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Item No. 16 on the agenda: Strategic Plan

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Suggestions to update or redefine the Organisation's strategic objectives</i>
<i>Action to be taken</i>	<i>The Governing Council, at its 89th Session, will be invited to revise the document, to take note of progress made in implementing the Strategic Plan and to consider whether a working group should be set up to prepare an updated draft Strategic Plan for submission to the Council at its 90th session in 2011.</i>
<i>Mandate</i>	<i>Governing Council, 82nd Session (UNIDROIT 2003 – C.D. (82) 21, Report of the Session, p. 27)</i>
<i>Related documents</i>	<ul style="list-style-type: none">● <i>Strategic Plan – Horizon 2016, UNIDROIT 2004 C.D. (83) 6</i>● <i>UNIDROIT 2003 C.D. (82) 21</i>● <i>UNIDROIT 2009 – C.D. (88) 9</i>● <i>UNIDROIT 2002 IBS Docs. 1 and 2</i>

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INTRODUCTION

1. On the occasion of the 75th anniversary of the foundation of UNIDROIT and of 81st Session of the Governing Council, an informal brainstorming Session was held on 26 September 2002 attended by the representatives of 44¹ of the Organisation's 59 member States at the time. The Session was chaired by Mr Roland LOEWE (Austria, then first premier Vice-President of the Governing Council) and moderated by Mr Peter WINSHIP (United States of America). On the basis of written comments submitted by the Government of Canada and by Mr Pierre WIDMER, then member of the Governing Council, as well as a document submitted by the Secretariat (*cf. UNIDROIT 2002 – SIR – Doc. 1*), the discussion addressed a wide range of issues including the constitutional framework, the member States, recent achievements, working methods, working languages, non-legislative activities, the resources available to the Secretariat, the structure and development of the budget. A report on this first meeting was drafted by participants and the Secretariat (*cf. UNIDROIT 2003 – SIR – Doc. 2*).

2. A second informal brainstorming Session was held on 4 and 5 April 2003, attended by the representatives of 31 member States² and six members of the Governing Council.³ Mr LOEWE and Mr Jacques PUTZEYS submitted written comments and the Secretariat submitted a working document for the Session (*cf. UNIDROIT 2003 – SIR – Doc. 3*). The Session, moderated by Mr Ian GOVEY (Australia, currently a member of the Governing Council), was chiefly devoted to the budget, to the various components of the Organisation's work, to the possible accession of the European Union and to co-ordination with other intergovernmental Organisations. The Moderator and the Secretariat drafted the report of this Session (*cf. UNIDROIT 2003 – SIR – Doc. 5*). As the Session progressed, a consensus emerged that the Secretariat ought to establish a Strategic Plan that would make short, medium and long-term assessments of the tasks and objectives of the Organisation, of the priorities for each of its activities, of the resources at its disposal, of the present and future staffing levels, and that would outline options as to the structure and development of the budget. The participants moreover concluded that the then Governing Council, as well as the new Governing Council that was to be elected at the end of 2003, should be apprised of the outcome of these informal brainstorming Sessions and that the future Governing Council, in close co-operation with member States' Governments, should take the necessary measures.

3. The reports of the two informal brainstorming Sessions were submitted to the Governing Council at its 82nd Session, held in Rome from 26 to 28 May 2003 (*cf. UNIDROIT 2003 – C.D. (82) 15*). The Council expressed its satisfaction at the way in which the Sessions had been prepared and at the way they had proceeded, and, among other things,

(a) took note of the importance of establishing a strategy and of following-up its implementation on the basis of significantly improved resources, and

¹ Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Croatia, Denmark, Egypt, Estonia, Germany, Greece, Finland, France, Holy See, Hungary, India, Iran, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Yugoslavia.

² Argentina, Australia, Austria, Belgium, Bulgaria, Brazil, Canada, China, Colombia, Denmark, France, Germany, Greece, Holy See, India, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Republic of Korea, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America.

³ Owing to budgetary restrictions, only a few members of the Governing Council were able to participate: Mr Berardino LIBONATI (President), Mr Roland LOEWE (First Vice-President), Mr Michael ELMER, Mr Jacques PUTZEYS, Ms Anne-Marie TRAHAN and Mr Joannis VOULGARIS.

(b) instructed the Secretary-General to *convey its views* and deliberations to the *incoming Council* so as to secure continuing support for those conclusions (*cf* UNIDROIT 2003 – C.D. (82) 21, *Report on the Session*, p. 27).

4. The Secretariat subsequently drafted a Strategic Plan, which was submitted, first, to the General Assembly at its 57th Session on 28 November 2003 (UNIDROIT 2003 – A.G. (57) 3), then to the Governing Council at its 83rd Session in 2004 (UNIDROIT – *Strategic Plan Horizon 2016* (C.D. (83) 6)). The Strategic Plan aimed at covering the immediate as well as the medium-term future until 2016, the year in which the 90th anniversary of the foundation of UNIDROIT is to be commemorated – hence its name “Horizon 2016”.

5. The Secretariat noted in that document that priorities would need to be set *within* the Organisation’s three areas of activity (legislative activities, research/documentation/publications, legal co-operation) rather than *among* them. The document identified the areas where budget increases would be needed to carry out the Strategic Objectives. The Secretariat emphasised that the Strategic Objectives set out in the document, the measures to be taken to achieve them and the results thus obtained would be monitored and a report submitted to the different bodies of the Institute. Moreover, the Strategic Plan would be updated on a regular basis.

6. It should be borne in mind the Strategic Objectives set out in the Strategic Plan are a mix of policy options and concrete measures. Some of these fall within the remit of the Secretary-General, whereas others require the co-operation or support of other UNIDROIT bodies or of member States’ Governments. Even those measures which the Secretary-General is mandated to decide without consulting, or requesting the authorisation of, the President, the Governing Council of the General Assembly, are, in effect, subject to the availability of resources at the Secretariat’s disposal.

7. Since the Strategic Plan was first drafted, the Secretariat has each year submitted to the Governing Council and the General Assembly documents setting out the progress made by the Secretariat in implementing the Strategic Plan during the period under consideration. In these reports, the Strategic Objectives are grouped according to their relevance in terms of the Organisation’s various activities. At its 88th Session, the Governing Council took note, with great satisfaction, of the report presented by the Secretary-General on the progress made and the interim results obtained in respect of the Strategic Objectives listed in the 2003 Strategic Plan, but stressed that great challenges still lay ahead. The Council decided to resume its discussion on the need or otherwise to re-assess these Objectives at its 89th Session in 2010 in light of a revised draft Strategic Plan that was to be prepared by the Secretary-General. This document contains a number of elements which the Council may wish to consider in view of its re-assessment of the Organisation’s strategy.

8. Central to these suggestions is a particular view of the “strategy”, such as the options before us in deciding which course to steer, and the means to be deployed in achieving the Organisation’s long-term objectives. The strategy would consist in identifying those factors and activities that would be of greatest benefit to the Organisation and make optimum use of its resources in a competitive environment, so as to secure the best response to the needs of its “market” and to meet the expectations of stakeholders and beneficiaries alike. The Secretariat therefore believes that in order to define a strategy for UNIDROIT, the following questions must first be answered:

(a) what is the real position of the Organisation, its instruments, working methods, resources and results (identity). What are the values and expectations which the Organisation is called upon to fulfil (stakeholders, beneficiaries) ? (Chapter I);

(b) which are the “markets” that the Organisation wishes to target and which are the activities these imply (market); which comparative advantage does the Organisation possess and which are the activities where it is likely to enjoy the greatest competitive edge (advantage) ? (Chapter II);

(c) which are the objectives that the Organisation wishes to achieve in the long term (direction) and which external factors affect the Organisation and its ability to compete (environment) ? (Chapter III);

(d) how does the Organisation expect to secure its competitive advantage and what resources (qualifications, capital, connections, technical know-how, equipment) will be required to compete (resources) ? (Chapter IV).

9. This document does not seek to answer all these questions but to contribute to the Council’s deliberations on the UNIDROIT Strategy.

CHAPTER I. OUR IDENTITY

A. HISTORY, MANDATE

10. Founded in 1926 as an auxiliary body of the League of Nations, UNIDROIT was re-constituted, following the dissolution of the League of Nations in 1940, by virtue of a multilateral agreement: the UNIDROIT Statute.

11. UNIDROIT’S founding mission is to “examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law” and to “facilitate international relations in the field of private law (Article 1 of the UNIDROIT Statute). Article 1 then goes on to list the various ways in which this mission is to be accomplished. In carrying out its mission for the benefit of the international community, UNIDROIT in effect fulfils two main roles: (1) as a thinktank and rule-making body, and 2) as a centre for the dissemination and exchange of information.

B. STRUCTURE, FUNDING, DECISION-MAKING PROCESS

1. Structure

12. UNIDROIT has an essentially *tripartite structure* made up of the Governing Council, the General Assembly and the Secretariat.

(a) Governing Council

13. The *Governing Council* establishes the means by which the Institute’s statutory objectives are to be attained and supervises the work of the Secretariat in implementing the Work Programme set by the Council. The Governing Council is made up of one *ex officio* member, the President of the Institute, who is appointed by the Italian Government, and of 25 elected members, typically eminent judges, academics and civil servants

14. The *Permanent Committee* is made up of the President and five members of the Governing Council. Its task, according to Article 17 of the Regulations, is to ensure “the continuity of the Institute’s operation in accordance with the instructions of the Governing Council.” It is the competent authority for a wide range of decisions affecting the Institute’s staff, in particular the

appointment of Categories A and B officials (Article 40), the determination of officials' remuneration (Article 41), promotions and the termination of officials' and employees' contracts (Articles 42, 61, 62, 63).

(b) General Assembly

15. The *General Assembly* is the ultimate decision-making body of UNIDROIT: it votes the Institute's annual budget, approves the Work Programme every three years and appoints the members of the Governing Council every five years. The member States are typically represented on the General Assembly by members of their diplomatic missions accredited with the Italian Government.

16. Membership of UNIDROIT is restricted to States acceding to the UNIDROIT Statute. UNIDROIT'S 63 member States are drawn from the five continents and represent a variety of different legal, economic and political systems as well as different cultural backgrounds. The 63 member States at present are: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Poland, Portugal, Republic of Korea, Republic of Serbia, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Venezuela.

17. The *Finance Committee* is a consultative body of the General Assembly which, in accordance with Article 8 of the UNIDROIT Regulations, "examines the draft budget and the annual accounts of receipts and expenditure, and formulates an opinion thereon." Its membership is not fixed either by the Regulations nor by the Statute. The Finance Committee is currently made up of the Category I member States (Germany, France, Japan, United Kingdom and United States of America), of most of the members of Category II member States (Canada, Russian Federation and Spain – China having declined membership of the Finance Committee), as well as some countries representing other categories (Austria, India, Mexico, the Islamic Republic of Iran, Romania and Switzerland). Italy is the host State and as such traditionally a member of the Finance Committee.

(c) Secretariat

18. *The Secretariat* is the body of the Institute which "ensures enforcement of the decisions of the General Assembly, of the Governing Council, of the Permanent Committee and of the study groups" (Article 18 of the UNIDROIT Regulations). To this purpose, it manages the day-to-day activities of the Organisation and in doing so, is fortunate to have at its disposal a highly qualified and devoted staff. It is supervised by the Secretary-General, who is appointed by the Governing Council on the proposal of the President of the Institute. The Secretary-General is assisted by international officials and employees.

