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Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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ORGANISATION OF A UNIDROIT INFORMATION SYSTEM OR DATA BANK ON
UNIFORM LAW

(Secretariat memorandum)

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INTRODUCTION

In the framework of the general policy review of the Institute, the Governing Council is called upon to take a stand on the proposal before it to create a data bank in the ambit of the Institute's activities.

Unidroit has over the years become increasingly aware of the fact that information regarding uniform law is widely dispersed and often difficult to obtain. There is at present no single point of reference to which those seeking information on uniform law, be they practitioners, Governments or scholars, can turn. This is in part due to the fact that uniform law instruments have been prepared and adopted by a number of different organisations, each of which takes care of the information which relates to the instruments it has adopted. The broad terms of reference of Unidroit would suggest that the Institute would be ideally placed to act as the focal point for the collection and dissemination of information on uniform law.

Such a view was expressed at the 73rd session of the Governing Council held in Rome from 9 to 13 May 1994. Mr Goode and Mr Rose in particular felt that Unidroit should "occupy the role of the world's leading provider of information concerning uniform law"¹ and could and ought to be "the centre *par excellence* for the collection and dissemination of information concerning uniform law".²

The Institute has in the past sought to provide in its publications, notably the *Uniform Law Review* and the *Digest of Legal Activities of International Organizations and other Institutions*, as comprehensive a survey of developments in the unification of private law as was possible with the limited resources it had available. The Secretariat is acutely conscious of the fact that notwithstanding its best efforts the information it is able to furnish is often fragmentary: the case law published in the *Uniform Law Review* is of necessity a selection, made in most cases from the legal periodicals available in the library of the Institute, a selection which is further limited by the number of languages with which the Secretariat is conversant. Even if a more extensive selection were to be made than is at present the case, the fact that the material is selected from already published sources, and is published with considerable delay, is a severe draw-back.

The creation of a data bank would permit the Secretariat to furnish up to date and more complete information in its publications, as well as provide the Secretariat with an invaluable tool for the carrying out of its other tasks. Offering access to this data bank to outside users would further enhance the role of the Institute as the focal point for uniform law.

¹ Statement by Mr Goode; see the Report on the Session of the Governing Council, C.D. (73)18, p. 55.

² Statement by Mr Rose, see the Report on the Session of the Governing Council, C.D. (73)18, p. 56.

A data bank is without doubt the most convenient way of storing and of providing access to information. There are a great number of ways in which information can be stored in data banks, and it is of importance to determine the way which is the most appropriate for the purposes of the data bank under consideration. A number of preliminary questions need to be answered before any such considerations are embarked upon. These include the following:

- ◆ what other data banks exist?
- ◆ how are those data banks organised?
- ◆ do the existing data banks answer the needs of their utilisers?
- ◆ who are the potential utilisers of the proposed Unidroit data bank?
- ◆ what are the needs of its potential utilisers?
- ◆ would the Unidroit data bank be able to meet those needs?
- ◆ what services would it offer?

1. EXISTING DATA BANKS

A number of data banks already exist or are in the process of being created. These include those of international organisations as well as national data banks and others which are privately owned and commercially marketed. A survey of the existing data banks is necessary, first and foremost to find out what they cover so as to determine whether there is room for yet another data bank, but also to determine whether the Institute would be able to retrieve from them the information it needs for its own data bank.

2. THE POTENTIAL UTILISERS OF THE UNIDROIT DATA BANK AND THEIR NEEDS

The potential utilisers of a data bank on uniform law may be seen in

- ◆ practising lawyers,
- ◆ professional and trade associations,
- ◆ judges and arbitrators,
- ◆ scholars,
- ◆ national Governments, above all from economies in transition and developing countries but also from industrialised countries, and
- ◆ international organisations

in addition to

- ◆ Unidroit itself.

The question is whether the needs of these different groups are the same or similar, and whether, or how, their needs could be catered for in the same program.

It is to be presumed that to whichever of the above groups the potential utilisers may belong, they need rapid access to information on international conventions and other uniform instruments (e.g. on the status of ratifications), on legislation and on decisions taken by courts. In some cases bibliographical references will also be required. In order to obtain that information quickly, it would be necessary for them to be able to access the information through a reasoned system of keywords, a combination of which would provide the desired information quickly and effectively.

