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Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

ESTABLISHMENT OF A UNIDROIT FOUNDATION

Prospectus

(Secretariat memorandum)

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UNIDROIT



A Description

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THE UNIFORM LAW FOUNDATION

INTRODUCTION

*The Uniform Law Foundation, created in October 1996, was set up to provide funding for the activities of the International Institute for the Unification of Private Law (Unidroit).*¹

1. PURPOSE OF THE FOUNDATION

The purpose of this Foundation is to promote activities that Unidroit considers to be particularly meritorious, but which it is not in a position to finance out of its budget; and in particular

1. the creation and operation of a data base and a modern documentation centre for uniform law, the modern research tools of the global society;
2. projects on uniform law, including the *rapprochement* of legislation, also, but not only, in the framework of the unification of law; and
3. consulting services to developing countries and countries engaged in the transition to a market economy on request, including the funding of scholarships for research on uniform law.

2. WHY CHOOSE A FOUNDATION?

The fifty-eight member States of Unidroit have many legitimate competing demands on their financial resources. In recent years it has become clear to the Institute that, unless it is to reduce substantially its current core activities, the present financial commitments of its member States will not permit it to undertake important new initiatives.

The Governing Council of Unidroit has therefore under the Institute's Statute looked at how it can attract a broader based interest in and commitment to the work of the unification of private law. It has concluded that establishing a Foundation is the best course.

Most international organisations are set up to provide States with a neutral forum in which to discuss, co-ordinate and resolve issues of common interest. They provide an institutional framework through which relations among nations can effectively be promoted and discussed in such a manner that situations of conflict are reduced to a minimum. These organisations are set up by States for States and are financed by the States themselves. The

¹ For a brief introduction to Unidroit and its present Work Programme, see Annex 1.

officers of the organisations answer to the States for their activities and are at times even nominated by the States.

But Unidroit is somewhat different. The States parties established and continue to maintain a catalytic organisation primarily to fashion new legal vehicles to advance the quality of intercourse among the people of the nations of the world in conducting their private affairs.

Foundations are instead set up to provide funding for specific purposes, in most cases purposes of a beneficial nature: the offering of funding to meritorious students who otherwise would not be able to pay for their university education, for example. In most cases foundations will be free of involvement on the part of States, although it is not excluded that States may wish to contribute financially to a particular foundation.

For an organisation such as Unidroit the foundation approach has the advantage of providing a new funding source while maintaining the present balance of substantive independence for the organisation but accountability ultimately to States parties.

3. *WHAT IS THE FOUNDATION'S ROLE?*

The ideal of creating a better understanding and of improving relations among nations and the peoples of nations is pursued in a number of different ways - the offering of medical assistance and food, the transfer of technology and the promotion of trade are but a few examples. But whatever the method adopted, the activity must be structured in order to be effective. Such a structure will in most cases be provided by law. It will comprise rules regulating the procedures to be followed, the contracts and agreements to be reached, the standards and norms to be met and the sanctions to be applied as a last resort if breakdown occurs.

The Foundation provides to the world of global business a prime opportunity to contribute directly to lessening the legal risks of cross-border transactions. For private commercial, social and individual financial interests to prosper globally it is necessary to rationalise the maze of regulations that are applied to transactions by the different nations. It is important to have the same rules or at least very similar applying in as many different countries as possible and to remove the "bumps" from crossing State boundaries and most particularly in the age of rapidly expanding electronic commerce. This is precisely the role of uniform law. Ultimately the purposes of the unification of law are

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| <ul style="list-style-type: none"> ◆ to facilitate relations between States and between individuals of different States by providing for the same, or for a very similar, regulation of those areas of law where relations are most frequent or where the difficulties associated with those relations are such that some form of agreement is imperative; <p>and</p> |
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- ◆ to promote economic development by the adoption of uniform rules facilitating foreign investments and other relations such as the transfer of technology.

The intention is to avoid conflicts to the greatest extent possible by providing rules that are acceptable to all parties and that have the purpose of promoting the prosperity of the whole international community.

The beneficial effects of uniform law are:

- ◆ a greater certainty in dealings across borders during a period of increasing inter-dependence;
- ◆ an increased volume and value of international trade and cross-border relations;
- ◆ the promotion of improved standards of conduct
- ◆ the establishment of performance benchmarks; and
- ◆ the facilitation of more effective international dispute resolution and enforcement of rights.

4. THE FOUNDATION AS A TWENTY-FIRST CENTURY STRATEGY

Given the purposes of the unification or harmonisation of law and its specialised nature, it would be natural to expect that those that are confronted with the problems of cross-border transactions or relations would be the first to solicit the further development and implementation of uniform rules. Regrettably this is not always the case. The harmonisation or unification of law is a subject which is unfamiliar to many lawyers. Many are ill-equipped to analyse and determine cross-border legal risks.

Practitioners are often not aware that when they apply their national law significant parts of it derive from international conventions.² To a very large extent this is due to a lack of knowledge resulting from first, inadequate training programmes in the course of their legal studies, and secondly to a not un-common parochialism, that leads them to consider applying only their own domestically derived law.

The Foundation provides a vehicle for those in business as well as enlightened practitioners to intervene directly to speed up the process of unification by contributing to very practical initiatives planned by Unidroit.

Education and marketing are the keys to changing this situation. Information on uniform law, on its techniques, on its instruments, on the application of the instruments and on their interpretation as it appears in legal writing, is essential if effective educational and marketing programmes are to be pursued. If this information is to achieve the purpose of

² A case in point is the 1980 United Nations Convention on Contracts for the International Sale of Goods, which many lawyers do not realise will govern their contracts unless specifically excluded.

advancing uniformity by increasing the levels of awareness of uniform law, it must be presented in an easily accessible and structured manner.

The only way to achieve this degree of universal accessibility and to be able to promote the advantages of uniform law solutions is to have available a high quality authoritative source in the form of an *electronic data base* from which can be taken in various hard copy and electronic forms information to meet the specific needs of a wide range of users. Universality would be assured by having the data base accessible through the Internet. Such a data base cannot exist without adequate back-up documentation. It is therefore necessary to ensure the availability of this documentation, to provide for its retrieval and storage. The most logical method for storing documentation is to operate an effective documentation centre.

The funding of a data base and of a modern *documentation centre* for uniform law is the first item for which Unidroit requires funding from the Foundation.

The benefits of uniform law can however only be fully reaped if it realises its potential and if it is correctly applied. In order to realise its potential States must be encouraged to make use of uniform law instruments when they create or modify their domestic legislation. Many nations, both industrialised nations and emerging economies, are often ill equipped to make the best use of the instruments that are available. It is therefore necessary to provide them with the assistance they might require in the legislative process, both in terms of the providing of *expert consultants* and in terms of the providing of information.

The funding of *projects on uniform law*, including the rapprochement of legislation also, but not only, in the framework of the unification of law, is therefore the second item for which the Unidroit foundation intends to provide funding, and the offering of consulting services to developing countries and countries engaged in the transition to a market economy is the third.

For uniform law to be correctly applied, it is necessary that those that are called upon to apply it have sufficient knowledge of both the substance of the applicable uniform law and the techniques used to create it. It is in other words necessary for them to be adequately trained and to have the possibility to conduct the research necessary for them to become experts on the subject. The funding of *scholarships for research* on uniform law is therefore an integral part of the third item to be funded by the foundation.

Purpose 1 of the Foundation:

The Funding of a Data Base and a Modern Documentation

Centre for Uniform Law

UNILAW

THE PROPOSED UNIDROIT DATA BASE ON UNIFORM LAW

The unidroit initiative

1. BACKGROUND

As the technological revolution of the last three decades advanced, the International Institute for the Unification of Private Law (Unidroit) realised the potential importance of high quality electronic systems, and particularly of a uniform law information system or data base.

The urgency of the matter has become increasingly apparent. Over the years, retrieving information, above all up-to-date information, from traditional hard copy and electronic systems has become increasingly difficult. The volume of relevant material is expanding constantly and with ever greater rapidity. Furthermore, no single institution has established itself as a focal point for the collection of at least the most important data on major uniform law topics. Commercially available electronic and hard copy materials only partially meet this need. A combination of these factors led Unidroit to the conclusion that the decision to set up an information centre itself to act as the point of reference for uniform law could no longer be post-poned.

