

UNIDROIT 1999
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U N I D R O I T

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

REPORT
on the
ACTIVITY OF THE INSTITUTE
1998

Rome, 1999

This Report covers the activity of UNIDROIT from 1 January to 31 December 1998.

I. ADMINISTRATION AND ORGANISATION

A. GOVERNING COUNCIL AND PERMANENT COMMITTEE, GENERAL ASSEMBLY AND FINANCE COMMITTEE

1. Governing Council and Permanent Committee

The 77th session of the Governing Council was held in Rome from 16 to 20 February under the chairmanship of the President of the Institute, Mr Luigi Ferrari Bravo.

After approving the Acting Secretary-General's report on the activity of the Institute in 1997, the Governing Council proceeded to the appointment of the new Secretary-General. Following a report by Mr Roland Loewe, submitted also on behalf of Mr Jean-Pierre Plantard and Mr Jacques Putzeys, the three of whom had made up the small working group entrusted by the Council with the task of interviewing the candidates for the post of Secretary-General, the Council, following lengthy discussion, unanimously appointed Mr Herbert Kronke Secretary-General for the period 1 September 1998 – 31 August 2003. It further expressed its deep gratitude to Mr Walter Rodinò for the excellent service he had rendered as Acting Secretary-General and to the officers of UNIDROIT for their loyalty and hard work in the absence of a Secretary-General.

The Council subsequently appointed Mr Loewe and Mr Allan Farnsworth First and Second Vice-President respectively up until its 78th session.

After reviewing the role of the correspondents of the Institute, the Council nominated the following new correspondents: Mr Pierre BIENVENU (Canada), Mr Attila HARMATHY (Hungary), Mr Charalambos PAMBOUKISO (Greece), Mr Francisco José SANCHEZ-GAMBORINO (Spain), Mr Sandro SCHIPANI (Italy), Mr Jan SVIDRON (Slovakia) et Mr Don WALLACE (United States of America).

It also nominated the candidates for the post of Secretary-General (Mr George BROUWER (Australia), Mr Nicholas KASIRER (Canada), Mr Wouter STURMS (Netherlands) and Mr Gerhard WALTER (Switzerland)) correspondents of the Institute, subject to their acceptance.

After taking note with satisfaction of the news regarding the prospects for acceptance of UNIDROIT Conventions, of the new system for the production and distribution of the Uniform Law Review and of the revision of the Headquarters Agreement between Italy and UNIDROIT, the Council proceeded to consider the implementation of the Work Programme for the current triennium and drew up the draft Work Programme for the 1999-2001 triennium in the following form :

I. PREPARATION OF UNIFORM LAW INSTRUMENTS

(a) Priority items

1. International interests in mobile equipment
2. The UNIDROIT Principles of International Commercial Contracts

(b) Other items under consideration (subject to the identification of external funding)

1. Model law on franchising
2. Model law on leasing
3. Transnational rules of civil procedure
4. Uniform rules applicable to transport

II. ACTIVITIES CONNECTED WITH THE UNIFICATION OF LAW

1. Programme of legal co-operation
2. Promotion of UNIDROIT activities and instruments (in particular the Internet site)
3. UNIDROIT publications
4. Data base on uniform law (in collaboration with the UNIDROIT Foundation)

The Council also authorised the transmission to the financial organs of the Institute of the draft estimates of expenditure for 1999 as drawn up by the Secretariat.

At its 99th meeting, held on 19 February 1998, the Permanent Committee took a number of decisions concerning staff matters and approved the provisional agenda for the 52nd session of the General Assembly.

2. General Assembly and Finance Committee

The 52nd session of the General Assembly was held in Rome on 27 November under the chairmanship of His Excellency Mr Henrik R. Iversen, Ambassador of Denmark in Italy. The Secretary-General made a statement concerning the Institute's activity during 1998.

Following lengthy discussion, the Assembly approved the draft Work Programme for the 1999-2001 triennium as drawn up by the Governing Council.

In the course of its consideration of financial matters, the Assembly approved the final modifications to the 1997 budget, together with the accounts for that financial year and the Deputy Secretary-General's proposals for adjustments to the 1998 budget. The Assembly also adopted the budget for 1999 and the assessments of member States' contributions for that year.

The Assembly further decided upon a number of amendments to the classification of member States in the UNIDROIT contributions chart and noted with satisfaction the reduction in the arrears owing in respect of member States' contributions.

The Assembly proceeded to appoint the members of the Governing Council of the Institute for the 1999-2003 quinquennium, the following candidates being elected on the first ballot:

Mr Ömer I. AKIPEK (Turkey)
 Mr Luiz Olavo BAPTISTA (Brazil)
 Mr Anthony S. BLUNN (Australia)
 Mr Antonio BOGGIANO (Argentina)
 Ms Isabel de Magalhães COLLAÇO (Portugal)
 Mr Michael B. ELMER (Denmark)
 Mr Royston MR GOODE (United Kingdom)
 Mr Arthur S. HARTKAMP (The Netherlands)
 Mr Gerard W. HOGAN (Ireland)
 Mr Kiyoshi HOSOKAWA (Japan)
 Mr Alexander KOMAROV (Russian Federation)
 Mr Roland LOEWE (Austria)
 Mr Byung-Hwa LYOU (Republic of Korea)
 Mr Ferenc MÁDL (Hungary)
 Mr Jacques PUTZEYS (Belgium)
 Mr Jorge SÁNCHEZ CORDERO DAVILA (Mexico)
 Mr Biswanath B. SEN (India)
 Mr Bruno STURLESE (France)
 Mr Ronald Thandabantu NHLAPO (South Africa)
 Ms Anne-Marie TRAHAN (Canada)
 Mr Evelio VERDERA y TUELLS (Spain)
 Mr Ioannis VOULGARIS (Greece)
 Mr Maher A. WAHED (Egypte)
 Mr Pierre WIDMER (Switzerland)
 Mr Yuqing ZHANG (People's Republic of China).