3. INSTRUMENTS AND SUBJECT MATTERS TO BE COVERED IN THE DATA BANK

In the determination of the subject matter which should be covered by the data bank a decision must be taken as to whether

- ◆ the data bank should be limited to uniform law, and
- ◆ if so whether the uniform law to be dealt with should be only commercial law, or
- ◆ whether other areas, such as conflict of laws or intellectual property, should be included.

If the data bank should deal prevalently with commercial law, it must be decided

- ◆ whether it should be limited only to uniform instruments, or
- ◆ whether it ought not preferably be a data bank on commercial law in general.

There is, for example, no doubt that information relating to national investment laws would be of great interest to a number of potential utilisers.

There are a number of options or combinations of options possible in relation to the types of instrument which should be inserted in the data bank. A decision needs to be taken as to

- ◆ whether the data bank should deal only with international/multilateral instruments prepared by inter-governmental organisations or
- ◆ whether it should deal also with regional instruments,
- ◆ whether it should deal with national laws which implement or incorporate international instruments,
- ◆ whether general conditions of trade prepared by professional or trade organisations should be included, and
- ◆ whether more flexible instruments such as legal guides should also be considered.

4. DIFFERENT WAYS OF ORGANISING THE INFORMATION

Once the areas of law and the types of instruments the Unidroit data bank should cover have been determined, it is necessary to decide upon the information that should be inserted in the data bank. Again, there are a number of possibilities:

- ◆ information only on the instruments themselves, or also on
- ◆ status of ratifications and
- ◆ reservations,
- ◆ cases decided in relation to the instruments treated and, where possible, arbitral awards,
- ◆ bibliographical references, or
- ◆ combinations of the above.

In relation to the case law, it would be necessary to take a decision as to how far back in time the data bank should go. This could clearly vary depending on the instrument in question.

Consideration should also be given to the question of whether, for ease of consultation, there should be cross references between the instruments dealt with.

Different options exist as to systems of retrieval of the information: a system based on all the words contained in the instruments and a system based on legal concept, i.e. an analytical data bank. Preferences in this regard might well depend upon the legal training of the user and consequently on the type of research normally conducted. It is suggested that the data bank should be an analytical data bank, as it is extremely time-consuming to go through the wealth of information that a non-analytical data bank would churn out during the search. Not only would it be very time-consuming, it would also be very expensive. In the case of an analytical data bank all material to be inserted must be analysed and properly classified.

An analytical thesaurus can only be prepared by an expert in the field, or possibly by a group of experts with a thorough knowledge of the instruments to be analysed. Such a group would be entrusted with the preparation of the thesaurus for a particular instrument or area to be covered. To speed up this stage it would be possible to envisage more than one group working in parallel, e.g. sales and transport law.

A special program for the data bank would further have to be written by a software expert. The experts on the legal instruments would have to work in close co-operation with the software expert so that any problems that might arise could be sorted out immediately. It should be noted that the software expert would only be able to begin work once the legal experts had decided precisely what they wanted from the data bank and how they would wish to retrieve the information.

5. OBTAINING OF THE INFORMATION TO BE INSERTED IN THE DATA BANK

The data to be inserted in the data bank may be obtained from a variety of sources:

- ◆ the international organisations responsible for their adoption,
- ◆ Governments (particularly where Governments are the depositories of the instruments of ratification of the conventions),
- ◆ other data banks, international, national and commercial, and
- ◆ interested contact persons, particularly in countries where there are no data banks or where the language is inaccessible to the group responsible for a particular instrument or area of law.

Agreements with the inter-governmental organisations and data banks which have the information required would therefore need to be concluded. The cost to the Institute of this information should be estimated and the possibilities of arranging for exchanges of information, particularly with the other international organisations, explored.

The possibility of making agreements with arbitral tribunals for the inclusion in the data bank of arbitral awards, the majority of which are not published, should also be examined, as it would represent an addition of major importance to the practice of national courts.

