



**GOVERNING COUNCIL  
90<sup>th</sup> session  
Rome, 9-11 May 2011**

UNIDROIT 2011  
C.D. (90) 7  
Original: English  
March 2011

**Item No. 8 on the agenda: UNIDROIT Model Law on Leasing: follow-up and promotion**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Report on the implementation to date of the UNIDROIT Model Law on Leasing and of the programme for promotion of the Model Law approved at the 89<sup>th</sup> session of the Council</i>
<i>Action to be taken</i>	<i>See paragraph 19, below</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>High</i>
<i>Related document</i>	<i>Annual Report 2010 (C.D. (90)02), pp 14 and 20.</i>

**INTRODUCTORY REMARKS**

1. An account of the progress made in 2010 in implementing the programme for promotion of the UNIDROIT Model Law on Leasing approved at the 89<sup>th</sup> session of the Council is to be found in the Annual Report 2010. This memorandum will, accordingly, focus essentially on bringing the Council up to date with details of the programme for the launch seminar and its current plans for the follow-up seminars.

**IMPLEMENTATION OF THE MODEL LAW**

2. The Secretariat would, first, draw the Council's attention to the fact that, in addition to the unofficial Arabic, Russian and Spanish versions of the Model Law that were available at the time of the Council's 89<sup>th</sup> session, an unofficial Chinese version of the Model Law is now also available. With the official English and French versions of the Model Law, this means that the latter now exists in all six languages of the United Nations. In this respect, the Secretariat would point out that all the unofficial language versions have been prepared without any financial outlay on the part of the Secretariat.

3. By way of update to the information on implementation of the Model Law provided to the Council at its 89<sup>th</sup> session,<sup>1</sup> the Secretariat would point out that neither the draft Afghan nor the

<sup>1</sup> C.D. (89) 6, § 30.

draft Palestinian law has yet been enacted. While the draft Afghan law was approved by both Houses of Parliament in June 2010, it has not to date been officially ratified owing to parliamentary elections and the fact that the new Parliament that has just been sworn in has not yet turned to this issue. There can, in present circumstances (with the President of the Palestinian National Authority having stopped the enactment of laws in the absence of the Palestinian Legislative Council, it not being clear when the latter may be reconvened and it not being certain whether the President will decide to continue the practice of enacting temporary laws), be no guarantee as to when the draft leasing law may be enacted. The International Finance Corporation, nevertheless, continues to support the enactment of both laws.

4. As announced at the Council's 89<sup>th</sup> session, the Middle East and North African office of the I.F.C. will be conducting a first assessment mission in Iraq regarding leasing regulatory reform in May 2011. The Secretariat has learned that the United States Agency for International Development (USAID) also has a project in Iraq and that a draft leasing law has been prepared as part of this project.

5. In March 2011 Mr R. Castillo-Triana, a UNIDROIT correspondent, who was active in the preparation of the Model Law, informed the Secretariat that he was preparing, on behalf of USAID, a draft leasing law for Georgia, based on the Model Law.

#### **OUTLINE OF SEMINAR PROGRAMME**

##### *(a) Launch seminar (Tian Jin, 19 May 2011)*

4. Through the preparation of the unofficial Chinese version of the Model Law and following on from the visit that an official of the Financial and Economic Committee of the China National People's Congress paid to UNIDROIT, on a research scholarship, in June 2008, to study the then draft Model Law from the perspective of the draft Chinese law on leasing that was then under consideration, China seemed the perfect place to launch the programme of promotional seminars.

5. The China Leasing Business Association (C.L.B.A.) and the Financial Leasing Committee of the China Banking Association have kindly agreed to host a one-day seminar in Tian Jin on 19 May 2011 on "Drawing on international experience for the drafting of China's leasing law: the UNIDROIT Model Law on Leasing". The co-hosts of the seminar have kindly agreed to take care of the travel and accommodation arrangements of three members of the UNIDROIT panel of speakers, Mr R.M. DeKoven, a UNIDROIT correspondent, who acted as Reporter throughout the genesis of the Model Law, Mr M. Johnson, Principal Legal Officer of the Attorney-General's Department of Australia, who represented that Government during the intergovernmental consultation process on the Model Law, and Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT. They will also kindly be taking care of the accommodation arrangements of the fourth member of the panel, Mr H.D. Gabriel, member of the Governing Council, who represented the Government of the United States of America during the intergovernmental consultation process on the Model Law.