An awareness of the potential utility of a data base such as the one proposed to a number of different users led Unidroit to conduct surveys among four categories of potential users (members of the International Bar Association, international organisations, arbitral institutes and tribunals and chambers of commerce and industry) to determine their interest for a data base such as the one envisaged. Contacts were also established with a number of ministries of countries in Central and Eastern Europe.

2. WHY IS UNIDROIT PROPOSING A UNIFORM LAW DATA BASE?

The evidence collected by these surveys inevitably led to the conclusion that there was:

- ◆ considerable potential demand from States and their legal advisers, other international organisations, legal practitioners and academics for expeditious and efficient access to a high-quality source of uniform law;
- ◆ this demand could not be satisfactorily met from existing hard copy and electronic sources;

- ◆ the Institute could usefully fulfil its statutory purposes through the provision of information regarding uniform law. It was a service to the international community that of all international organisations Unidroit was in the best position to render; and
- ◆ state of the art electronic information technology was now available or becoming available that would allow the Institute to continue better to discharge its uniform law co-ordination and information roles to the international community into the twenty-first century.

Law often follows other applications in capitalising on the opportunities provided by modern technology. This is true of law in general, but is especially true of those areas of law that are mistakenly perceived by many as of no immediate interest to everyday business and social life, that is, international and comparative law. Many developed countries now have data bases offering information on domestic law - legislation and case law - but there are relatively few that deal in any systematic way with international law in general or with uniform private law in particular. It is to fill this void that Unidroit has decided to set up a data base on uniform law. The Unidroit objective is to establish an electronic source for uniform law with authority and a guarantee of continuity in ultimately covering the whole reach of uniform law. The data base will be interactive once in its full production mode.

3. WHY SHOULD UNIDROIT BE THE ONE TO SPONSOR UNILAW AND PROMOTE UNIFORM LAW?

The *International Institute for the Unification of Private Law*, more commonly known as *Unidroit*, was originally founded in 1926 as an auxiliary organ of the League of Nations. Following the demise of the League of Nations it was re-established in 1940 on the basis of a multilateral agreement. It is an independent inter-governmental organisation, not part of the United Nations system, with fifty-eight member States.

The purposes of the organisation as set out in Article 1 of its Statute are:

"to examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law".

The terms of reference of Unidroit are therefore the harmonisation and co-ordination of private law as a whole. Unlike other international organisations it is not limited to any specific area such as trade law, transport law or human rights. Although international trade law has taken the lion's share of its efforts, other areas have also been dealt with as is evidenced by the *1973 Washington Convention providing a Uniform Law on the Form of an International Will* and the *1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects*.

In the course of its seventy-year history Unidroit has time and again come up against the problem of finding the information it needs to permit it to operate effectively. In order to have easy and ready access to as much information as possible, it set up a library which today is one of the largest law-libraries in Europe. As all library administrators know, however, the problems of keeping a large international library up to date and accessible to a growing clientele on a limited budget, with the costs of the literature, paper-based or CD-ROM, soaring, are enormous. More cost-effective approaches to the retrieval of information must of necessity be adopted. The setting up of an information system, with a central data base as the fulcrum and computer links with other major data bases, is an effective answer to these problems.

4. SUBJECT -AREAS

So as to permit Unidroit to offer the use of *UNILAW* to a larger number of outside users, including international organisations, judges and arbitrators, practitioners, Government legal advisers, national legislators and universities, it was decided that "uniform law" should be understood in a broad sense, as including not only what is known as substantive law but also conflicts or private international law.

The areas it is proposed that UNILAW should include, but not necessarily be limited to, are the following:

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| <ul style="list-style-type: none"> ◆ Acquisitions ◆ Agency ◆ Arbitration and Settlement of commercial disputes ◆ Banking Instruments ◆ Choice of law ◆ Communication ◆ Competition ◆ Cultural Property ◆ Energy law ◆ Enforcement of foreign judgements and awards ◆ Environmental law and natural resources ◆ GATT/WTO ◆ Insolvency and bankruptcy ◆ Insurance ◆ Intellectual and Industrial Property ◆ International Business Law (financing, factoring, leasing, investment, franchising) ◆ International Sales and related Transactions ◆ International wills ◆ Liability instruments ◆ Negotiable Instruments ◆ Security Interests ◆ Telecommunications law ◆ Transport |
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The above subjects cannot however all be given the same treatment from the start. What is proposed is that the data base should be built progressively and that a limited number of subjects should from the start be dealt with to full capacity. The subjects proposed as initial priority areas are:

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| <ul style="list-style-type: none"> ◆ Transport ◆ International Sales and Related Transactions ◆ Arbitration and other International Dispute Resolution <p>and</p> <ul style="list-style-type: none"> ◆ Cultural Property |
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It is intended that *UNILAW* should be accessible through an umbrella communications program which will permit access also to data bases containing the catalogue of the Unidroit Library and the scientific documents produced by the Institute. It is anticipated that these collections, above all the library collection, will become the core of what will become the *Unidroit Documentation Centre*. In this connection the possibility of entering the electronic inter-library exchange programmes will be examined.

5. THE TYPES OF INSTRUMENT TO BE COVERED

A variety of instruments need to be dealt with if a complete picture of the state of play in a specific field of law is to be obtained. Bearing in mind that the needs of the different subject-areas will differ, the type of instruments that will be dealt with in the data base are the following:

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| <ul style="list-style-type: none"> ◆ international and multilateral instruments prepared by inter-governmental organisations ◆ regional instruments ◆ national laws which implement or incorporate international instruments ◆ general conditions of trade prepared by international organisations and ◆ legal guides. |
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6. THE INFORMATION TO BE OFFERED

The surveys conducted among potential users confirmed that the following information should be offered by the data base:

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| <ul style="list-style-type: none"> ◆ the text of international conventions and uniform laws ◆ the official explanatory reports to the international conventions and uniform laws |
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- ◆ the status of ratifications
- ◆ reservations
- ◆ the text of model laws
- ◆ national implementing legislation
- ◆ national case law on the instruments covered
- ◆ case law of international courts of justice
- ◆ case law of arbitral tribunals (where possible) and
- ◆ bibliographical references.

UNILAW is intended to be an "intelligent" data base. It is in other words intended that the information should be retrievable by legal concept. The instruments will be analysed by experts in the field who will be responsible for the extrapolation of the relevant concepts for the instruments concerned and for their classification as key-words. Each document which is subsequently inserted into *UNILAW* will be analysed and classified in accordance with this concept-key-word system. The information contained on a specific subject will thus be accessible through concepts and key-words in addition to being accessible through more simple and obvious classifications such as the date of the decision or the name of the relevant court.

7. *POTENTIAL USERS*

The potential users of the data base are all those who in one way or another come across and need to work with uniform law, i.e.:

- ◆ 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.

8. *SERVICES TO BE OFFERED BY THE DATA BASE*

The services which over time will be offered by the data base include

- ◆ on-line links
- ◆ CD-ROM
- ◆ selective hard copy service
- ◆ answering service via e-mail, via fax, and via telephone and mail for specific requests for information

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| <ul style="list-style-type: none"> ◆ accessibility to visitors to the Unidroit Documentation Centre and ◆ full interactivity, including with the panels of experts |
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As it is intended that the information contained in the data base should be made available to as many different users as possible, consideration is being given to making *UNILAW* available on the Internet and/or on any other information superhighway carrier.

In principle the data base will be accessible against payment. Preferential schemes are however under study, in particular for users from developing countries and from countries in transition to a market economy.

9. LANGUAGES

The data base will be bilingual English and French.

10. CO-OPERATION AGREEMENTS

The information to be inserted in the data base is available from a variety of sources. These include the international organisations responsible for the international instruments, notably as regards the up-dating of the status of ratifications and reservations. Unidroit is therefore in the process of contacting these organisations with a view to coming to an agreement with them for an exchange of information. In exchange for free access to the data base, the organisations will be requested to furnish constant and up-to-date information as to the status of ratifications and reservations of their conventions.

A first contact with a number of international organisations in this connection has already taken place: interested international organisations were invited to attend a meeting in Rome to discuss the data base, its scope and objectives, as well as the possibilities that exist for co-operation on this project between these organisations and Unidroit. The meeting was held on 2 February 1996 and saw the participation of the following seventeen inter-governmental and non-governmental organisations: the International Maritime Organization (IMO), the International Trade Centre UNCTAD/GATT (ITC - UNCTAD/GATT), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the Commonwealth Secretariat, the Council of Europe, the Nordic Council for Research on European Integration Law (NORFEIR), the Organisation for Economic Co-operation and Development (OECD), the *Organisation internationale pour les transports internationaux ferroviaires* (OTIF), the *Comité maritime international* (CMI), the International Bar Association (IBA), the *Union internationale des avocats* (UIA), the *Centre d'études sur la coopération juridique internationale* (CECOJI), the Centre for Comparative and Foreign Law Studies, and the *Institut international de droit d'expression et d'inspiration françaises* (IDEF).

