

UNIDROIT News

➤ **81st Session of the Governing Council** ◀ *Rome, 24 – 25 September 2002*

INSTITUTIONAL ASPECTS

The Governing Council appointed Mr Roland LOEWE and Mr Anthony BLUNN first and second vice-presidents, respectively, until its 82nd session.

The Council then appointed the following new correspondents:

Mr Ewan MCKENDRICK (United Kingdom), Professor of English Private Law, University of Oxford, Barrister;

Mr Gainan AVILOV (Russian Federation), Member of the Expert Council for Civil Legislation under the Chairman of the State Duma, Member of the Council for Codification and Development of Civil Law under the President of the Russian Federation.

The Governing Council expressed its gratitude to those States which in 2002 supplied or renewed their voluntary support of the UNIDROIT Research Scholarships Programme: France (since 1993), the Republic of Korea (since 1997) and Finland (since 1999), as well as the People's Republic of China (as of 2002).

➤ **Brainstorming Session** ◀

*of the Governing Council and Representatives
of Member States' Governments – Rome, 26 September 2002*

Under the customary interpretation of the UNIDROIT Statute,¹ the members of the Organisation's Governing Council, although appointed by the General Assembly, i.e. the representatives of all member States, hold office in their personal capacity as experts and not as representatives of their respective Governments (*cf.* Articles 5 and 6[6]). While some Governments traditionally put forward candidatures of senior civil servants in charge of private law or private international law in their respective departments, others tend to designate senior judges or distinguished scholars who, once they are elected, may not necessarily act as ambassadors of their Governments' views, let alone follow instructions. In the light of these constitutional peculiarities, the Governing Council, at its 80th session, held in 2001, decided to convene a special "brainstorming session", designed to discuss the fundamentals underlying UNIDROIT's current work with representatives of those Governments who are particularly interested in charting the Institute's future.

¹ Statute, incorporating the amendment to Article 6(1) which entered into force on 26 March 1993.

Participants from 44 of UNIDROIT's currently 59 member States² discussed, guided by Professor Peter WINSHIP (Southern Methodist University School of Law, Dallas, United States of America), who acted as moderator, a broad range of issues identified in documents submitted by Governments and the Secretariat.

With respect to the Organisation's *constitutional framework*, a number of participants voiced their preference for taking full advantage of the Statute's flexibility margins which allowed for certain adaptations (e.g. the invitation of observers to the Council's sessions) without requiring actual modifications of the relevant provisions. Others emphasised that formal amendments of the Statute should not be a taboo. In this context, related issues, such as the "creeping" modification of the Institute's working methods, in particular the regular and deeper involvement of private interest groups and the desirability of a stronger General Assembly were discussed. Speakers agreed that, given the Organisation's intergovernmental nature and Governments' accountability vis-à-vis their taxpayers, efforts were needed to avoid any disconnection between the establishment of the work programme and deliberation of the Institute's budget.

As regards the *work programme*, the choice of subjects as well as the relative weight the so-called "subsidiary activities" (documentation, publication, technical assistance, scholarship programme, etc.) should be given were addressed specifically from the point of view of UNIDROIT's attractiveness for developing countries in Africa and Asia.

The unsatisfactory representation of those two continents among the Organisation's *membership* was a third topic which drew numerous comments. While some discussants would not exclude that one or two more working languages might have to be added, others emphasised the budgetary implications which, in their view, would not be tolerable.

The *relationship with the other private-law formulating Organisations*, co-ordination of their programming cycles as well as the very structure of their respective remits (substantive law – conflict of laws, political relevancy – pure technicity, etc.) was equally subject of a few very forceful interventions.

Much to the participants' regret, even a full day of concentrated discussions did not leave sufficient time to thoroughly address the overarching issue of the currently insufficient *funding and models to develop the budget* so as to provide the Organisation with working conditions and financial resources which are adequate for carrying out the highly demanding and steadily growing work programme as well as the new tasks assigned to the Institute such as the functions of the depositary for the Cape Town instruments. While a number of delegations called for the necessary budget increase committing their Governments in this respect on condition that all or at least major contributors followed suit, others preferred to explore alternative routes such as the establishment of trust funds for specific projects, seconding officials from member States' Governments to the Secretariat and similar devices.

² Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, the Holy See, Hungary, India, Iran, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Portugal, the Republic of Korea, Slovenia, Romania, the Russian Federation, the Slovak Republic, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom, the United States of America, Uruguay and Yugoslavia.

It is envisaged to convene in early 2003 a meeting of a restricted Steering Group, made up of the Governing Council's Permanent Committee and Government representatives, which is to formulate conclusions for this session and to make recommendations for further work on developing a "vision for the future".

➤ **Implementation of the 2002-2004 Work Programme** ◀

INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

1. Convention on International Interests in Mobile Equipment and Protocol on Matters specific to Aircraft Equipment

By 30 September 2002, 24 States had become signatories of both the Cape Town Convention and the Aircraft Protocol.³ The Cape Town Convention is due to enter into force following the deposit of the third instrument of ratification, acceptance, approval or accession *but only as regards a category of objects to which a Protocol applies*. The Aircraft Protocol is due to enter into force following the deposit of the eighth instrument of ratification, acceptance, approval or accession. Reliable information reaching the Secretariat would lead it to believe that three States are on the verge of depositing their instruments of ratification and it is anticipated that the two instruments are likely to enter into force relatively quickly.

As indicated elsewhere in this Review (*cf.* 2001, 591), it is one of the tasks of the Preparatory Commission set up by the Cape Town Conference to ensure that the international registration system for aircraft objects intended to underpin the new international regimen is ready to be operated at the latest by the date of the entry into force of the two new instruments. It will also be for the Preparatory Commission to guarantee that this international registration system is set up in accordance with an objective, transparent and fair selection process and to ensure the necessary liaison and co-ordination with the representatives of private industry who will in due course be using the International Registry. The Preparatory Commission held its first meeting at the Headquarters of the International Civil Aviation Organization (I.C.A.O.), which was invited by the Cape Town Conference to act as Supervisory Authority for the international registration system for aircraft objects, in Montreal from 8 to 10 May 2002. Mr Laurent NOËL (Switzerland) was elected Chairman. Pursuant to the decision taken at that first meeting, a working group to finalise the draft regulations prepared by the International Registry Task Force intended to govern the operation of the International Registry for aircraft objects met, first, in Washington from 4 to 6 September 2002 and, secondly, in Montreal from 12 to 14 November 2002.

At the request of the African Civil Aviation Commission, the Secretariat of UNIDROIT, as depositary of the Cape Town Convention and the Aircraft Protocol, has prepared a guide to the complex system of declarations underlying those instruments, including model declaration forms, designed to assist States in their implementation.

Pursuant to the invitation extended to him by the Cape Town diplomatic Conference, Sir Roy GOODE (United Kingdom), who served as Chairman of the Drafting Committee at that Conference, has prepared an Official Commentary on the Cape Town Convention and the

³ Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Germany, Ghana, Italy, Jamaica, Jordan, Kenya, Lesotho, Nigeria, Panama, Senegal, South Africa, Sudan, Switzerland, Tonga, Turkey, United Kingdom and United Republic of Tanzania.

Aircraft Protocol. Following the decision taken by the UNIDROIT Governing Council at its 81st session, this Official Commentary is to be distributed to all negotiating States and participating observers from the Conference, as well as to all negotiating non-member States.

The UNIDROIT Secretariat is also in the process of preparing the Acts and Proceedings of the Cape Town Conference. It has also been active in the year since the opening to signature of the new instruments in publicising the new instruments, whether through articles or at international conferences.

2. Preliminary Draft Protocol on Matters specific to Railway Rolling Stock

The first session of the Joint UNIDROIT/O.T.I.F. Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the *Joint Committee of governmental experts*) was held in Berne on 15 and 16 March 2001 to consider the text of the preliminary draft Protocol on Matters specific to Railway Rolling Stock (hereinafter referred to as the *preliminary draft Rail Protocol*).

This text was subsequently amended by a restricted Drafting Group, chaired by Mr K.F. KREUZER (Germany) (Rome, 4-6 February 2002) to implement the changes agreed at the first session of the Joint Committee of governmental experts as well as those required following the adoption of the Cape Town Convention and its Aircraft Protocol.

