. He indicated that, in principle, the member States had all to watch very closely that the Institute's budget ultimately reached zero growth, but that, as the Chairman said and as was reported, the Finance Committee approved the 2007 budget, and that the Government of the United States for its part supported it. He added that this was because the position of the Deputy Secretary-General was a practical solution. He indicated that the representatives of the member States were asking UNIDROIT to act professionally and transparently, but that there was a need for funding of that position, which the Government of the United Kingdom had provided. He affirmed that his Government fully supported the 2007 budget and that there was a vision heading to zero growth in 2008.

77. The *representative of Japan* appreciated the efforts made by the Secretariat for the presentation of the final draft budget, which took into consideration opinions expressed by the Finance Committee. He indicated that Japan supported the budget.

78. The *representative of Colombia* thanked the Secretariat for this document and for its efforts in reducing expenditure for this year. He wished to recall that Colombia had paid all its arrears, including part of its contribution for 2007, and that this effort appeared to be very important, because it was the result of an austerity drive that underlined the need to reduce expenses in order to ensure timely payment of its contributions to international organisations. He indicated that his Government did understand the justifications put forward by UNIDROIT to increase the contributions for 2007 and that it would not break the consensus if the General Assembly should decide to approve the proposed draft budget. However, he expressed the concern of his Government about future increases and suggested that the Secretariat revise UNIDROIT's future expenditure in order to contain the budget for 2008.

79. The *representative of Canada* indicated that the objective of her Government was to help the Institute to achieve stable and sustainable resource levels so that it could continue the good work that it was doing, and that this needed to be done in terms of short-term, medium-term and long-term objectives. She recognised that steps had been taken to provide much more information and more transparency and that this was very positive. She indicated that there remained still work to be done in order to achieve full transparency in financial matters, in working methods and work programme and that this transparency would persuade States to continue their contributions, and, as Sir Roy Goode had pointed out, this could also be an important factor in obtaining private contributions from the different foundations that had been established. The financial documents should reflect also the financial support obtained by the private sector. She recognised that the Secretariat had taken steps to reduce the proposed contributions of member States for 2007 and that her Government did appreciate that implementation of the recommendation of the Finance Committee. She added that the Organisation needed to address the issues that would have to be faced in 2008 and in 2009 and for the future, there was the need for a link between priorities and

the work of the Organisation and the resources available and an appropriate planning process to take all that into account. She affirmed that there should have been more communication and better comprehension between the work of the Governing Council and their decision-making process and the views of member States in resource terms. She recalled as an example that a number of representatives of member States had indicated that the Space Protocol needed to be a high priority matter and that they would like to see it concluded as soon as possible, that others indicated as a priority the work on intermediated securities, which would need a fourth session of the Committee of Governmental Experts, and that others would like to see the finalisation of the draft Model Law on leasing; she wondered whether sufficient money had been set aside to cover those sessions. She recalled that, in addition, there were the requests to cover the salary of the Deputy Secretary-General and that of the officer who was carrying out the depositary function. For this reason, she affirmed that she shared to a large extent the concerns that were expressed by the representative of France and by the Chairman of the Finance Committee. She indicated that, given the reduction in the contributions of member States, the Government of Canada could support the budget for 2007, although there were problems that needed to be addressed well before getting into the 2008 process and that there needed to be a balance between the priorities and the resources available, with a full dialogue in the course of the year between member States and the Secretariat in developing the budget and in presenting the information. She expressed satisfaction at the improvements that had been made and indicated that it might be useful in the context of the next General Assembly to take advantage of the time that was made available to review the recommendations of the joint brainstorming session of the Council and Governments. That might be a useful exercise since it would take place at the Institute at little cost and potentially very good return.