The Assembly decided to renew the appointment of Mr Franco Zaffuto as auditor up until 30 June 1999 and to appoint Mr Luigi Piersigilli auditor for a five-year term commencing on 1 July 1999.

Finally, the Assembly noted that Cyprus had acceded to the UNIDROIT Statute with effect from 1 January 1999 and decided to classify this new member State in Category VIII of the UNIDROIT contributions chart.

The 51st session of the Finance Committee was held on 6 October 1998 under the chairmanship of Ms Ingrid Apelbaum, Minister Counsellor, Embassy of Switzerland in Italy. The Committee was called upon to formulate opinions on certain financial matters which were submitted for decision to the General Assembly at its above-mentioned 52nd session.

In order to finalise a number of proposals for the revision of the 1999 budget, a meeting of the Sub-committee of the Finance Committee was held in Rome on 4 June 1998.

B. DIPLOMATIC CONFERENCES, STUDY GROUPS AND COMMITTEES OF EXPERTS

The following meetings were organised by the Institute in 1998:

Working Group for the preparation of Principles of International Commercial Contracts, first session (Rome, 16 to 20 March 1998);

Steering and Revisions Committee [for the finalisation of the preliminary draft Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment] (Rome, 27 to 29 June 1998).

C. RELATIONS WITH GOVERNMENTS

The 57 States members of UNIDROIT are: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Holy See, Hungary, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Poland, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia (former Federative Socialist Republic of).

The Government of Cyprus deposited its instrument of accession to the UNIDROIT Statute and will therefore become the 58th member States of the Institute as from 1st January 1999.

Consultations continued throughout 1998 between the Secretariat and a number of Governments with a view to their accession to UNIDROIT and it is hoped that these contacts will in due course result in a further expansion of the membership of the Institute.

D. DIPLOMATIC CONFERENCES AND MEETINGS ORGANISED BY OTHER INTERNATIONAL ORGANISATIONS

In the course of the period under review, the Institute was represented at meetings organised by a number of international organisations, including FAO, UNESCO, the Hague Conference on Private International Law, the Council of Europe, the International Development Law Institute (IDLI), the International Air Transport Association (IATA) and the International Bar Association. Members of the Secretariat also participated in various meetings and seminars at which they gave exposure to UNIDROIT Conventions and to the Institute's ongoing work, information regarding which is provided in Part II of this Report.

II. SCIENTIFIC ACTIVITY

A. WORK IN PROGRESS

1. Principles of international commercial contracts

The Working Group for the preparation of a second enlarged edition of UNIDROIT Principles held its first session at the UNIDROIT headquarters from 16 to 19 March 1998. The session was attended by A. Di Majo (Italy), A. El Kholly (Egypt), E.A. Farnsworth (U.S.A.), P. Finn (Australia), M. Fontaine (Belgium), M. Furmston (United Kingdom), Huang Danhan (China), C. Jauffret-Spinosi (France), A. Komarov (Russian Federation), O. Lando (Chairman of the Commission on European Contract Law), P. Schlechtriem (Germany) and T. Uchida (Japan). M.J. Bonell (UNIDROIT) was confirmed as Chairman.

The Working Group was seized of a paper prepared by the Secretariat (UNIDROIT 1998 Study L - Doc. 55) dealing with the question of the revision of the present text of the UNIDROIT Principles and the new topics for inclusion in the second edition.

As concerned the first matter, the Working Group deemed that, given the extremely favourable reception of the first edition of the UNIDROIT Principles worldwide and the few substantial criticisms which had been made as to its content, the extent to which the present text needed some revision should be decided at a later stage, also in the light of the growing body of case law.

The Group dedicated most of the session to the consideration of possible new topics to be included in the second edition of the UNIDROIT Principles. After a thorough discussion of the various topics presented in the Secretariat's paper, the Working Group decided to concentrate initially on agency, limitation of actions, assignment of contractual rights and duties, contracts for the benefit of a third party, set-off and waiver. The Group appointed for each topic a Rapporteur and agreed that, starting from its next session, it would examine position papers to be prepared by M.J. Bonell on agency, P. Schlechtriem on limitation of actions, M. Fontaine on assignment, M. Furmston on contracts for the benefit of third parties, C. Jauffret-Spinosi on set-off and P. Finn on waiver. Moreover E.A. Farnsworth was invited to prepare a draft model clause for the choice by the parties of the UNIDROIT Principles as the rules of law governing their contract. T. Uchida was invited to prepare a note on possible adaptations of the UNIDROIT Principles in the light of electronic commerce.

Thanks to the generous offer of the newly established School of Economics of the Free University of Bozen, it was decided to hold the next session of the Working Group from 22 to 26 February 1999 there.

In the course of 1998 the UNIDROIT Principles have been the subject of a number of seminars and colloquia.

Most important of all, the UNIDROIT Principles were the subject of a special section of the XVth International Congress of Comparative Law organised by the International Academy of Comparative Law (Bristol, 26 July - 1 August 1998). M.J. Bonell acted as General Reporter and received National Reports from 18 countries (G.A. Moens (Australia), M.

