

UNIDROIT 2003
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UNIDROIT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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GENERAL ASSEMBLY 57TH SESSION

(Rome, 28 November 2003)

REPORT

(prepared by the Secretariat)

Rome, January 2004

I. INTRODUCTION

Opening of the session and election of the President of the Assembly

The 57th session of the General Assembly was held on 28 November 2003 at the seat of UNIDROIT. The session was attended by the diplomatic representatives in Italy of 54 member States and one observer (cf. list of participants set out in APPENDIX I). The meeting was opened by Mr B. Libonati, President of UNIDROIT, at 9.15 a.m.

The President welcomed the representatives of UNIDROIT member States and thanked them for their continuing interest in the work of the Institute, as demonstrated by their turning out in such numbers on this occasion. He noted that this session was particularly important, given that it fell to the General Assembly, as every five years, to elect a new Governing Council. He stressed the desirability of this election resulting in a Governing Council that was as representative as possible of the different legal cultures and of the different continents and thus as balanced as possible in these two respects. Unlike other intergovernmental Organisations. UNIDROIT was small in scale and the question of its financing had never to date therefore attracted particular importance. The Secretary-General would however be speaking of this topic when presenting the broad outline of the Strategic Plan that he had drawn up in the wake of the two informal brainstorming sessions of representatives of the Governments of member States and the Governing Council, after which the matter would be opened up for detailed discussion over the following year with the new Governing Council, all member States and the competent organs of the General Assembly, not least the Finance Committee. The Institute had for many years been seen as the point of reference in the area of the unification of law, and nowhere more so than in its non-lawmaking activities. However, at the same time as monitoring the activities of other Organisations in this field, it had made signal contributions of its own to this process, not least the Principles of International Commercial Contracts, Part II of which was due to be published in 2004. He expressed the Institute's particular thanks to those States which had made voluntary extra-budgetary contributions in respect of the Institute's new depositary functions under the Cape Town Convention on International Interest in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment, namely Finland, the United Kingdom and the United States of America, as also those States which had made voluntary contributions to other programmes of the Institute, such as Germany, the Republic of Korea and Switzerland. He voiced the Institute's gratitude to the Italian Government for its continuing commitment to the Institute, notwithstanding all the different cuts made in the Italian budget, as in particular evidenced by its recent restoration and repair work on Villa Aldobrandini and its assistance in identifying premises for the holding of sessions of the Institute's committees of governmental experts on a rent-free basis. Giving to floor to the outgoing President of the General Assembly, His Excellency the Ambassador of Australia, he expressed his particular thanks for the

benevolent interest that he had taken in the life of the Institute over the previous year, in particular in negotiations with the Italian Authorities.

The outgoing President of the General Assembly expressed his gratitude for the support he had had throughout the year from the Secretariat and his colleagues in Rome. He noted that this year Governments had seen an intense campaign in the run-up to a contested election and that today the Governments' representatives were called upon to select those who would guide the work of the Organisation in the period ahead. The outgoing President voiced his conviction that there could be no doubt as to the quality of all candidates and those not selected would also continue to make a major input into the Organisation's work. The outgoing President then turned to the task conferred upon him by the 56th session to pursue, with the Italian Authorities, a number of inter-related issues in respect of Italy's outstanding budget contributions, and the level and system of the host country's future contribution. He first of all thanked his colleagues in the Ministry of Foreign Affairs (and especially in Minister Frattini's office) but also in the Ministry of Finance for their willingness to enter into a frank discussion of these complex and sensitive issues. He indicated that he had asked the Secretary-General to circulate a copy of his letter to him which sums up the conclusions of this dialogue and which is attached to this Report as APPENDIX II. The outgoing President reported in detail on his conversation with Minister Ragolini as outlined in his letter.

While this final Italian position might be less than some in this Assembly had hoped might be achieved, the President believed we should look positively at two elements. First, member States now had a clear view of the future Italian position, and on this they could better base their discussions of UNIDROIT'S ongoing work. Second, member States had the hope that Italy might indeed be able to use the "flexibility" it had identified, so as to increase its contribution when its overall budget situation made this possible. One reality flowing from the Italian position was that the available funding might be less than the Secretariat had anticipated. This made the discussions on the Strategic Plan even more important. Like many other international Organisations, UNIDROIT now had to devote more attention to priority setting. Also, member States' Governments could not realistically ask for more work with fewer resources. Although he welcomed the improved budget situation arising from payments by some members and he was encouraged by the Secretary-General's ongoing efforts in seeking to broaden the membership base one would need to look to members who had particular ideas to match this enthusiasm with resources. He called upon member Governments to reflect on the scope for non-traditional approaches to contribution for on-going and new work. In closing, the outgoing President voiced once again his thanks for support given to him. He was looking forward to working with the incoming President and all the members of the Assembly.