The Registry Task Force set up by the Joint Committee of governmental experts at its first session held its first session in Rome from 20 to 22 March 2002. Messrs F. CROCCOLO (Italy) and P. BLOCH (United States of America) were in the chair. The principal result to emerge from this session was a decision to circulate a questionnaire among countries in Africa, Asia and Latin America seeking information regarding existing mechanisms permitting the registration of railway rolling stock.

The Joint Committee of governmental experts held its second session in Rome from 17 to 19 June 2002. The session was attended by the representatives of 25 States,⁴ one intergovernmental Organisation,⁵ two international non-governmental Organisations⁶ and one national Organisation.⁷ Ms I. WEINBERG DE ROCA (Argentina) was in the chair and Sir Roy GOODE served as Reporter. Mr A. LEINONEN (Finland) was elected Deputy Chairman.

At this session, the Joint Committee of governmental experts reserved its position pending their in-depth consideration by the Registry Task Force, and further urged Governments to respond to the questionnaire agreed upon by the Registry Task Force with a view to facilitating the prosecution of that body's work.

Following its consideration by the Drafting Group (Rome, 23-25 October 2002), the preliminary draft Rail Protocol will be transmitted to Governments for comments with a view to the third session of the Joint Committee of governmental experts which will be held in Berne from 5 to 13 May 2003. The Drafting Group and the Registry Task Force will also be meeting in the meantime.

⁴ Argentina, Austria, Belgium, Brazil, Canada, China, Croatia, the Czech Republic, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Italy, the Great Socialist People's Libyan Arab Jamahiriya, Netherlands, Republic of Korea, Russian Federation, Spain, Sweden, Switzerland, Tunisia, United Kingdom and United States of America.

⁵ European Commission.

⁶ Rail Working Group and Union of European Railway Industries.

⁷ Association of American Railroads.

Notwithstanding the all too evident urgent need, in particular in the developing world and countries with economies in transition, for private foreign investment in their rail infrastructures, it is clear that, with a few notable exceptions, there is all too little awareness of the preliminary draft Rail Protocol and the benefits that it may reasonably be expected to bring in precisely those countries. As a result, the UNIDROIT Secretariat has urged the holding of regional seminars in Africa, Asia and Latin America in the run-up to the third session of the Joint Committee of governmental experts as part of a consensus-building exercise.

There can be no doubt that the economic impact assessment study in respect of the Cape Town Convention as applied to railway rolling stock, under consideration by the Rail Working Group and shortly to be completed, will prove a key factor in the successful mounting of such a consensus-building exercise.

3. Preliminary Draft Protocol on Matters specific to Space Assets

Pursuant to the decision taken by the UNIDROIT Governing Council at its 80th session (Rome, 17-19 September 2001) to authorise transmission of the preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Space Protocol*) to Governments once it had been revised to reflect the final versions of the Cape Town Convention and the Aircraft Protocol (at the time still in draft form), the preliminary draft Space Protocol was considered afresh by the Space Working Group at a fifth session (Rome, 30-31 January 2002) and by a Steering and Revisions Committee (Rome, 1 February 2002).

At its fifth session the Space Working Group considerably revised and updated the preliminary draft Space Protocol to take account of the changes made in Cape Town. The text as amended by the Space Working Group was further revised by the Steering and Revisions Committee with a view to ensuring its terminological and conceptual coherence and consistency with the text of the Cape Town Convention. The Steering and Revisions Committee was chaired by Mr SÁNCHEZ CORDERO (Mexico) and, in addition to Sir Roy GOODE, Mr J. PUTZEYS (Belgium) and Ms S. PAYMAN, representing Mr A. BLUNN (Australia), on behalf of the Governing Council, it was also attended by representatives of the Space Working Group and the United Nations Office for Outer Space Affairs (U.N./O.O.S.A.).

The preliminary draft Space Protocol has over the last year, together with the Cape Town Convention, been the subject of close consideration by, first, the *ad hoc* consultative mechanism of U.N./COPUOS and, subsequently, the Legal Subcommittee of that Committee, as to their relationship with the United Nations Treaties and Principles on Outer Space (Paris, 10-11 September 2001 and Rome, 28-29 January 2002), in which both the UNIDROIT Secretariat and representatives of the Space Working Group took an active part, did not seem to reveal any provisions of the preliminary draft Space Protocol requiring specific amendment in order to bring them into line with the United Nations Treaties and Principles on Outer Space, although the representative of the United Nations Office for Outer Space Affairs (U.N./O.O.S.A.) indicated to the Steering and Revisions Committee that the *ad hoc* consultative mechanism had concluded as to the desirability of the inclusion in the preliminary draft Space Protocol, at least in the preamble, of a provision clarifying the relationship between the preliminary draft Space Protocol and existing international space law.