The organisations expressed great interest in the project, indicating that if it became operative it would be of considerable benefit to the international community. It was a very

ambitious project, but the organisations present were prepared to offer assistance. The meeting ended with all organisations present that are depositories of materials and information indicating what, within the limits of their resources and terms of reference, they would be able to offer the proposed Unidroit data base, both in terms of presently existing materials and in terms of consultations for the future.

11. FINANCING

An accurate assessment of the capital and start-up cost of *UNILAW* is difficult to make because of the considerable number of variables involved. An analysis of the technical requirements, both hardware and software, was made by the *Ingenium Software Ltd.*, software consultants whose assistance Unidroit enlisted. Over time recurrent running costs are likely to be the heaviest, particularly when work has started on the majority of the subjects to be dealt with.

The funds that are necessary for a project such as the one described in this paper are far beyond the very limited possibilities of an international organisation such as Unidroit. Funding for *UNILAW* must therefore be found from extra-budgetary sources. The Unidroit Foundation is a prime source for the obtaining of these funds.

12. IMPLEMENTATION: PROCEDURE AND TENTATIVE SCHEDULE

UNILAW is a data base which when fully functional will provide information on all major areas of uniform law. This information will be accessible through a concept-key-word system elaborated after a thorough analysis of the materials it contains. It is however clear that even though these are, and remain, the ultimate objectives of the data base, they are not objectives that can be attained in one go. It is also clear that there is a great need for information which, even if very basic in nature (the status of ratifications, for example) is not presently readily available. These two fundamental considerations have led Unidroit to the conclusion that even if it is not possible from the start to provide access to all information in all the areas of uniform law that the data base will eventually cover by means of the concept-key-word system, work should nevertheless begin across the board to make some information available immediately through more simple means of research (for example, country, date, number, court, and through a full text search). This approach would permit a large number of instruments and other texts to be included in the data base within the first year of its operation.

The procedure that will be followed in building *UNILAW* will therefore involve a three stage progression:

1. insertion of:
 - ◆ the texts of the instruments, and
 - ◆ the status of ratifications with reservations and declarations

2. insertion of:
 - ◆ case law selected by the experts, and
 - ◆ bibliographical references

3. analysis of the materials with the extrapolation of the concept-key-words and the linking of these concepts with the materials.

This procedure will be followed also for the up-dating of the data base, thus permitting it to be constantly up-to-date as to the materials it contains, even if the latest additions have not been fully analysed.

13. CONCLUSIONS

The creation of a data base is never a simple task. The problems that have to be faced are many and not always of easy solution. A constant effort and adequate funding over time are essential to meet the challenge. The proposed *Unidroit Data Base on Uniform Law* is no exception. Indeed, the difficulties that can be expected are such as to make the project a daunting task. It is, however, the firm conviction of Unidroit that it is a venture well worth embarking upon. If, with the assistance of the community of international organisations and of the experts who will be working with Unidroit, the data base is launched as planned, it will be a tool that will be invaluable.

THE UNIDROIT DOCUMENTATION CENTRE

Descriptions of fully operative and efficient documentation centres generally include all the most modern tools that are available to researchers: on-line links with data bases set up by specialist and other diverse bodies, CD-ROM and computerised card catalogues as well as older means of information storage such as microfilm, microfiche and some hard copy.

Such sophisticated technology is however not always accessible to all researchers all over the world. Research by traditional means is still of major importance. This is true not only in developing countries but also in countries in transition to a market economy and even, perhaps more surprisingly, in the major industrialised nations.

This was evidenced clearly in a set of surveys conducted by Unidroit in 1994 among four different categories of potential users of the data base on uniform law that the organisation is in the process of setting up (members of the *International Bar Association*, chambers of commerce and industry, international organisations and arbitral associations and tribunals). The results of these survey showed that an overwhelming majority of the lawyers contacted still use paper-based sources for their research, even if they do consider that a data base such as the one envisaged would be of the greatest utility. It is without doubt a question of time before modern technological means displace most other information sources in the offices of legally trained professionals - practising lawyers, judges, academics or government officials. Professional lawyers trained in OECD countries in the last ten years and reaching their peak in the next ten to fifteen years now use electronic sources more readily than older professionals. In economic and financial terms other forms of storage, retrieval, cataloguing and access are being priced-out of the broad markets domestically and internationally. This is an inescapable reality. The value of paper-based and other sources such as microfiche and microfilm however remains and is likely to remain for some time to come in the OECD countries.

The reason for this is quite simply human nature. The appeal of the printed page is not to be under-estimated, no matter how convenient a search by telematic means. The two are in fact not mutually exclusive, they are complementary means of storing information.

1. THE FUNCTIONS OF THE UNIDROIT DOCUMENTATION CENTRE

The basic functions of an *Unidroit Documentation Centre* can be identified as follows:

- ◆ as a back-up for and complement to the projected data base
- ◆ the storage of primary sources of information, e.g. as depositary of the documents of the United Nations, the European Union and other organisations and

◆ the storage of legal writing.

In other words, a documentation centre is a physical location where researchers can retrieve information either by visiting it in person or by contacting it by any one of the different means available (mail, telephone, fax, etc.).

This is particularly important when the needs of scholars from developing countries or from countries engaged in the transition to a market economy are concerned. The amount of information available in the countries of origin of these scholars is often insufficient for their needs, independently of whether they are government officials engaged in the legislative processes of their countries or in their representation internationally, members of the judiciary called upon to decide a case involving a foreign or international element, or an attorney faced with sophisticated opposing counsel and the contracts these produce. It is therefore important for these lawyers to be able to turn to an institution which holds most of the texts they require for their work or scholarship. A visit to such an institution, with the possibility to stay for a longer period of time to consult, and where necessary to copy, the official texts stored, the case law of national and international courts and tribunals as well as the legal writing on the subject matter, is often of invaluable assistance to them.

Where an actual stay at the documentation centre is not possible, contact may nevertheless be established at a distance. The means to retrieve information from far away locations are first and foremost the traditional methods: mail, telephone, lately fax and even e-mail. To these must be added new methods that are developing, that indeed are operative in certain countries. Among these new methods is a further development of e-mail, namely the electronic transmission of the actual texts of, for example, articles published in legal periodicals. Where these are not available electronically, they can be scanned and subsequently transmitted electronically. Clearly, to be considered in this connection is the question of copyright. The whole concept of copyright is in fact increasingly being reconsidered in relation to the new technologies that are developing.

(a) *Back-up for and Complement to the projected Unidroit Data Base on Uniform Law*

One aspect of electronic storage of information which is often forgotten is the back-up support it requires. Most of the material that is inserted in electronic data bases or on CD-ROM derive from paper-based sources. Only recent material is actually created in electronic form and subsequently printed on paper. A well-stocked traditional library and documentation centre is therefore of considerable importance as back-up for, and complement to, electronic data bases. This is particularly true of sources of information which although of considerable interest, in particular as background information, are not deemed to be suitable for inclusion in the data base (for example the reports prepared in the course of the elaboration of major law reform). Storing these documents in a documentation centre would permit them to be easily accessed if needed.

Although on-line and CD-ROM national reporting services are increasingly being developed for the storage of both legislation and case law, the process is by no means equally efficient or fast in all countries. Furthermore, as the amount of data that would need to be stored if all the legislation and all the case law produced by any one nation were to be

computerised is enormous, the national services begin with the present and go back in time. There is therefore a considerable amount of material which at any one time is not included in the new computerised systems. Although it is true that a certain amount of this material will be obsolete, a substantial part of it will still be relevant to researchers. The importance of this type of access to foreign material should not be disregarded. The need to compare the solutions adopted in different countries in the preparation of national legislation is universal. So is the need to have access to foreign materials in the preparation of a case involving a foreign element or indeed in deciding such a case. Again, it must be stressed that the most modern systems of storing information may not be available to all. In either case the role of a documentation centre will be of fundamental importance.