19. It should be borne in mind that this is a small Secretariat. On 31 December 2009, the Secretariat consisted of 21 full-time or part-time members, broken down as follows: nine officials (Category A) (including one part-time), nine persons employed in an administrative capacity, in the Library and its offices (Category B) (including one part-time), three persons providing logistical support (Category C). The Secretariat also has one consultant and one collaborator benefiting from a two-year research grant that was recently extended for a further six months (funded by private donors) who is working on a specific project (preliminary draft Protocol on matters specific to Space Assets to the Convention on International Interests in Mobile Equipment).

2. Funding

20. When UNIDROIT was first reformed in 1940, funding was on a voluntary basis, chiefly a contribution by the Italian Government. The member States – forty-two at the time – did not legally commit themselves to pay a contribution until the entry into force, in 1964, of an amendment to Article 16 of the Statute that had been approved by the General Assembly at its 10th Session in 1961. Since that time, the contributions system has gradually developed into a system of compulsory contributions the amounts of which are determined by the governing bodies of the Institute.

21. At present, the annual expenditure for the operation and maintenance of UNIDROIT is covered by the receipts entered in the budget which include, in particular, the ordinary basic contribution of the Italian Government, as well as the ordinary annual contributions of the other participating Governments:

(a) the contribution of the host country is set annually by the Italian "*legge finanziaria*" and is still the most substantial contribution (over 9% of the total contributions per annum). In addition to this sum, the Italian State also provides the Institute's premises and pays for their upkeep and structural maintenance;

(b) the contributions of the other member States, which are classified in eight ordinary categories and one special category, each corresponding to a certain number of units of account. The amount of each unit of contribution as well as the budget are approved each year by the General Assembly; the amount varies from year to year depending on the amount of estimated expenditure in the UNIDROIT budget after the Italian Government contribution has been deducted, on any other revenue forecast in the budget as well as on any amounts carried over from the previous financial year. While this system (which follows the system used by the Universal Postal Union and the Hague Conference on Private International Law) is not identical to the assessment system used by the United Nations, in fixing the classification of each member State in one of these categories the General Assembly of UNIDROIT has relied on the percentage of –States' contributions to the UN budget. According to a decision taken by the UNIDROIT General Assembly at its 52nd session (Rome, 27 November 1998), the classification follows the following rules:

- 1st category (50 units of account) – member States contributing to the United Nations budget with more than 3%;
- 2nd category (22 units of account) – member States contributing to the United Nations budget with a percentage ranking between 2 and 3%;
- 3rd category (18 units of account) – States that contribute to the United Nations budget with a percentage of between 1 and 2%;
- 4th category (13 units of account) – States that contribute to the United Nations budget with a percentage of between 0.960% and 0.999%;
- 5th category (11 units of account) – States that contribute to the United Nations budget with a percentage of between 0.500% and 0.959%;
- 6th category (9 units of account) – States that contribute to the United Nations budget with a percentage of between 0.450% and 0.499%;
- 7th category (8 units of account) – States that contribute to the United Nations budget with a percentage of between 0.115% and 0.449%;
- in the 8th category (5 units of account) would be classified the States that contribute to the United Nations budget with a percentage of between 0.005% and 0.114%;
- special category (1 unit of account) – States that contribute between 0.001% and 0.004% to the United Nations budget (currently only San Marino and the Holy See).

22. The UNIDROIT budget for 2010 provides for the following breakdown of expenditure:

Chapter 1 – Reimbursement of expenses	
Art. 1 (Governing Council)	50,000.00
Art. 4 (Auditor)	3,500.00
Art. 5 (Committees of Experts)	65,000.00
Art. 6 (Official journey of representatives and staff)	28,000.00
	146,500.00
Chapter 2 – Salaries and allowances	
Art.1 (Salaries of Categories A, B and C staff and consultant)	1,307,875.00
Art. 2 (Remuneration for occasional collaborators)	20,000.00
Remuneration for collaborators and special work	
	1,327,875.00
Chapter 3 – Social security charges	
Art. 1 (Insurance against disablement, old age and sickness)	390,000.00
Art. 2 (Accidents' insurance)	8,500.00
	398,500.00
Chapter 4	
Compensation retired members of staff	2,500.00
Chapter 5	
Publications' printing costs	31,500.00
Chapter 6 – Administrative expenses	
Art. 1 (Stationery)	21,000.00
Art. 2 (Telephone, fax and Internet)	28,000.00
Art. 3 (Postage)	25,000.00
Art. 4 (Entertainment and representation)	4,650.00
Art. 5 (Interpreters)	27,500.00
Art. 6 (Miscellaneous)	6,700.00
Total	112,850.00
Chapter 7 – Maintenance costs	
Art. 1 (Electricity)	12,500.00
Art. 2 (Heating)	20,000.00
Art. 3 (Water)	7,000.00
Art. 4 (Insurance of premises)	11,500.00
Art. 5 (Office equipment)	22,000.00
Art. 6 (Upkeep of building, local taxes)	20,000.00
Art. 7 (Labour costs)	27,000.00
	120,000.00
Chapter 9 – Library	
Art. 1 (Purchase of books)	82,000.00
Art. 2 (Binding)	9,000.00
Art. 3 (Software)	22,000.00
	113,000.00
Chapter 10	
Promotion of Unidroit instruments	5,000.00
Chapter 11	
Legal co-operation programme	10,000.00
Total ordinary expenditure	2,267,725.00

23. The Institute's sole item of "own income" is that generated by the sale of publications and subscriptions to the *Uniform Law Review* (€42,702.79 in 2009). Exchange agreements provide the UNIDROIT Library with a certain number of books and periodicals. Apart from the contributions paid in by member States, some activities receive funding *outside* the regular budget. This is the case, in particular, of the scholarships programme and the database, as well as of several legislative projects (see Annex I – Doc. A.G. (65) INF – for further details).

3. Decision-making process

24. The broad outline of the UNIDROIT decision-making process is fixed by the Statute and the Regulations. It is more formal as regards the General Assembly, and more flexible in respect of the Governing Council. The adoption procedures for the budget and the Work Programme are particularly important in considering the Strategic Plan.

(a) Budget procedure

25. *The budget procedure* is fixed in Article 31 of the Regulations. On 15 March each year, the Secretary-General submits a proposal for a draft budget for the following financial year to the Finance Committee for a preliminary opinion. This draft budget, amended as appropriate in light of the opinion of the Finance Committee, is then submitted to the Governing Council for consideration and subsequently communicated to member Governments for comment. Such comments must reach the Secretary-General by 30 September at the latest. The draft budget is then submitted, together with these comments, to the Finance Committee for final opinion and, together with any amendments recommended by the Finance Committee, laid before the General Assembly for approval (until 2008, the report of the Finance Committee was not submitted to the General Assembly).

26. The number of categories in the statutory contributions chart, the number of units corresponding to each category, the amount of each unit, as well as the classification of each Government in a given category are determined by a resolution of the General Assembly, taken by a two-thirds majority of members present and voting, upon the proposal of a Committee appointed by the Assembly. In determining these classifications, the Assembly takes into account, among other considerations, the national revenue of the country concerned. The decisions of the General Assembly taken by virtue of Article 16(3) of the Statute may be amended every three years by a new resolution of the General Assembly, taken by the same two-thirds majority of members present and voting, as contemplated in Article 5(3) of the Statute.

(b) Work Programme

27. In accordance with Article 5 of the UNIDROIT Statute, the Work Programme is decided by the Governing Council, then adopted by the General Assembly every three years. Proposals for new items to be included in the Work Programme may come from the Governing Council, from member States or from the Secretariat – in the latter case, this is often in consultation with academics, legal practitioners or other international Organisations. UNIDROIT correspondents are often asked to comment on these proposals before they are submitted to the Governing Council.

28. The decisions of the Governing Council are taken by a majority of members present. Only members of the Governing Council take part in the discussions. Nevertheless, Article 16 of the Regulations authorises the Governing Council to “request representatives of member Governments that have no nationals sitting on the Council to attend its meetings in a consultative capacity”.

29. The Secretary-General, as the *ex officio* Secretary of the Governing Council, draws up the minutes of the meeting to be submitted to the members of the Council for approval. According to UNIDROIT custom, the minutes of the Governing Council as well as documents relevant to its meetings are communicated solely to the Council members themselves. The General Assembly only receives a summary of the decisions taken by the Council. This summary is also published by UNIDROIT.

C. ACTIVITIES AND WORKING METHODS

1. Elaboration of instruments, implementation and promotion

30. In the course of its history, UNIDROIT has used several methods in preparing its instruments. As a general rule, a distinction may be made between the methods used in elaborating instruments intended for incorporation in domestic substantive law (conventions, model laws) and those used for other, non-binding instruments (principles).

(a) Procedure for the elaboration and adoption of legislative instruments

Preliminary stage

31. Topics for future work by UNIDROIT are typically proposed to the Organisation by Governments (Article 12(1) of the Statute), members of the Governing Council, international institutions or Organizations (Article 12(2) of the Statute), or correspondents and other interested persons who have come across a problem which they feel might suitably be solved by the adoption of an instrument at international level. Every three years the Secretariat circulates a document containing proposals to Governments, members of the Governing Council and correspondents. The comments made by those contacted will be submitted together with the proposals to the Governing Council for discussion. If the Council considers a particular proposal to be of interest, it will request a preliminary comparative law study to be prepared. Such a comparative law study will be conducted either by a member of the Secretariat, or by an outside expert. The comparative law study will examine the problem area, the solutions adopted in different jurisdictions, the need for an international instrument, and the feasibility of preparing one. This comparative study will be circulated to interested circles and professional associations for comment.

32. The comparative law study and any comments thereon will be submitted to the Council. The Council will decide whether there are good prospects for a viable instrument to be prepared. If so, it will authorise the President of the Institute to convene a Study Group, or Working Group (Article 13(1) of the Statute) to examine the problem in greater depth and, if it so decides, to prepare a first draft of a future instrument.

Study Groups and Working Groups

33. The members of Study Groups and Working Groups are experts in their field, and sit in a personal capacity, as experts and not as representatives of their countries of origin. They are nominated by the President of the Institute at the suggestion of members of the Council and the Secretariat. Governments may also be contacted with a request to suggest an expert, it being clearly understood that as members of the Study Group the experts do not represent their Governments. In the selection of the experts to serve on the groups, a conscious effort is made to ensure the representation of different legal systems and different personal backgrounds, so that each expert can contribute with his or her experience, different geographical origin, so that developing countries and countries in transition are adequately represented, and different working languages to ensure that the instrument adopted will be translatable into the different languages of the world. Study Groups are normally quite small, consisting of about 15 members at most, and, depending on the subject-matter dealt with, may have observers from other Organisations and from representative international professional associations.

34. While Article 10 of the Statute provides that UNIDROIT has five official languages (English, French, German, Italian and Spanish), its working languages are English and French. This means that its official publications are issued in two languages and, where possible, work in Study Groups and Committees is also carried out in two languages. There are however exceptions: depending on the subject-matter dealt with, and also on the financial resources available, work may be

conducted in one language only, normally English. The final product is however issued in both English and French.

35. Once the Study Group has prepared a draft to its satisfaction, and this includes an assessment of the most suitable type of instrument to be adopted, the draft, at this stage called a 'preliminary draft', will be submitted to the Governing Council. If the Governing Council is satisfied with the product (Article 14(1) of the Statute), it will authorise the convening of a Committee of Governmental Experts. It should be noted that this is the procedure followed for international conventions, protocols to conventions and model laws. In the case of other instruments, such as principles or guides, the examination of the final product of the Study or Working Group by the Council will end with the authorisation by the Council to publish the instrument.