Wide-ranging discussion of the Cape Town Convention and the preliminary draft Space Protocol subsequently took place at the 41st session of the Legal Subcommittee of U.N./COPUOS (Vienna, 2-12 April 2002), *inter alia* on the case for the functions of Supervisory

Authority in respect of the international registration system for space assets being entrusted to the Secretary-General of the United Nations. It was above all with a view to seeing whether these functions might be exercised by a body of the United Nations that the Secretariat had contacted U.N./O.O.S.A. in respect of the preliminary draft Space Protocol in the first place, given the quite unique nature of outer space and the fact that the international registry for space objects established under the United Nations Convention on Registration of Objects Launched into Outer Space was operated by a United Nations organ (U.N./O.O.S.A.).

At the request of the Legal Subcommittee, U.N./COPUOS agreed to include examination of the preliminary draft Space Protocol both from the point of view of the possibility of the United Nations serving as Supervisory Authority in respect of the future international registration system and as regards the relationship between its provisions and the rights and obligations of States under the legal regimen applicable to outer space on the agenda of the Legal Subcommittee on the agenda of its 45th session (Vienna, 5-14 June 2002). It also set up a new working group should be set up to consider these matters, and decided that the Secretariat of U.N./O.O.S.A. would prepare a report on the possibility of the United Nations serving as Supervisory Authority in consultation with the Legal Counsel to the United Nations for consideration by the working group.

UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

The Working Group for the preparation of Part II of the UNIDROIT Principles held its fifth session at the UNIDROIT headquarters in Rome from 3 to 7 June 2002. The session was attended by Messrs M.J. BONELL (UNIDROIT, Chairman), P.-A. CRÉPEAU (Canada), S.K. DATE BAH (Ghana), E.A. FARNSWORTH (United States of America), P. FINN (Australia), M. FONTAINE (Belgium), M. FURMSTON (United Kingdom), A. GARRO (Argentina), Ms HUANG DANHAN (China), Ms C. JAUFFRET-SPINOSI (France), Messrs A. KOMAROV (Russian Federation), P. SCHLECHTRIEM (Germany) and T. UCHIDA (Japan). Messrs A.-M. WHITESELL and J. CARLEVARIS (ICC Court of Arbitration) and G. SCHIAVONI (Milan Italian and International Chamber of Arbitration) attended as observers. Mr H. KRONKE (Secretary-General of UNIDROIT) also took part in the discussions.

The session was mainly devoted to the examination of the revised draft Chapter on Limitation Periods prepared by Mr Schlechtriem (UNIDROIT 2002 Study L – Doc. 73), the revised draft Chapter on Assignment of Rights, Transfer of Obligations and Assignment of Contracts prepared by Mr Fontaine (UNIDROIT 2002 Study L – Doc. 74), the revised draft Chapter on Set-off prepared by Ms C. Jauffret-Spinosi (UNIDROIT 2002 Study L – Doc. 75) and the revised draft Chapter on Third Party Rights prepared by Mr Furmston (UNIDROIT 2002 Study L – Doc. 76). The Group was also seized of a document containing a questionnaire and replies thereto on “UNIDROIT Principles and Electronic Commerce” prepared by Messrs M.J. Bonell and E.A. Farnsworth (UNIDROIT 2002 Study L – Doc. 77) and a position paper on “Waiver and Related Issues” prepared by Mr Finn (UNIDROIT 2002 Study L – Doc. 78).

It is expected that the Working Group will finalise Part II of the UNIDROIT Principles at its 6th session scheduled to take place in Rome in June 2003. A detailed report on the latest session is contained in UNIDROIT 2002 Study L – Misc. 24.

FRANCHISING

The Second, and final, session of the Committee of Governmental Experts convened to examine the Draft Model Franchise Disclosure Law was held from 8 to 12 April 2002. Twenty-three

member States participated in the meeting.⁸ Two delegations from non-member States⁹ and four from non-governmental organisations¹⁰ participated as observers. The report of the session has been published as Study LXVIII – Doc. 47.