For countries in which information is not easily accessible the creation of an extended and efficient network of national correspondents could be envisaged. The information would have to be communicated speedily and be up to date. Following the suggestions made in the Governing Council, the correspondents should be young people with a keen interest in collaborating in projects such as the creation of a data bank. This is particularly important as the experience of other organisations with networks of correspondents has not always been felicitous. The possibility of establishing relations with large law firms, which often have extensive information services, and with other professional groupings such as Price Waterhouse should also be considered.

Agreements with a number of research institutions could also be envisaged, from which in particular bibliographical materials could be obtained in exchange for access to the data bank. Among the institutes with which such agreements could be concluded are the Comparative Law Institute of Lausanne, the Max-Planck Institute of Hamburg, the Max-Planck Institute of Munich, and the Asser Institute.

6. THE SERVICES A DATA BANK COULD OFFER

The data bank could offer potential utilisers a variety of services, the choice of which would to a large extent depend on the identification of the needs of those potential utilisers.

The services which could be offered include

- ◆ on line links
- ◆ answering service via fax for specific requests for information
- ◆ answering service via telephone and mail
- ◆ accessibility to visitors to the library and to resident researchers
- ◆ availability of a selection of the information contained in the data bank in the Institute's publications
- ◆ availability of the information contained in the data bank on CD-ROM.

These services are not mutually exclusive. They could all be offered, provided there were to be adequate funding and staff.

What must also be considered is

- ◆ whether these services should be charged for and if so how much,
- ◆ whether there should be preferential schemes for certain categories of utilisers or for certain countries.

Governments of member States of the Institute would have access to the data bank free of charge. Free access could also be envisaged as a means of assistance to the Governments of developing countries and economies in transition.

In this context the marketing of the product must be considered. Marketing is a weak point in the organisation of the Institute. The most rational solution to this problem would therefore be to hire the services of a marketing expert.

7. FINANCIAL MEANS

A data bank such as that envisaged would require considerable financial resources. Although a certain initial investment would have to be made by the Institute, the actual running of the data bank would require resources which must of necessity come from extra-budgetary sources.

One such possible source could be a *Foundation*, the creation of which was proposed at the 73rd Session of the Governing Council; another could be the aid agencies of industrialised countries.

i. *Development aid*

The considerable value that a data bank such as that envisaged would have for users in developing countries and economies in transition makes its creation an interesting proposition for those countries. It is conceivable that the development agencies of donor countries (such as USAID, SIDA, CIDA) would see the setting up of a data bank as a project of great value to developing countries and therefore as falling within their aid to development programmes. If this is the case, those agencies might be prepared to contribute financially to the project.

ii. *The Foundation*

At the 73rd session of the Governing Council that a foundation be created to finance the "New Deal" policy of the Institute was favourably received subject to further investigation.³ Following this proposal preliminary soundings were made with the *Banca Nazionale dell'Agricoltura* and the *Cassa di Risparmio of Treviso*. The interest expressed by both these financial institutions leads the Secretariat to believe that a similar interest could also be forthcoming from banks and other potential donors in other countries. What must however be absolutely clear is that the sponsors of, or contributors to, the Foundation should not dictate conditions: no strings must be attached to their donations. The data bank would be a Unidroit venture and Unidroit must be free to take the action it considers to be the most appropriate.

Questions of a general nature which need to be examined include

- ◆ where the Foundation would be created
- ◆ what consequences this would have (if any)
- ◆ its ties with the Institute
- ◆ whether it would have its own staff, and
- ◆ who would be responsible for its administration.

The funds of the Foundation would need to be invested by financial experts, and a decision taken as to who should be responsible for those investments.

A more detailed consideration of the Foundation will be made in a separate document.

³ Proposal by Mr Goode. For the discussion on this point, see the Report of the Session, document C.D. (73) 18, p. 55 *et seq.*

8. BENEFITS TO POTENTIAL USERS

In addition to the Institute itself, the potential users of a Unidroit data bank have been identified as practising lawyers, professional and trade associations, judges and arbitrators, scholars, national Governments, above all from economies in transition and developing countries, but also from industrialised countries, and international organisations.

The benefits to all these categories include first and foremost easy access to information on uniform law. This would dispense users from the need to contact a great number of different sources to obtain information, always assuming that they would know where to find it.