Intergovernmental negotiation stage: the committees of governmental experts

36. Full participation in UNIDROIT committees of governmental experts is open to representatives of all UNIDROIT member States. Non-member States may be invited to participate as observers. Observers may also include representatives of other intergovernmental organisations, non-governmental organisations and representative international professional associations, for example the world association of the national professional associations of the area examined. Purely national professional associations are not admitted; they are represented by the world-wide association. Observers may participate in the discussions but are not permitted to vote should a vote be taken.

37. Once the Committee of Governmental Experts has completed its task, the draft instrument as modified by the Committee is submitted to the Governing Council (Article 14(3) of the Statute). If the instrument is a draft convention or protocol, the Governing Council will authorise the transmittal of the draft to a Diplomatic Conference (Article 14(4) and (5) of the Statute) that will be convened by one of the member States of the Organisation. If the instrument is a model law, the Governing Council will generally endorse the work of the Committee and authorise the publication of the model law.

(c) Assistance in implementing instruments and promotion

38. At the latest diplomatic Conferences, States have requested UNIDROIT to take on the function of Depositary of the instruments adopted (the Cape Town instruments, the Geneva Securities Convention), which places a new burden on the Institute (UNIDROIT is now the Depositary of four complex instruments). In addition, as concerns the implementation of the Cape Town instruments, this involves the production of documents relating to numerous declarations and overseeing the establishment of International Registries, and, where the Geneva Securities Convention is concerned, organising the Official Commentary and a "duty" to follow up and promote implementation of the instrument (cf. Resolution No. 3 of the Final Act of the diplomatic Conference).

Non-legislative activities

39. In keeping with its mandate, as a centre devoted to research, dissemination and exchange of information, UNIDROIT also carries out non-legislative activities (albeit sometimes closely linked to its legislative work) that have evolved considerably since the Strategic Plan was first elaborated in 2003. These concern the following in particular:

40. **UNIDROIT Library:** When UNIDROIT was first founded, the establishment of an international legal documentation centre to underpin the Organisation's study and research activities was undertaken as a priority. The centre is also a Depositary Library for the documents of the United Nations Organization. It has been extensively modernised in recent years (transfer of the paper

catalogue to an on-line data base; hook-up with the data bases of other major libraries; ongoing work on a data base concerning Authority Files for Corporate Authors). The Library “employs” five full time equivalents.

41. **Publications:** first of all, the *Uniform Law Review / Revue de droit uniforme*, but also the *UNIDROIT Proceedings and Papers – Actes et documents d’UNIDROIT*, or indeed the collections of UNIDROIT documents (*Travaux préparatoires 1970 – 2004 on the UNIDROIT Principles of International Commercial contracts, ...*). Three people are principally engaged in producing these publications, but the entire Secretariat is involved in some way or other.

42. **Internet Website:** first created in 1995, this is one of the Institute’s main promotional tools (cf. the 41 800 webpages currently linked up compared to the 10 200 when the Strategic Plan was first drafted). The site is developed and updated on an ongoing basis. It is managed by an administrator (Category A), but the entire Secretariat is involved in “feeding” it.

43. **Data base (UNILAW):** UNIDROIT has decided to create a database with a view to supplying Governments, judges, arbitrators and legal practitioners with updated and readily accessible information concerning the various sources of uniform law, in English and French. It has been agreed that the project is to be funded solely from sources other than the Institute’s budget. The project has begun by focusing on data relating to the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR).

44. **The network of UNIDROIT Correspondents:** In order to achieve its statutory objectives, it is essential that Unidroit be kept informed of substantive law developments worldwide. With this in mind, and since certain types of information are hard to come by, UNIDROIT has set up a network of *correspondents* in both member and non-member States; these correspondents, drawn from academia and legal practice, are appointed by the Governing Council.

D. ACHIEVEMENTS AND FAILURES

1. Institutional aspects

45. While the governing bodies of other international organisations with a similar mandate (such as the Hague Conference or UNCITRAL) are typically comprised of representatives of member States, members of the UNIDROIT *Governing Council* are elected in their personal capacity. There is no doubt that the mix of high-ranking Government officials, judges, practitioners and renowned scholars, acting without the strict constraints of instructions from their Governments, has contributed immensely to the development of transnational private law. At the same time, however, the *ad personam nature* of participation in the Governing Council is not always conducive to efficient communication between the Council and the General Assembly.

46. Indeed, one striking feature of the institutional set-up of UNIDROIT is the low-key role of the *General Assembly*. The only body where all member States have a chance to take an active part is convened once a year for a half-day meeting and approves the budget, usually following the indications given by the Finance Committee. Every three years it approves the Work Programme. Every five years the Assembly is called upon to elect the Governing Council. Attempts to render the Assembly’s meeting more substance and programme related have so far not borne fruit.

47. Moreover, Governing Council and General Assembly seldom hold joint meetings, and the practice of restricted distribution of Governing Council documents and reports deprives the General Assembly of useful background information for decisions that it is required to make. This leads to a somewhat conflicting approach between the Council and the General Assembly, with the former attaching great importance to ensuring the high quality and productivity of UNIDROIT, while the

General Assembly, and, in particular, its subsidiary body the Finance Committee, tend to focus on containing the budget.

2. Participation in the work of UNIDROIT

48. Efforts to broaden the Institute's membership in Africa and Asia have had only moderate success. There have been only five accessions to the UNIDROIT Statute in the last ten years, and only two of these were from outside Europe (Indonesia and Saudi Arabia in 2009).

49. The response of Member States' Governments to the Secretariat's requests for comments on future work continues to be insufficient. The input obtained through the network of correspondents has consistently diminished over the years.

3. Implementation of instruments

50. Since it was first established, UNIDROIT has elaborated almost seventy studies and projects. Much of that work has culminated in international instruments; the following international conventions and model laws, which are all in force except where otherwise indicated, were prepared by UNIDROIT and, where the conventions are concerned, approved at diplomatic Conferences convened by member States:

- *1964 Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague);*
- *1964 Convention relating to a Uniform Law on the International Sale of Goods (The Hague);*
- *1970 International Convention on Travel Contracts (CCV) (Brussels)*
- *1973 Convention providing a Uniform Law on the Form of an International Will (Washington);*
- *1983 Convention on Agency in the International Sale of Goods (Geneva);*
- *1988 UNIDROIT on International Financial Leasing (Ottawa);*
- *1988 UNIDROIT Convention on International Factoring (Ottawa);*
- *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome);*
- *2001 Convention on International Interests in Mobile Equipment and 2001 Protocol on Matters specific to Aircraft Equipment;*
- *2002 Model Franchise Disclosure Law*
- *2007 Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg)*
- *2008 UNIDROIT Model Law on Leasing*
- *2009 UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva)*

51. Moreover, UNIDROIT has published:

- *UNIDROIT Principles of International Commercial Contracts (1994; new edition 2004);*
- *Guide to International Master Franchise Agreements (1998);*
- *Principles of Transnational Civil Procedure (in co-operation with ALI) (2004).*

52. UNIDROIT'S work has also served as the basis for a number of international instruments adopted under the auspices of other Organisations. Among the latter, the following international treaties are in force:

- *1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO);*
- *1955 European Convention on Establishment (Council of Europe);*
- *1955 Benelux Treaty on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (Council of Europe);*
- *1956 Benelux Treaty on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (Council of Europe);*
- *1958 Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children (Hague Conference on Private International Law);*
- *1959 European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (Council of Europe);*
- *1962 European Convention on the Liability of Hotel-keepers concerning the Property of their Guests (Council of Europe);*
- *Protocol No. 1 concerning rights in rem in Inland Navigation Vessels and Protocol No. 2 on Attachment and Forced Sale of Inland Navigation Vessels annexed to the 1965 Convention on the Registration of Inland Navigation Vessels (UN/ECE);*
- *1980 United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL).*

53. Some instruments prepared by UNIDROIT have become real landmarks in the fields of law they cover. This is particularly true of the UNIDROIT Principles on International Commercial Contracts, the Cape Town Convention, and the 1995 Rome Convention. Remarkable achievements of earlier days, before UNIDROIT developed the practice of finalising its instruments under its own auspices, include the *1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO)*, and the *1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) (UN/ECE)*. Some of those early instruments were not themselves very successful, but served as the basis for other successful instruments, such as the 1964 Hague Conventions, without which it would not have been possible to develop the United Nations Convention on Contracts for the International Sale of Goods (CISG).

54. At the same time, however, one must admit that several instruments have been less successful than its drafters would have expected. Both Ottawa Conventions fall into this category, as well as the 1974 Washington Convention and the 1983 Agency Convention. There are various reasons for this, including, depending on the instrument, any or a combination of the following: criticism of policy choices in the instrument; lack of support or opposition by an industry group; lack of interest by Governments or of a driving force for promoting the Convention domestically; insufficient investment by the Secretariat in promotion and awareness efforts.

55. The Strategic Plan adopted in 2003 identified the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the auspices of UNIDROIT as one of the strategic objectives of the Organisation. The Secretariat submits, however, that the implementation of this objective has since proceeded in a fragmentary rather than systematic manner and that it has been driven more by topical demand than by planned effort. As can be seen in document C.D. (88) 9, a survey of promotional activities in respect of instruments already adopted over the past three years shows a concentration of effort in the areas of international interests in mobile equipment, principles of international commercial contracts and international protection of cultural property. Other areas in which UNIDROIT has worked hardly appear on the list of promotional activities. There are various reasons for the greater visibility of some topics as compared to others, not least their relative level of acceptance and authority, the existence of industry groups particularly interested in the quick implementation of an instrument, or a partnership with a larger Organisation actively engaged in its promotion. Lacking the resources for a comprehensive implementation strategy, the promotional activities of UNIDROIT

have remained essentially demand-driven, rather than pro-active as originally envisaged. This means that other UNIDROIT instruments that lack the same level of visibility gradually receive less attention, falling into a vicious circle that eventually compromises their promotion.

56. To a very large extent, however, the limited success in achieving this strategic objective is attributable to the limited resources available. The Secretariat points out that the relevant chapters in the UNIDROIT Budget, namely *Chapter 1, Article 6* (Official journeys of representatives, members of staff and collaborators), *Chapter 10* (Promotion of UNIDROIT Instruments) and *Chapter 11* (Legal Co-operation Programme) have either essentially remained the same for several years or have even been reduced lately.

3. Non-legislative activities

57. The Strategic Plan adopted in 2003 contemplated, as *Strategic Objective No. 2*, "the further elaboration of the UNIDROIT research and information facilities as the world's leading source of knowledge and capability-building in the field of transnational private law."

58. There has since been some obvious progress in the implementation of that objective (see document C.D. (88) 9, para. 33). However, it would be illusory to believe that UNIDROIT is anywhere near becoming the "world's leading source of knowledge and capability-building in the field of transnational private law", and the Secretariat cannot but admit that this objective is far from being achieved. The coverage of the website and the *Uniform Law Review* is limited, for the former, to UNIDROIT's own activities, and for the latter, to the contents of the Review itself. As regards the data base, coverage is fragmentary and by no means close to encompassing the whole body of "transnational private law". The Library, on the other hand, has achieved the cataloguing of its holdings, but the financial resources available to it clearly limit its ability to attain full coverage of transnational private law.