The Committee completed its task, and transmitted the draft to the UNIDROIT Governing Council which decided to adopt the Model Franchise Disclosure Law on 25 September 2002. The final text was subsequently transmitted to the member States of UNIDROIT and to all those who participated in the meeting. It has been posted on the UNIDROIT website at < <http://www.unidroit.org/english/franchising/modellaw/main.htm> > for the English text and < <http://www.unidroit.org/french/franchising/modellaw/main.htm> > for the French text.

PRINCIPLES AND RULES OF TRANSNATIONAL CIVIL PROCEDURE

The third session of the joint UNIDROIT / *American Law Institute* (ALI) Working Group for the Preparation of Principles and Rules of Transnational Civil Procedure was held at the UNIDROIT headquarters in Rome from 27 to 31 May 2002.

The session was chaired by Mr R.T. NHLAPO (South Africa; Member of the Governing Council of UNIDROIT) and was attended by Mr N. ANDREWS (United Kingdom), Ms A.R. KEMELMAIER DE CARLUCCI (Argentina), Ms F. FERRAND (France), Mr G.C. HAZARD Jr. (United States of America; *Co-Rapporteur on behalf of the ALI*), Mr M. KAWANO (Japan), Mr P. LALIVE (Switzerland) and Mr R. STÜRNER (Germany; *Co-Rapporteur on behalf of UNIDROIT*). The session was also attended by Messrs A. GIDI, Secretary to the Group, O. HAHN (observer for the European Commission, Directorate General Justice and Home Affairs, Unit A3 – Cooperation in Civil Matters), L. MAGGIONI (observer for the Court of Justice of the European Communities), L. PRIESTLEY QC and M. TRAYNOR (observer for the ALI). The UNIDROIT Secretariat was represented by Messrs H. KRONKE and M.J. BONELL.

The session mainly focused on the examination of the draft Principles of Transnational Civil Procedure and of the draft Rules of Transnational Civil Procedure with Comments prepared by Messrs G.C. HAZARD Jr, R. STÜRNER, M. TARUFFO and A. GIDI (UNIDROIT 2001 Study LXXVI – Doc. 7). The Group was also seized of the French language version of the two drafts produced under the auspices of the ALI and reviewed by Ms F. FERRAND and Mr P. LALIVE.

After extensive discussion, the Group decided to ask the two Rapporteurs to prepare a new draft of the Principles of Transnational Civil Procedure with Comments to be submitted to the competent organs of UNIDROIT and of the ALI discussed at the Group's fourth session in May 2003 in Rome.

⁸ Argentina, Austria, Belgium, Bulgaria, Canada, China, Colombia, France, Germany, Greece, Hungary, Italy, Japan, Malta, Mexico, Poland, Republic of Korea, Russian Federation, Sweden, Switzerland, Tunisia, Turkey and the United States.

⁹ The Philippines and Thailand.

¹⁰ The European Franchise Federation, the World Franchise Council, the International Bar Association and the Union internationale des avocats.

As to the draft Rules of Transnational Civil Procedure, it was agreed that they should represent an example of possible implementation of the Principles within particular jurisdictions.

A detailed report on the session is contained in UNIDROIT 2002 Study LXXVI – Doc. 8.

**PRIVATE LAW ASPECTS OF TRANSACTIONS ON TRANSNATIONAL
AND CONNECTED CAPITAL MARKETS**

The Study Group for the preparation of *‘Harmonised Substantive Rules for the Use of Securities Held with Intermediaries as Collateral’* held its first session at the seat of UNIDROIT in Rome from 9 to 13 September 2002.

This item is the first of five items which form part of the larger subject *‘Transactions on Transnational and Connected Capital Markets’* which was included in the Institute’s Work Programme by the General Assembly at its 55th session (2001). The remaining four items are the preparation of substantive rules applicable to delocalised transactions, the offering of assistance in developing rules capable of enhancing trading on emerging markets, the development of standards for “global shares”, and an examination of the feasibility of developing harmonised rules for world-wide take-over bids.

In consideration of the preferences indicated by the member States of the Institute, the Governing Council authorised the Secretary-General to set up a Study Group to deal with the first item of the project. This first item deals with the legal issues that arise in systems of indirect holding of securities (e.g. shares, bonds), especially in the case of the taking of collateral in securities that are held indirectly.