Fontaine (Belgium), H. Danhan (China), J. Lookofsky (Denmark), B. Fauvarque-Cosson (France), J. Basedow (Germany), B. Izadi (Iran), A.M. Rabello (Israel), G. Alpa (Italy), F. de Ly (Netherlands), F. Sabourin (Quebec), P.M. Cosmovici and R. Munteanu (Romania), C. Hultmark (Sweden), F. Werro and E.M. Belser (Switzerland), M. Furmston (United Kingdom), A. Rosett and M.W. Gordon (United States of America), Lê Net (Vietnam) and H. Veytia Palomino (Mexico), thus confirming the widespread interest in the UNIDROIT Principles. Given the high quality of the National Reports, Kluwer International agreed to publish them together with the General Report by M.J. Bonell in a separate volume entitled "A New Approach to International Commercial Contracts: The UNIDROIT Principles".

The UNIDROIT Principles were also on the agenda of the International Bar Association Conference in Vancouver (13-18 September 1998). The special workshop organised within Subcommittee "M" ("International Sales and Related Commercial Transactions") was attended by over 100 practising lawyers from all over the world. Papers were presented by M.J. Bonell, G. Herrmann, H. Van Houtte and F. Juenger.

On 13 March 1998 a one-day seminar on "UNIDROIT Principles of International Commercial Contracts: Application in International Commercial Arbitration" was held at the London-based law firm Freshfields for a select audience. It was attended by some 50 eminent judges, arbitrators and lawyers, mainly from the United Kingdom. Under the co-chairmanship of M. Mustill and R. Goode, papers were presented by M. J. Bonell, M. Furmston, M. Schneider (representing P. Lalive), E.A. Farnsworth and V.V. Veeder.

On 11 September 1998 the School of Law of the University of California at Berkeley organised a seminar at which M.J. Bonell presented a paper on "The UNIDROIT Principles: some open questions". In the lively discussion which followed a number of eminent comparativists such as J. Gordley, R. Buxbaum, W. Fikentscher, H. Koetz and F. Juenger intervened.

On 15 October 1998 a workshop on "The Changing Rules for Drafting International Commercial Contracts - Prospective for Drafters and Litigators" was organised in Los Angeles by the Los Angeles County Bar Association. In their papers both M.J. Bonell and A. Rosett focussed on the importance of the UNIDROIT Principles in this context.

The Drafting Committee to Revise Uniform Commercial Code Article 2 - a joint committee of the National Conference of Commissioners on Uniform State Law and the American Law Institute - invited M.J. Bonell to attend its meeting held in Dallas from 18 to 20 September 1998. Following the meeting, M.J. Bonell was requested to suggest possible amendments in the Comments to the new draft Article 2 which would take into consideration the UNIDROIT Principles.

2. International interests in mobile equipment

The principal features of UNIDROIT's work on its international interests in mobile equipment project in 1998 were, first, the completion of the revision procedure in respect of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (hereinafter referred to as the preliminary draft Convention), established by an UNIDROIT

Study Group, and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (the preliminary draft Aircraft Protocol), established by a special working group (the Aircraft Protocol Group) set up under the authority of the President, decided upon by the Governing Council at its 77th session, held in February 1998, and, secondly, the transmission of the revised texts to Governments in August 1998 with a view to a first session of governmental experts, to be held in Rome, under the joint auspices of UNIDROIT and the International Civil Aviation Organization (I.C.A.O.), in February 1999.

Following completion of the Study Group's work on the preparation of a preliminary draft Convention towards the end of 1997, at the end of January 1998 the UNIDROIT Secretariat received the text of the first preliminary draft Protocol thereto, namely the preliminary draft Aircraft Protocol. This text had been prepared by a working group organised and chaired by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters and co-ordinator of an aviation working group organised jointly by Airbus Industrie and The Boeing Company (the Aviation Working Group); the core members of the working group were provided by I.C.A.O., the International Air Transport Association (I.A.T.A.) and the Aviation Working Group (A.W.G.).

Together with the preliminary draft Convention, the preliminary draft Aircraft Protocol was laid before the Governing Council at its 77th session for advice as to the most appropriate manner in which to prosecute work thereon. While noting with appreciation the work on these texts accomplished by the UNIDROIT Study Group and the Aircraft Protocol Group, the Council decided that they should be further refined by a steering and revisions committee (the Steering and Revisions Committee) before and with a view to their submission to governmental experts. It was in particular envisaged that those provisions of the preliminary draft Aircraft Protocol capable of application to the generality of equipment encompassed by the preliminary draft Convention should be transferred from the preliminary draft Aircraft Protocol to the preliminary draft Convention and that the preliminary draft Aircraft Protocol should in general be aligned, as to both style and terminology, with the preliminary draft Convention. Comments made by Council members would be included in the materials to be considered by the Steering and Revisions Committee and by governmental experts.

The Steering and Revisions Committee met in Rome from 27 to 29 June 1998. Pursuant to the Governing Council's decision, the meeting was attended by representatives of UNIDROIT, I.C.A.O., I.A.T.A. and A.W.G, as members of the Committee, as well as two experts, Ms C. Kessedjian, representing the Hague Conference on Private International Law, for the private international law aspects of the texts, and Ms C. Chinkin, Professor of Public International Law at the London School of Economics, for the relationship between the texts and other Conventions. The meeting was chaired by Mr R.M. Goode, Professor of English Law in the University of Oxford, member of the UNIDROIT Governing Council and Chairman of the Study Group. Mr P. Widmer, Professor of Law in the University of St. Gallen, Director of the Swiss Institute of Comparative Law and also a member of the UNIDROIT Governing Council, attended too.