80. The *representative of Luxembourg* recalled that, in his capacity of representative to FAO, the WFP (World Food Programme) and the European University Institute in Florence, he had some experience of how international organisations operated. He indicated that international organisations, Governments and private industry alike tended to favour budget savings and cuts, but that it would be well to place matters in perspective and identify the points of departure, since if one started out from a position in which heavy cuts had already been made, further savings might be impossible to achieve. He then recalled that all previous speakers had stressed, and repeatedly so, the importance and quality of the work done by UNIDROIT, and that after working with the Institute in view of the preparations for the diplomatic Conference in Luxembourg he was well-placed to confirm that view. However, several interventions had underlined a lack of transparency. He stressed that, although transparency was of course important, it might lead to over-bureaucratisation, not least given that UNIDROIT after all had a small Secretariat, and that it was important therefore to find an acceptable middle road. He concluded by confirming that his Government agreed to the budget as presented.

81. The *representative of Switzerland* again reiterated his Government's full support for UNIDROIT and its work, stressing its appreciation of the results achieved. He indicated that he had some sympathy with what had been said earlier by the delegations of France and Canada. Certainly, the budget should be based on stable resources and there should be transparency as between income obtained from voluntary sources and that generated by compulsory contributions. He further stated that it might have been useful to separate the two budgets, one covering compulsory contributions and the other voluntary input, and that in this way, States that had made voluntary payments would have an even better idea of which activities had been funded by these resources. He affirmed that the Swiss delegation wished to support the conclusions of the Finance Committee; the Committee had approved the budget for 2007, but had added a qualified recommendation with a view to securing full transparency in the 2008 budget and ensuring that the Secretariat make every effort to make substantial spending in respect of the 2008 budget, and possibly, to split it into two (one for voluntary contributions, the other for compulsory payments). He concluded by

confirming his agreement with the Canadian proposal on improving communication between the Governing Council and member States in matters affecting the budget.

82. The *representative of Austria* indicated that her Government was able to support the budget. She added that the Embassy of Austria would be happy to receive all documents by e-mail and dispense with paper copies.

83. The *representative of Mexico* congratulated the President of the General Assembly on his nomination. She indicated that the Government of Mexico was able to support the proposed budget for 2007 and congratulated the Secretariat on its efforts to reduce the proposed increase.

84. The *President of the General Assembly* noted that, although some concern had been voiced on the sustainability of the expenditure, the majority of the members of the Assembly agreed with the proposed budget and therefore the budget was approved. He added that together with that approval, instructions had to be given to the Secretariat to meet the suggestions made by the representatives of some member States and concerning the presentation of the financial documents.

85. The *representative of France* affirmed that he had complete faith in the wisdom of the President of the Assembly but that he wished, in compliance with the instructions he had received from his Government, mention to be made in the Report of the fact that France had abstained from voting the budget.

86. The *Secretary-General* wished to thank the Government of the Russian Federation and of Switzerland for their announcement that they were ready to host the final stages of two projects of the Institute, i.e. the Diplomatic Conference for the adoption of the draft Convention on Intermediate Securities and the Diplomatic Conference for the adoption of the Space Protocol to the Cape Town Convention. He indicated that the Secretariat had listened very carefully to the interventions of the representatives of the member States; he expressed the view that the proposal made by Canada to take up the dialogue between the organs of the Institute in the form joint brainstorming sessions was a very good proposal and that for the next General Assembly could be planned an afternoon session to make the discussions substantial. He indicated that as concerned the proposal made by the representative of Switzerland to more clearly distinguish between the ordinary budget and the extraordinary budget there were different points of view, but that the issue would continue to be discussed within the Finance Committee. He recalled that, as the representative of the United Kingdom indicated, the Secretariat was in the process of developing documents which would also give the possibility of following-up on the financial aspect, on the income side, the revenue side and the spending side of each particular project.

87. In concluding, the *President of the General Assembly* invited the Secretariat to act prudently and conservatively as regards the use of private-sector funding. Funding through the budget process, i.e. based on the Governments' assessed contributions should be a rule. Otherwise the Organisation's work might become unpredictable both as regards the process and the results. Where there was no certainty that funding was or would become available, projects had to be closed down or put on hold and people had to leave. Special – in particular private-sector – contributions had to support special projects that were limited in time. These were his personal recommendations for the next budget-planning cycle.