The legal issues that arise are the result of three fundamental problems: the first is of a conceptual nature and concerns the transition from a system for the direct holding of securities to one for indirect holding, a transition that was imposed for practical reasons of efficiency. In most countries the indirect holding systems developed step by step without any change in the existing conceptual framework which is still based on direct holding. The direct holding system is based on, firstly, a direct relationship between the investor and the issuer – in most cases a property right – and, secondly, on the physical possession of certificates. From the practical point of view these elements are not necessary for an efficient and reliable indirect holding system. Their legal integration into the indirect holding system, the most important element of which is book entries, might be considered to be rather difficult. The second problem is the fact that in today’s global capital market securities are traded internationally, which implies that such trade is based on different national jurisdictions that interlock or conflict. The third problem is that the cross-border taking of collateral in indirectly held securities – an instrument of huge and ever increasing importance – can multiply the legal and economic risks involved.

A few modern and highly sophisticated national legal frameworks for indirect holding systems work quite reliably and with little legal uncertainty. Many legal systems have only outdated or rudimentary rules or, indeed, no rules at all. Problems arise inevitably in cases of different indirect holding systems interconnecting in cross-border trading. In this case the diversity of the different legal concepts in themselves, or diversity together with marginal internal inconsistencies of the systems involved, creates considerable legal risk. This results in tremendous transaction costs, as most cross border transactions and providing of collateral need to be accompanied by an individually created legal construction to avoid legal uncertainty.

Moreover, these uncertainties are increasingly threatening the global capital market, because shortfalls caused by a legally uncertain framework for the holding of securities could lead to the insolvency of the collateral taker. The insolvency of a major market participant may trigger the insolvency of other collateral takers and cause a chain reaction.

The Hague Conference on Private International Law has recently adopted a *Convention on the law applicable to proprietary aspects of dispositions of securities held with an intermediary*. The Convention deals with the question of which law applies to the proprietary (not contractual) aspects of transfers of title (e.g., purchase, the providing of collateral). It does not address substantive questions. However, the determination of the applicable law through modern conflicts rules is satisfactory only in those cases where that legal system has adequate substantive rules.

The work of the UNIDROIT Study Group is aimed at decreasing these remaining risks which are obstacles to a smoothly working globalised capital market. At its first session the Study Group identified two key objectives: on the one hand, legal certainty in cross-border securities transactions requires every national set of rules involved to be internally sound. On the other hand, the compatibility of the national systems for the indirect holding of securities must be increased.

The members of the Study Group are: Mr B. SEN (India, Member of the UNIDROIT Governing Council, *Chairman*); Mr J. Michel DESCHAMPS (Canada); Mr Philippe DUPONT (Luxembourg); Ms Dorothee EINSELE (Germany); Mr Edgar JELONCHE (Argentina); Mr Hideki KANDA (Japan); Mr Guy MORTON (United Kingdom); Mr Frédéric NIZARD (France); Mr Richard POTOK (Australia); Mr Curtis R. REITZ (United States of America); Mr Luc THÉVENOZ (Switzerland, *Vice Chairman*).

**UNIFORM RULES APPLICABLE TO TRANSPORT
CO-OPERATION WITH CEE/ONU FOR THE PREPARATION OF A CMR PROTOCOL**

Asked by the United Nations Economic Commission for Europe "to comment on the problems concerning the exchange of electronic data in the framework of the CMR Convention" ((CEE/ONU, 19-21 October 1998, TRANS/SC.1/363, 4 December 1998), the Governing Council decided that, having promoted the CMR Convention, it wished to participate in the work. Professor Jacques PUTZEYS, member of the UNIDROIT Governing Council, was entrusted with the task of representing UNIDROIT within the Economic Commission for Europe.

When the CMR – the Convention on the Contract for the International Carriage of Goods by Road – was signed at Geneva on 19 May 1956 and entered into force on 2 July 1961 was drafted under the auspices of the Economic Commission for Europe on the basis of a draft prepared by UNIDROIT, the "consignment note", the document generally used for the carriage of goods by road and intended to record the relations between contracting parties, could only be conceived of as paper-based. Since then, other mediums have come to be used in all transport modes – telex, fax, electronic messages (EDI).