Upon a proposal from the President, which was seconded by the representative of Germany, Mr H. Som, Ambassador of India in Italy, was elected

President of the General Assembly for the year ahead. Since the Ambassador had left Rome to attend to urgent business in Delhi, Mr G. Singh, Deputy Chief of Mission, presided the Assembly on behalf of Ambassador Som.

II. DOCUMENTATION FOR THE SESSION

The General Assembly was seized of the following documents prepared by the Secretariat:

1. Provisional agenda (A.G. (57)1 rev.2)
2. Election of the Governing Council's members (A.G.(57) 2 rev.)
3. Final modifications to the budget and approval of the accounts for the 2002 financial year (A.G. (57) 4 and Accounts 2002)
4. Adjustments to the budget for the 2003 financial year (A.G.(57) 5)
5. Arrears in contributions of member States (A.G. (57) 6 rev.)
6. Approval of the draft agenda for 2004 and fixing of the contributions of member States for that financial year (A.G. (57) 7 and Add.1)
7. Presentation of the "Strategic Plan" designed to outline the Institute's future development (A.G. (57) 3 Prov.)
8. Appointment of the auditor (A.G. (57) 8)
9. Presentation of the current state of work with respect to the Study Group on Harmonised substantive Rules regarding Indirectly Held Securities (A.G. (57) 9)

III. CONSIDERATION OF THE BUSINESS ON THE GENERAL ASSEMBLY'S AGENDA

Item No. 4 - *Adoption of the provisional agenda (A.G. (57)1 rev.2)*

The General Assembly adopted the provisional agenda prepared by the Secretariat (reproduced in APPENDIX III).

Item No. 5 - *Statement regarding the Institute's activity in 2003*

The Secretary-General informed the Assembly that the customary annual report on the Institute's activities during 2003 would be sent out to member States at the beginning of 2004. The follow-up work on the Cape Town Convention on International Interests in Mobile Equipment and the related protocols continued to occupy the Organisation's full attention. Panama and Ethiopia had deposited instruments of ratification of the Convention and the Protocol thereto on Matters specific to Aircraft Equipment on 28 July 2003 and 21 November 2003 respectively. A third session of a Committee of governmental experts convened jointly by UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) had been held in Bern from 5 to 13 May 2003. The session had taken a decision to give exposure to the draft Protocol on Matters specific to Railway Rolling Stock through regional seminars before convening a diplomatic Conference for its adoption. One seminar for Central America which had been planned to take place in Mexico in October had to be

postponed. It was envisaged to hold two more seminars, one of them in Warsaw and aimed at the States of Central and Eastern Europe, the Russian Federation and other members of Commonwealth of Independent States. In the run-up to the first session of a Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Space Assets a regional seminar had been held in July in Paris. As regards the Secretariat's preparations for taking up the depositary functions under the Cape Town Convention the Secretary-General informed the General Assembly that the United States of America made an extra-budgetary contribution of € 95,590.00 and that Finland and the United Kingdom had made such contributions of 1,158.00 and € 10,000, as respectively. These amounts and funding expected to be provided under the regular budget for 2004 and 2005 would permit to hire an additional officer on a two-year contract.

The Study Group on Substantive Rules regarding Indirectly Held Securities had made good progress at its third session, held in Rome from 13 to 15 November. The session had been preceded by a seminar where close to 90 participants, among them representatives of a significant number of central banks from four continents, had discussed the key issues of the project as outlined in the Study Group's position paper which had been published in August 2003. Fact finding missions designed to understand the market practices had been carried out in the United Kingdom, France, the United States and Switzerland. A fifth series of interviews was to take place in Canada during the week following the Assembly. The Secretary-General indicated that the Swiss National Bank would be hosting the Study Group's fourth session in March 2004. On 16 November 2003, the Advisory Committee, a high-level group of experts set up to advise the Governing Council and the Secretariat on the various items of capital-market related work, had evaluated the Study Group's work expressing its satisfaction with the progress made. The Advisory Committee had moreover discussed the outstanding items and encouraged the Secretariat to commence preparatory research in particular on the emerging-markets item as well as on world-wide takeover rules.