88. *The General Assembly, while noting the negative vote expressed by Poland and the abstention of France, approved the draft Budget for the 2007 financial year.*

**Item No. 13 on the Agenda:** Any other business

89. No other business having been raised, *the President* declared the session closed at 14.30 p.m.

## APPENDIX I

LIST OF PARTICIPANTS/*LISTE DES PARTICIPANTS*

ARGENTINA/ <i>ARGENTINE</i>	Mr Claudio Javier ROZENCWAIG, Counsellor Embassy of Argentina in Italy
AUSTRALIA/ <i>AUSTRALIE</i>	Mr Ross EDDINGTON, Second Secretary Embassy of Australia in Italy  Ms Lee HOLLOWAY, Third Secretary Embassy of Australia in Italy
AUSTRIA/ <i>AUTRICHE</i>	Ms Ingrid PECH, Minister Embassy of Austria in Italy
BELGIUM/ <i>BELGIQUE</i>	Excused / <i>excusé</i>
BOLIVIA/ <i>BOLIVIE</i>	Excused / <i>excusé</i>
BRAZIL/ <i>BRESIL</i>	Mr João André PINTO DIAS LIMA, Counsellor Embassy of Brazil in Italy  Mr Raul de TAUNAY, Minister Counsellor Embassy of Brazil in Italy
BULGARIA/ <i>BULGARIE</i>	Ms Vessela STOEVA, Secretary Embassy of Bulgaria in Italy
CANADA	Ms Kathryn SABO, General Counsel Department of Justice  Mr Kent VACHON, Counsellor Political and Public Affairs Embassy of Canada in Italy
CHILE/ <i>CHILI</i>	H.E. Mr G. VALDEZ SUBERCASEAUX, Ambassador Embassy of Chile in Italy President of the General Assembly / <i>Président de l'Assemblée Générale</i>
PEOPLE'S REPUBLIC OF CHINA/ <i>REPUBLIQUE POPULAIRE DE CHINE</i>	Mr TONG Zhan, Attaché Embassy of the People's Republic of China in Italy
COLOMBIA/ <i>COLOMBIE</i>	H.E. Sabas PRETELT DE LA VEGA, Ambassador Embassy of Colombia in Italy  Ms Paula TOLOSA ACEVEDO, First Secretary Embassy of Colombia in Italy
CROATIA/ <i>CROATIE</i>	Ms Lidija Lukina KARAJKOVIC, Minister Counsellor Embassy of Croatia in Italy

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CYPRUS/ <i>CHYPRE</i>	Excused / <i>excusé</i>
CZECH REPUBLIC/ <i>REPUBLIQUE TCHEQUE</i>	Mr Michal NOP, Civil Servant Ministry of Industry and Trade
DENMARK/ <i>DANEMARK</i>	Excused / <i>excusé</i>
EGYPT/ <i>EGYPTE</i>	Mr Hatem ABDEL KADER, First Secretary Embassy of Egypt in Italy
ESTONIA / <i>ESTONIE</i>	Mr Roman VINARTŠUK, Second Secretary Embassy of Estonia in Italy
FINLAND/ <i>FINLANDE</i>	Ms Vesa LEHTONEN, Counsellor Embassy of Finland in Italy
FRANCE	M. Alexandre GIORGINI, Premier Secrétaire Ambassade de France in Italie  Mme Béatrice MARTINETTO, Attaché Ambassade de France in Italie
GERMANY/ <i>ALLEMAGNE</i>	Mr Hans-Jürgen PASCHKE, Third Secretary Embassy of Germany in Italy  Ms Dorothee Elsner VON DER MALSBURG
GREECE/ <i>GRECE</i>	Ms Maria THEODOROU, First Counsellor Embassy of Greece in Italy
HOLY SEE/ <i>SAINT SIEGE</i>	M. Giuseppe DALLA TORRE Président du Tribunal de l'Etat de la Cité du Vatican
HUNGARY/ <i>HONGRIE</i>	Ms Andrea PERNYE, Counsellor Embassy of Hungary in Italy
INDIA/ <i>INDE</i>	Mr M. SUBBARAYUDU, First Secretary Embassy of India in Italy
IRAN	Mr Raja MAHDAVI, First Secretary Embassy of the Islamic Republic of Iran in Italy
IRELAND/ <i>IRLANDE</i>	Ms Joanne KING, Second Secretary Embassy of Ireland in Italy
ISRAEL	Excused / <i>excusé</i>
ITALY/ <i>ITALIE</i>	Mr Paolo MASSA, Counsellor Diplomatic Legal Advisory and Treaties Service Ministry of Foreign Affairs