6. The programme for the seminar has been structured by the C.L.B.A. in such a way that, following welcoming addresses, there will be, first, a session filling in the background to the Model Law, in which Mr Stanford will - possibly with support from the China office of the I.F.C. - be illustrating the need for, and relevance of the Model Law and then briefly describing the process for its preparation, before Mr DeKoven explains the considerations underlying the choices made by the authors of the Model Law regarding its subject-matter, looking in particular at the decision not to deal with accounting aspects of the subject, which would appear to be a subject of especial interest in China. Then there will be a session devoted to an analysis of the key features of the Model Law, in which Mr DeKoven will illustrate the underlying principles of the Model Law, Mr Stanford will describe its sphere of application, Mr Gabriel will analyse the rights and duties of the parties to financial leases under the Model Law, Mr Johnson will analyse the rights and duties of parties to

leases other than financial leases thereunder and Mr Gabriel will illustrate the Model Law's rules on default. There will then be a question-and-answer session, moderated by Mr DeKoven, followed by a presentation by a representative of the Department of Law of the Ministry of Commerce of China on solving the problem of legislating for financial leasing by means of State regulations, in the light of the Government of the People's Republic of China's participation in the development of the Model Law. After this, Mr DeKoven will introduce the implications for enactment of the Model Law in China and there will then be presentations by an official of the China National People's Congress and a judge of the Supreme People's Court of China on the status of China's progress towards legislating in this field and its analysis of foreign legislation and the Model Law and the need for resolving the problems of financial leasing by legislation respectively. This will be followed by another question-and-answer session, after which counsel to the C.L.B.A. will talk about combining the Model Law on Leasing with the planned legislation for leasing in China. After that, there will be a final question-and-answer session and time for comments by the UNIDROIT panel, before the concluding remarks, to be made by the President of the C.L.B.A.

7. The seminar is to be preceded on 18 May 2011 by an international leasing meeting, to which members of the UNIDROIT panel have also been kindly invited.

*(b) Planned follow-up seminar in Indonesia*

8. The Indonesian Ministry of Law and Human Rights already indicated its interest in hosting a seminar on the Model Law at the time of the second session of governmental experts, held in Muscat in April 2008. This interest was formally confirmed by the Ministry of Law and Human Rights of Indonesia in August 2010. The Government indicated that it would be kindly taking care of arranging the venue and on-the-spot transportation, as well as providing accommodation of up to four or five experts. The Government having, however, indicated that it would not be able to take care of the travel arrangements of such experts, the Secretariat got in touch with the Swiss Secretariat for Economic Affairs (SECO), which on 1 October 2010 kindly agreed to make available to the Secretariat a substantial financial contribution to cover, *inter alia*, the cost of such travel arrangements.

9. The Secretariat has had its hands full with preparations for the launch seminar, the dates and venue for which have had to be changed, for a number of reasons. It has not, therefore, yet been possible to settle dates for the planned seminar in Indonesia. The Secretariat is, in particular, mindful of the need not to be overly demanding in the expectations it places on those experts willing to serve it in this context. It is, therefore, contemplating the seminar being held, compatibly, of course, with the convenience of the Indonesian Authorities, towards the end of the year.

10. As mentioned in the Secretariat memorandum on the preliminary draft Space Protocol,<sup>2</sup> the Secretariat was asked by the Government of Indonesia at the recent session of governmental experts to organise a workshop on the preliminary draft Space Protocol. It is early days yet and the Secretariat has not had the opportunity to work out the details of such a workshop. It has, though, already suggested to the Government of Indonesia that the seminar and the workshop might be held back-to-back, not least so as to facilitate the participation, where appropriate, of the same experts in both.

*(c) Planned follow-up seminar in Africa*

11. The primary focus of the Model Law was always Africa, given that continent's particular shortage of infrastructure financing but general need for financing at every level. The Secretariat, therefore, believes that no programme of promotional seminars worth the title could fail to include at least one African venue.