The Working Group for the preparation of Part II of the Principles of International Commercial Contracts and a consolidated version to be known as the "UNIDROIT Principles of International Commercial Contracts 2004" had finalised its work at its 6th session held in Rome from 2 to 6 June 2003 and the consolidated version which contained new sections on authority of agents, assignment of rights, transfer of obligations and assignment of contracts, set-off, third party rights and limitation periods was awaiting the Governing Council's approval in April 2004.

The joint UNIDROIT/American Law Institute Study Group for the Preparation of Principles and Rules of Transnational Civil Procedure had finalised its work at its fourth session, held in Rome from 19 to 23 May 2003. The draft was to be transmitted to a Steering Revision Committee made up of the Study Group's Chair, Mr Ronald Thandabantu Nhlapo, member of the Governing Council, the

two Co-Rapporteurs, two members of the Study Group and those members of the Governing Council who had indicated a particular interest in the project.

The scholarship programme continued to flourish. Nine government officials, law teachers and researchers from Botswana, Hungary, Lithuania, Mongolia, Peru, Slovenia, Thailand, Turkey and Vietnam had been with the Institute on research sojourns of two to three months. The Secretary-General expressed his gratitude to the Governments of the People's Republic of China and the Republic of Korea for their sponsorship. The Institute's activities in the field of legal co-operation were about to make a qualitative leap in the wake of a decision taken by the Council of Ministers of the Organisation for the Harmonisation of Business Law in Africa (OHADA) to request UNIDROIT's assistance in drafting a uniform contract law for this group of mainly francophone African Countries. The work was funded by an extra-budgetary contribution of € 125,000 by the Swiss Government to whom he expressed UNIDROIT's and the beneficiary countries' gratitude. Far-sighted initiatives of this nature reflected the increased awareness of the importance private-law reform had as a prerequisite for economic development.

Participation in the work of other Organisations had, due to budgetary restrictions, unfortunately, been scaled back. The same applied to other Organisations' participation in UNIDROIT's work. The Secretary-General emphasized that this multitude of disconnects posed a systemic problem which governments' and the various Organisations had to address. He announced that his colleagues from the Hague Conference on Private International Law and UNCITRAL would meet him in Rome before Christmas for a first co-ordination meeting of the three private-law formulating agencies.

The General Assembly took note with satisfaction of the Secretary-General's statement regarding the Organisation's activities in 2003.

Item No. 6 - *Election of the Governing Council's members (A.G. (57) 2 rev.)*

The President of the Assembly, introducing this item, reiterated the basic rules as set out in Article 7 of the Regulations of the Institute.

The representative of Spain, seconded by the representative of Argentina, requested that, contrary to UNIDROIT's practice, in announcing the results of the election the number of votes obtained by the candidates should from now on be disclosed.

It was so agreed

The President of the General Assembly announced that 53 States present were eligible for voting. After the ballots had been collected the representative of Bolivia arrived and requested to cast his ballot. The Assembly agreed that Bolivia's vote was to be counted and that therefore 54 States were eligible. The

Assembly then designated *the representatives of Argentina, Korea, Sweden and Tunisia* to serve on the ballot committee.

Item No. 7 - *Final modifications to the budget and approval of the accounts for the 2002 financial year (A.G. (57) 4 and Accounts 2002)*

The Deputy Secretary-General, introducing the Secretariat's memorandum on this item and highlighting the key variations in expenditure for 2002 which entailed an overall reduction in expenditure of € 24,426.26 as against the original estimates, indicated that the modifications regarding Chapters 11 and 12 of the budget had been authorised by the General Assembly at its 56th Session on 6 December 2002 and that the Finance Committee had agreed at its 57th Session to recommend to the General Assembly that it approve the final modifications to the 2002 budget and the accounts for the financial year.

The General Assembly approved the final adjustments to the budget and the Accounts for the financial year 2002.

Item No. 8 - *Adjustments to the budget for the 2003 financial year (A.G. (57) 5)*

The Deputy Secretary-General, introducing this item on the agenda, indicated that the Secretariat did not consider there to be any need to adjust the budget for the 2003 financial year.

The General Assembly took note of the Secretariat's statement.

Item No. 9 - *Arrears in contributions of member States (A.G. (57) 6 rev.)*

The Deputy Secretary-General, introducing this item and responding to an intervention by the *representative of South Africa* indicated that the document had to be corrected as South Africa had indeed settled its contribution for 2003. As of 25 November 2003 the total amount outstanding was € 374,898.48. The outstanding contributions for the current financial year amounted to only € 207,025.33. As the Government of Italy had indicated at the 57th session of the Finance Committee and reiterated on the occasion of the outgoing President's consultations in this regard (cf APPENDIX II), settlement of the outstanding amount of € 37,354.00 for the 2002 financial year was expected for the beginning of 2004.