In preparing the new draft protocol to the CMR (the first Protocol of 5 July 1978, entry into force 28 December 1980, had introduced a reference to the Special Drawing Right (SDR) unit of account), the Governing Council of UNIDROIT considered the solutions already adopted in other transport modes to legalise electronic data interchange, and presented proposals and comments (TRANS/SC.1/2000/9 and TRANS/SC.1/2000/1/7) which the Working Party on Road Transport of the Inland Transport Committee (SC.1) duly submitted to the CMR Contracting Parties for comment.

On the basis of the replies received, UNIDROIT has prepared a commentary which will be considered by the Road Transport Working Group at its 96th session in October 2002. While drawing the Working Group's attention to the urgency of the adoption of the Protocol since at the present time private initiatives are undertaken without directions and without any legal foundation, and that anarchy, which would be prejudicial to the parties to the contract of carriage, must be avoided, it noted that there was unanimity as to substance, and proposed that the principle of the EDI-CMR Protocol be adopted, guidelines issued as to its content, and a working group set up to draft it.

UNIFORM LAW DATA BASE (UNILAW)

Work has progressed with the preparation of software for the insertion of data, and of a website for the English language section of the data base. It is anticipated that the address of the data base will be made public shortly, when a sufficient amount of data has been inserted in the data base. The first convention to be dealt with is the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR). The co-operation of experts in the field as well as of young lawyers has been enlisted.

➤ **Implementation of UNIDROIT Instruments** ¹¹ ◀

1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The Convention was ratified by Cambodia on 11 July 2002 (entry into force: 1 January 2003), and by Portugal on 19 July 2002 (entry into force: 1 January 2003). Spain acceded to the Convention on 21 May 2002 (entry into force: 1 November 2002). This brings the number of Contracting States (as of December 2002) to 18.

➤ **UNIDROIT : Congresses and Colloquia** ◀

To commemorate the 75th anniversary of its foundation, UNIDROIT organised a Congress on "*Global Harmonisation of Private Law and Regional Economic Integration*" in Rome (at the Pontificia Università Urbaniana) on 27-28 September 2002 (see Report of the meeting in this issue, p. 814).

The Congress was intended as a starting point for in-depth reflection on world-wide legal harmonisation and the way in which its objectives and methods square with the realities and needs of regional economic integration systems. The debates centred on a general report and

¹¹ For the state of implementation of UNIDROIT instruments, please consult the UNIDROIT website: < www.unidroit.org > .

six topics of special importance in the recent history of the harmonisation of private law (contracts, sale and carriage of goods, secured transactions, civil procedure and the protection of cultural property). The discussions took off with the reports and communications of academics and practitioners, speaking to an audience of over 300 people from some sixty countries, including representatives of the Governments of member States and some non member States of UNIDROIT, as well as from several international organisations, both general and specialised, as well as regional economic integration organisations.

A detailed account of the Congress is reproduced in this issue, pp. 814. The Acts reproducing the reports and communications will be published in *Uniform Law Review / Revue de droit uniforme* in the course of 2003.

➤ **UNIDROIT Research Scholarships Programme** ◀

The following scholars conducted research at UNIDROIT during the period 1 January – 20 December 2002:

- Mr Andras MOGYORO (Hungary), Ph.D. Student, ELTE University of Sciences, School of Law, Budapest; Student Central European University, Budapest – Research Period: 5 Feb. – 31 Mar. 2002; Research topic: "The principle of preservation of contracts in international legal instruments" Funding (à *personam*): Italian Government, Ministry of Foreign Affairs.
- Ms Amina KHAYAT (Morocco), Lecturer, Faculty of Law, Souissi University, Rabat; Official, Ministry of Finance – Research period: Mar./Apr.. Research topic: "The law applicable to international commercial contracts". Sponsored by the Government of Finland.
- Ms Ana DJORIC (Yugoslavia (Serbia)), Researcher, Institute of Comparative Law and G17 Institute, Belgrade; Ph.D Student (Paris X, France); Research Period: Mar./July. Research topic: "The international carriage of goods". Sponsored by the French Government.
- Mr Anibal QUIROGA LEON (Peru), Professor, Faculty of Law, Pontificia Universidad Católica del Peru, Lima; Research Period: April-June. Research topic: "UNIDROIT Principles and Rules / ALI relative to the transnational civil procedure". Sponsored (partial funding) by the Government of Finland.
- Ms Yulia LENEVICH (Russian Federation), Counsellor, Legal Department, Ministry for Economic Development and Trade, Moscow. Research Period: June/July. Research topic: "Warehousing contract in international trade". Partial funding by UNIDROIT.
- Ms Katarina KALESNA (Slovakia), Professor, Faculty of Law, Comenius University, Bratislava. Research Period: Jul./Aug. Research topic: "International Franchising and Competition Law Issues". Sponsored by UNIDROIT.
- Mr Oleksandr SEROGIN (Ukraine), Assistant Professor of Law, Institute for International Relations – Taras Shevchenko National University of Kyiv. Research Period: Jul./Aug. Research topic: "Legal Regulation of International Tourist Relations (Ukraine – EU comparative Study)". Sponsored by UNIDROIT.
- Mr FAN Yong (People's Republic of China), Attorney-at-law, Sinobridge Law Firm, Beijing. Research period: Jul./Sep. Research topic: "Cross-Border Mergers and Acquisitions and Merger Control Regulation under EU Legal System". Sponsored by the Government of the People's Republic of China.
- Mr ZUO Haicong (People's Republic of China), Associate Professor of International Economic and Commercial Law, Wuhan University. Research period: Jul./Sep. Research topic: "Agency Law" (in progress). Sponsored by the Government of the People's Republic of China.

- Ms DUAN Donghui (People's Republic of China), Legal Counsel China Construction Bank, Beijing. Research period: Jul./Sep. Research on: UNIDROIT Principles; Securities Held in Indirect Holding System; Transnational Civil Procedure. Sponsored by the Government of the People's Republic of China.
- Mr Ivo TELEC (Czech Republic), Professor, Masryk University, Brno; Member, Permanent civil law commission. Research period: Sep./Oct. Research topic: "Franchising and Licensing Law – comparative law". Sponsored by UNIDROIT.
- Ms Elena BABKINA (Russian Federation), Assistant Professor, University of the State of Belarus, Minsk. Research period: Sep./Oct. Research topic: "International commercial agency: international and comparative law aspects". Sponsored by UNIDROIT.
- M. Mario Gustavo CARRIZO ADRIS (Argentina), Professor, Universidad Argentina de la Empresa (UADE), Buenos Aires. Research period: Sep./Oct. Research topic: "Competition law/Mercosur UE compared". Sponsored by the Government of Finland and the UADE.
- Ms Elena SOKOLOVA (Russian Federation), Assistant Professor, Moscow State Open University. Research period: Sep./Oct. Research topic: "Factoring and credit law: international instruments". Sponsored by UNIDROIT.
- Mr Blaise DAUGAUX-KOUASSI (Côte d'Ivoire), Assistant Professor at the University of Abidjan. Research period: Sep./Oct. Research topic: "Legal integration in Western francophone Africa – private law aspects. Sponsored by UNIDA (*ad personam*).
- Mr Bayu Seto HARDJOWAHONO (Indonesia), Professor, Catholic University of Parahyangan. Research period: Sep./Dec. Research topic: "UNIDROIT Principles and their application in Asia". Sponsored by the Government of Korea.

➤ **Depository Libraries for UNIDROIT Documentation** ◀

The UNIDROIT Secretariat's invitation to Member States to designate libraries to serve as depositories for *UNIDROIT Proceedings and Papers* on CD-ROM and the *Uniform Law Review, New Series* has been well received. Forty-one libraries world-wide have been designated so far to serve this purpose. In addition to those indicated in this column in *Unif. L. Rev. / Rev. dr. unif.* (1999, 682; 1999, 933; 2000, 512; 2001, 88 and 597), the following libraries have been designated as depositories for UNIDROIT documentation:

- Bulgaria: Bulgarian National Library "St. Cyrill and St. Methodius"
- Estonia: National Library of Estonia < www.nlib.ee >
- Poland: Poland Sejm Library (Biblioteka Sejmowa) < <http://www.sejm.gov.pl> > .

➤ **UNIDROIT Publications** ◀

UNIDROIT Proceedings and Papers 2000 and 2001 on CD-ROM have appeared.