(b) Storage of Primary Sources of Information

A number of libraries and documentation centres act as depositories for documentation produced by organisations such as the United Nations and the European Union. The importance of the role played by these libraries and documentation centres in the dissemination of information on the activities of organisations and systems such as that of the United Nations cannot be exaggerated. The documents produced by the United Nations are, for example, not easy to come by, particularly the documents that are presented to the sessions of the different commissions and committees. These documents in fact need to be requested specifically from the United Nations in New York. Once the work on a particular point has been finalised a publication might ensue. Such publications are available from selected book sellers in the different countries, as well as from the United Nations itself. Any researcher who needs to consult this type of documentation, which can be considered to be "law in the making", will therefore in most cases experience a certain difficulty in finding what he or she is looking for. Even where documentation is available through computerised services accessible through the Internet, the expense incurred in a consultation of such a service might be prohibitive. An effective documentation centre therefore has a definite role to play in the context of the dissemination of information deriving from international organisations and institutions.

(c) Storage of Legal Writing

Law is not only composed of legislation, original texts and case law. A significant part of law is what may be termed "legal science". The role assigned to legal science varies from legal system to legal system. At best, it will influence the development of law, with the result that changing circumstances are eventually provided for by law. It will furnish a guide to the interpretation of both national and international legal instruments as well as of case law. Its representatives will actively contribute to the improvement of law by taking part in the legislative process at one stage or another. Access to legal writings is therefore of considerable importance for researchers who endeavour to give a correct interpretation of the law. This is particularly the case where foreign law is concerned, as it is from legal writing that the background to the adoption of a certain course is to be found, its historical, cultural and economic motivations. The differences that exist in the interpretation of international instruments will also often find an explanation in the elements furnished by legal writing. The role of a documentation centre in this regard is self-evident.

2. *THE USERS OF THE UNIDROIT DOCUMENTATION CENTRE*

In view of the functions illustrated above, the prospected users of an Unidroit Documentation Centre are primarily:

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| <ul style="list-style-type: none"> ◆ scholars and researchers ◆ practising lawyers ◆ government officials and ◆ courts and arbitral tribunals |
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particularly from developing countries and countries engaged in the transition to a market economy, but also from industrialised nations.

Not to be forgotten are other international organisations. The needs of these organisations will vary considerably. A number of international organisations are specialised in purpose, such as for example the *World Intellectual Property Organisation (WIPO)*, and will therefore have substantial holdings of documentation and literature relating to their subject. There are however others that deal with a variety of different subject-matters, depending on what their member States decide when they periodically review and adopt the work programme of the organisation concerned. It will not be possible for such organisations to keep up to date material on all subjects they have ever dealt with, even when it concerns comments on their own instruments. The utility of a documentation centre for such organisation, is therefore two-fold: first, as a source of information when they are preparing an international instrument, secondly to monitor developments in the fields they have already dealt with so as to enable them not only to evaluate the success of the instruments adopted under their aegis, but also to permit a reasoned consideration of the necessity of any modifications to them.

3. *THE SETTING-UP OF A DOCUMENTATION CENTRE*

A documentation centre takes time to set up. It takes time to collect the materials and it takes time to process them. It also takes a large amount of funds. As all library administrators know, the problems of keeping a large international library up to date and accessible to a growing clientele on a limited budget, with the costs of the literature, paper-based or CD-ROM, soaring, are enormous. This is true even if a severe selection of the materials is made. A selection is necessary, as the amount of publishing, thanks also to modern methods for desk-top publishing, has increased exponentially and, regrettably, the quality of what is produced does not correspond to the quantity.

The *Unidroit Documentation Centre* would have the great advantage of building upon an already existing library. The Unidroit library has always been a source of great pride for the organisation. Unidroit is indeed one of few international organisations with a truly significant library. This is due to the realisation by the founders of the Institute of the importance of adequate documentation for the work of the Institute.

Uniform law is that body of law which has been adopted as a result of international co-operation, both it regional and universal. It is incorporated into the national legislation of the countries that prepared and adopted it and/or agree with its policy and principles. It is termed "uniform" because it is intended to be the same in all the different countries that have adopted it. In practice, however, it is not always applied in a uniform manner by the judges of the different countries, often through a lack of information.

Information is necessary at all the stages of the development and life of a uniform law, from the first comparative law study to the application of the law finally adopted by the courts. The materials that are necessary for the research include doctrinal treatises as well as articles in legal periodicals and first hand material such as legislative instruments, the decisions of courts, preparatory reports and other documentation. It was to ensure the availability of this material that when Unidroit was founded in 1926 the decision was taken to create a library.

Although the purpose of the Institute is to work for the unification of law, the library collection is not limited to uniform law *strictu sensu*, but covers a far greater number of areas of law. A large part, in fact, of the materials, both national and international, that are necessary for the research conducted in relation to the projects of the Institute. Over the years what was a modest collection of publications has grown to become one of the largest law-libraries in Europe. It has the distinct advantage of broad coverage and not merely catering for sectional interest. At present, the collection comprises some 250,000 monographs of varying nature, plus 710 periodicals from 77 different countries and international organisations. Of these, 550 are current periodicals. 332 periodicals deal with international and comparative law. In addition, the official journals of 21 countries are received on a regular basis, as is the Official Journal of the European Union.

Despite this impressive stock of materials, a significant amount of material is not held. Modern technology is conspicuous by its absence and would need to be introduced in all the different aspects - on-line links, CD-ROM, even microfiche and microfilm. Integrations are also necessary in the sections on national legislations, case law, documentation of certain international organisations and monographs. Considerable renovation of the collections will need to be made if the Unidroit Library is to serve as the basis on which to create the proposed *Unidroit Documentation Centre*. What is now in the library is a foundation to build on, but one which is rapidly becoming outdated as electronic information technology takes hold.

Purpose 2 of the Foundation:

The FUNDING OF PROJECTS ON UNIFORM LAW, INCLUDING
THE RAPPROCHEMENT OF LEGISLATION, ALSO, BUT NOT
ONLY, IN THE FRAMEWORK OF THE UNIFICATION OF LAW

PROJECTS ON UNIFORM LAW

The second priority area for funding from the foundation is the funding of "projects on uniform law, including the *rapprochement* of legislation, also, but not only, in the framework of the unification of law."

1. *CRISIS OF FUNDING*

The activities of an international organisation are financed by the contributions of its member States. Regrettably, the possibilities of States to provide funding have been severely affected by the prevailing economic crises. This has led governments to adopt a zero-growth policy in relation to the contributions they pay international organisations. In effect, this has meant a lowering of the contributions in real terms.

In an increasingly inter-dependent world the importance of uniform law, and therefore of the projects associated with uniform law, is, however, impossible to deny. A foundation that is able to finance activities in this field that international organisations are professionally able, but financially not able, to carry out or to promote, would be of paramount importance in the promotion of international trade and relations through law.

2. *PURPOSES OF PROJECTS ON UNIFORM LAW*

Projects on uniform law can have a number of different purposes and may indeed be initiated by a number of different persons and entities. The most important projects are carried out on behalf of States or of groups of States. In this case the projects may have the purpose of examining an existing uniform discipline and how it is applied in different countries with a view to introducing that uniform discipline elsewhere, or of creating a harmonised system which does not as yet exist in a given field of interest.

This is clearly contemplated by the Statute of Unidroit, which states that in the examination of ways of harmonising and co-ordinating the private law of States and of groups of States and in the gradual preparation for the adoption by the various States of uniform rules of private law, the Institute shall

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| <ul style="list-style-type: none">"(a) prepare drafts of laws and conventions with the object of establishing uniform internal law;(b) prepare drafts of agreements with a view to facilitating international relations in the field of private law;(c) undertake studies in comparative private law; |
|---|

- (d) take an interest in projects already undertaken in any of these fields by other institutions with which it may maintain relations as necessary;
- (e) organise conferences and publish works which the Institute considers worthy of wide circulation".³

Uniform law is normally created under the aegis of an international body - an inter-governmental organisation, such as Unidroit, or an association of States such as the European Union. The final product, whether it is an international convention, a model law or even a simple legal guide, represents the compromise solution reached through intensive debate and an active search for solutions that are acceptable to peoples with different legal traditions. The reason this search for a common denominator is actively pursued is that the application of the same product in as many different nations as possible brings very real benefits.

(a) *Methods of Unification*

The methods adopted do not vary greatly from one organisation to the other. The procedure adopted within Unidroit is in general flexible, allowing as it does for modifications responding to the nature of the final product. A subject is proposed, a preliminary comparative law study is conducted to ascertain the feasibility of the project, a study group is convened, then a committee of governmental experts works over the draft and finally, if the end product is an international convention, a diplomatic conference is held. Where the end product is not an international convention, other procedures are adopted for the final approval of the text.