With a view to facilitating the Steering and Revisions Committee's work, Mr Goode had revised the texts submitted to the Governing Council, with the assistance of Mr Wool where aircraft equipment in general and the preliminary draft Aircraft Protocol in particular

were concerned. In line with the Council's instructions, he had moved a number of provisions, which he had judged to be potentially capable of general application, from the preliminary draft Aircraft Protocol into the body of the preliminary draft Convention. In revising the preliminary draft Aircraft Protocol he had been able to eliminate a great deal of the detail which had characterised the text prepared by the Aircraft Protocol Group. In this revision he had sought both to align the style and terminology of the preliminary draft Aircraft Protocol more closely with those of the preliminary draft Convention and to do away with those provisions that might be considered to be unnecessary or repetitive.

On the basis of Mr Goode's revised texts, the Steering and Revisions Committee was able to finalise the texts of the two preliminary draft instruments. In addition it considered the options open for the adoption of post-diplomatic Conference Protocols (such as the preliminary draft Protocols on Railway Rolling Stock and Space Property under preparation), review procedures for the future Convention and Protocols and amendment procedures for the same, in particular fast-track procedures, on the basis of a discussion paper prepared by Ms Chinkin and Ms Kessedjian. It also discussed a number of provisions in the two texts that it was agreed should be referred to Governments as raising policy considerations, in particular the general question of the structure of the future international instruments.

In August 1998 the texts of the preliminary draft Convention and the preliminary draft Aircraft Protocol as revised by the Steering and Revisions Committee were transmitted by the UNIDROIT Secretariat to UNIDROIT member Governments for comment together with an invitation to attend a first session of an UNIDROIT Committee of governmental experts, to be held in Rome from 1 to 12 February 1999.

It will be recalled that, at the tenth meeting of its 152nd session, held on 1 December 1997, the I.C.A.O. Council had decided to include the subject "International Interests in Mobile Equipment (Aircraft Equipment)" in the General Work Programme of the Legal Committee. At its 32nd session, held from 22 September to 2 October 1998, the I.C.A.O. Assembly urged the Legal Committee to work further jointly with UNIDROIT to finalise the preliminary draft Convention and the preliminary draft Aircraft Protocol with a view to their submission to a diplomatic Conference at the earliest possible date. On 11 October 1998 the Chairman of the I.C.A.O. Legal Committee established a Sub-Committee to study the subject of a draft instrument or draft instruments relating to international interests in mobile equipment, with particular regard to aircraft equipment. At the first meeting of its 155th session, held on 21 October 1998, the I.C.A.O. Council approved the convening of the Sub-Committee in Rome from 1 to 12 February 1999 and on 29 October 1998 the I.C.A.O. Secretariat sent out invitations to the 27 States members ⁽¹⁾ of the Sub-Committee to designate experts to attend that session. The forthcoming session of governmental experts will thus be a joint session of the UNIDROIT Committee of governmental experts and of the Sub-Committee of the I.C.A.O. Legal Committee.

Preparation of preliminary draft Protocols on Matters specific to Railway Rolling Stock and Space Property in the meantime proceeds within the Rail Working Group and the

(1) The Sub-Committee is composed of the following States: Argentina, Australia, Brazil, Cameroon, Canada (*ex officio*), China, Côte d'Ivoire, Egypt (*ex officio*), Finland, France, Germany, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Mauritius, Nepal (*ex officio*), Russian Federation, Saudi Arabia, Singapore, Spain, United Kingdom, United States of America and Venezuela.

Space Working Group respectively. Whilst UNIDROIT attaches maximum importance to prosecution of the work on these preliminary draft Protocols with due expediency, it recognises that the only means of reconciling the urgency attached by aviation circles to the early entry into force of the future Convention in respect of aircraft equipment with the slower pace of progress being made with the preparation of the preliminary draft Rail and Space Protocols is to press ahead with completion of the preliminary draft Convention and the preliminary draft Aircraft Protocol first, thus leaving those involved in the preparation of the preliminary draft Rail and Space Protocols with invaluable additional time in which to build much-needed further support for their proposals.

The Secretariat continued to support information exercises designed to disseminate awareness of the preliminary draft Convention and the preliminary draft Aircraft Protocol in different parts of the world. Both the Institute's efforts and the parallel initiatives of other institutions in this field have highlighted the extent to which the intended beneficiaries of such exercises are all too often unaware of the legal/economic handicaps (essentially in the shape of domestic legal frameworks which are inadequate to tap anything like the full wealth-creating potential of secured financing) under which they are labouring. A.W.G and I.A.T.A. have continued to be in the forefront of such educational exercises, in particular organising a series of briefings, essentially designed to prepare representatives of Government for the intergovernmental consultation process. The first of these was held in Bangkok on the occasion of a legal symposium organised by I.A.T.A. from 1 to 3 February 1998; it was attended by Mr M.J. Stanford, who made two presentations on behalf of the Secretariat, one outlining the basic features of the proposed new international regimen and the other the steps necessary to bring the preliminary draft Convention and the preliminary draft Aircraft Protocol to adoption. A second briefing, this time for the Americas, organised jointly by A.W.G., I.A.T.A. and the International Latin American Air Transport Association, was held in Miami on 22 April 1998; it was attended by Mr J Sánchez Cordero, member of the UNIDROIT Governing Council, and two papers prepared by Mr Stanford were included among the documentation. The last in the series of briefings, organised by A.W.G and I.A.T.A., was for the countries of Europe, both East and West. It was held in Brussels on 14 May 1998. Mr Stanford once more gave a couple of presentations on behalf of the Secretariat.