CHAPTER II. OUR "MARKET"

A. WHAT IS LEGAL HARMONISATION FOR?

59. The ultimate purpose of the harmonisation of law is to facilitate relations between States and between individuals and businesses of different States by providing for the same, or for a very similar, regulation of those areas of law where relations are most frequent or where the difficulties associated with those relations are such that some form of agreement is imperative. Another important objective is to promote economic development by proposing legislative models or principles aimed at enhancing the private law framework for foreign and domestic investments in economic activities.

60. The perception of the increasing need for uniform law was aptly summarized by René David, in the light of the unprecedented expansion of international commerce in the 20th century as a result of ease of transport, increased mobility of people and capital, international distribution of labour.

[. . .] Such links mean that complete state independence in matters of law results in anarchy: international relations require an international law construed in the same way by the various states concerned. To regulate this intercourse we must find a means of reconstructing a body of law acceptable to all nations [...] and we must ensure that the most diverse countries will recognize the value of a body of law destined to govern international relations but which does not emanate from national authority.⁴

⁴ R. David, 'The International Unification of Private Law', Chapter 5 of Volume II of the *International Encyclopedia of Comparative Law*, (Tübingen/ Paris/New York 1971), p. 5.

61. It should be noted that uniform law, however useful, is seldom, if ever, a necessary condition for international trade and investment. Therefore, legal harmonisation efforts do not rank particularly high among government priorities.

62. Legal harmonisation has traditionally been justified by the assumption that it removes “legal obstacles to trade” and therefore contributes to economic growth. Unfortunately, this postulate of the international harmonisation effort has never been empirically substantiated, and may in fact have given too much weight to the legal aspect of trade in general and the importance of a unified legal background in particular. The absence of easily quantifiable benefits arising out of the adoption of uniform law instruments represents a significant handicap for their implementation.

B. WHO IS IT FOR ?

63. Legal harmonisation is ultimately intended to benefit judges, arbitrators, business and practitioners by providing them with predictable, uniform rules to apply in cross-border transactions or information on uniform law intended to facilitate its application. This general premise can be broken down into three broad groups of beneficiaries, depending on the nature of the instrument.

1. Conventions and model laws

64. For conventions, the ultimate beneficiaries will be those parties who, in their transactions, stand to gain from greater legal certainty and predictability that results from a harmonised set of rules applying in the various jurisdictions in which they operate or with which they transact. The nature of the instrument, however, places the implementing States in the forefront, as the immediate “clients” or “addressees” of the new instrument. This means that, for conventions, a dual level of awareness and sensitivity is required:

(a) to the interests and concerns of Governments of member States; and

(b) to the interests and concerns of the domestic industries and private operators in the member States.

65. Two intermediate or parallel groups of interested parties must also be taken into account, namely intergovernmental Organisations having a vested interest in the area covered by the new convention; and international non-governmental Organisations representing internationally active stakeholders.

66. These considerations are equally valid for instruments aimed not at harmonising laws but rather at modernising domestic legislation in a particular area. It is true that the non-binding nature of a model law increases the flexibility for States in the negotiation process, allowing them to focus mainly on the benefit that private operators in the enacting State may derive from the implementation of the international standard. Two factors, however, need to be borne in mind:

(a) the political acceptability of the standard for the prospective enacting States; and

(b) the extent to which States not in need of new legislation in the relevant area are willing to endorse a set of legal standards that may be at variance with their own domestic system.

2. Principles and contractual guides

67. For products intended for direct use by private parties, the situation is slightly different. Here, the quality, utility and practical value of the end product for the ultimate users (lawyers, judges, arbitrators) is the primary focus of attention, and the absence of a political instance of adoption at the domestic level gives member States a less prominent role. Nevertheless, there are important reasons for being aware of domestic political sensitivities also in this context:

(a) “soft law” instruments, such as the UPICC, issued under the seal of an intergovernmental Organisation, may be seen as a benchmark for assessing the quality of the law in any given area; and

(b) “soft law” instruments enjoying a widely recognised authority, as is the case of UPICC, can and have been used as a basis for developing new domestic or regional legislation in the areas they cover.

3. Non-legislative activities

68. For non-legislative activities, the spectrum of beneficiaries is more easily identified, since it corresponds directly to the universe of their end-users, that is:

(a) in the case of the Library, those who visit it;

(b) in the case of the *Uniform Law Review*, those who read it;

(c) in the case of the UNILAW data base, those who consult it;

(d) in the case of the scholarships programme, those who receive the scholarships.

69. That being said, an additional layer of consideration comes into play from the fact that these activities are sponsored by an intergovernmental Organisation maintained by contributions from member States. This aspect requires a constant assessment of the extent to which those activities effectively support the overall aims of the Organisation. This means, in particular, that non-legislative activities need to be clearly linked to the Organisation’s mandate and its products and should provide services that are not available elsewhere. Moreover, the activities must provide an added value to the Organisation itself and represent effective tools to support its core activities, promote its work and raise awareness about UNIDROIT and its achievements. None of them can be allowed to become “just another” activity of its kind, in particular if they are felt to duplicate activities that can be carried out more effectively elsewhere.

C. WHO ARE OUR “COMPETITORS” ?

1. Rule-making

70. The term “competition”, when applied to the rule-making bodies, is misleading insofar as each Organisation operates under its own institutional framework toward the implementation of a particular intergovernmental mandate and none of them has as its objective or strategy to dominate a particular field of activity to the exclusion of any other. Nevertheless, the particular structure, resources, membership or working methods of any given Organisation may, under certain circumstances, render one or the other Organisation relatively more attractive than another for pursuing one or the other projects or better equipped for carrying out one or the other type of activity. This is the meaning of “competition” in the present context.

(a) Multilateral

71. At the global level only two Organisations have a specific mandate that is similar to that of UNIDROIT: the Hague Conference on Private International Law and the United Nations Commission on International Trade Law (UNCITRAL).

72. The oldest institutionalised forum for legal harmonisation, the Hague Conference on Private International Law held its first meeting in 1893 and became a permanent inter-governmental Organisation in 1955, upon the entry into force of its Statute. Its mandate is the progressive unification of the rules of private international law. The Hague Conference meets in principle every four years in Plenary Session (ordinary Diplomatic Session) to negotiate and adopt Conventions and to decide upon future work. The Conventions are prepared by Special Commissions or working groups held several times a year, generally at the Peace Palace in The Hague, increasingly in various member countries. Special Commissions are also organised to review the operation of the Conventions and adopt recommendations with the object of improving the effectiveness of the Conventions and promoting consistent practices and interpretation.

73. In 2007, the Hague Conference established the International Centre for Judicial Studies and Technical Assistance to promote and support the delivery of assistance and training on the Hague Conventions to Government and legal officials around the world. Assistance by the centre might involve providing advice on legislation, structural organisation and capacity building; identifying and overcoming bad adoption practices; and training people involved in the adoption procedure and in the child protection system in general.

74. 68 States and the European Union are members of the Hague Conference. The Organisation is funded principally by its Members. Its budget is approved every year by the Council of Diplomatic Representatives of Member States. The Organisation also seeks and receives some funding for special projects from other sources. In the year 2010, the regular budget of the Hague Conference authorised a total expenditure of € 3,321,708.50. The Hague Conference also carries out specific projects and activities under a supplementary budget funded through voluntary contributions. The supplementary budget for the year 2010 contemplated a total expenditure of € 2,023,382.

75. UNCITRAL was established in 1966 as a subsidiary organ reporting directly to the United General Assembly. Its mandate, according to General Assembly resolution 2205 (XXI), is the improvement and harmonisation of international trade law. UNCITRAL currently has 60 Member States, elected for a period of five years, but all member States of the United Nations are admitted to participate at its meetings. Its secretariat, the International Trade Law Division of the UN Office of Legal Affairs is located in Vienna. UNCITRAL carries out its tasks, with the assistance of the secretariat, in one annual meeting of up to four weeks' duration and in six working group meetings on specialized topics of up to 12 weeks' duration per year. While the main activity of UNCITRAL consists in preparing uniform law instruments (conventions, model laws, legislative guides), the UNCITRAL secretariat carries out a number of information and technical assistance activities. UNCITRAL and its secretariat are funded through various chapters of the United Nations regular budget. While it is not possible to quote an exact figure, since the exact share attributable to UNCITRAL of the overall UN overhead, as well as the exact cost of UNCITRAL meetings are not separately available, the staff and travel costs of the secretariat, as well as the annual meeting capacity allocated to UNCITRAL would amount to not less €5,900,000 per annum. Furthermore, the trust fund for UNCITRAL symposia receives approximately €90,000 worth of voluntary contributions per year.

76. Besides those two Organisations, a large number of international Organisations undertake, continuously or sporadically, to prepare uniform law instruments or to promote legal standards in areas of private law directly relevant to their mandates. Those Organisations may be specialised agencies or organs of the United Nations, such as the International Civil Aviation Organisation (ICAO), the International Maritime Organisation (IMO), the World Intellectual Property Organisation (WIPO), the UN Conference on Trade and Development (UNCTAD), the Economic Commission for Europe (UN/ECE); multilateral financial institutions (such as the World Bank, and regional development banks); or other Organisations with limited membership, such as the Organisation for Economic Cooperation and Development (OECD) or the Commonwealth Secretariat.

77. There is no hierarchy or standing institutional arrangement between intergovernmental rule-making bodies. Thus it has happened in the past that different bodies approve action plans or lines of work envisaging the formulation of uniform rules or other instruments relating to the same subject or a similar one. This is possible because different bodies may be composed of different member States not in the habit of consulting the work programme of other bodies before approving their own. Often, the same State is a member of different bodies, but communication between its representatives in each one of these may be less than ideal.

(b) Regional

78. Except for the Council of Mutual Economic Assistance, which ceased to exist in 1991, all regional intergovernmental Organisations involved with harmonisation of commercial law in the years following the end of World War II, such as the European Union (EU) or the Organisation of American States (OEA), are still active today. Various other Organisations have been created since 1966 (APEC, ASEAN, COMESA, MERCOSUR, NAFTA, OHADA, SADCC, to name but a few). They are all, in one way or another, involved in activities that have at least some component of trade law harmonisation. The emergence of these new international Organisations or regional mechanisms of economic integration considerably increases the inherent difficulty of co-ordinating international harmonisation efforts.

79. The legislative activities of the EU deserve a special mention in view of the particular history of UNIDROIT and the place of European States within UNIDROIT membership. The expansion of the European integration process over the past twenty years, accompanied by ever-broadening Community competences, has led to growing complexity in the administrative and decision-making structures of the European institutions, so that several Directorates-General – each assisted by different groups of experts and exposed to varying interest groups – may be involved in any given topic. It has also caused a significant increase in the number of legislative harmonisation projects in the area of commercial law or related topics. It has, therefore, been noted that “[t]he transfer of sovereign competences for the creation of private law in certain areas from [twenty-seven] Member States to the European Union, the many uncertainties regarding the scope of that transfer, and the techniques to co-ordinate decision-making and interaction with the rest of the world, already all condition UNIDROIT’s work significantly and will increasingly do so.”⁵

80. One matter of particular concern for UNIDROIT is the risk that its own activities may receive a lower level of attention by many EU member States (which are still the largest group of UNIDROIT member States), in particular smaller States with lesser involvement in investment and trade outside Europe.

⁵ Herbert KRONKE, “Methodical Freedom and Organisational Constraints in the Development of Transnational Law”, *Loyola Law Review*, No. 51 (2005), 287 *et seq.*, 298.