JAPAN/ <i>JAPON</i>	Mr Kazumi ENDO, Counsellor Embassy of Japan in Italy
LATVIA/ <i>LETTONIE</i>	Ms Inese NIKULCEVA, Deputy State Secretary Ministry of Justice
LITHUANIA/ <i>LITUANIE</i>	H.E. Mr Šarūnas ADOMAVIČIUS, Ambassador Embassy of the Republic of Lithuania in Italy
LUXEMBOURG	S.E. M. Jean FALTZ, Ambassadeur Ambassade du Luxembourg en Italie
MALTA/ <i>MALTE</i>	Ms Ritienne BONAVIDA, First Secretary Embassy of Malta in Italy
MEXICO/ <i>MEXIQUE</i>	Ms Luz Estela SANTOS, Counsellor Embassy of Mexico in Italy
NETHERLANDS/ <i>PAYS-BAS</i>	Mr Chris DEVILLERS, Second Secretary Embassy of the Netherlands in Italy
NICARAGUA	Excused / <i>excusé</i>
NIGERIA	Mr Eyo ASUQUO, Minister Counsellor Embassy of Nigeria in Italy
NORWAY/ <i>NORVEGE</i>	Ms Toiko KLEPPE, Assistant Embassy of Norway in Italy
PAKISTAN	Mr Riaz H. BUKHARI, Counsellor Embassy of the Islamic Republic of Pakistan in Italy
POLAND/ <i>POLOGNE</i>	Mr Marek MAJEWSKI, Counsellor Embassy of Poland in Italy
PORTUGAL	H.E. Mr Vasco VALENTE, Ambassador Embassy of Portugal in Italy  Ms Tânia ALEXANDRE, Department of Legal Affairs Ministry of Foreign Affairs
REPUBLIC OF KOREA/ <i>REPUBLIQUE DE COREE</i>	Mr Eun-Chul LEE, First Secretary Embassy of the Republic of Korea in Italy
REPUBLIC OF SERBIA / <i>REPUBLIQUE DE SERBIE</i>	Ms Dragana VUKOVIC-LJUBOJEVIC, First Secretary Embassy of the Republic of Serbia in Italy
ROMANIA/ <i>ROUMANIE</i>	Excused / <i>excusé</i>