The representative of Mexico wondered, first, whether, in light of the economic difficulties Mexico was experiencing the contribution could also be made in kind and, second, whether payment in instalments was possible.

The representative of Tunisia pointed out that his government was heartened by the fact that Tunisia did not appear any longer in the document listing member States' arrears. He indicated that Tunisia was committed to this

policy as an expression of his Government's appreciation of UNIDROIT's work and invited other governments to do likewise.

The Deputy Secretary-General explained that, while contributions in kind were not acceptable as they would not permit the Organisation to retain the staff needed for carrying out its tasks, payment in instalments was possible provided it was made within the financial year for which the contribution was due.

The representative of Japan noted that, within the process of making the relevant assessments and, addressing the situation of member States' accumulating arrears, thought might be given to scaling back the contributions of some while increasing those of other member States.

The General Assembly took note of the Secretariat's report on arrears in the contribution of member States.

Item No. 10 - *Approval of the draft budget for 2004 and fixing of the contributions of member States for that financial year (A.G. (57) 7 and Add.1)*

The Deputy Secretary-General, introducing this item on the agenda, informed the Assembly of the procedure that had been followed in drawing up the budget. The estimates had been examined on 17 March 2003 by the Sub-Committee of the Finance Committee and on 28 May 2003 they had been examined and approved by the Governing Council. No comments and observations having been received by member States' Governments to whom the draft had been transmitted thereafter, the draft budget had been examined by the Finance Committee at its 57th session on 9 October 2003 and the Committee had given its favourable opinion thereon. The Deputy Secretary-General further informed the Assembly of efforts being made to improve the Institute's premises. Lastly, he drew the Assembly's attention to considerations on the medium-term evolution of the Institute's financial situation contained in document A.G. (57) 7 Add.1 which the Finance Committee had decided to transmit to the member States' Governments.

The President of the General Assembly thanked the Secretariat for the excellent preparation of this agenda item including the Deputy Secretary-General's "spiritual testament" and invited comments.

The representative of Argentina requested clarification regarding the increase by €1,500.00 of the expenditure for members of the Governing Council attending the Council's sessions.

The President of the Assembly and the Secretary-General responded to this query underlining the importance of broader geographical representation on the Council and the increase in travel expenses entailed by a greater number of Council members coming from more distant countries.

The representative of the United Kingdom enquired about the funding of the scholarships programme and indicated that, in his Government's view, the Institute's functions as Depositary under the Cape Town Convention had the highest priority. He wondered whether under the proposed budget those functions would be fully funded.

The Secretary-General assured the General Assembly that the priorities as established by the Governing Council's and the General Assembly's deliberations and flowing from UNIDROIT's treaty obligations would be respected.

The representative of Tunisia voiced his Government's highest appreciation for the scholarships programme and the Organisation's other efforts in the field of legal co-operation. Legislative activities in Tunisia over many years had been positively influenced by UNIDROIT's efforts and its research resources being at member States' Governments' disposal.

The representative of Chile, while expressing appreciation of the work done by the Organisation, was not in a position to approve the proposed increase, modest as it might appear, due to the fact that the exchange rate of the euro had significantly risen, his Government's contribution would increase by 18%.

The representative of Japan emphasized the importance of saving efforts. He noted that out of the total budget increase of € 66,000 no less than € 53,000 covered anticipated increases in salaries. In Japan, salaries were being cut, and civil servants needed to show a "sense of mission".

The representative of Colombia voiced his Government's support for the views expressed by Chile and the United Kingdom.

The representative of the United Kingdom wondered whether the fact-finding missions carried out as a part of the work on indirectly held securities were necessary.

The representative of Tunisia voiced his government's concern that the good functioning of the Organisation not be imperilled by over-dramatising a modest increase as proposed in the draft budget.

The representative of France indicated that, in her Government's view, the proposed increase was both reasonable and modest. It was as a matter of fact much lower than in other Organisations. She associated herself with her Tunisian colleague's analysis and warned against putting the Institute's functioning at risk.

The representative of Norway, taking issue with certain comments made with respect to the staff salaries, recalled that member Governments had deliberately made the decision to join the Co-ordinated Organisations and their

salary-fixing criteria and procedure. This decision had been made because deemed to be beneficial in the long run. One should not try to deviate from the consequences of that decision if one disliked them with respect to any given financial year.