(c) Private

81. A number of private sector entities engage in work aimed at developing legal standards for transnational business activities. Chief among these is the International Chamber of Commerce. Private sector entities such as the International Chamber of Commerce (ICC) are not “competitors” of UNIDROIT as regards most of the latter’s legislative work. Indeed, their non-governmental character does not make of them suitable fora for the negotiation of binding instruments. However, they may occasionally “compete” with UNIDROIT in two ways:

(a) They may compete **positively** with UNIDROIT by developing contractual standards intended for use by private business entities;

(b) They may also compete **negatively** whenever they fear that the self-regulations function may be disturbed by the development of a binding instrument in an area in which they have a vested interest.

2. Non-legislative activities

82. Here the picture becomes more complex: research centres, university libraries, law journals, commercial and academic databases all offer services and information tools that to a greater or lesser extent resemble some of the non-legislative activities carried out by UNIDROIT.

D. WHAT ARE THEIR STRONG POINTS AND LIMITATIONS COMPARED TO UNIDROIT?

83. UNIDROIT is an independent intergovernmental Organisation with a certain number of assets, whose approach often sets it apart from the other Organisations in the sector. To begin with, its a-political approach (although not unique) enables UNIDROIT to work efficiently with all States without being influenced by considerations of a political character to elaborate universally acceptable solutions. Its network of correspondents and past beneficiaries of the Scholarships Programme enables it to adopt an approach that respects the different legal traditions in the context of its projects. Finally, UNIDROIT is able to disseminate considerable resources in the shape of documents, information, research and permanent education which are available to civil servants, legislators and others involved in the implementation of private law instruments. These characteristics are not in themselves sufficient to give UNIDROIT a competitive advantage in all areas, and they may present both advantages and disadvantages, as compared to other Organisations. The example of UNCITRAL illustrates this point clearly.

84. UNCITRAL has at its disposal a conference budget that permits a total of 12 weeks worth of intergovernmental meetings per year, with full interpretation and translation services in six languages. Moreover, UNCITRAL staff, slightly larger than the entire staff of UNIDROIT, can be entirely committed to the delivery of projects under the UNICTRAL work programme, since all conference and administrative support is provided by the general services structure of the UN (meetings planning and management, documents translation and distribution, security, building management, financial and personnel administration). It is clear that UNIDROIT is not, and is never likely to be, in a position to “compete” with UNCITRAL, at least as regards the volume of work that can be accomplished.

85. Another relative advantage of UNCITRAL is that its position within the general structure of the United Nations facilitates liaison with member States, since most communications are channelled through the member States’ Permanent Missions to the United Nations, which are in most cases especially equipped for handling multilateral issues, in contrast to many Embassies in Rome, which cumulate that function with their responsibility to handle bilateral matters.

86. At the same time, however, the structure and working methods of UNCITRAL also entail a number of constraints to which UNIDROIT is not subjected. For instance, the need fully to utilise the entitlement to conference services puts some pressure on UNCITRAL to bring projects to the stage of intergovernmental negotiations through Working Groups (the equivalent of UNIDROIT Committees of governmental experts) as quickly as possible. This means that UNCITRAL projects tend to have relatively shorter “gestation” periods before the intergovernmental negotiating machinery is engaged. This may make it more likely than is the case at UNIDROIT that the – naturally heavier – intergovernmental process begins before sufficient work can be done to consolidate the basic scientific (technical) conditions for the feasibility of the project.

87. The greater flexibility enjoyed by UNIDROIT in determining the working methods most appropriate for a given project allow UNIDROIT better to “calibrate” the pace of progress and to avoid engaging member States in intergovernmental negotiations before a project is “ripe” for that stage.

88. To some extent, the above considerations apply to all other intergovernmental Organisations. A comparison with non-governmental bodies, such as the ICC or the American Law Institute (ALI), in turn indicates a clear advantage for UNIDROIT as a result of its intergovernmental character, which impresses a mark of political approval upon all UNIDROIT instruments. At the same time, however, UNIDROIT lacks a comparable capacity of mobilising private sector involvement and funding for projects and promotion activities.

89. A comparison of the relative advantages and disadvantages of UNIDROIT as compared to Organisations and institutions offering services similar to those of the “non-legislative” branch of the Institute (library, publications, scholarships, technical assistance) would be necessarily more complex given the high number and wide variety of those potential “competitors”. The initial assessment of the Secretariat – admittedly somewhat speculative and not at this stage empirically substantiated in all its points – is that UNIDROIT is at a clear disadvantage given the severe limitation of the resources it can devote to them.

CHAPTER III. THE CHALLENGES AHEAD

90. The Secretariat invites the Governing Council, in its consideration of the Strategic Plan, to focus on some of the challenges we face, in particular the following.

A. TO PRESERVE OUR CONTINUED INDEPENDENCE

91. The Secretariat is assuming that member States attach political importance and practical utility to preserving the independent existence of UNIDROIT. The Secretariat accordingly invites the Governing Council not to consider any scenario involving the UNIDROIT’s integration or institutional linkage with other Organisations.

92. The independent presence of UNIDROIT has not only political or symbolic value. Indeed, UNIDROIT has a unique mandate: to attain the interdependent objections of legal harmonisation, which forms the linchpin of its work. UNIDROIT is the only intergovernmental Organisation with a statutory mandate covering the entire spectrum of private law. The Convention on the Form of an International Will (Washington, 1973), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995), and the ALI/UNIDROIT Principles of Transnational Civil Procedure are clear evidence that the international community needs an Organisation with a mandate reaching beyond commercial law and into other areas of private law. Furthermore, UNIDROIT is the only

intergovernmental Organisation that combines a mandate to promote the harmonisation of private law with a mandate and a tradition to function as a research centre for uniform law.

B. BROADENING PARTICIPATION IN AND ENHANCING THE VISIBILITY OF THE ORGANISATION

93. Measures to enhance the visibility of and broaden participation in the Organisation's work may be taken at various levels and by various means, beginning with efforts to increase formal membership in the Organisation, and continuing with efforts to secure greater involvement by industry, practitioners and the academic world, and to raise awareness about UNIDROIT and its achievements.

1. Membership

94. In many countries outside Europe, UNIDROIT is still seen as a basically European (or European/North American) institution. This is not surprising. Its seat is in Italy. Its President is Italian. Thirteen out of twenty-five members of the Governing Council are European. Only two members of the professional staff are non-Europeans. This is why, for many years now, the Secretariat has attempted to reach out to non-member States in other regions.

95. Discussions with Governments of non-Member States suggest, however, that there are the following *disincentives*: firstly, the annual contribution to the budget of this independent Organisation, small as it may be; secondly, the fact that membership does not entail immediate benefits which a Government does not otherwise enjoy (as many do, e.g. in FAO, IFAD, etc.); thirdly, the absence of certain working languages (e.g. Arabic or Spanish); fourthly, the Work Programme, which is perceived as not catering for the needs of legal systems in developing countries; fifthly, the insufficiency of resources for promotion activities, assistance in implementation of UNIDROIT instruments and other forms of legal co-operation; sixthly, shortage of staff in Governments, making it difficult to follow up on work in international Organisations. Finally, non-Member States view UNIDROIT'S constitutional framework and in particular the lack of any guarantee that a new member State will ever be able to participate in policy-making decisions on the Governing Council as a strong disincentive to accede to the UNIDROIT Statute.

96. Efforts to broaden the membership of UNIDROIT must, therefore, be carefully weighted against the expectations likely to be placed on UNIDROIT by prospective member States. The main advantage of membership is – and will for a long time remain – the possibility actively to participate in the Organisation's work programme and influence the development of projects on the Organisation's agenda. The more technical the projects become, the less likely many countries will be to be able actively to participate or fully contribute to the substantive aspects of UNIDROIT work. Since the cost of participation must in most cases be borne by the member States themselves (travel of delegates and experts), few countries not already members of UNIDROIT (who collectively carry about 98% of the budget of the UN) are in a position effectively to profit from membership.

97. Lesser developed countries (or at least the Government instances that decide about whether or not to join an international Organisation) typically evaluate what they are likely to gain from becoming a member of an international Organisation. Recent experience shows that for Organisations carrying out technical work, as is the case of UNIDROIT, non-member States attach great importance to the likelihood of obtaining technical assistance, expert training and other forms of capacity building from the Organisation. Unless the expected benefits outweigh the cost of membership and participation in the Organisation's work, the prospects of expanding membership in the developing world should be evaluated cautiously.

98. The Secretariat therefore submits that a realistic strategy to broaden membership of the Organisation should focus on a selected group of countries, mainly the larger economies of the regions that are under-represented in the Institute's membership.

2. Industry and practitioners

99. UNIDROIT has a long-standing practice of seeking the contribution of private sector experts – industry representatives, legal practitioners and others, in an advisory capacity – to most, if not all, its legislative projects. This was already the case even prior to the formulation of the Strategic Plan, as demonstrated by the high level of activity of the legal profession in the Study Group on Franchising, of industry representatives in the work that led to the adoption of the Cape Town Convention and its two Protocols, as well as in the ongoing negotiations on the preliminary Draft Space Protocol, or at the drafting stage of what is now the UNIDROIT Convention on Substantive Rules for Intermediated Securities.

100. Nevertheless, the increasingly technical and complex nature of UNIDROIT's work (banking and financial law, but also contract law and procedural law), and the influence which the relevant industries bring to bear on Governments in recognition of the practical impact of the various legislative projects on these sectors, renders it even more imperative that they be involved in the work at a very early stage. We might think of extending our co-operation with the private sector to an exchange of ideas outside the formal context of specific projects, in the shape, for example, of more or less regular meetings. Such consultations might provide an interesting forum to identify the relevant sectors' practical needs in seeking greater harmonisation and to discuss how best to approach these. Greater transparency at the discussion stage, for example by publishing press releases or the outcome of discussions, might help to allay any fears of undue influence on the part of pressure groups.

101. Here, the obstacles confronting the Secretariat stem, on the one hand, from the lack of institutional consultation mechanisms with the private sector (no "observer status" option) and, on the other hand, from the scarcity of financial and logistical resources (no suitable premises) to organise formal consultations, seminars and other information meetings.

3. The academic world

102. UNIDROIT was born, and existed for many years, as a quasi-academic institution. For decades, the sharpest legal minds served on the Institute's bodies and participated in its study groups. Its partners and associates tended to be universities, research organisations and independent researchers rather than Government agencies, national and international bar associations or the judicial authorities. This began to change as other interested parties gradually became more involved, yet the elaboration, in particular, of instruments in the banking and financial fields have given rise to the increased presence in the governmental delegations of professors specialising in these matters.

103. The Governing Council may wish to consider ways in which the network of correspondents might be revitalised, giving priority to the establishment of institutional links between UNIDROIT and research institutions, rather than with individuals.

104. UNIDROIT might, for example, together with other bodies, initiate a broad-ranging study on the economic benefits of legal harmonisation in general.⁶ Just having such general economic impact studies to hand could help to lay to rest some of the preconceived ideas in matters of harmonisation and to secure support, at the domestic level, for particular uniform law instruments.

4. Making UNIDROIT visible and reaching out to the general public

105. The impact and relevance of the UNIDROIT Work Programme largely depend on the Organisation's visibility and on the recognition it receives in the wider world. A concerted effort will have to be made to present the results of our activities to the general public and to decision-makers, underpinned by a publications policy capable of showing the Organisation's greatest achievements, and its contribution to the international debate in the areas it covers, to best advantage.