The Secretariat also took part in the conference on *Cross-Border Finance and Security: the UNIDROIT Convention on International Interests in Mobile Equipment in the final stages of negotiation* organised by the British Institute of International and Comparative Law in London on 2 March 1998. The panel of speakers included both the Chairman of the UNIDROIT Study Group, Mr Goode, and one of its members, Mr S.J. McGairl, as well as Mr Wool, Mr D.W.C. Mallon, who had represented the International Association of Young Lawyers on the Study Group, Mr J. Simpson, Leader of the Secured Transactions Project in the Office of the General Counsel of the European Bank for Reconstruction and Development, who had been one of the Bank's representatives on the Study Group, and Mr Stanford.

A.W.G. and I.A.T.A. were also responsible for an initiative designed to promote awareness of the likely economic benefits of the proposed new international regimen in relation to aircraft equipment. On behalf of the Aircraft Protocol Group, they commissioned an *Economic Impact Assessment* study. This study, prepared under the auspices of Insead and the Salomon Centre of New York University, was published in September 1998. It concludes

that, “to the extent adopted and effectively implemented,” the preliminary draft Convention and the preliminary draft Aircraft Protocol will result in “significant” economic gains, “conservatively” estimated at several billion U.S. dollars *per annum*. It saw these gains as benefitting airlines and manufacturers, their employees, suppliers, shareholders and customers as well as the economies of the countries where they are located.

3. Franchising

At the beginning of September 1998, the English version of the *UNIDROIT Guide to International Master Franchise Arrangements* was published. It was presented at the International Bar Association Conference, held in Vancouver from 13 to 18 September 1998.

A dépliant publicising the Guide and containing an order form was sent to members of the IBA Section on Business Law Committee on International Franchising, to members of the Commission on Franchising of the *Union internationale des avocats*, to members of the International Franchise Association, to participants in the joint International Franchise Association/International Bar Association Conference of 1998, as well as to other contacts who in the past had expressed an interest in the Guide. An electronic copy of the dépliant was also sent out to a number of contacts who had provided the Secretariat with their e-mail addresses. In addition, national franchise associations were contacted with a view to eliciting their interest in preferential schemes for their members. Information on the Guide, as well as an order form, have been placed on the UNIDROIT web site.

The Guide has aroused considerable interest in both the legal profession and industry. Companies interested in initiating a franchising activity, as well as companies well established as franchisors, have bought the volume.

The preparation of other language versions of the Guide was initiated subsequent to the finalisation of the English text. Thus, a translation into French was prepared by Ms Dominique Lombardi, a French lawyer with extensive experience in franchising, and a translation into Spanish is being prepared by Ms Hernany Veytia of the Panamerican University of Mexico in co-ordination with Mr David Morán Bovio of the University of Cádiz in Spain. A translation into Portuguese is being prepared by a team lead by Mr Luiz O. Baptista (São Paulo), correspondent of the Institute, a Russian translation is being prepared under the supervision of Mr Alexander Komarov (Moscow), correspondent of the Institute, a Bulgarian version is being prepared by the Bulgarian Franchise Association (BFA) following an agreement to this effect concluded between UNIDROIT and the BFA, and a Hungarian version is being prepared under the supervision of Mr Ferenc Mádl, member of the UNIDROIT Governing Council. The preparation of other language versions, namely, Arabic, Chinese, Dutch and German, is also being considered.

At its 77th session the Governing Council of the Institute accepted a proposal to proceed with the preparation of a model law on franchising, indicating that the model law should in the first instance deal with disclosure, but should also consider connected areas such as sanctions for non-compliance with the disclosure requirements of the model law. The General Assembly of the Institute endorsed the decision of the Governing Council at its 52nd session on 27 November 1998, in the context of the adoption of the Work Programme of the Institute for the 1999 – 2001 triennium. The first meeting of a Drafting Committee of the

Study Group on Franchising is consequently expected to be held at the beginning of 1999 to prepare a first draft text of the future model law.

4. International protection of cultural property

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, adopted and opened to signature on 24 June 1995, entered into force on 1 July 1998 pursuant to the deposit of the fifth instrument of ratification/accession. As of 31 December 1998 there were seven Contracting States: China, Ecuador, Hungary, Lithuania, Paraguay, Peru and Romania (see p. 13 below, *sub* Acceptance of UNIDROIT Conventions). The procedure for ratification or accession is underway in other countries.

Ever since its adoption, the UNIDROIT Secretariat has been assiduous in its efforts to maximise awareness of the Convention, by taking part in a number of events at which the Convention has been studied. Of particular interest among these events, at an intergovernmental level, was the Meeting organised by the Council of Europe in Paris on 14 December 1998 during which there was a discussion of the best means of encouraging States to accept instruments that might be of use in the fight against illegal trafficking in cultural property. The Secretariat also took part in June 1998 in a regional workshop for Arab countries, organised by the International Council of Museums (I.C.O.M.) in Hammamet, and another organised by INTERPOL in Budapest for the countries of Eastern Europe, designed to familiarise participants (*inter alia*, senior officials of Ministries of Culture, museum directors, representatives of the police and customs authorities) with the legal weapons available for the protection of cultural property.

Moreover, the Parliamentary Assembly of the Council of Europe unanimously adopted a Recommendation requesting the 40 member States of the Council of Europe as well as non-member States to ratify the Convention. The Committee of Ministers of the Council of Europe endorsed this Recommendation, stating that it "is ready to do all it can to give political encouragement to the UNIDROIT Convention and to the systematic implementation of all its provisions". Finally, the Secretariat was represented at the first meeting of a working group on access to data bases regarding stolen cultural property, organised in Lyon in September 1998 by the American National Central Bureau of INTERPOL.