RUSSIAN FEDERATION/ <i>FEDERATION DE RUSSIE</i>	Mr Nikolay V. POPOV Director of the Legal Department Ministry for Economic Development and Trade
	Mr Evgeny TYUSIN, Legal Adviser Trade Representation of the Russian Federation in Italy
SAN MARINO/ <i>SAINT-MARIN</i>	Mr Victor CRESCENZI, Professor
SLOVAKIA/ <i>SLOVAQUIE</i>	Mr Milan KOVÁČ Permanent Representative to the FAO and WFP Embassy of the Slovak Republic in Italy
SLOVENIA/ <i>SLOVENIE</i>	Ms Mojca NEMEC, Second Secretary Embassy of Slovenia in Italy
SOUTH AFRICA/ <i>AFRIQUE DU SUD</i>	Mr Duncan M. SEBEFELO Counsellor (Multilateral) Embassy of South Africa in Italy
SPAIN/ <i>ESPAGNE</i>	Mr Pedro MEDINA ASENSIO Director of the International Treaties Section Ministry of Foreign Affairs
SWEDEN/ <i>SUEDE</i>	Ms Lisa BJUGGSTAM, First Secretary Embassy of Sweden in Italy
SWITZERLAND/ <i>SUISSE</i>	M. Alexander R. MARKUS Chef de section du droit international privé Office fédéral de la justice
	Mme Manuela LEIMGRUBER, Deuxième Secrétaire Ambassade de Suisse en Italie
TUNISIA/ <i>TUNISIE</i>	Mr Abdelhamid ABID, Conseiller Ambassade de Tunisie en Italie
TURKEY/ <i>TURQUIE</i>	Ms Çimen KESKIN, Second Secretary Embassy of Turkey in Italy
UNITED KINGDOM/ <i>ROYAUME-UNI</i>	Ms Sally MOSS, Legislation and International Policy Unit Department of Trade and Industry
	Ms Lynne McGREGOR, Political Officer Embassy of the United Kingdom in Italy
UNITED STATES OF AMERICA/ <i>ETATS-UNIS D'AMERIQUE</i>	Mr Leslie S. deGRAFFENRIED, First Secretary Alternate Permanent Representative U.S. Mission to the UN Agencies in Rome Embassy of the United States of America in Italy

URUGUAY Excused / *excusé*

VENEZUELA Excused / *excusé*

#### **OBSERVERS/OBSERVATEURS**

SOVEREIGN MILITARY ORDER  
OF MALTA/*ORDRE SOUVERAIN  
MILITAIRE DE MALTE*

H.E. Mr Aldo PEZZANA  
CAPRANICA DEL GRILLO, Ambassador

Sir Roy GOODE

Honorary member of the UNIDROIT Governing  
Council/*Membre honoraire du Conseil de Direction  
d'UNIDROIT*  
President of the U.K. Foundation for the International  
Uniform Law

#### **UNIDROIT**

Mr Berardino LIBONATI, President / *Président*

Mr Herbert KRONKE, Secretary-General / *Secrétaire-Général*

Mr Martin STANFORD, Deputy Secretary-General / *Secrétaire Général adjoint*

Mrs Alessandra ZANOBETTI, Deputy Secretary-General / *Secrétaire Général adjoint*

Mrs Marina SCHNEIDER, Senior Officer / *Fonctionnaire principale*

**APPENDIX II****REVISED DRAFT AGENDA**

1. Welcome by the President of UNIDROIT
2. Statement by the President of General Assembly for the year 2005-2006
3. Appointment of the President of the General Assembly for the year 2006-2007
4. Statement by the President of General Assembly
5. Adoption of the agenda (A.G. (60)1/rev.)
6. Statement regarding the Institute's activity in 2006 and Implementation of the Strategic Plan (A.G. (60) 2)
7. (a) Presentation of the draft Protocol on Rail Financing to the Cape Town Convention and the Preparation of the Diplomatic Conference for its Adoption (Luxembourg, 12-23 February 2007) – 10 minutes  
(b) Presentation of the draft Model Law on Leasing and the Envisaged Procedure for its Adoption – 10 minutes
8. Presentation of the work of the Uniform Law Foundation and the United Kingdom and United States of America Foundations for International Uniform Law
9. Final adjustments to the budget and approval of the accounts for 2005 (A.G. (60) 3)
10. Adjustments to the budget for 2006 (A.G. (60) 4)
11. Arrears in contributions of member States (A.G. (60) 5)
12. Approval of the draft budget for 2007 and fixing of the contributions of member States for that financial year (A.G. (60) 6)
13. Any other business.