

U N I D R O I T

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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ORGANISATION OF A UNIDROIT INFORMATION SYSTEM OR DATA BASE ON
UNIFORM LAW

Meeting of Experts on the 1956 Geneva Convention
on the Contract for the International Carriage of Goods by Road (CMR)
Brussels, 26 to 27 September 2000

REPORT
(Prepared by the Secretariat)

The first meeting of the experts on the *1956 Geneva Convention on the Contract for the International Carriage of Goods by Road* was held in Brussels, at the *Club de la Fondation Universitaire*, on 26 and 27 September 2000. A list of participants is annexed to this report. Mr Roland LOEWE, First Vice President of the Governing Council of Unidroit, was asked to chair the meeting.

Opening the meeting, Mr LOEWE thanked Mr Putzeys on behalf of Unidroit as well as on his own behalf for organising the meeting.

Introducing the subject, Mr PUTZEYS recalled that the proposal for the setting up of a data base on uniform law had been submitted to the Governing Council in 1994. The proposal had found favour with the Council, the difficulty however being the need to use extra-budgetary funds, as the UNIDROIT budget would not be able to cover the costs associated with such a project. To obviate this handicap, UNIDROIT had established a foundation ("*The Uniform Law Foundation*"). The Foundation had been established under Dutch law. The Council had decided that the data base should be managed by the Foundation, even if the organisation retained the property of the data base.

In 1999 an American foundation had contributed US\$ 50,000 and this sum had subsequently been doubled by other donations. These contributions had made possible the collaboration of a couple of interns from universities that had been contacted with a view to the establishing of an internship programme specifically for the data base.

The present meeting had been convened to examine how a data base in general, and the section on the CMR in particular, should be organised logically, what its intellectual structure should be. It was not intended to discuss the technical aspects of the data base. He stressed that the intention was to begin with the CMR, but that that was only the beginning, other conventions and other subject areas would follow.

Ms PETERS recalled that the data base project went back further than 1994, as the Secretariat had started to consider the possibility already in 1985. Out of the conversations that had taken place at the time, two parallel initiatives had grown: the UNILEX initiative of the *Centre of Comparative and Foreign Law Studies*¹ directed by Mr Bonell, and the UNILAW initiative which had been undertaken by UNIDROIT itself. As the two initiatives had grown out of the discussions that had taken place within the UNIDROIT Secretariat, in particular with the late Secretary-General of UNIDROIT, Mr Malcolm Evans, they were very similar conceptually. For this reason, the present Secretary-General of UNIDROIT, Mr Herbert Kronke, had decided to enter into a co-operative arrangement with the Centre, following which the Centre in exchange for the upgrading of the UNILEX software to an Internet compatible software permitted UNIDROIT to use the UNILEX software to build upon for its own purposes. This was to avoid redoing what had already been done by those who had worked on the UNILEX data

¹ Set up jointly by UNIDROIT, the University of Rome I and the Italian National Council for Research in 1989.

base. Document 8, which was before the meeting, therefore examined the UNILEX data base in detail, with a view to permitting the participants in this meeting to decide what modifications they would like to see made to the software, if any. Currently the software developers was working on the transformation of the UNILEX data base. A certain number of desired modifications had already been communicated to the software developers, and these had been indicated in Document 8. Once the present Group had decided what further modifications it desired, these would be communicated to the software developers. It was difficult to say how long it would take them to introduce the modifications, as it would be possible to obtain an estimate of both time and cost only after the software developers had been provided with a full list of desired modifications.

As regards the documentation that had already been collected, Ms Peters indicated that the text of the Convention and the state of ratifications would not represent a problem. As regards the cases, she regularly had the cases on the CMR that appeared in the reviews received in the UNIDROIT Library photocopied. A number of them had already been scanned, some had been proof-read. Furthermore some had had summaries made in English, others in French, and yet others had not yet had a summary prepared. It was necessary at this point to bring all the cases up to the same level of development. The cases that UNIDROIT had selected over the years for publication in the *Uniform Law Review* could furthermore be used as a point of departure for the collection of cases, but as certain omissions had been made in the reproduction of the text, the original would need to be retrieved, photocopied and scanned.

The possibility of enlisting the assistance of interns depended on the funding available, and it would be possible to determine how much money was available only once the exact amount necessary for the software was known, and that depended also on the outcome of the present meeting.

The meeting examined a number of specific questions. The outcome of the discussions is as follows:

1. LANGUAGES

It was decided that the data base should be a bilingual English/French data base. Proposals to include at least the texts of conventions in other authentic language versions was discussed, as was the possibility of the key-words for the CMR being made available in German, considering the importance of that language in Central Europe. Considering the difficulty in working with more languages, and the prohibitive costs that would be involved, the Group decided that as regards the CMR the languages would remain just English and French, and that whether or not other authentic versions should be included for other conventions should be decided on a case by case basis.

As regards the suggestion that the keywords be made available also in German, it was decided that rather than introduce a third language element, a glossary should be provided.