The Secretary-General, responding to the query raised by the representative of the United Kingdom, noted that it was the Organisation's established policy to ascertain throughout the process of elaborating a new instrument that the instrument was needed and to ensure that the solutions contemplated were legally sound and commercially viable. Fact-finding in the relevant financial markets was part of this policy and crucial for developing useful and economically efficient substantive rules regarding indirectly held securities.

The representative of Spain explained, in his capacity of *Chairman of the Finance Committee*, the proposals under the draft budget as proposed by the Committee. He indicated that the proposals were linked to the Organisation's development as envisaged by and to be detailed in the Strategic Plan. In his capacity of representative of Spain he supported the observations made by France and Tunisia. In his Government's view, the budget should provide for some nominal growth which realistically had to set off inflation.

The representative of Canada acknowledged the work done by the Secretariat and the Finance Committee in preparing the draft budget and indicated that his Government would welcome further intensive and focused discussion of the Institute's financial bases and their future development.

The President of the General Assembly recalled that the Finance Committee was for all practical purposes the Assembly's tool for in-depth analysis of financial matters and invited more Governments to actively participate in the Committee's important work.

The representative of Australia joined the President in his remarks and commended the Secretariat and the Finance Committee on their efforts to ensure that the Organisation's financial planning was both responsible and realistic. He recalled how modest the draft budget this Assembly was called upon to approve was, both in absolute terms and relatively speaking in relation to easily identifiable big spenders among intergovernmental Organisations. The Strategic Plan which was to be laid before Governments would provide the appropriate basis for further discussing reasonable and responsible funding of UNIDROIT's work.

The General Assembly adopted the budget for 2004 as set out in A.G.(57)7.

Item No. 12 - *Appointment of the Auditor (A.G. (57) 8)*

The President of the General Assembly requested the re-appointment of Mr Luigi Piersigilli to the post of auditor for a term of five years starting from 1 July 2004 as proposed by the Secretariat. The General Assembly accepted this request, re-appointing the Auditor for the period from 1 July 2004 to 30 June 2009.

Reverting to Agenda Item No. 6 – *Election of the Governing Council's members* – *The President of the General Assembly* called upon the Committee appointed for counting the ballots and invited *the representative of Argentina* to announce the result. The following candidates were elected (votes obtained indicated in brackets) : Mr Martin Adensamer, Austria (44); Mr Tugrul Arat, Turkey (42); Mr Antonio Boggiano, Argentina (46); Mr Hans-Georg Bollweg, Germany (53); Mr Sergio Carbone, Italy (46); Mr Michael Elmer, Denmark (48); Mr Henry Deeb Gabriel, United States of America (43); Mr Ian Govey, Australia (42); Mr Attila Harmathy, Hungary (44); Mr Arthur Hartkamp, Netherlands (40); Mr Gerard Hogan, Ireland (45); Mr Kiyoshi Hosokawa, Japan (49); Mr Anthony Inglese, United Kingdom (44); Mr Alexander Komarov, Russian Federation (46); Mr Lyou Byung-Hwa, Korea (44); Mr Didier Opertti Badán, Uruguay (39); Mr Jorge Sánchez Cordero, Mexico (45); Mr Biswanath Sen, India (45); Mr Stanislaw Soltysinski, Poland (45); Mr Bruno Sturlese, France (46); Ms Anne-Marie Trahan, Canada (43); Mr Evelio Verdera y Tuells, Spain (48); Mr Ioannis Voulgaris, Greece (47); Mr Pierre Widmer, Switzerland (46); Mr Zhang Yuqing, China (51). Mr Maher Abdel Wahed, Egypt (39) was not elected in accordance with Article 7 of the Regulations of the Institute which provides that if the number of votes cast for each candidate is equal, the older candidate shall be deemed to be elected.

The representative of Argentina voiced his regret that, all three African candidates having failed to obtain the necessary number of votes, an entire continent was not represented on the Governing Council.

The representative of Tunisia expressed, on behalf of Africa, his deep disappointment at the result. While all three African member States firmly believed in democratic rules and procedures and therefore accepted the outcome of the elections, the reasons and implications had to be analysed carefully.