The information an international data bank would contain could be of considerable assistance to national Governments and to departments of national administrations in the preparation of national legislation. The experience of other countries is often examined when national legislation is under consideration. It would therefore be most useful to the Government departments responsible for the drafting of legislation to have most of the information they need in this regard collected in one place. This is true not only of the Governments of industrialised nations, but also, and perhaps most importantly, of the Governments of developing countries and economies. Considering the importance of such a service, it would be conceivable to offer it also to Governments of non-member States of Unidroit, in particular to the Governments of developing countries and economies in transition to which it could be offered as a form of legal assistance.

For users in developing countries and economies in transition a data bank would provide an invaluable source of information of a kind which is all too often either insufficient or totally lacking.

A data bank would also be a highly effective tool in the promotion of uniform law, as it is uniform law which is arguably of the greatest use to developing countries and economies in the regulation of business relationships between nationals and foreigners. Uniform law, which is prepared by groups of experts from different countries, offers a guarantee of neutrality which law firms from specific legal systems are unable to offer. Making the information relating to uniform law available to these countries would therefore be an important contribution to the modernisation of their legal systems.

9. BENEFITS TO UNIDROIT

There is no doubt that the creation of a data bank would be of great benefit to Unidroit and to its activities. The present "manual" methods of research are no longer sufficient for the Secretariat to carry out its work in as effective a manner as possible.

where the text of the convention which was finally adopted, and cases decided on that convention, are to be found has been vented, particularly if this information were to be obtained from one specific source such as a data bank.

One possibility which the creation of a data bank would offer would be to split the *Uniform Law Review* into two publications: a *Uniform Law Review* and a *Uniform Law Reporter*.

The *Uniform Law Review* could be re-examined along the lines indicated above.

The *Uniform Law Reporter* could be divided into two main parts: one for uniform law instruments (universal and regional) with a status of ratifications service, the other for uniform law cases, preferably organised by subject-matter and sub-divided by convention. If it were to be considered appropriate, the bibliography could become a third part, divided by subject so as to facilitate research. Publication of the Reporter on CD-ROM could also be considered.

A data bank could be a precious tool in the publishing activity of the Institute. The advantage of the connection data bank - publications is its great flexibility. With effective planning it would be possible to publish a variety of different publications, quickly and at a relatively low cost. It is a question of deciding what type of publication(s) should be published by the Institute and of ensuring that the relevant information can be obtained from the data bank in the form desired.

CONCLUSION

The setting up of a data bank is by its very nature a long-term venture which would require detailed planning. Even if it were to take a number of years before the data bank could be considered as fully operational, it would however not be necessary to wait until such time before the information that is available could be used, whether as a service for outside users or as a service for Unidroit itself.

From this document it can be inferred that a certain number of issues in relation to which decisions must be taken require the attention of the Governing Council. These include

- ◆ the purposes of the creation of a data bank
- ◆ the obtaining of adequate financial resources
- ◆ the hiring of adequately trained staff
- ◆ the setting up of a group to prepare the thesaurus for each convention/area to be covered in the data bank, with possibly more than one group working at the same time

- ◆ the acquiring of consultation services of software specialists to write the program in close co-operation with the group
- ◆ the acquisition of the necessary hardware
- ◆ the possible need to find premises on which to locate the computer necessary for the data bank
- ◆ the co-operation agreements which should be concluded with other organisations and data banks and
- ◆ the possibility of concluding agreements with marketing experts for the marketing of the final product(s).

The Secretariat proposes conducting surveys among potential users of the Unidroit data bank to determine the interest among those groups for a data bank such as that under consideration. It also proposes contacting the inter-governmental organisations responsible for international instruments to sound out possibilities for concluding co-operation agreements. Furthermore, it is the intention of the Secretariat to contact the aid agencies of donor countries to discuss with them the possibility of their contributing financially to the setting up of a Unidroit data bank. Lastly, if possible at this stage, the Secretariat intends to contact a software house for a first estimate of the possible cost of a data bank of the kind contemplated. The Secretariat hopes to be in a position to report, at least partially, on these surveys to the Governing Council at its 74th session in March 1995.