The Institute was also present at a number of meetings organised in Italy and submitted written contributions to events at which the Convention was being discussed but where it was not possible for it to be present for financial reasons and pressure of work. The Convention continues to attract the writing of articles in legal journals and in the international press.

B. ACTIVITIES SUBSIDIARY TO THE UNIFICATION OF LAW

1. Programme of legal co-operation

The programme of legal co-operation has a two-fold objective: the dissemination of information on the activities of the Institute and the provision of training and research opportunities for top-flight lawyers, in particular by means of the UNIDROIT research

scholarships programme for lawyers from developing countries or countries in economic transition.

(a) Symposia and other events

“Jornadas UNIDROIT: Modernos Contratos Comerciales”: symposium organised by the *Universidad Argentina de la Empresa*, Buenos Aires (Argentina) from 12-14 November 1998. The discussions centred around UNIDROIT’s recent work in the field of contract law, focusing in particular on the way in which Argentinean substantive law deals with existing instruments, on current reform projects and on jurisprudence and business in theory and practice. The UNIDROIT *Principles of International Commercial Contracts* were debated in depth, as were issues connected with factoring, leasing and franchising contracts. The reports submitted at the symposium are to be published shortly in the *Revista de Derecho Privado y Comunitario* (Buenos Aires).

The Secretary-General took advantage of his trip to Buenos Aires to make several other visits of a scientific and official nature elsewhere in South America: in Argentina itself, in Uruguay and in Chile, and finally took part in the *I Congreso de Derecho Mercantil Internacional: legislación, doctrina y jurisprudencia* in Caracas (Venezuela) from 23-28 November 1998.

(b) Research scholarships programme

Twelve researchers were received at the Institute in 1998, in line with the decision taken by the Scholarships Committee of the Governing Council at its 1997 and 1998 sessions, and thanks to the support of the following sponsors: the French Government, the Government of the Republic of Korea, and the *Agence de la Francophonie*. The UNIDROIT general budget also made a contribution.

The following researchers benefited under the Programme: M. Carlos Valedon (Venezuela), Professor Cecilia FRESNEDO DE AGUIRRE (Uruguay), Professor Maria Blanca NOODT TAQUELA (Argentina), Mr Maris LEJNIEKS (Latvia), Mr Bizan IZADI (Iran), Mr Mohamed El Hadi ALLALI (Algeria), Mr LE Net (Vietnam), Professor Miklós KIRALY (Hungary), Professor Sathya NARAYAN (India), Mr Mirela RUSU (Romania), Professor Jana ZASTEROVA (Czech Republic), Professor Ion BURUIANA (Moldavia).

(c) Interns and researchers

The Institute welcomed in 1998 the following interns and researchers coming from various universities in the world: Sara Medina Alvarez (Spain), Marianne Hoepfl (Germany), Manuela Schuerz (Germany), Ulrike Achhammer (Germany), Marcellus Puhlemann (Germany), Klaus Rabe (Germany), Peter Onyango (Kenya), Kresimir Sajko (Croatia), William Wiggers (Netherlands) and Marie-Louise Larsson (Sweden).

In addition, Mr Eric Carpano was seconded to the Secretariat since April 1998 for a period of sixteen months under the French Government's voluntary service scheme.

2. Creation of a data base on uniform law

In the course of 1998 a first prototype of the future uniform law data base (UNILAW) was prepared by Mr Ludovic Bernardeau and Ms Lena Peters of the UNIDROIT Secretariat, the intention being to use the prototype to illustrate the data base project to prospective funders. This prototype, which is in hyper-text mark-up language, concentrates on Article 29 of the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR). It reproduces the text of the Convention, the state of ratifications, a selection of case law and a select bibliography.

On 14 May 1998, UNIDROIT participated in a colloquium organised in Rouen by the *Institut du droit international des transports (IDIT)* on the possible application of the CMR to contracts for national road transportation. The organisation was represented by Mr Bernardeau also at the meeting of the Commission on Legal Affairs of the International Road Transport Union (IRU), held on 15 May in conjunction with the IDIT colloquium. An official demonstration of the prototype was made during this meeting and the project thus illustrated was very favourably received by the participants. Following this demonstration, and pursuant to a subsequent meeting held on 23 September 1998 in relation to a possible collaboration between the IRU and UNIDROIT, work commenced on the preparation of a prospectus that the IRU will be able to use to publicise the data base among its members with a view to the obtaining of seed money for the project. The meeting of 23 September was attended by Mr Martin Marmy, Secretary General of the IRU, Mr Jan Theunis, President of the IRU Commission on Legal Affairs, Mr Waldemar Czapski, Secretary of the IRU Commission on Legal Affairs, Mr Herbert Kronke, Secretary-General of UNIDROIT and Mr Jacques Putzeys, honorary member of the IRU and member of the UNIDROIT Governing Council,

3. Uniform Law Foundation

The second meeting of the Board of Governors of the Uniform Law Foundation was held on 21 February 1998.

4. Acceptance of UNIDROIT Conventions

The Secretariat has throughout the year under review continued to use its best efforts to promote UNIDROIT Conventions, whether by making presentations at conferences or by penning articles.

In terms of the acceptance of UNIDROIT Conventions, the highlight of 1998 was the entry into force of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Already in 1997 the Convention had been ratified by Lithuania and Paraguay and China and Ecuador had acceded (cf. *Report on the Activity of the Institute 1997*, p.14). Pursuant to its ratification by Romania on 21 January 1998, the Convention, in accordance with Article 12 of its terms, entered into force on 1 July 1998. By the end of the year it was also in force for Peru and Hungary (which deposited their instruments of ratification on 5 March and 8 May 1998 respectively and for which it accordingly entered into force on 1 September and 1 December 1998 respectively).