The Secretary-General joined the previous speakers in expressing, on behalf of the Institute's President and the Secretariat, his profound regret at this particular aspect of the outcome. It was a sad day for the Organisation. Moreover, the exclusion of Africa from the body which guided the Institute was in open contradiction with the professed strategic objective to achieve broader representation in Asia, Africa and the Middle East. Referring to the far-sighted and intelligent example of the Nordic States who traditionally presented a common candidate, he appealed to member States to join the Secretariat in its

efforts to identify appropriate ways and means for ensuring minimum representation of all important world regions and to avoid over-representation of others. The Secretariat would submit proposals to member States' Governments.

Agenda Item No. 11 - *Presentation of the "Strategic Plan" designed to outline the Institute's future development (A.G. (57) 3 Prov.)*

The Secretary-General, introducing this item on the agenda, informed the General Assembly that the document was defined "provisional" because for a number of technical reasons, including shortage of man-power and the breakdown of equipment, the final version which was to be transmitted to Governments and members of the Governing Council had not been produced in time for inclusion into the folder for today's session. Governments would receive the final version shortly. Then the Secretary-General recalled that the joint Informal Brainstorming Sessions of Governing Council and representatives of Governments, held in September 2002 and April 2003, had given a mandate to the Secretariat to draw up a Strategic Plan to examine – in the short, medium and long term perspective – the Organisation's tasks, objectives, priorities and the resources at its disposal. As the document's title "Horizon 2016" – a reference to the year when the next anniversary of UNIDROITS founding would be commemorated – indicated, the document was not intended to reflect the difficult economic environment many countries were presently facing. It was both modest and ambitious and it anticipated that there would be better times again, times when law reform would reconquer its place in the hierarchy of Governments' priorities. The Secretary-General then exemplified the Secretariat's thinking by giving a brief overview of the analysis underlying a few strategic objectives. He selected *Strategic Objective No.1* (the preparation and implementation of international instruments (conventions, model laws, statement of principles, etc.) of the highest possible quality by applying strict criteria of scientific rigour and commercial viability and having regard to the legal implications of regional integration processes in the context of global law-making), *Strategic Objective No.3* (the gradual and systematic conversion of hitherto stationary know-how, skills, research and legislative capabilities into pro-actively employed outreach resources), *Strategic Objective No.4* (designing communication, decision-making and resourcing processes capable of ensuring a comprehensive assessment of potential interests, costs and benefits of a State's participation in any given project, on the one hand, and the predictable and sustained provision of adequate resources, on the other hand), *Strategic Objective No.5* (to create, within the framework of the Organisation's website, "The Governments' Forum", an electronic communication and discussion platform access to which is limited to UNIDROIT member States' Governments), *Strategic Objective No.7* (a systematic and sustained effort to broaden the Organisation's representation in Africa, the Middle East and Asia, to fill gaps and re-vitalise dormant membership, and to guarantee a more regular presence and focused participation in other international fora) and *Strategic Objective No.11* (the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the Institute's auspices).

Addressing the budgetary implications, he emphasized that, while there was no alternative to a modest increase of staff units, these did not need to be permanent but ought to be functional in relation to the Institute's work programme at any given point in time. In his view secondment of officials from member States to the Secretariat was a particularly useful vehicle for overcoming staff shortages. He furthermore drew the Assembly's attention to a number of areas where, in the Secretariat's considered opinion, ways of pooling resources and sharing burdens with other Organisations ought to be explored. With respect to priorities, he believed that prioritisation within the three branches of activity (legislative, research/documentation/publication, legal co-operation) was to be preferred over prioritisation among them.

The President of the General Assembly thanked the Secretary-General for this first and brief introduction and voiced his personal and undoubtedly member Governments' keen interest in discussing the important issues raised in the document once its definite version would be available.

The representative of the United States of America expressed his gratitude for the presentation, reiterated his Government's appreciation for UNIDROIT's valuable work and indicated that his Government was looking forward to a focused analysis and discussion of the Organisation's future on the basis of the Strategic Plan. He suggested that the General Assembly, in the future, devote its attention to the discussion of substantive issues first and to treat the analysis of budgetary implications rather as a function of decisions on substance.

Item No. 13 - *Presentation of the current state of work with respect to the Study Group on Harmonised Substantive Rules regarding Indirectly Held Securities (A.G. (57) 9)*

Mr Ph. Paech (UNIDROIT Secretariat), introducing this item on the agenda, first, reported on the session of the Study Group held from 13 to 15 November, the organisation of inter-sessional work and the group's plans for the future. He then made a power-point presentation highlighting the relevant issues as well as the envisaged solutions both from an economic and legal point of view.