2. BIBLIOGRAPHICAL REFERENCES

It was decided that the bibliographical references should be as exhaustive as possible. No attempt should be made to evaluate the texts listed. In addition to the specialised articles, it was decided that a general bibliography, containing references to texts such as, for example, commentaries on the whole Convention, should also be made available. The texts should be listed by author. There should be links with the articles of the Convention, and it should be possible to search the bibliography by keyword.

3. CASE LAW

A number of issues were discussed in relation to the case law:

- it was decided that no more than five main keywords for each case should be listed (each main keyword could have connected keywords);
- the full text of the cases should be in the original language;
- the summaries should be in both English and French;
- the summaries should include a brief summary of the facts of the case, so as to permit a user to decide whether or not the case suited his/her needs (this would permit the user to provide for the translation of the full text of the case if need be);
- the summaries should be made from the full original text of the case – summaries that already existed and that were to be found in some publications were often unreliable or even false and should therefore not be utilised;
- the full text of new cases should be made available to users before the summaries were available.

As regards the collection of the cases, the following was decided:

- the aim should be to establish agreements with the courts in the different countries, even if until this was possible only published sources had to be used;
- sources available on the Internet should be identified and subsequently used;
- all the different sources should in time be integrated;
- if cases were covered by copyright, then agreements should be made with the copyright holders;
- as collectors of cases individuals might be enlisted and agreements made with national and international institutions, such as the IDIT and the IRU;
- Mr Loewe indicated that he would be able to provide the complete case law of the Austrian Supreme Court for the last ten years;
- the assistance of the UNIDROIT network of correspondents and of the UNIDROIT Governing Council might be enlisted, either to provide the case law or to indicate

possible contacts in their countries. A circular letter should be sent to correspondents and Governing Council members to this end;

- new cases should be inserted immediately and the backlog recuperated progressively, moving backwards in time, so as to arrive to the time of the adoption of the Convention;
- the cases should in the first instance be supreme court cases, although lower court decisions might also be included at the discretion of the expert;
- in some cases annotations relating to the reversal of judgements etc. should be added, in others the case reversed might be removed from the data base;
- the members of the Group would act as controllers for cases from their countries and for the summaries prepared for those cases, even if they would not necessarily check the contents of the summary against the text of the case;
- the members of the Group would advise and assist in the selection and collection of cases from his jurisdiction to be inserted in the data base;
- the case summaries would need to be checked for language and translated into the other language.

4. ISSUES

- An analysis of the text of the Convention should be carried out with a view to the establishing of a list of the issues dealt with in each article, paragraph and sub-paragraph;
- the first draft of the list of issues should be established by Mr Putzeys, with the assistance of the Secretariat, by the end of October and circulated among the members of the Group for comments, with a view to finalising the list before Christmas. Group members should be allowed three weeks to submit comments;
- the list of issues should be open-ended, so as to permit the addition of issues raised in cases.

5. KEYWORDS

- The keywords should be established immediately after the list of issues has been finalised, the aim being to establish a first list by the end of January 2001;
- the list of keywords should be open-ended, so as to permit the addition of keywords relevant to individual cases;
- a glossary of keywords between English, French and German should be prepared;
- an alphabetical index of keywords should be provided.

6. MEMBERS OF THE GROUP

- It was decided that Mr Loewe would contact Mr Rolf Herber with a view to convincing him to become a member of the Group for Germany. On the occasion of previous contacts Mr Herber had indicated that he did not feel that he could take on this commitment, but Mr Loewe thought that he might be able to convince him.

7. IRU PROPOSALS (Study LXIX - Doc. 9)

In Document 9 the IRU submitted a number of proposals for the modification of the software. Subject to technical and financial considerations the following proposals will be retained:

- page 2 of Document 9 point 1: addition of “denunciation”
 point 2: addition of “binding signature”
 point 3: addition of “Done at ... on” and “Entry into force”
 point 4: annotations to be added to the single reservations specifying whether they are binding for all Contracting States or which Contracting States have accepted them
- page 3 of Document 9 ref. p. 3: access to a manual in pdf format can be provided for
 ref. p. 4: a link to the related instruments can be inserted in Frame 1 – to be discussed with the technicians. Also to be considered is whether other links to related instruments might not be required or useful
 ref. p. 8-9: searches for dates “between...and...”, “before...”, “since...” to be allowed for
 ref. p. 13: addition to list of bibliographic references of date of publication.

Other points raised throughout the document on standardisation of terminology and of methods of procedure (e.g. whether or not the surname of an author should be separated from the name by a comma) will be kept in mind and referred to throughout the process of finalisation of the software and also for the determination of the parameters that are to be used for the insertion of the data.

8. ACCESS TO THE DATA BASE

The question of whether or not access to the data base should be free was considered by the Group. Suggestions for allowing free access for a certain period of time before requiring payment and combinations of free access for some (e.g. member States of UNIDROIT) with access against payment for others, were examined. No final decision was taken, considering also the need for the Governing Council of UNIDROIT to accept the solution finally proposed.

9. PRESENTATION

The Group decided that the aim should be a presentation of the data base in September 2001, on the occasion of the Congress that UNIDROIT is planning to hold to celebrate the 75th anniversary of its foundation.

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