106. For it to become truly visible, UNIDROIT must have proper production tools and the wherewithal to disseminate information efficiently. The Organisation's Internet website, unidroit.org, today is the most important of these instruments, both by reason of the volume of information it dispenses and because of the growing number of users. It therefore deserves special attention. By incorporating the Organisation's more traditional media (publications), our Internet website is growing into a multimedia tool, a working tool, a platform in which to organise and make available to the public the knowledge produced by the Organisation in its area of competence.

107. It is indispensable that UNIDROIT succeed in reaching the general public in its different member States. That is why it is important that it continue to publish its information products (press releases, website, publications) in several languages and, if possible, even to reinforce that multilingualism.

C. GUARANTEEING THE HIGH QUALITY OF OUR WORK

108. In line with its mandate, UNIDROIT should follow a general blueprint for the purpose of planning its activities in each area. In this connection, UNIDROIT should seek the best possible thought balance between theory and practice, that is to say, it should:

- (a) clearly pinpoint the problems (think-tank);
- (b) implement a broad-ranging dialogue with national experts in order to develop guidelines to solve these problems (normative action); and
- (c) disseminate the results of these projects to its member States and beyond (centre of dissemination and exchange of information).

109. Clearly, these objectives assume the existence of a well-designed, sharply-focused Work Programme, in which the allocation of funds is properly balanced, clear priorities are set and the results for each topic are measurable. Globally speaking, we need an innovative, creative approach for the Work Programme, in order to demonstrate its relevance, usefulness and impact, in particular by involving the community at large?.

⁶ Such a project might incorporate various elements, as suggested by Mr Jeffrey Wool at the Congress commemorating the 75th anniversary of UNIDROIT ("Economic Analysis and Harmonised Modernisation of Private Law", *Unif. L. Rev. / Rev.dr. unif.* 2003, 389 *et seq.*).

110. The positive fall-out of the economic impact study relating to the Aircraft Protocol to the Cape Town Convention⁷ prompts the Secretariat to propose that an economic analysis be made part and parcel of the decision-making process leading to the formulation of uniform law instruments. This would make it easier to obtain the support of representatives of the private sector and legal practitioners for new projects.

111. The “quality” of a uniform law instrument is the product of careful balance of various factors, including, in particular, its practical usefulness, and the economic or commercial benefits it may generate. Advice and input from industry representatives and other private sector experts are therefore essential for the success of the instruments prepared by UNIDROIT, and the Organisation should continue its tradition of openness to co-operation with industry representatives. At the same time, however, UNIDROIT must preserve its independence and impartiality. Legal unification through binding instruments has sometimes been accused of being the product of “private legislators” heavily influenced by lobbying groups seeking to promote their economic interests, and working in an environment of scant accountability.⁸ As an intergovernmental Organisation, UNIDROIT cannot afford to be perceived as being susceptible to undue interference.

CHAPTER IV. TOWARDS A UNIDROIT STRATEGY

A. CONCENTRATING ON WHAT WE DO BEST

112. There can be no doubt about the limited capacity for UNIDROIT to take on new projects or to open new lines of activity. Although some additional capacity may be generated by various measures to enhance efficiency, the Secretariat submits that UNIDROIT has already reached the limit of what it can deliver within the existing resources. It is therefore absolutely indispensable to establish clear priorities for the work of UNIDROIT.

113. This will undoubtedly entail difficult decisions, in particular where it comes to “slimming down” the Programme. However, this retrenchment should not be understood as systematically cutting certain activities in favour of others. On the contrary, it should be the outcome of a coherent strategy and rational short and medium-term planning. It is against this background that we should assess some of the practical consequences of the decisions that are to be taken.

1. Legislative activities

114. The formulation of uniform law instruments is the primary activity of UNIDROIT according to its Statute and the one for which it is most widely known. At the same time, however, it is obvious that the capacity of UNIDROIT to handle legislative projects is very limited.

115. The Governing Council may wish to give thought to whether UNIDROIT, as a rule-making body, should concentrate on:

- the areas in which its flexible structure and academic network represent an added value: an example would be the UNIDROIT Principles of International Commercial Contracts

⁷ See Heywood W. Fleisig, “The Proposed UNIDROIT Convention on Mobile Equipment: Economic Consequences and Issues,” *Unif. L. Rev. / Rev.dr. unif.* 1992-2, 253 *et seq.*

⁸ See Paul B. STEPHAN, “Accountability and International Lawmaking: Rules, Rents and Legitimacy,” *Northwestern School of Law Journal of International Law & Business*, vol. 17 (1997), 681 *et seq.*; see also Alan SCHWARTZ / Robert E. SCOTT, “The Political Economy of Private Legislatures,” *University of Pennsylvania Law Review*, vol. 143 (1995), 9 *et seq.*

- the areas in which UNIDROIT has special expertise and where the fact that it is not evenly represented around the globe (as compared, for example, to UNCITRAL) would be an advantage rather than a drawback, since its more restricted and informal working environment makes for greater flexibility: an example would be the Cape Town instruments and the UNIDROIT Convention on Substantive Rules for Intermediated Securities
- those areas of private law that are not covered by other Organisations with much greater resources, in particular where synergies with other Organisations, especially those based in Rome, are possible: cultural property (ICCROM), land law, particular private law aspects of agricultural funding (FAO, FIDA), social enterprise (IDLO)

2. Legal co-operation

116. At the time the Strategic Plan was formulated, as noted by the Secretariat, the item “legal co-operation”, was synonymous with “scholarships programme”. The Secretariat then suggested that those activities might be usefully extended to services such as assisting Governments, legislators and the judiciary in developing countries not only with the implementation of uniform law instruments but with domestic law reforms in general. The Secretariat also suggested, at that time, that UNIDROIT could co-ordinate requests for assistance and third-party funding (World Bank, regional development banks, private donors) with offers of expertise coming from members of current or former working groups, academic and professional circles as well as Governments. A first exercise of that nature was the assistance facilitated by the Secretariat to the OHADA States in drafting a model law on international commercial contracts, even without securing any additional means beforehand.

117. Despite the widely recognised high quality of the product delivered to OHADA in the form of the draft Uniform Act, the current Secretary-General is less optimistic than his predecessor as regards the feasibility of pursuing this objective without a substantial injection of resources. Indeed, the vision underlying the 2003 Strategic Plan does not seem to have fully taken into account the level of resources needed to design technical assistance and legal co-operation programmes, the amount of follow-up involved, the resources needed for organising seminars and training sessions, the extent of travel required and the depth of consultations needed to bring technical assistance and legal co-operation projects to fruition. Other Organisations, such as IDLO, are almost exclusively devoted to training and mobilise resources at a level several times higher than the entire budget of UNIDROIT. Multilateral financial institutions, such as the World Bank and regional development banks, as well as bilateral donors, have entire programmes devoted to law reform and technical assistance and are capable of allocating several millions of Euro to develop programmes of this nature. Even the biennial seminar programme of UNCITRAL, which is not primarily a technical assistance body, is funded at a level that more than triples the entire travel budget of UNIDROIT (currently €28,000, with 5,000 for “promotion” activities).

118. Therefore, it would seem more realistic and less ambitious to explore synergies with other Organisations better equipped than UNIDROIT to carry out technical assistance activities and to limit UNIDROIT’s own initiatives in this area to those instances where an outside partner is not likely to be found. Increased co-ordination with law reform and technical assistance bodies could supplement UNIDROIT’s own promotion activities. Also, at least in theory, formulating agencies could pool their resources with a view to the joint promotion of their instruments, at least of those that are complementary. The following scenarios would seem to be possible:

(a) to systematically integrate strategic considerations on promotion of a future instrument into the decision-making process that leads to the inclusion of a topic into the Work Programme. In other words, UNIDROIT should assess, already at the stage of feasibility studies, how the future instrument might be promoted and which Organisation should, already at that stage, be approached as a potential partner;

(b) to devise common promotion and technical assistance programmes with other rule-making agencies having developed complementary instruments (UNCITRAL/UNIDROIT/Hague Conference for CISG/UPICC/Choice of Law-Applicable Law/E-Commerce; HCCH/UNIDROIT for Securities trading; HCCH/ UNIDROIT on migration, family law, Washington Convention; UNCITRAL/UNIDROIT/Hague Conference in the area of secured transactions).

(c) to intensify contacts with non rule-making bodies so as to persuade them of the usefulness of incorporating the promotion of UNIDROIT instruments into their technical assistance and law reform programmes (already the case for Cape Town, could be further explored for securities).

3. Non-legislative activities

119. The non-legislative activities of UNIDROIT represent an important part of the Work Programme. If Governments were contemplating to seek *synergies* and to identify *priorities across* the community of Organisations of which they are members, it would seem to be economically more efficient to *strengthen* documentation, research and other outreach resources at UNIDROIT rather than to scale them down or start re-building them elsewhere, at a necessarily lower level. This approach to prioritisation might imply *pooling of resources* and *sharing of burdens* wherever functional and technically feasible.

120. Moreover, the UNIDROIT Library is an activity mandated by the Statute. As far as the Secretariat is concerned, the need to maintain and expand it is not open to debate. That being said, from the point of view of the Organisation's broader statutory objectives, the Governing Council may wish to consider that the Library should preserve a unique profile and should not become "just another" legal library available for researchers in or passing by Rome. In particular, the Governing Council may wish to consider that investment in the Library should prioritise measures aimed at:

(a) supporting the research activities needed to carry out the Organisation's Work Programme;

(b) enhancing the attractiveness of the Library for researchers from around the world, in particular from developing countries, taking into account the expectations of researchers in today's world; and

(c) intensifying exchanges with other libraries, including libraries maintained by other intergovernmental Organisations, such as the Hague Conference and UNCITRAL.

121. The UNILAW database may deserve special attention. Earlier Secretariat documents (see, in particular, UNIDROIT 2002 IBS – Doc. 1) estimated that "a relatively modest investment could raise it to the level of a premium interactive working tool for Governments, legal education, the legal profession and business requiring constantly up-dated information on the status of instruments, case law and bibliography." As originally conceived, UNILAW was to have a very broad coverage (e.g. carriage of goods "by all means of transportation", "credit and finance") and the Secretariat envisaged that it "could be extended to all areas of transnational private law". Unfortunately, the current Secretary-General is less optimistic than his predecessor as regards the feasibility of those objectives without a substantial injection of resources. Indeed, the vision underlying the 2003 Strategic Plan does not seem to have fully taken into account the amount of resources needed to develop this type of research and information tool so as to meet the standards and capability expected by users in today's world. Also, the magnitude of the task may not have been fully realised. The Secretariat now adopts an approach that favours full treatment (including case law and bibliography) only of instruments prepared by UNIDROIT, limiting the treatment of

instruments adopted elsewhere to the provision of appropriate hyperlinks to their texts and other sources of information.

122. Finally, the Secretariat stresses that not all activities must necessarily lead to the preparation of new instruments. The breadth of the mandate given to UNIDROIT, its structure and history make the Institute well suited for functioning occasionally as a “think-tank” on private law matters. The organisation of colloquia on selected topics and the publication of their proceedings in the Uniform Law Review, as was the case with the papers presented at the 2002 Congress to celebrate the 75th Anniversary of UNIDROIT, is an example of an activity that the Institute should continue pursuing.

