

## UNIDROIT News

### ➤ *Institutional Aspects* ◀

#### **Latvia : 60<sup>th</sup> member State of UNIDROIT**

With effect from 1 January 2006 the Republic of Latvia acceded to the UNIDROIT Statute, thereby becoming UNIDROIT's 60<sup>th</sup> member State. The Library of the Ministry of Justice of the Republic of Latvia is the depository library in Latvia for UNIDROIT documentation.

#### **59<sup>th</sup> Session of the UNIDROIT General Assembly (Rome, 1 December 2005)**

- *H.E. Mr Vasco Taveira da Cunha Valente*, Ambassador of Portugal in Italy, was elected President of the General Assembly for 2005/2006.
- *Work Programme for the 2006/2008 Triennium adopted by the General Assembly*

At its 59<sup>th</sup> session (Rome, 1 December 2005), the General Assembly adopted the Work Programme drawn up by the Governing Council at its 84<sup>th</sup> session (Rome, 18-20 April 2005).

#### PART I: PREPARATION OF UNIFORM LAW INSTRUMENTS AND EXERCISING OF DEPOSITARY FUNCTIONS IN RESPECT THEREOF

1. International interests in mobile equipment – Cape Town Convention and related Protocols
  - (a) Convention on International Interests in Mobile Equipment (Cape Town, 16 November 2001) and Protocol thereto on Matters specific to Aircraft Equipment (Cape Town, 16 November 2001) – exercising of depositary functions, in particular in relation to the International Registry for aircraft objects and the Supervisory Authority of that Registry;
  - (b) Draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock – organisation of a regional seminar for Africa and of a diplomatic Conference of adoption by mid-2006;
  - (c) Preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets – completion of a draft Protocol capable of being laid, as soon as possible, before a diplomatic Conference of adoption; and
  - (d) Future Protocol to the Cape Town Convention on agricultural, construction and mining equipment – subject to the case for such work being confirmed in a preliminary study, that should also examine the possibility of including industrial and civil works equipment within the scope of the project.
2. Principles of International Commercial Contracts – with work following the same lines as hitherto, with the Secretariat being invited to consider the membership of the Working Group and also who might usefully be invited to participate as observers and with wide support being expressed for work focussing on, first, unwinding of failed contracts, secondly, illegality, thirdly, plurality of debtors and creditors, fourthly, conditions (that is suspensive conditions or conditions precedent and resolute conditions or conditions subsequent) and,

fifthly, suretyship and guarantees but with more detailed proposals being due to be laid by the Secretariat before the Governing Council at its 85<sup>th</sup> session, as soon as possible after which the reconvened Working Group should hold its first session.

3. Capital markets
  - (a) Preliminary draft Convention on harmonised substantive rules regarding intermediated securities – completion of a draft Convention capable of being laid, as soon as possible, before a diplomatic Conference of adoption; and
  - (b) Principles and rules capable of enhancing trading in securities on emerging markets – decentralised preparation of an instrument, probably to take the form of a legislative guide.
4. Model law on leasing – subject to the availability of external support, with it being noted that, thanks to the efforts of Mr Ronald DEKOVEN, a UNIDROIT correspondent, such external support is indeed being provided.
5. Multimodal transport – with, given UNIDROIT's longstanding involvement in the drafting of transport law instruments, consideration being given to the possibility of working in co-operation with the relevant international Organisations.

PART II: ACTIVITIES CONNECTED WITH THE UNIFICATION OF LAW

1. Programme of legal co-operation – for developing countries and countries in economic transition
  - (a) Research scholarships programme, and
  - (b) Assistance in legal drafting – in particular, co-operation with the Organisation for the Harmonisation of Business Law in Africa (OHADA) for the preparation of a draft Uniform Act on Contracts.
2. Promotion of UNIDROIT activities and instruments – in particular the Institute's web site.
3. UNIDROIT publications – in particular
  - (a) *Uniform Law Review / Revue de droit uniforme*;
  - (b) Digest of Legal Activities of International Organizations and other Institutions;
  - (c) UNIDROIT Proceedings and Papers and
  - (d) Acts and Proceedings of the diplomatic Conference at which the Cape Town Convention and the Aircraft Protocol were opened to signature.
4. Data base on uniform law (Unilaw)
5. Uniform Law Foundation.