The final product of the unification process may be either adopted by the States or become a source of inspiration for the national legislator. In either case it will serve as an indication of the best practices in the field concerned at international level. The procedure by which uniform instruments become part of the national legal system varies from country to country. A number of countries merely annex the instrument to an act or decree which states that it has been adopted, others transform the instrument into a national law, often changing the article numbers and the order of the provisions to fit the conceptual order of its legal system. Before any nation proceeds to either course, however, it will carefully study the implications of the adoption of the instrument for its national legal system, the modifications to domestic legislation that might be required, the modifications introduced by other nations, in particular those with the same or a similar legal traditions, as well as the practice associated with that international instrument in other countries. An evaluation will thereupon be made as to the advisability of adopting that particular instrument. The process of retrieval of the information necessary is often lengthy and expensive. The possibility to turn to an institution of recognised integrity and objectivity would greatly facilitate the task of those entrusted with the retrieval, examination and evaluation of this information.

³ Article 1 of the Unidroit Statute.

(b) *Uniform Law as a Source of Inspiration*

Where instead uniform law is used as a source of inspiration for national legislation, the uniform law concerned may not only be one which has already been elaborated and which is available for consultation on the part of the legislators, but also a uniform law in the making.

In the first case the procedure is much the same as for the actual adoption of the instrument under consideration. Information must be gathered and evaluations made, after which it will be possible for the legislators to pick and choose the solution that is the most appropriate for their country. This often means adapting solutions adopted elsewhere, perhaps only partially accepting that which has been done in the other countries, possibly combining solutions deriving from different legal systems.

The international law-making process is often observed with great interest by national legislators, even where the country concerned has no national representative in the group responsible for the elaboration of the uniform instrument. The reason is that the study groups are composed of experts active in the field under consideration, by people who often have practical experience dating back twenty or thirty years and who consequently are totally familiar with the problems that arise, with the solutions that have been tested and adopted (or rejected), with the pitfalls that have become apparent over time, and with what should absolutely be avoided if damage is to be averted. The outcome of the work of a group with such an expertise is therefore of considerable importance as a source of inspiration for national legislators.

(c) *The Creation of a Uniform International Discipline*

The main importance of uniform law however lies in the fact that it provides a uniform international discipline in areas of importance to international relations. Such an international discipline may be provided for areas that are not covered by any other international discipline, however fragmentary in character, or where a discipline already exists but is either not considered to be adequate or needs to be adapted to changing circumstances. Such international disciplines may be triggered by an economic need, for example the creation of the European common market, or by social and cultural needs, for example in areas dealing with family relations.

No matter what the purpose of the uniform law, it must be well-prepared to be effective. Projects specifically geared towards uniform law in all its aspects are therefore of considerable importance, in particular, but by no means exclusively, to developing countries and countries in transition to a market economy.

3. *WHO PROPOSES THE SUBJECTS TO CONSIDER?*

Proposals for the consideration of a certain subject may be received by the international organisation concerned from a number of different sources:

- ◆ the members of the governing bodies of the organisation - with or without the backing of their States, depending on the nature of the body of which they are a member,
- ◆ trade associations and other interest groups,
- ◆ lawyers of all professions and, last but not least,
- ◆ the governments of the member States themselves.

The possibility also of the governments of non-member States proposing that a certain subject be dealt with should not be excluded. Often, at committee of governmental expert level, non-member States will in any event be invited to send observers to the meetings.

The projects that Unidroit has dealt with in the course of its seventy-year history have almost always led to the creation of a uniform law instrument, normally an international convention. Increasingly, however, the organisation is looking to other vehicles to fulfil its statutory purposes. Pride of place in this context is occupied by the proposal to set up a data base on uniform law, but other means are also considered. Not surprisingly, the main problem in this diversification of the activities carried out by the organisation is that of funds.

The availability of funds through a foundation would have the added merit of enabling Unidroit to take into consideration subject-matters or specific issues that are of great practical significance and that private associations, such as for example trade or professional associations such as Chambers of Commerce and Industry or the International Bar Association, may wish to propose. Unidroit does in fact co-operate actively with a number of such bodies, for example the *Union Internationale des Avocats*, the International Bar Association and the Chamber of Commerce and Industry of the Russian Federation. These bodies have expressed considerable interest in the work conducted by the Institute, the professional bodies often contributing to that same work by sending representatives to the meetings of the Unidroit Study Groups or Committees of Governmental Experts.

The importance of the role that the professional and trade associations can play in the furthering of uniform law cannot be exaggerated. It is they that are in touch with the problems that arise every day in cross-border transactions; it is they that have to solve these problems; it is they that will use the uniform instruments adopted under the aegis of international organisations such as Unidroit. Finally, it is they that can act as forceful pressure groups in the lobbying of governments for accession to the international instruments. Any organisation that has the ambition of promoting change through law cannot disregard the real practical needs that exist in every-day life. Unidroit does have this ambition, and hopes to be able to make an increasingly significant contribution through its work. What is it able to do will however depend on the funding it has available and on the possibilities it has to use that funding. An independent source of funding such as a foundation would permit it to act with greater incisiveness and speed, while at the same time guaranteeing the quality of the product and, through the government supervision to which any international organisations is subject, the objectiveness and fairness of the choices made.

Purpose 3 of the Foundation:

The funding OF consulting services to developing countries and countries engaged in the transition to a market economy on request, including the funding of scholarships for research on uniFORM LAW

CONSULTING SERVICES

The third priority area of the Unidroit foundation is the funding of consulting services to developing countries and to countries engaged in the transition to a market economy. The offering of such consulting services is seen by Unidroit as a contribution to the modernisation of the legal systems of the nations concerned. A modernisation of the legal systems has become ever more urgent as a result of the growing inter-dependence of the nations of the world. If this inter-dependence is to benefit all nations concerned, it is necessary to provide a structure which will favour development rather than hamper it. Such a framework is provided by law.

The inter-dependence of nations has increased also as a result of economic and social developments. Recent years have seen an intense economic development of certain parts of the world, notably South-East Asia. According to the *1994 Trade and Development Report* of UNCTAD "[t]he dynamism of East and South-East Asia comes from a virtuous circle of growing investment and trade, rapid structural change and deepening industrialization. Imports have risen rapidly, from both within and outside the region. So, too, have exports. Their main impetus has been the high rate of investment [...]".⁴ This explosive growth is however not uniform all over the world, many parts of which remain economically disadvantaged. This is the case particularly with Africa, where no significant increases in foreign direct investment (FDI) have occurred, notwithstanding the liberalisation of foreign investment laws.⁵

Even where there has been economic growth the infra-structure is often inadequate, not only as regards the services that should assist and promote economic development, but also in terms of the legislative instruments that should provide the legal framework necessary for the development and in terms of the information available relating to international commercial relations and their regulation, both internationally and domestically.

This is the case of the countries of Central and Eastern Europe, the difficult economic situation of which is well-known. According to the *1994 Trade and Development Report* of UNCTAD "[t]he key question is how to accomplish the massive enterprise restructuring needed to create efficient units capable of responding to market signals. The machinery of government inherited from the past is too otiose for such an intricate operation. On the other hand, an entrepreneurial class and the institutional infrastructure required to sustain capitalist activity are highly underdeveloped, while a system to finance restructuring and investment is still present only in embryo".⁶

⁴ *Trade and Development Report, 1994, Overview by the Secretary-General of UNCTAD*, United Nations, New York and Geneva, 1994, p. 6 (UNCTAD/TDR/14 (Overview)).

⁵ *Trade and Development Report, 1994, Overview by the Secretary-General of UNCTAD*, United Nations, New York and Geneva, 1994, p. 2 (UNCTAD/TDR/14 (Overview)).

⁶ *Trade and Development Report, 1994, Overview by the Secretary-General of UNCTAD*, United Nations, New York and Geneva, 1994, p. 7 (UNCTAD/TDR/14 (Overview)).

In fact, the tasks which the Governments of Eastern Europe face are

- ◆ to dismantle centralised economic controls, thereby enabling markets to perform
- ◆ to decrease the rising underemployment and unemployment associated with privatisation
- ◆ to create private enterprises able to provide goods and services in quantities and qualities that meet local needs, and
- ◆ to create an economy that can support long-term economic growth and compete in international markets.