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<sup>2</sup> C.D. (90) 4(b), § 31.

12. Following up on a suggestion made by Mr D. Wallace at the 89th session of the Council, the Secretariat got in touch immediately thereafter with Mr S. Karangizi, Assistant Secretary-General of the Common Market for Eastern and Southern Africa (Comesa), who indicated that the Model Law would be a good subject to lay before the annual meeting of the Comesa Ministers of Justice and Attorneys-General,<sup>3</sup> all the more so since leasing had developed considerably in importance in Comesa's member States. However, since the following annual meeting of the Ministers of Justice and Attorneys-General was due to take place less than a month later, the Secretariat suggested putting off such an event until such time as there was sufficient time to make the necessary preparations.

13. The Secretariat is conscious, of course, too that at the 89<sup>th</sup> session of the Council Mr D. Tricot favoured efforts being made to promote the Model Law in both the French- and English-speaking member States of the Organisation for the Harmonisation of Business Law in Africa (O.H.A.D.A.), noting "unmistakable signs that some O.H.A.D.A. member States stood in need of just the type of leasing contract contemplated by the Model Law and that the time therefore seemed ripe for a Uniform Act based on the Model Law".<sup>4</sup>

14. The Secretariat has been in touch with the I.F.C., given the scope for the exploration of synergies in the organisation of such a seminar, in particular at the request of SECO, which has also committed a substantial financial contribution to cover the funding required for an African seminar.

15. As mentioned above, however, for the time being, the limited time available to the Secretariat for work on developing the programme of promotional seminars has not permitted it to get any closer to identification of the most appropriate venue nor a realistic date for the planned seminar: in the light of what has already been said,<sup>5</sup> it would, however, submit that it would not be realistic to contemplate the organisation of such a seminar before mid-2012 at the very earliest.

#### **OTHER DEVELOPMENTS**

16. As announced by the Secretariat at the Council's 89<sup>th</sup> session, the Commonwealth Secretariat had indicated its interest in working with the Secretariat on implementation of the Model Law.<sup>6</sup> Particular importance, it was pointed out, attached to involving the Commonwealth Parliamentary Association (C.P.A.) in such implementation, given that this would open the way for direct communication with Parliamentarians in the 54 Commonwealth jurisdictions.

17. After the Council's 89<sup>th</sup> session, the Secretariat was, however, informed by the Commonwealth Secretariat that, because of supervening budgetary restrictions, it was no longer possible, for the time being, for the Commonwealth Secretariat itself to implement the envisaged collaboration. The Commonwealth Secretariat, therefore, suggested to the Secretariat that it contact the C.P.A. directly.

18. Mr Stanford paid a visit to the Headquarters of the C.P.A. in London on 6 August 2010 and, in the absence of the Secretary-General, Mr W.F. Shija, saw Mr S. Baldeosingh, Assistant Director (Communications and Research), and Ms M. Dhar, Assistant Director of Programmes. Ways were discussed of possible collaboration between the C.P.A. and UNIDROIT regarding the promotion of the Model Law. On 10 September 2010, at the suggestion of Mr Baldeosingh and Ms Dhar, Mr Stanford wrote to Mr Shija, formally seeking advice on collaboration between the two Organisations, suggesting, as a possible first step, that consideration be given to the appearance of an article on

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<sup>3</sup> In his reply, Mr Karangizi indicated that the Ministers of Justice/Attorneys-General of between 10 and 15 of Comesa's 19 member States normally attended such meetings.

<sup>4</sup> C.D. (89) 17, § 23.

<sup>5</sup> Cf. § 9, *supra*.

<sup>6</sup> C.D. (89) 6, §§ 25-29.

the Model Law in a future issue of *The Parliamentarian*, the C.P.A. Secretariat's quarterly publication. At the time of writing, the Secretariat was expecting a response from Mr Shija.

**ACTION TO BE TAKEN**

19. *The Secretariat would invite the Council to take note of the progress recorded by the Secretariat over the past year in implementation both of the UNIDROIT Model Law on Leasing and of the programme of seminars for promotion of the Model Law approved by the Council at its 89<sup>th</sup> session.*