➤ **Implementation of Work Programme 2006-2008** ◀

**UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS**

By the end of March 2006, three of the official language versions of the UNIDROIT Principles of International Commercial Contracts 2004 (English, French, Italian), had been published. The integral version has also been published in Chinese (Edition and translation by the Treaty and Law Department of the Ministry of Commerce (MOFCOM), Beijing, Law Press – China, 2004, ISBN 7-5036-5166-0; Edition and translation by Mr Zhang Yuqing, Member of the UNIDROIT

The black letter rules are also available in German, Spanish, Russian and Turkish and may be accessed – as well as the English, French, Italian and Chinese texts – on the UNIDROIT website (<www.unidroit.org>).

#### HARMONISED SUBSTANTIVE RULES REGARDING INTERMEDIATED SECURITIES

A third seminar on intermediated securities was held in Paris on 31 January and 1 February 2006. 49 Delegates from 17 Member States and three international organisations attended the event hosted by the French Banking Association (FBF – *Fédération Bancaire Française*) and the Securities Industry Association (AFTI – *Association française des professionnels de titres*). The programme included presentations and discussions on (a) the definition of the term “securities”; (b) segregation of securities accounts; (c) the definition of the term “good faith acquirer”; (d) methods of loss sharing in case of shortfalls; (e) the impact of intermediated holding on the relationship between issuer and investor; (f) the “link” between credits and debits to securities accounts in case of transfer; and (g) the definition of “securities clearing or settlement system.

Equally within the exercise of inter-sessional work of the Committee of Governmental Experts (CGE), two informal working groups finalised their reports. The first report dealt with the question to what extent Article 19.1 of the *preliminary draft Convention on Substantive Rules regarding Intermediated Securities* went beyond a pure non-discrimination provision. The second report evaluated legislative techniques for the implementation of the future instrument.

The second session of the CGE on Intermediated Securities was held from 6 to 14 March 2006. 37 Member States, 2 non-Member States and 11 observers attended with a total of 121 delegates. The text of the draft instrument was amended as set out in UNIDROIT 2006 Study LXXVIII Doc. 42. At its second session, the CGE decided that inter-sessional work in the form of two informal working groups should be organised by the Secretariat on (a) issues related to good faith acquisition, and, (b) so called “transparent systems”. The third session of the CGE on Intermediated Securities is to be held from 6 to 15 November 2006.

#### PREPARATION OF A MODEL LAW ON LEASING

The preparation of a model law on leasing continues on the accelerated schedule, that the Advisory Board overseeing its preparation determined was appropriate in the light of the urgent need for the law in certain States. Following the Advisory Board’s first session last October, a preliminary draft of the model law was prepared by Mr Ronald DeKoven, the Reporter, and distributed to all members of the Advisory Board. Members submitted comments thereon, and on 6 and 7 February 2006, a second session of the Advisory Board was held at the seat of UNIDROIT in Rome. At the second session, members of the Advisory Board from sub-Saharan Africa, North Africa, Asia, Europe, Latin America, North America and the Russian Federation discussed the preliminary draft and agreed on the changes necessary for the next draft.

The Reporter has now prepared a second preliminary draft, on which comments have been received. Advisory Board members will convene in Rome for a third and final session from 3 to 5 April 2006. The preliminary draft law as it emerges from this session would be submitted to the UNIDROIT Governing Council at its 85<sup>th</sup> session, to be held in Rome from 8 to 10 May 2006 for advice on the appropriate follow-up action.

*Brian Hauck* \*

\* Secretary to the Advisory Board; on secondment to UNIDROIT from *Jenner & Block LLP*, Washington DC (United States of America).

➤ **Implementation of UNIDROIT Instruments** ◀

**1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**

Nigeria (on 1 December 2005 with entry into force on 1 June 2006) acceded to the Convention. This brings the number of Contracting States (as of 31 March 2006) to 27.

**2001 Convention on International Interests in Mobile Equipment  
and Protocol on Matters specific to Aircraft Equipment**

The *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the Protocol), and the *Convention on International Interests in Mobile Equipment* (the Convention) as applied to aircraft equipment, entered into force on 1 March 2006. Both the Convention and Protocol have been a major focus of UNIDROIT's work programme over recent years. Also on 1 March 2006, the International Registry commenced operations, and the Council of the International Civil Aviation Organization became the Supervisory Authority of the International Registry.

On 9 January 2006, the Senegal deposited its instruments of ratification to the Convention and the Protocol, and will become the ninth Contracting State to both the Convention and Protocol on 1 May 2006.

Further information is available on the UNIDROIT website: <[www.unidroit.org](http://www.unidroit.org)>.