The number of States Parties to the 1988 UNIDROIT Convention on International Factoring and the 1988 UNIDROIT Convention on International Financial Leasing also continued to grow during the year under review. On 20 May 1998 Germany deposited its instrument of ratification in respect of the UNIDROIT Convention on International Factoring, this Convention (already in force as between France, Hungary, Italy, Latvia and Nigeria) thus entering into force for Germany on 1 December 1998. The Russian Federation and Belarus acceded to the UNIDROIT Convention on International Financial Leasing (already in force as between France, Hungary, Italy, Latvia, Nigeria and Panama) on 3 June and 18 August 1998 respectively, this Convention accordingly entering into force for the Russian Federation and Belarus on 1 January and 1 March 1999 respectively.

UNIDROIT Conventions of course have a bearing on the legislative process that goes beyond ratification or accession by this or that State. It is worth noting that, where domestic legislation specific to leasing has been enacted, such legislation has generally been modelled on the provisions of the UNIDROIT Convention on International Financial Leasing. As noted by one of the world's leading consultants in this field ⁽²⁾, “[a]lthough the Convention is concerned with international, cross-border transactions, it provides a useful model for countries in need of a legal framework in the domestic leasing arena. The Convention was also drafted with the needs of emerging lease economies in mind. It has been used as a drafting model in China, Ghana, Indonesia, Nigeria, Panama, Russia, Turkey and elsewhere.”

As reported elsewhere in this Report (cf. p. 12), the Secretariat used the opportunity afforded by the UNIDROIT colloquy *Contratos comerciales internacionales*, organised by the Universidad Argentina de la Empresa in Buenos Aires from 12 to 14 November 1998, to promote the UNIDROIT Conventions on International Factoring and International Financial Leasing.

5. Convening of a congress or meeting on uniform law

“*International Efforts Towards Unification of Law*” – XVIIth meeting of the *International Association of Law Librarians* (IALL). This seminar, organised in Rome from 20-24 September 1998 in co-operation with UNIDROIT at its headquarters in Rome, provided a forum for an exchange of views between law librarians from different parts of the world and offered an introduction to the activities of the Institute. A series of lectures on aspects of documentary research and the Italian legal system alternated with visits to several Italian and international institutions in Rome and Florence. The acts of the seminar (the (then) provisional programme was reproduced in *Uniform Law Review* 1998, 140), will be published in the *International Journal of Legal Information*, the official organ of IALL.

6. Publications

(a) Uniform Law Review

Volume III, consisting of issues 1998-1 and 1998-2/3, which appeared in the course of 1998, and issue 1998-4, which followed early in 1999, totalled 950 pages. The first and last

⁽²⁾ Cf. S. Amembal: “Emerging lease markets” in *World Leasing Yearbook 1999*, 16 *et seq.* at 18.

issues featured the usual sections, whereas the double issue was devoted to the *Uniform Law Studies in memory of Malcolm Evans* and featured the contributions of a total of 41 authors.

World-wide distribution of the *Review* (except for Italy) was taken over by *Kluwer Law International* as of 1998, while *Giuffrè Editore* continued as the distributor for Italy. The new contract has enabled the Institute virtually to reinstate the old library exchange agreements which form an important source of supply for the UNIDROIT Library.

UNIDROIT News, a section of the Uniform Law Review providing information on current events within UNIDROIT, was distributed in 1998 by e-mail to subscribers to the former *News Bulletin*. *UNIDROIT News* is accessible on the UNIDROIT Internet World Wide Web site at <http://www.UNIDROIT.org/english/news/news-main.htm> and will also be distributed on an ongoing basis as an electronic newsletter to those specifically requesting it.

(b) Digest of Legal Activities of International Organizations and other Institutions

The forthcoming (12th) edition of the *Digest*, providing information on work currently underway within the international organisations and other institutions covered, which was scheduled to appear in 1998 together with a companion volume relating to work which has already been completed by the organisations and institutions in question has been rescheduled to appear in 1999.

(c) Other publications

1998 saw the publication by the Secretariat of the Report on the Activity of the Institute for 1997, the accounts for 1997 and the budget for 1999.

The following documents relating to the implementation of the Institute's Work Programme were published during 1998, in English and French unless otherwise stated:

Study L - Principles of International Commercial Contracts

Misc. 20 – Working Group for the preparation of Principles of International Commercial Contracts. Summary records of the meeting held in Rome from 16 to 20 March 1998 (English only)

Doc. 55 – Preparation of a second enlarged edition of the UNIDROIT Principles of International Commercial Contracts (Secretariat Memorandum) (English only)

Doc. 56 – Authority of agents (Draft and Explanatory Notes prepared by Professor M.J. Bonell on the basis of 1983 Geneva Convention on Agency in the International Sale of Goods) (English only)

Doc. 57 – Working Group for the preparation of Principles of International Commercial Contracts. Draft Model Clause prepared by Professor E.A. Farnsworth (English only)

STUDY LXV – PROGRAMME OF LEGAL CO-OPERATION

Scholarships Impl. 11 – Implementation of the UNIDROIT research scholarships programme as of 15 December 1998

STUDY LXVIII – FRANCHISING

Doc. 16 – Study Group on franchising: Guide to International Franchising, Fourth Draft (English only)

Doc. 17 - Study Group on franchising: Guide to International Master Franchise Arrangements. Fifth Draft, incorporating the modifications adopted by the UNIDROIT Governing Council on the occasion of its 77th session, on 16 February 1998

STUDY LXXII – INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Doc. 37 - Study Group for the preparation of uniform rules on international interests in mobile equipment. Preliminary draft Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997).