To do this, it is necessary for the nations of Central and Eastern Europe to introduce modern legislation which is adequate for these purposes.

A changing world order and the practical needs that arise in relations between individuals of different States require adequate legal instruments. Without adequate legal instruments those involved will operate only with difficulty and may not always be able to solve the problems that arise in a satisfactory manner. As international trade increases, a growing number of individuals are faced with the necessity of operating in and with other systems of law and regulation. The efficiency with which internationally active operators are able to act will be greatly enhanced if the legal frameworks they operate in are similar or the same in character.

The developments described above have intensified the need for consulting work in the field of legislation, as a growing number of countries are looking to modernise their legislation or to introduce legislation to regulate new forms of business and commercial transactions previously unknown to them. The inter-dependence of nations, in particular of their economies, the need to stimulate foreign investments and technical know-how is however such, that often ill-advised attempts are made to regain the time lost or to fill the gap vis-à-vis the industrialised nations of the world. This has led to advice being sought from practitioners without the necessary experience in the legislative process, and regrettably also without an adequate understanding of the social, economic, cultural and historical heritage of the country they are called upon to advise.

There is no doubt that the seeking of advice is a wise course to take. The problem is knowing where to turn in order to obtain advice which is of high quality and proven objectivity. The obvious answer is request this advice from institutions that are not the representatives of any professional or trade group and that have all the necessary contacts to enable them to retrieve the information that is necessary to offer an expert consultation. Such institutions would also have contacts with experts of world standing that would be able to undertake the task of drafting an expert opinion.

With these requirements, there can be no better institution than an inter-governmental organisation with a reputation for quality and objectivity. The inter-governmental nature of such an organisation would guarantee a lack of bias that would be difficult to find elsewhere. The experience of the organisation in international legislative work would

furthermore be invaluable in the adaptation of the product to the needs of the country in the present-day international community. The organisation would also have the contacts necessary to conduct the consultations in the best possible manner, both as regards the experts and as regards any documentation that it would be necessary to retrieve. As the promoter of uniform legislation the organisation would furthermore be in the best position to give advice on the subject-matter concerned. Where law is concerned, an obvious choice for a consultant would be Unidroit, which will furthermore be particularly well-equipped to furnish consulting services when the proposed *Data Base on Uniform Law and Documentation Centre* become fully operative.

The border-line between consulting services and projects on uniform law may at times be difficult to draw. The finalities are, however, different for the purposes of the Unidroit foundation, in that the consulting services would be more clearly directed towards the specific needs of a country or group of countries that request the assistance of Unidroit. These needs would lie more in the direction of the elaboration of national legislation or of international agreements, possibly even regional agreements between two or more countries, than the projects on uniform law, which would be more generally analytical of uniform law that is already in existence or that is being elaborated.

Training and research opportunities are also be included under the consulting activities. With the limited resources at its disposal, Unidroit has already initiated a scholarships programme, which the resources of the foundation will hopefully permit it to expand.

Scholarships for research

1. THE UNIDROIT RESEARCH SCHOLARSHIPS PROGRAMME

The Unidroit programme for research scholarships was launched in 1992 in the framework of the item "Legal Assistance" of the Work Programme of the Institute. The purpose of the programme is to give lawyers from developing countries and countries engaged in the transition to a market economy access to the holdings of the present Unidroit library for private research. The scholars are selected by the Scholarships Committee of the Governing Council of Unidroit taking into consideration the candidates' degree of qualification, the nature of their research projects, which must be in keeping with the statutory aims of Unidroit, and their practical potential for application in the candidates' countries of origin. Projects relating to the drafting of national laws or which aim at promoting the adoption of uniform law instruments in the scholars' countries of origin are given particular attention.

The programme is financed in part by donors and in part by the Unidroit budget. Scholars are further encouraged to find independent financing for their stay. Co-operation agreements with other institutions, such as the Swiss Institute of Comparative Law, are furthermore in place, permitting the scholars to benefit from the resources of both Unidroit and the other institution concerned.

The programme is to be firmly set in the framework of the promotion of uniform law. For the benefits of uniform law to be reaped, it must be applied correctly and in conformity with the intentions of the international legislators that adopted it. This is however not possible without knowledge. The first condition for there to be knowledge is that there is accurate and up to date information. This condition is fulfilled by means such as a data base and a modern documentation centre. But once this information is available and accessible, it must be properly understood, interpreted and applied. This can only be done by people who are adequately trained, who have examined the issues concerned, the different possible solutions and who are able to place the uniform instrument in its proper perspective and context.

Uniform law is not a subject that is taught in universities. All too many members of the legal professions - practitioners, academics, judges or government officials - are unaware of it as a discipline or even as an integral part of their national legal system. It is therefore necessary to increase the awareness of uniform law of these different categories of lawyers, it is necessary to equip them with sufficient knowledge to permit them to make the best possible use of uniform law.

By providing scholars with access to the library Unidroit hopes to spread knowledge of uniform law, its sources and interpretation. With this knowledge the lawyers will be able to make use of the sources that will be made available through UNILAW as well as in the future Documentation Centre and will be able to assist scholars in their countries of origin.

2. *FUTURE PROSPECTS*

The Unidroit Scholarships Programme is still of modest dimensions, even if it is growing steadily in importance. Financial backing is being provided by both France (for franco-phone lawyers) and Sweden (for lawyers from the Baltic Republics). The existing co-operation with other institutions has recently expanded to include the Council of Europe and may soon extend also to the Hague Conference on Private International Law.

The situation of the Scholarships scheme in some ways resembles that of the Unidroit library: it is a useful platform on which to build. The exact nature and extent of future developments will however depend on the funding available and it is in providing this that the foundation will have a very important role to play.

annexes

annex 1: the international institute for the unification of private law, an introduction

annex 2: the UniFORM LAW foundation, text of the constitution

UNIDROIT

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GENERAL INFORMATION

The *International Institute for the Unification of Private Law*, more commonly known as *Unidroit*, was originally founded in 1926 as an auxiliary organ of the League of Nations. Following the demise of the League of Nations it was re-established in 1940 on the basis of a multilateral agreement. It is an independent inter-governmental organisation, not part of the United Nations system, with fifty-eight member States.

Member States: 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 (Federal Socialist Republic of).

Purpose: To examine ways of harmonising and co-ordinating the private law of States and of Groups of States and to prepare uniform instruments of private law.

Financed by a basic annual contribution from the Italian Government and by annual contributions from the other member States.

Structure: A *General Assembly* constituted by one representative from the Government of each member State, with the tasks of voting the Institute's budget, of approving the Work Programme of the Institute and of electing the Governing Council;

a *Governing Council* responsible for drawing up the Institute's Work Programme and for determining the methods of carrying out the Institute's aims; and

a *Secretariat* responsible for the carrying out of the Work Programme.

Languages: English, French, German, Italian and Spanish are the official languages while English and French are the working languages of the Institute.

International Conventions and Uniform Laws: The instruments prepared by Unidroit for the attaining of its aims are international conventions, uniform laws, model laws, sets of principles and recommendations addressed to States, as well as guides, codes of conduct or standard forms of contracts addressed directly to professional circles.

Co-operation with other organisations: Unidroit co-operates with other intergovernmental organisations such as the IMO, UNESCO, UNCITRAL, the UN/ECE, the Hague Conference on Private International Law, and the Commonwealth Secretariat, with regional organisations such as the OAS and the Commission of the European Communities, as well as with non-governmental organisations such as the International Bar Association and the Union Internationale des Avocats.

Library: The Unidroit Library is one of the major European centres of its kind, with over 220,000 books and 550 current legal periodicals from over 70 countries. The Library collection consists mainly of works of commercial, comparative and private international law. The Library also has an extensive collection of documents and publications of numerous international organisations.

Publications:

(i) Periodical publications of Unidroit:

the *Uniform Law Review* is a bilingual publication in English and French which appears quarterly. It offers a comprehensive survey of the most recent developments concerning uniform law, including articles, studies on subjects on which Unidroit is working, texts of uniform law instruments adopted at both universal and regional level, a select uniform law bibliography and a selection of national case law dealing with the application and interpretation of international conventions;

the *News Bulletin* is published twice-yearly in English, French and Spanish and provides a concise update on Unidroit's activities as well as more general information relating to uniform law; and

the *Digest of Legal Activities of International Organizations and other Institutions*, a loose-leaf publication, is designed to give an overall picture of the legal activities underway in international organisations.