➤ **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-six 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, 932; 2000, 512; 2001, 88; 2001, 596; 2002, 858 and 2003, 692, the following libraries have been designated as depository for UNIDROIT documentation:

Holy See	Libera Università Maria Ss. Assunta, Rome < <a href="http://www.lumsa.it">www.lumsa.it</a> >
Latvia	Library of the Ministry of Justice, Riga < <a href="http://www.tm.gov.lv">http://www.tm.gov.lv</a> >
United States of America	Underwood Law Library, Dedman School of Law, Southern Methodist University, Dallas < <a href="http://library.law.smu.edu/">http://library.law.smu.edu/</a> >.

➤ **UNIDROIT Research Programme** ◀

Between 31 July 2005 and 31 March 2006, the following researchers have been accepted at the UNIDROIT library to conduct research. In a number of instances, the researchers have received a full or partial scholarship granted by the UNIDROIT Scholarships Fund or by special grants received from outside donors. Special acknowledgments are given to the Government of the Republic of Korea who generously contributed to the UNIDROIT Research Programme and provided funding for several scholars (see below).

- Mr Felix ONANA ETOUNDI (Cameroon), Magistrate; Legal Expert at CCJA / OHADA, Professor at the Catholic University of West Africa and at the *Ecole Supérieure Internationale de Droit d'Abidjan* (E.S.I.D) (Aug./Sep.) "The UNIDROIT Principles and legal certainty of commercial transactions in the preliminary draft OHADA uniform act on contract law"; \*
- Ms Syrine AYADI (Tunisia), *Magistère* Student – Faculty of Legal Science, University of "Tunis 2" (Sep.) "Implementation of international ADR mechanisms in cross-border mergers – Tunisian, international and American Legal Perspectives";
- Ms Sylvie Ivonne BEBOHI EBONGO (Cameroon), PhD Student, University of Yaoundé (Sep./Oct.), "Enforcement of arbitral decisions under the CIRDI and OHADA systems";
- Ms Tatyana GABDULLINA (Russia), LLM, Russian School of Private Law – Research Centre of Private Law; Moscow (Sep/Oct) "State Contracts with Foreign Private Enterprises";
- Mr Alejandro VOGELMAN (Argentina), Barrister, Lecturer at the University of Buenos Aires (Sep./Nov.) "Party Autonomy in International Commercial Contracts: Applicability and Enforceability of International Private Law Rules";
- Mr Hakan ACAR (Azerbaijan/Turkey), Vice-Rector, Dean, Faculty of Law, University of Qafqaz, with funding from the Government of Korea (Oct./Dec.) "1 – Passing of Risks in International Sales: A Comparison with Turkish Law; 2 – Promotion of the *lex mercatoria* in Azerbaijan"; *Supported by a scholarship granted by the Government of the Republic of Korea.*
- Mr Phomma INTHANAM (Lao People's Dem. Rep.), Legal Service of the Prime Minister, Vientiane, (Nov./Dec.), together with the International Trade Centre (WTO/UNCTAD), "International Uniform Law Treaties and their Application in the Lao People's Democratic Republic with particular reference to the World Trade Organization Instruments"; *Supported by a scholarship granted by the Government of the Republic of Korea.*
- Mr Dhafer DRIDI (Tunisia), LLM, Faculty of Law and Political Science of Tunis (Nov.), "the reception of foreign judgments".
- Mr Mustapha EL BITR (Morocco), Ph.D. Student, University Mohammed V – Agdal, Faculty of Legal, Economic and Social Sciences, Rabat, (Feb./Mar.) "The international trade contract – legal order and contractual practice";
- Mr Nabil FERJANI (Tunisia), Ph.D. Student, Universities of Lyon and Perpignan (France), (Feb./Mar.) "The State judge and the international contracts towards the harmonisation of solutions in Franco-Tunisian international private law";
- Ms Silviya TSONEVA (Bulgaria), Ph.D. Student, Senior Assistant, Legal Department, New Bulgarian University, Sofia; (Mar./Apr.) "Investment Securities".



\* The outcome of the research conducted at Unidroit was published in an article reproduced in this Review: Félix ONANA ETOUNDI, "Les Principes d'UNIDROIT et la sécurité juridique des transactions commerciales dans l'avant-projet d'Acte uniforme OHADA sur le droit des contrats", *Uniform Law Review / Revue de droit uniforme* 2005, pp. 683-718 (with a summary in English: "The UNIDROIT Principles and Legal Certainty of Commercial Transactions in the Preliminary Draft OHADA Uniform Act on Contract Law").