Doc. 39 – Steering and Revisions Committee for the finalisation of the preliminary draft Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group)

Doc. 40 – Governing Council (77th session: Rome, 16 – 20 February 1998): Extract from the report on the session: Re item n° 8 on the agenda: International interests in mobile equipment

Doc. 41 - Steering and Revisions Committee (Rome, 27-29 June 1998): report (prepared by the Secretariat)

Doc. 42 - Preliminary draft Convention on International Interests in Mobile Equipment (as established by an UNIDROIT Study Group and revised, in accordance with a decision taken by the UNIDROIT Governing Council at its 77th session, held in Rome from 16 to 20 February 1998, by a Steering and Revisions Committee, meeting in Rome from 27 to 29 June 1998)

Doc. 43 – Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: preliminary observations (submitted by the Government of the United States of America)

- Doc. 44 - Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment: comments (submitted by the Government of Australia)
- Doc. 45 – Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted jointly by the International Air Transport Association and the Aviation Working Group)
- Doc. 46 - Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment: comments (submitted by the Government of Canada)

STUDY LXXIID – INTERNATIONAL INTERESTS IN AIRCRAFT EQUIPMENT

- Doc. 1 – Study Group for the preparation of uniform rules on international interests in mobile equipment. Preliminary draft Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997): preliminary draft Protocol on Matters specific to Aircraft Equipment (as established by a working group organised by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters, at the invitation of the President, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997)
- Doc. 2 - Steering and Revisions Committee for the finalisation of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment. preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group): preliminary draft Protocol on Matters specific to Aircraft Equipment (as established by a working group organised and chaired by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters, at the invitation of the President, at the conclusion of its second session, held in Geneva from 19 to 21 November 1997, and revised by the Chairman of the Study Group in collaboration with Mr Wool)
- Doc. 3 – Preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (as established by a working group organised, at the invitation of the President, by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters to the UNIDROIT Study Group for the preparation of uniform rules on international interests in mobile equipment, and revised, in accordance with a decision taken by the

UNIDROIT Governing Council at its 77th session, held in Rome from 16 to 20 February 1998, by a Steering and Revisions Committee, meeting in Rome from 27 to 29 June 1998)

- Doc. 4 – Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: preliminary observations (submitted by the Government of the United States of America)
- Doc. 5 - Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Australia)
- Doc. 6 – Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted jointly by the International Air Transport Association and the Aviation Working Group)
- Doc. 7 - Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment: preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Canada)

(d) Depository libraries for UNIDROIT documentation

In order to make UNIDROIT documents (reports prepared by the Secretariat for submission to the Governing Council as well as the studies and reports of the various working groups on items on the UNIDROIT Work Programme) more readily available to a wider public in general and to nationals of UNIDROIT member States in particular *Notes Verbales* were sent to all member Governments requesting that each designate a depository library in its country to serve as depository for UNIDROIT documentation.

UNIDROIT Proceedings and Papers 1997 on CD-ROM is being distributed to depository libraries.

7. Internet

In 1998 the official Unidroit Internet Web site was provided with its own domain name:

<http://www.unidroit.org>

In April 1998 member States of Unidroit were formally informed of the Unidroit Internet Web site and its content.

The development, management and promotion the UNIDROIT Web site is an ongoing activity. A large part of the site has been relinked for the purpose of creating subdirectories in view of future development.

The results of a rather complex, articulated analysis of the log files (records of traffic on the UNIDROIT site) indicate that, by the end of 1998, the number of times documents on the UNIDROIT site were being accessed amounted to more than 12,000 (twelve thousand) per month. The constant increase in the number of contacts registered since the UNIDROIT Web site was activated at the end of 1996 and the provenance of contacts (academic institutions, government servers, libraries, corporations, etc. from all parts of the world) can only reinforce the conviction that the UNIDROIT Web site is an extremely important, irreplaceable instrument for the promotion of the Institute and its activities and the dissemination of its work.

The UNIDROIT Web site comprises, in both English and French, one home page and seven main pages introducing the following sections: Presentation of UNIDROIT, UNIDROIT News, UNIDROIT Conventions, Status of UNIDROIT Conventions, Principles of International Commercial Contracts, UNIDROIT publications and UNIDROIT Library.

The content of the UNIDROIT Web site has been substantially enlarged in 1998 and many of its pages have been updated and/or replaced in order to provide an up to date, comprehensive overview of UNIDROIT's activity.

A number of commercial search engines as well as commercial and academic Web Directories to Internet Legal Resources have been notified of the UNIDROIT Web site and about 100 of their Web pages contain a link to the UNIDROIT home page or to its individual Web pages.

8. Library

In 1998, the Library's holdings increased by 1,481 titles, of which 664 were purchased and 107 obtained on an exchange basis, for a total value of Lit. 13,145,000. 718 other titles were received as gifts for a total value of Lit. 35,740,000.

In 1998 work for the restructuring of the Library has continued.

The computerisation of the catalogue started in November 1997 following the introduction of the necessary software. Entry and research fields have been worked out on the

basis of other existing online catalogues and the special needs of multilingual legal research. Entry and research is possible from all work stations connected to the network. As entering records entails a great deal of work, it is at present difficult to evaluate precisely the time required to computerise the card catalogue. It will still be necessary to revise certain research fields and all the work carried out hitherto in order to bring it into line with the technical rules for cataloguing.

The Library still attracts many readers from all over the world and the number of volumes consulted is constantly increasing. In 1998, 413 new admission cards were issued and more than 1,000 readers consulted the Library's collections.

APPENDIX