(ii) Monographs

the *Unidroit Principles of International Commercial Contracts*, which constitute a system of rules of contract law specifically adapted to the special requirements of modern commercial practice;

Acts and Proceedings of Diplomatic Conferences held for the adoption of Unidroit Conventions
and
Acts of Uniform Law Congresses organised by Unidroit.

SCIENTIFIC ACTIVITY

The *International Institute for the Unification of Private Law (Unidroit)* was created with the specific purpose of harmonising the private law of nations and therefore to bring these benefits to as many different nations as possible. Efficient - and standardised - systems for international payments, efficient - and standardised - procedures for the transport of goods, for insurance, are a few of many areas which are vital for the development of economies, be they industrialised or developing.

Regrettably, the international commitments of the nations of the world are such that international organisations have to share very limited financial resources. Many States are in arrears with their payments, and others have imposed a zero-growth principle on the contributions they make to the budgets of the organisations. The result is an inevitable decline in efficiency of the organisations which find that they are no longer in a position to fulfil even their statutory obligations, let alone to undertake any additional tasks that they see as being of importance, or even essential, to the contribution they have been delegated to make to the development of the international community.

The Statute of the *International Institute for the Unification of Private Law (Unidroit)* states that its purposes are "to examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law" (Article 1, para. 1, of the Statute).

A. PRIORITY ITEMS

1. *Franchising*

The preparation of a legal guide to international franchising, in particular to master franchise agreements.

The preparation of uniform rules applicable to certain aspects of franchising agreements amenable to treatment at international level.

2. *International Interests in Mobile Equipment*

Preparation of uniform rules on international interests in mobile equipment.

B. OTHER ITEMS UNDER STUDY

1. *Secured transactions in general*

Study of the feasibility and desirability of the preparation of a model law in the general field of secured transactions.

2. *Civil liability connected with the carrying out of dangerous activities*

Study identifying issues that could be dealt with by Unidroit as a basis for possible measures to ensure compensation for personal injury to the victims of industrial accidents.

C. RESERVE LIST

1. *Legal issues associated with computer software*

An inquiry into the extent to which problems may arise in the international relations between producers and users of software and in particular the identification of new types of contract which may be evolving as the use of computers becomes ever more widespread.

D. ACTIVITIES ASSOCIATED WITH THE UNIFICATION OF LAW

1. *Creation of a data base on uniform law*

Setting up by Unidroit of a data base permitting ready access by Governments, judges, arbitrators and practising lawyers to information regarding uniform law instruments and in particular to texts thereof, ratifications and reservations thereto, and the relevant case law and bibliography.

2. *Establishment of a Unidroit Foundation*

The establishment of a foundation to permit Unidroit to finance activities it considers worthy of promotion but which are too cost-intensive to be financed out of the Unidroit budget, in the first hand the setting up of a Unidroit data base on uniform law.

3. *Programme of Legal Assistance*

The promotion of co-operation with developing countries and with countries engaged in the transition to a market economy, in areas falling within the statutory competence of Unidroit, in particular through an increased diffusion of information concerning uniform law (the organisation of seminars, the development of exchanges and the donation of publications) and through training (the awarding of research scholarships).

PAST ACHIEVEMENTS

Since it was set up Unidroit has prepared over seventy studies and drafts. Many of these efforts have resulted in international instruments, including:

- 1964 Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (adopted in The Hague)
- 1964 Convention relating to a Uniform Law on the International Sale of Goods (The Hague)

- 1970 International Convention on the Travel Contract (Brussels)
- 1973 Convention providing a Uniform Law on the Form of an International Will (Washington)
- 1983 Convention on Agency in the International Sale of Goods (Geneva)
- 1988 Unidroit Convention on International Financial Leasing (Ottawa)
- 1988 Unidroit Convention on International Factoring (Ottawa)
- 1994 Principles of International Commercial Contracts
- 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects.

Unidroit's work has also served as the basis for a number of international instruments adopted under the auspices of other international organisations, including:

- 1954 Convention for the Protection of Cultural Property in Case of War (adopted under the auspices of UNESCO)
- 1955 European Convention on Establishment (Council of Europe)
- 1955 Benelux Treaty on compulsory insurance against civil liability in respect of motor vehicles
- 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR)(UN/ECE)
- 1958 Convention on the recognition and enforcement of decisions involving obligations to support minor children (Hague Conference on Private International Law)
- 1959 European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (Council of Europe)
- 1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (ILO/UNESCO/WIPO)
- 1962 European Convention on the Liability of Hotel-keepers concerning the Property of their Guests (Council of Europe)
- Protocol No. 1 concerning rights in rem in inland navigation vessels and
- Protocol No. 2 on attachment and forced sale of inland navigation vessels annexed to the 1965 Convention on the Registration of Inland Navigation Vessels (UN/ECE)
- 1980 United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL).
- 1989 Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (UN/ECE) and
- 1991 United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (UNCITRAL).

CONSTITUTION OF A FOUNDATION

This ninth day of October nineteen hundred and ninety-six, there appeared before me, Prof. Dr Aart Adriaen van Velten, civil law notary practising in Amsterdam (the Netherlands):

1. Prof. Dr Luigi Ferrari Bravo, President of the International Institute for the Unification of Private Law (Unidroit) and Judge at the International Court of Justice, residing in Rome (Italy), Via Cassia 1004, born in Naples (Italy) on 5 August 1933, married, bearer of Italian Diplomatic passport number 015787 issued on 13 January 1995 in Rome;

2. Prof. Dr Arthur Severijn Hartkamp, Advocate-General at the Supreme Court of the Netherlands and member of the Governing Council of Unidroit, residing in the Hague (the Netherlands), Van Weede van Dijkveldstraat 105, born in Amsterdam (the Netherlands) on 10 January 1945, married, bearer of Dutch passport number 790877 C;

Prof. Ferrari Bravo and Prof. Hartkamp, acting in a personal capacity, have stated their intention to constitute a foundation. The articles of this foundation read as follows:

NAME, CORPORATE SEAT, TERM

Article 1

1. The name of the foundation - hereinafter referred to as "the foundation" - is: "The Uniform Law Foundation".
2. The seat of the foundation is The Hague.
3. The foundation has been created for an indefinite term.

PURPOSES

Article 2

The purpose of the foundation is to provide funding to support the activities of the International Institute for the Unification of Private Law (Unidroit) generally. In particular, it will provide funding for

- a. the creation and operation of a data base and a modern documentation centre for uniform law;

- b. projects on uniform law, including the "rapprochement" of legislation, also, but not only, in the framework of the unification of law; and
- c. consulting services to developing countries and countries engaged in the transition to a market economy on request, including the funding of scholarships for research on uniform law.

CAPITAL

Article 3

The capital of the foundation is composed of donations, grants, endowments, gifts, property acquired by testamentary succession and bequests, as well as of other income.

BOARD OF GOVERNORS

Article 4

1. The Board of Governors of the foundation is composed of at least five members, a majority of whom shall be appointed in their capacity as members of the Governing Council of Unidroit.
2. In addition to the members under paragraph (1), the President and Secretary-General of Unidroit shall ex officio be members of the Board of Governors.
3. The term of office of the first Board of Governors shall expire on 30 June 1999. Thereafter the members of the Board of Governors shall be appointed for a term of five years.
4. Members of the Board of Governors are eligible for re-appointment.
5. The President of the Board of Governors shall be the President of Unidroit.
6. The Board shall elect from its membership a Vice-President, a Secretary and a Treasurer.

The offices of Secretary and Treasurer may be held by the same person.

7. As soon as one or more vacancies occurs on the Board of Governors, the latter shall fill the vacancy or vacancies. In respect of members of the Board who are also members of the Governing Council of Unidroit, such vacancies shall be filled by the Board after consultation with the Governing Council.
8. If for any reason whatsoever one or more members of the Board should be absent or prevented from acting, the other members of the Board shall nevertheless constitute a legal Board of Governors.

9. The members of the Board of Governors shall receive no remuneration for their activities.

They are, however, entitled to reimbursement of the expenses made in the exercise of their duties.

BOARD MEETINGS AND RESOLUTIONS OF THE BOARD

Article 5

1. The meetings of the Board shall be held at the place determined by the majority of the members of the Board.
2. At least one meeting shall be held each year.
3. Meetings shall be held when the President thinks fit or if a member supported by one of the other members of the Board has addressed to the President a request in writing to that effect, precisely stating the business of that meeting.