The President of the General Assembly voiced the Assembly's appreciation of this first attempt to build a bridge between those bodies who were in charge of the work on substance and UNIDROIT's highest organ who was not normally involved in the work process.

Closure of the session

No other business being raised, *the President of the General Assembly* declared the session closed at 2.15 p.m.

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

ARGENTINA/ARGENTINE	Mr Claudio Javier ROZENCWAIG, Secretary, Embassy of Argentina in Italy Mr Jorge Omar IREBA, Counsellor Embassy of Argentina in Italy
AUSTRALIA/AUSTRALIE	Mr Murray A. COBBAN, Ambassador Embassy of Australia in Italy Ms Linda Keevers, Second Secretary Embassy of Australia in Italy
AUSTRIA/AUTRICHE	Mr Karl PRUMMER, Counsellor, Embassy of Austria in Italy
BELGIUM/BELGIQUE	Mr Thomas BAEKELDANT, Minister Counsellor Embassy of Belgium in Italy Mr Luc de CLERCK, Consul, Embassy of Belgium in Italy
BOLIVIA/BOLIVIE	Mr M.C. Carlos CHANOVE SALVATIERRA, Chargé d’Affaires, Embassy of Bolivia in Italy
BRAZIL/BRESIL	Mr João André PINTO DIAS LIMA, Counsellor, Embassy of Brazil in Italy Ms Ana Paula SEVERINO, Lawyer Embassy of Brazil in Italy
BULGARIA/BULGARIE	Mr Atanas MLADENOV, Counsellor Embassy of Bulgaria in Italy
CANADA	Mr Kent VACHON, Counsellor Embassy of Canada in Italy
CHILE/CHILI	Mr Gustavo AYARES, Counsellor Embassy of Chile in Italy Mr Sebastian SCHNEIDER, Third Secretary Embassy of Chile in Italy
CHINA/CHINE	Mr GUO Shaowei, Third Secretary, Embassy of People's Republic of China in Italy
COLOMBIA/COLOMBIE	Mr Juan Carlos ESPINOSA, First Secretary, Embassy of Colombia in Italy

CROATIA/ <i>CROATIE</i>	Mr Vlado MATIJASIC, Counsellor Embassy of Croatia in Italy
CYPRUS/ <i>CHYPRE</i>	Mr Elpidoforos ECONOMOU, First Secretary Embassy of Cyprus in Italy
CZECH REPUBLIC/ <i>REPUBLIQUE TCHEQUE</i>	Mr Petr JAROS, Second Secretary Embassy of the Czech Republic in Italy
DENMARK/ <i>DANEMARK</i>	Mr Thorvald SPANGGAARD, Head of Section, Ministry of Justice
EGYPT/ <i>EGYPTE</i>	Mr Helmy Abdel Hamid BEDEIR, Ambassador Embassy of Egypt in Italy Mr Bassam RADY, First Secretary, Embassy of Egypt in Italy
ESTONIA / <i>ESTONIE</i>	Mr Urmas EIGLA, Third Secretary, Embassy of Estonia in Italy
FINLAND/ <i>FINLANDE</i>	Mr Seppo TUNTURI, Counsellor, Embassy of Finland in Italy
FRANCE	Ms Marie-Claire GERARDIN, Chargée de Mission Embassy of France in Italy
GERMANY/ <i>ALLEMAGNE</i>	Mr Peter SEIDEL, Consul, Embassy of Germany in Italy Ms Lotte SCHIMKAT, Attaché Embassy of Germany in Italy
GREECE/ <i>GRECE</i>	Mrs Artemis PAPATHANASSIOU, Deputy Legal Adviser, Ministry of Foerign Affairs
HOLY SEE/ <i>SAINT SIEGE</i>	Mr Gianluigi MARRONE, Juge Unique de l'Etat de la Cité du Vatican
HUNGARY/ <i>HONGRIE</i>	Mr Zoltán FEJES, Counsellor, Embassy of Hungary in Italy
INDIA/ <i>INDE</i>	Mr Gurjit SINGH, Chargé d' Affaires Embassy of India in Italy Mr Parimal KAR, Second Secretary Embassy of India in Italy
IRAN	Mr Ali GHOLAMPOOR, Third Secretary, Embassy of the Islamic Republic of Iran in Italy