B. INVESTING IN FOLLOW-UP AND PROMOTION OF INSTRUMENTS

123. Uniform law instruments typically attract little, if any, political interest. Their sole purpose is to facilitate the business activities to which they relate. In most cases, the economic benefit is not easily – if at all – quantifiable. Being *useful* but – with a few exceptions – not strictly speaking *necessary*, uniform instruments in the private law area are not typically treated as a priority for domestic adoption. Furthermore, as States usually act according to the principle of reciprocity, and only move forward on certain matters after other key partners have moved in the same direction, international conventions may take several years to enter into force or be ratified by a sufficiently significant number of countries.⁹ These circumstances mean that, apart from choosing the right topic, an Organisation such as UNIDROIT must develop a strategy for the promotion of its instruments.

124. Continued contact, briefing missions, seminars and similar events are needed to promote ratification at the domestic level. Without them, the time and resources invested by States in the preparation of uniform law instruments over several years run the risk of having been in vain. The main obstacle to the development of a meaningful promotion programme, however, is the penury of resources available in the UNIDROIT budget: €28,000 for all “official journeys of representatives, members of staff and collaborators” (including all project-related travel, travel to attend meetings of other Organisations and to participate in conferences and seminars) and €5,000 for “Promotion of UNIDROIT Instruments”. Only for comparison, during the same period, UNCITRAL will have approximately €84,000 for its technical assistance programme financed from the trust fund for UNCITRAL symposia, while the travel budget alone of the Hague Conference on Private International Law in the year 2010 amounts to €79,700.

C. FINDING PARTNERS FOR WHAT CANNOT BE ACCOMPLISHED ALONE

1. Co-operation with other Organisations

125. For an Organisation that lacks economies of scale, as is obviously the case of UNIDROIT, co-operation with other Organisations is more than a mere strategy: it is an imperative of efficiency.

126. There is already some degree of co-ordination between these Organisations in that they participate in each other’s meetings and hold informal consultations between their Secretariats. That co-ordination ends, however, where the member States themselves decide the work that is to be carried out, thus creating conflicts and potential overlap. The Governing Council might wish to

⁹ The pattern followed by the signatory States of the CISG offers an interesting example. Of the nineteen countries that signed the Convention before 1 September 1981, only three ratified it within less than five years (France, Hungary and Lesotho), while most needed between five and ten years (Austria, Chile, China, Denmark, Finland, Germany, Italy, Norway and Sweden). Three countries took between ten and fifteen years to ratify the CISG (Netherlands, Poland and Singapore), and two have not yet done so (Ghana and Venezuela).

consider whether member States should be encouraged to set up formal co-ordination mechanisms in consultation with the different intergovernmental Organisations active in the private law arena, in particular the Hague Conference and UNCITRAL.

127. In addition to co-ordination of Work Programmes, the Governing council may wish to consider measures to extend co-operation to the stages of project execution. In the earlier days of its history, UNIDROIT often undertook the initial, conceptual phase of the development of uniform law instruments, leaving it to other Organisations, with greater financial resources or better conference facilities, to bring these projects to completion (CMR, OTT). Admittedly, this pragmatic working method has not always led to satisfactory results, from the point of view of UNIDROIT member States, mainly because of the insufficient recognition given to the preparatory work done in Rome. Thus, beginning in the 1980s, UNIDROIT has followed a consistent practice of completing its projects under its own auspices. The wisdom of that policy, particularly when one considers the visibility gained by UNIDROIT with the successful completion of the UPICC and the Cape Town Convention, is undeniable. Of course, it would not be doing justice to its many achievements for UNIDROIT to demote itself to becoming a “legal laboratory” for other Organisations and to relinquish any influence over a project at its final stages. Yet the Secretariat believes that it may be worthwhile to consider again the scope for developing joint projects with other Organisations.

128. The 63 member States of UNIDROIT account for more than 99% of the world GDP. That means that taken together, they represent the largest group of contributors to the budget of any global Organisation. If, hypothetically, another Organisation has available capacity to carry out a joint project with UNIDROIT within its existing resources, it would seem more efficient, at least in theory, for member States to mandate the two Organisations to carry out the project jointly, rather than temporarily create additional capacity for UNIDROIT to do it on its own. The General Assemblies of most Organisations of the United Nations system, for example, where nearly all – if not all – member States of UNIDROIT are invariably represented, often function as conferences of plenipotentiaries for the adoption of international conventions, thus avoiding the need for convening diplomatic conferences (a possibility which UNIDROIT might also wish to examine for itself). One could conceive of devising co-operation mechanisms that would allow UNIDROIT member States to make use of those other fora also for the adoption of UNIDROIT instruments. In any event, joint projects should be based on the principles of equality, co-operation and mutual respect, with proper recognition being given to the work done by UNIDROIT, adequate opportunity for UNIDROIT to participate at the work developed elsewhere, and on condition that the project is eventually finalised as a joint project.

2. Fund-raising

129. The Secretariat is somewhat cautious about the potential for partnering with private sector entities for funding projects and other activities. Apart from policy considerations related to the Organisation’s independence, experience shows that private funding often falls significantly short of expectations. In the past, and in particular with respect to financing the so-called “subsidiary” activities, much hope has been placed, for instance, in the creation of the UNILAW Foundation. So far, donations have covered the expenses for developing the software for the database and enrolling the assistance of a few interns in preparing material to be inserted. Although the Secretariat has conducted time-consuming negotiations with major foundations in order to obtain more funding, there are many reasons why one should not make overly optimistic assumptions in this regard. Law is apparently not a very appealing subject to be associated with and not all countries have the same tradition and the same incentives (tax exemptions, for instance) for donations to not-for profit organisations. Also, under some legal systems and/or articles of incorporation, foundations are barred from donating funds where Governments are the ultimate beneficiaries. Moreover, many major foundations are *operating* foundations which, under their articles and by-laws, would be allowed to run their own library, scholarships programme or data

base but are barred from funding other institutions' activities. Lastly, fund raising, properly done, is in itself a full-time job. North American and British universities do frequently employ full-time staff but it is difficult to see how a small intergovernmental Organisation could do that. While the existence of the Foundation might prove useful as a vehicle for supplementing the funding of the Institute's activities, all efforts should be made to ensure that the regular budgetary resources meet the basic needs.

D. STEPPING UP THE INVOLVEMENT OF PARTICIPANTS IN THE PROCESS

130. Efficient communication between the Secretariat and its principal co-actors in the process is essential to the success of the Organisation's activities.

131. In some ways, UNIDROIT's structure and working methods are reminiscent of an era in which private law harmonisation was conducted more or less informally, for lack of specialised bodies either at the international level or in the member States. The real driving force behind its work, therefore, was the personal commitment of eminent jurists and their authority with their respective Governments (people such as Ernst Rabel, Vittorio Scialoja, René David, etc., spring to mind).

132. Meanwhile, however, member States' internal structures have evolved and the marked institutionalisation and "technocratisation" that have ensued have tended to shift the influence exerted by "great jurists" to the member States' administrative bodies. It is therefore indispensable that UNIDROIT adapt itself to this trend without relinquishing the flexibility that is its hallmark.

133. The Secretariat therefore submits that it would be desirable to involve all member States in the assessment of the Work Programme at the level of the Governing Council. These changes can be made without changing the decision-making function of the elected members of the Governing Council. Documentation for each meeting of the Governing Council could be disseminated sufficiently in advance to all member States so that comments and recommendations can be provided prior to Council meetings.

134. Secondly, member States could be invited to attend as Observers and comment on matters before the Governing Council, although the decisions of the Governing Council would still be made by the elected members as set out in the Institute's Statute. The Secretariat notes that the new conference facilities that will be available in the near future would make that feasible without leasing space elsewhere, so there need not be a financial obstacle to instituting this reform.

135. In addition, initiating work on any projected topic could involve expanded "Study Groups", so that there would be effective geographic representation, and selected preliminary studies and draft texts could be circulated to all members States and separately to relevant private or commercial or other sectors so that the views of States as well as affected interest groups would be before participants in Study Groups or other work entities of the Institute. Again, this could be done without making any changes to the Statute and without substantial additional expenditure.

136. Opening up the proceedings of the Governing Council in this manner might increase the awareness of the General Assembly and the Finance Committee of the substance of the work (draft instruments, proposals for future work, etc.) and might assist them in their task of approving the level of resources needed to fund the Organisation's activities.

E. MAKING THE MOST OF RESOURCES (SECRETARIAT)

137. In a rapidly changing environment, UNIDROIT must make sure that it operates as a dynamic organisation with a clear vision of who is responsible for what, that uses its resources judiciously and that organises its work with a view to efficiency and obtaining the looked-for results. The emphasis should be on two distinct areas, i.e. (1) results-based management, and (2) the management of human resources.

1. Introducing results-based management tools

138. The efficient use of resources requires mechanisms and processes that ensure

- (a) integrating organisational strategy as a criterion for project selection;
- (b) establishment of clear priorities;
- (c) early and accurate assessment of cost implications for new projects;
- (d) sound feasibility studies;
- (e) clear planning of projects, including quality benchmarks, realistic output deadlines and risk assessment;
- (f) project evaluation and periodic review of the Work Programme.

139. In 2009, the Secretariat stepped up its efforts to compile and submit information as to the cost of specific projects, and to elaborate documents highlighting the link between the budget and the implementation of the Work Programme by means of more detailed information on the allocation of resources, with a view to facilitating member States' internal assessment of the costs and benefits of participating in a given project, on the one hand, and ensuring reliable long-term allocation of sufficient resources, on the other hand. The Secretariat's aim is to ensure that funding considerations play a part in the elaboration of the Work Programme.

140. The Secretariat has also introduced a system whereby meetings are planned using a schedule showing the deadlines for the preparation of official documents, including an assessment of their likely length and time for translation and distribution. Other measures to modernise and render more efficient our administrative policies and procedures are underway, in particular:

- a) completion of work to post all the official UNIDROIT documents on-line;
- b) rationalisation and optimisation of distribution channels for our documents;
- c) coherent planning of major conferences and meetings; and
- d) continued development of our document handling system.

141. Furthermore, for an organisation as small as UNIDROIT, it is particularly important to ensure that projects offer a satisfactory level of returns, in terms of visibility and recognition. Here, the Governing Council may wish to consider carefully the overall distribution of resources between legislative and non-legislative activities. UNIDROIT is mainly known for its successful legislative activities. Instruments such as the UNIDROIT Principles and the Cape Town Convention, to name but those most widely known, are the cornerstone of the Institute's reputation, authority and visibility. However, in 2009 non-legislative activities absorbed nearly as much of the Institute's resources (€655,750, or 28.68% of expenditure) as legislative activities (€681,900, or 29.83% of expenditure), exceeding both the resources allocated to the governance of the Institute (€352,400, or 15.41% of expenditure) and to central administrative and management costs (€595,800, or 26.064% of expenditure).

142. Judicious use of resources may from time to time call for hard and unpopular decisions. If a project turns out to be manifestly over-ambitious, wrongly tailored or for any other reason unlikely to be brought to fruition, discontinuation or downsizing may be the only responsible options unless special stakeholders provide extra-budgetary support for its completion.

143. The Secretariat has also started a review of its procurement practices with a view to assessing whether current contractors still deliver value-for-money and exploring alternative sources of supply. While some savings can be achieved, the overall budgetary impact of these measures is expected to be rather modest, given the relatively low share of project-related expenditure in the UNIDROIT budget. Indeed, one of the most serious challenges to introducing results-based management at UNIDROIT is the current imbalance between fixed costs and project expenditure.