Should the President fail, in accordance with such a request, to call a meeting to be held within three weeks of the request being made, the members making the request shall be entitled to issue notices convening a meeting subject to the observance of the requisite formalities.

4. Notices convening a meeting shall be issued at least seven days before the meeting, not counting the day on which the meeting is called and the day of the meeting.
5. The notices convening the meeting shall state its place, time and agenda.
6. The meetings shall be chaired by the President of the Board or in the absence of the President by the Vice-President.
7. Each member of the Board of Governors is entitled to one vote. Any member may designate another member to represent him or her at a meeting.
8. Except as otherwise required by these articles, all Board resolutions shall be adopted by an ordinary majority of the votes validly cast.
9. The Board of Governors may only adopt valid resolutions at a meeting if the majority of its members are present or represented at that meeting.
10. As long as all members are present or represented at a Board meeting, resolutions may validly be adopted on any subject coming up for discussion, provided that they are adopted unanimously, even though the formalities for calling and holding meetings may not have been observed.
11. The Board may also adopt resolutions without a meeting, provided that all the members of the Board have been given the opportunity to express their opinions in writing, by telegram, by telex, by telefax or other electronic means of communication

which preserves a record of the information contained therein and is capable of being reproduced in tangible form, and that no member opposed such a procedure.

A report containing any resolution so adopted and the answers received from members shall be drawn up by the Secretary and co-signed by the President.

12. All votes at a meeting shall be by show of hands unless a secret ballot is requested by the President or any other member before the vote is held.

A secret ballot shall be held by means of unsigned, closed ballot papers.

13. Blank votes shall be deemed not to have been cast.
14. When the votes are equally divided the President shall have the casting vote.
15. Any disputes regarding votes not provided for in these articles shall be decided by the person chairing the meeting.
16. Minutes of the proceedings of meetings shall be taken by the Secretary, or by one of the other members present if requested to do so by the President. The minutes shall be approved and signed by the President and Secretary of the meeting.

POWERS OF THE BOARD AND REPRESENTATION

Article 6

1. The Board of Governors shall represent the foundation.
2. The foundation may also be represented by two members acting jointly.

Article 7

The Board of Governors is authorised to conclude agreements to acquire, to dispose of or to encumber register-bound assets, to conclude agreements whereby the foundation binds itself as surety for a debt solely or jointly, guarantees that a third party will pay a debt or undertakes to provide security for the payment of a debt of a third party, provided that the Board has adopted that resolution by a two-thirds majority of members present or represented, on condition that such majority constitutes an absolute majority of the members of the Board.

TERMINATION OF BOARD MEMBERSHIP

Article 8

Membership of the Board shall terminate:

- a. with the death of a member;

- b. with the loss of the free control of that member's property;
- c. with resignation in writing;
- d. with dismissal by virtue of Section 2:298 of the Netherlands Civil Code;
- e. with dismissal by virtue of a Board resolution adopted by a two-thirds majority of members present or represented, provided that such majority constitutes an absolute majority of the members of the Board. Reasons for the adoption of the resolution shall be stated;
- f. at the first Board meeting following a member's reaching the age of seventy-five;
- g. in the case of a Board member who is also a member of the Unidroit Governing Council, membership will terminate when that member ceases to be a member of the Governing Council and a successor has been nominated as a member of the Board.

FINANCIAL YEAR AND ANNUAL ACCOUNT

Article 9

- 1. The financial year of the foundation shall correspond to the calendar year.
- 2. The books of the foundation shall be closed at the end of each financial year.

The treasurer shall then draw up a balance sheet and a profit and loss account for the past financial year, which annual accounts, accompanied by a report drawn up by a chartered accountant or by an accountant-administration consultant, shall be submitted to the Board of Governors within six months of the close of the financial year.
- 3. The annual accounts shall be approved by the Board of Governors.
- 4. An annual report on the activity of the foundation shall be prepared by the Secretary and, after approval by the Board of Governors, shall be communicated to the Governing Council of Unidroit and to the donors.

COUNSELLORS

Article 10

- 1. The Board of Governors may avail itself of the advice of one or more counsellors in the exercise of its duties.
- 2. A counsellor may be present at Board meetings if so requested without the right to vote.

REGULATIONS

Article 11

1. The Board is authorised to draw up regulations dealing with matters for which provision has not been made in these articles.
2. The regulations shall not conflict with the law or with any of these articles.
3. The rules governing amendments to these articles shall apply *mutatis mutandis* to the regulations.

AMENDMENT OF THE ARTICLES

Article 12

1. The Board of Governors may amend these articles after consultations with the Governing Council of Unidroit. A resolution to this effect shall be adopted unanimously at a meeting at which all the Board members are present or represented.
2. Amendments to the articles shall not take effect until they have been registered in the Netherlands by notarial deed. Any Board member may sign the deed amending the articles.

DISSOLUTION AND WINDING UP

Article 13

1. The Board of Governors may dissolve the foundation after consultations with the Governing Council of Unidroit.
The rules governing amendments to these articles shall apply to the adoption of a resolution to dissolve the foundation.
2. Notwithstanding the adoption of a resolution to dissolve the foundation it shall continue in existence to the extent that this is necessary for the liquidation of its assets.
3. The liquidation of the foundation shall be carried out by the Board of Governors.
4. During the proceedings for the liquidation, these articles shall apply to the extent possible.
5. Any credit balance of the foundation following its dissolution shall to the extent possible be disposed of in accordance with the purposes of the foundation.

6. On completion of the liquidation proceedings, the books and records of the foundation shall remain for ten years in the custody of the person or persons appointed by the Board of Governors.

FINAL CLAUSE

Article 14

The Board of Governors is empowered to take decisions in respect of all matters for which provision is made neither in the law nor in these articles.

ANNEX I

FIRST BOARD OF GOVERNORS

The members of the first Board of Governors are the following:

Mr Luigi Ferrari Bravo President of the International Institute for the Unification of Private Law (Unidroit) and Judge at the International Court of Justice, residing in Rome (Italy), Via Cassia 1004, born in Naples (Italy) on 5 August 1933, married, bearer of Italian Diplomatic passport number 015787 issued on 13 January 1995 in Rome;

Mr Arthur Severijn Hartkamp, Advocate-General at the Supreme Court of the Netherlands and member of the Governing Council of Unidroit, residing in The Hague, Van Weede van Dijkstraat 105, born in Amsterdam (the Netherlands) on 10 January 1945, married, bearer of Dutch passport number 790877 C;

Mr Ferenc Mádl, Professor of Law at Eötvös Loránd University School of Law, Budapest (Hungary) and member of the Governing Council of Unidroit, residing in Egyetem tér 1-3, H1053 Budapest (Hungary), born in Bánd (Hungary) on 29 January 1931, married, bearer of Hungarian passport number PE 038094;

Mr Jean-Pierre Plantard, Procureur Général at the Court of Appeal of Versailles and member of the Governing Council of Unidroit, residing in 4, rue Chateaubriand, F75008 Paris (France), born in Annecy (France) on 13 September 1934, married, bearer of French passport number 90LZ67310;

Mr Kurt Siehr, Professor of Law at the University of Zürich (Switzerland), residing in Frohburgstrasse 52, CH 8008 Zürich (Switzerland), born in Tilsit (formerly Germany) on 28 July 1935, not married, bearer of German passport number 1299180567;

Mr Don Wallace, Professor of Law, Georgetown University Law Center (USA), residing in 2800 35th Street NW, Washington D.C. 20007 (United States of America), born in Vienna (Austria) on 23 April 1932, married, bearer of United States of America passport number 013413770;

Mr Malcolm Evans, Secretary-General of the International Institute for the Unification of Private Law, Rome (Italy), residing in Via Jacopo da Ponte 45 in Rome (Italy), born in Poole (United Kingdom) on 8 May 1942, married, bearer of British passport number 701464876.

ANNEX II

The first meeting of the Board of Governors shall be held in Rome.

The parties, whose identity has been established by me, notary, on the basis of the documents referred to in this act, are known to me, notary.

THE ORIGINAL OF THIS ACT
was done in Amsterdam on the day indicated at the beginning of this act.

Following a factual indication of the contents of this act to the parties the latter unanimously declared that they were aware of the contents of this act and that they were not interested in having it read out to them in its entirety.

This act was signed by the parties and by me, notary, immediately after its being partially read out.

I certify the above a true copy of the original seen by me

(A. A. van Velten)

UNIDROIT



A Description

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Via Panisperna 28
00184 Rome, Italy

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