144. Chapter 2 (salaries and allowances) and Chapter 3 (social security charges) of the UNIDROIT budget currently absorb 76.13% of the regular budget. The relative weight of salaries, allowances and social security charges within the UNIDROIT budget is partly due to the competitive salaries paid to staff (in particular professional staff), the length of their service and the high cost of the social security system in which most staff members are enrolled (37% of payroll). To a very large extent, the Secretariat has little flexibility to control these costs, since salaries are subject to periodic increases at rates established by the co-ordinated Organisations (OECD, NATO), and the rates of social security contributions are set by the social security schemes to which staff members belong. Be that as it may, given the tight control to which the UNIDROIT budget is subject, the increase in fixed costs is only partially set off by an increase in revenue. Indeed, an analysis of the evolution of the UNIDROIT budget over the past 20 years shows an increase in staff and social security costs of about 45.97% (covering roughly the same number of staff) against an overall budget increase of only 34.98%. After deduction of the other (non-staff related) components of the Institute's fixed costs, the Organisation is left with less than 14% of its regular budget to spend on delivery of services (organisation of meetings, promotion of texts, technical assistance, publications, purchase of books). If this trend is not reversed, fixed costs will soon absorb more than 90% of the Organisation's budget.

145. Staff cuts are not a viable option. If anything, UNIDROIT is rather understaffed.¹⁰ The real problem is the shortage of funds for project activities. This is not so much a consequence of uncontrolled fixed costs, but rather of an historic imbalance between fixed costs and project costs. In fact, for more than two decades project costs have never represented more than 20% of the overall UNIDROIT budget. The "vegetative" nature of fixed costs increases has only made this historic imbalance worse.

2. Making better use of human resources

146. The Secretariat's staff is its most valuable resource. As is the case of any other international Organisation, having a committed, motivated and loyal staff that meets the highest standards of professional competence and integrity must always be a paramount objective for UNIDROIT.¹¹ Achieving that objective, however, requires not only a properly developed and applied

¹⁰ By way of comparison, the Hague Conference has a total of 32 staff members, of which 16 at the professional level. The UNCITRAL secretariat is smaller, with 19 staff members, of which 13 area lawyers, but it has at its disposal the central support services of the United Nations Office in Vienna and the United Nations headquarters in New York.

¹¹ OECD Staff Regulation 7, for instance, states that: "(a) In recruiting officials the Secretary-General shall give primary consideration to the necessity to obtain staff of the highest standards of competence and integrity. (b) He shall provide, so far as possible, for an equitable distribution of posts among the nationals of Members of the Organisation, in particular as regards senior posts. c) Officials are required to possess the degree of physical fitness needed for their posts." Similarly, Regulation 1.1 (d) of the United Nations requires the Secretary-General to "ensure that the paramount consideration in the determination of the conditions of service shall be the necessity of securing staff of the highest standards of efficiency, competence and integrity."

personnel policy, but also a management strategy to ensure that staff are responsive to the demands placed on the Organisation. The following paragraphs address the main challenges faced by UNIDROIT.

(a) Low mobility

147. The need to focus on technical topics for the treatment of which UNIDROIT may be regarded as a suitable forum, is likely to lead increasingly to the inclusion in the Work Programme of projects for which no expertise may be available within the Secretariat. It is therefore essential that UNIDROIT be equipped to respond swiftly to changing mandates and an evolving Work Programme, in particular by having adequate means for engaging outside experts and recruiting short-term staff to work on specific projects. The difficulties faced by the Secretariat in ensuring adequate support for its work on intermediated securities amply demonstrate the need to develop a strategy to achieve these objectives.

148. With the exception of three staff members, all professional staff holding regular appointments have been with the Institute for more than twenty years (28.5 on average). The positive aspects of this situation are consistency of approach and institutional memory, as well as a high level of expertise in each staff member's area of work (besides providing eloquent evidence of their loyalty to the Institute). The possibly negative aspects are a certain rigidity of working methods, scant inclination to innovation and a tendency for internal clusters to work in isolation. These factors limit the Institute's ability to respond quickly to new demands from member States for changes in the Work Programme.

149. There is, therefore, a clear need for the Secretariat to consider measures to improve staff mobility. Apart from measures that may require an increase in the relevant chapters of the budget, more attention must be given to establishing secondment and junior professional officer programmes, such as those that exist in other Organisations, to welcome young lawyers for limited periods of service with the Institute.

(b) Imbalanced staffing structure and lack of continued education

150. Furthermore, the lack of junior professional staff combined with the need to deploy general service staff on a number of overhead functions not immediately related to service delivery means that senior professional staff often end up carrying out at least some administrative or clerical tasks, rather than doing the substantive legal work that should correspond to their posts. This problem had already been identified in the Strategic Plan, which characterised the "ever-waning involvement in actual preparatory research" by the Institute's professional staff as "creeping de-qualification".

151. Some improvement may be achieved by redistributing tasks among the staff, increased use of new technologies and information management tools and other measures to rationalise the internal work of the Secretariat. For instance, the Secretariat has started to review the job descriptions of general service staff with a view to assigning to them as much as possible the administrative tasks currently performed by professional staff members. This has already started at the higher end of the category B staff (secretaries), who have been asked to undertake a number of tasks they had not handled before: organising and handling the electronic filing system; maintaining address files, sharing office calendars and documents forecast tables; drafting and translating meeting reports. Some areas, however, may require special attention.

The silence of the Statute and the Regulations of UNIDROIT on this point does not mean that this principle would not equally apply to the Institute.

152. One area of particular concern is the translation of technical documents requiring a moderate to high level of familiarity with legal terminology. Multilingualism is an essential feature of intergovernmental Organisation. Experience also shows that this is a fundamental condition for ensuring both the quality of the final product and its political acceptability. The Secretariat believes that this feature of UNIDROIT'S working method must be preserved and further developed. The main challenge is of a financial nature. Currently, all translation is done in-house, mainly by professional members of the staff, which obviously limits their availability for substantive work.¹² This problem is further exacerbated by the fact that no sums are allocated under the UNIDROIT budget for outside translation and no stand-by arrangements exist to outsource translation if the volume of documents exceeds the in-house capacity. Over many years, the Secretariat has benefited from the provision, by the French Government, of international volunteers according to a formula devised in 1995 for participants in national service, which continued in 2001 with the new formula volunteers (duration one year, renewable). Unfortunately, this very important support to bilingualism in UNIDROIT ceased in March 2007.

153. In 2003, the Strategic Plan noted a "most unfortunate" lack of opportunities for continuing qualification ("language courses, enhancement of IT capabilities, etc.") for administrative support and technical staff.¹³ Unfortunately, no chapter in the UNIDROIT budget contemplates staff training and no concept has since been developed to persuade member States of the need for such an investment or to find alternatives within existing resources to provide for such a possibility. The Secretariat regrets that, thus far, it has not had the means for developing a skills and career development plan for the staff, in particular general service staff.

CONCLUSION

154. Within limits, some of the measures needed to increase or improve UNIDROIT'S ability to respond to the challenges which it faces, can be taken by the Secretariat. As far as the internal management of UNIDROIT is concerned, the Governing Council and the member States may rely on the devotion, loyalty and motivation of the Organisation's staff, and on the Secretary-General's determination to give of his best in fulfilling his duty as administrator of the human and financial resources entrusted to him. However, with regard to most of the other aspects discussed in this document, it is up to the member States and the bodies set up under the Organisation's Statute to instruct the Secretariat as to how to achieve the goals it has been set, pursuant to defining a long-term Strategy for the Organisation.

155. The purpose of this document, as indicated earlier, is not to provide answers to the various challenges faced by UNIDROIT, but rather to offer suggestions for an initial discussion by the Governing Council of a strategic plan for the coming years. The Governing Council may wish to establish an informal working group to examine the various matters and options outlined in this document with a view to the preparation of a draft new Strategic Plan to be submitted to the Council for consideration at its 90th session, in 2011.

¹² The following figures offer a clear indication of the burden of translation resting on UNIDROIT staff: in 2009 the Institute published 127 official documents for a total of 343,935 words.

¹³ Cf. UNIDROIT C.D.(83) 6.

ANNEX I

Doc. A.G. (65) INF

Information on the extra-budgetary contributions received in 2009 and on their allocation to the activities and projects of the Institute

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>For information of the members of the General Assembly</i>
<i>Action to be taken</i>	<i>None</i>
<i>Related documents</i>	<i>None</i>

Introduction

1. At its 60th session, the General Assembly showed the interest to know in detail the extra-budgetary contributions received from member States or private donors. The Secretariat prepared documents to this effect that were submitted to the Governing Council at its 58th session, held in Rome from 16 to 18 April 2007, to the Finance Committee at its 62nd session, held in Rome on 4 October 2007, and to the General Assembly at its 61st session, held in Rome on 29 November 2007, with a view to receiving their opinion.

2. The Governing Council and the Finance Committee shared the interest shown by the General Assembly and agreed that those contributions would have been better appreciated if allocated to the projects and activities of the Institute. This may permit the institutions of UNIDROIT to have a more precise picture of the finances of the Institute.

3. This paper accounts for these contributions as well as the expenditure that were, or will be, funded accordingly in 2009. It is to be noted that other contributions, i.e. direct organization of meetings, payment of travel and accommodation expenses of members of the staff, participation of persons external to the Institute, are not indicated in this paper. In particular, the Secretariat wishes to recall the hosting in Geneva by the Government of Switzerland of the two sessions of the Diplomatic Conference for the adoption of the Draft Convention on the Intermediated Securities.

Summary of the extra-budgetary contributions received in 2009 and of their allocation to the projects and activities of the institute.

1. SCHOLARSHIPS PROGRAMME

The Institute received in 2009 contributions from:

- the Government of Korea (€ 7,095.72)
- the UK Foundation for International Uniform Law (€ 5,837.71)
- the members of the Governing Council (€ 2,450)
- the Secretary-General (€ 1,500),

for the financing of several scholarships, aimed at permitting research periods of approx. two months in the UNIDROIT Library for young lawyers from developing countries or countries in economic transition, in addition to the scholarships funded by the UNIDROIT regular budget (€ 10,000).

2. PROJECT "CAPITAL MARKETS"

The Institute in 2009 received the following contribution:

from the Government of the Netherlands	€ 30,000.00	for the partial funding of the post of the researcher in charge of the project
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This contribution, which was not included in the budget, for reasons of accounting and transparency will be included in the 2009 Accounts, as well as the expenditure to which it was allocated.

3. CAPETOWN CONVENTION AND AIRCRAFT PROTOCOL

The Institute in 2009 received the following contribution:

from the UK Foundation for International Uniform Law	€ 19,835.00	for supporting activities in relation to the promotion of the Convention and the Aircraft Protocol
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4. SPACE PROTOCOL TO THE CAPETOWN CONVENTION

The Institute in 2009 received the following contributions:

from the UK Foundation for International Uniform Law	€ 16,041.07	for funding a post of assistant researcher
from the German Space Agency	€ 8,000.00	
from the US Foundation for International Uniform Law	€ 16,900.00	

5. DATABASES

In 1999 the Institute received important funds from private donors that financed the UNILAW database until 2006, in particular covering the cost of a part-time collaborator (until May 2007) and the costs of the website (until 2006).

In 2009, the database is funded by the Uniform Law Foundation as follows:

part-time collaborator	total	€ 37,600.00
website		
3 internships of 2 months each for young lawyers		
partial reimbursement of the cost of the officer in charge of the project		
total		

For more details, it is possible to consult the financial documents of the Uniform Law Foundation.