IRELAND/ <i>IRLANDE</i>	Mr Eóin DUGGAN, First Secretary, Embassy of Ireland in Italy
ISRAEL	Mr Shai COHEN, Counsellor Embassy of Israel in Italy
ITALY/ <i>ITALIE</i>	Mr Ivo BRAGUGLIA, Avvocato dello Stato, “Contenzioso Diplomatico”, Ministry of Foreign Affairs Mr Massimo LAVEZZO CASSINELLI, Consigliere d’Ambasciata
JAPAN/ <i>JAPON</i>	Mr Masaharu SATO, Counsellor, Embassy of Japan in Italy
LUXEMBOURG	M. Frank BIEVER, First Secretary Embassy of Luxembourg in Italy
MALTA/ <i>MALTE</i>	Mr Abraham BORG, Ambassador Embassy of Malta in Italy Ms Roberta GRIMA, Observer Embassy of Malta in Italy
MEXICO/ <i>MEXIQUE</i>	Mr Rafael TOVAR Y DE TERESA, Ambassador Embassy of Mexico in Italy Ms Ursula DOZAL, Third Secretary, Embassy of Mexico in Italy
NETHERLANDS/ <i>PAYS-BAS</i>	Mr Gerrit KULSDOM, Senior Legal Officer, Ministry of Foreign Affairs
NIGERIA	Excused/ <i>excusé</i>
NORWAY/ <i>NORVEGE</i>	Mr Irvin HØYLAND, Deputy Director General Ministry of Foreign Affairs Mr Knut-Are OKSTAD, Attaché Embassy of Norway in Italy
PAKISTAN	Mr Qasim Raza MUTTAQI, Counsellor Embassy of Pakistan in Italy
POLAND/ <i>POLOGNE</i>	Mr Wojciech PONIKIEWSKI, Minister Plenipotentiary Mrs Maria de ROSSET BOREJSZA, Counsellor Embassy of Poland in Italy

PORTUGAL	Mr Bernardo LUCENA, General Directorate of Multilateral Affairs, Ministry of Foreign Affairs Ms Carla SARAGOÇA, Secretary, Embassy of Portugal in Italy
REPUBLIC OF KOREA/ <i>REPUBLIQUE DE COREE</i>	Mr SHIN Kak-soo, Director-General, Treaties Bureau Ministry of Foreign Affairs and Trade Mr CHUNG Kwang-yong, Assistant Director Treaties Bureau, Ministry of Foreign Affairs and Trade Mr YOU Ki-jun, First Secretary Embassy of the Republic of Korea in Italy
ROMANIA/ROUMANIE	Ms Ionna BURDUF Ministry of Justice
RUSSIAN FEDERATION/ <i>FEDERATION DE RUSSIE</i>	Mr Alexander SILIKOV, Legal Consultant, Trade Representation of the Russian Federation in Italy
SAN MARINO/SAINT-MARIN	Mr Victor CRESCENZI, Professor
SERBIA AND MONTENEGRO/ <i>SERBIE ET MONTENEGRO</i>	Mr Nenad GLISIC, Counsellor, Embassy of Serbia and Montenegro in Italy
SLOVAKIA/SLOVAQUIE	Mr Milan PAKSI, Permanent Representative, Embassy of Slovakia in Italy
SLOVENIA/SLOVENIE	Ms Gaja PERIC, Third Secretary, Embassy of Slovenia in Italy
SOUTH AFRICA/ <i>AFRIQUE DU SUD</i>	Ms Tienie DU TOIT, First Secretary, Embassy of South Africa in Italy
SPAIN/ESPAGNE	Ms Luis CUESTA, First Secretary Embassy of Spain in Italy
SWEDEN/SUEDE	Ms Lisa BJUGGSTAM, First Secretary, Embassy of Sweden in Italy
SWITZERLAND/SUISSE	Mr Josef RENGGLI, First Secretary, Embassy of Switzerland in Italy
TUNISIA/TUNISIE	Mr Zouhair SKANDER, Chef de cabinet Ministry of Justice Ms Sihem SELTEN, Counsellor, Embassy of Tunisia in Italy

TURKEY/*TURQUIE*

Mr Murat Yavuz ATES, Head of Department
Ministry of Foreign Affairs

UNITED KINGDOM/
ROYAUME-UNI

Ms Carl WARREN, Director,
Legal Resource Management and Business Law
Department of Trade and Industry
Ms Sally MOSS, Head of Business Law Unit
Department of Trade and Industry
Ms Lynne MC GREGOR, Political Assistant
Embassy of United Kingdom in Italy

UNITED STATES OF AMERICA/
ETATS-UNIS D'AMERIQUE

Mr Bruce BERTON,
Alternate permanent Representative, United States
Mission in the United Nations Agencies for Food
and Agriculture

URUGUAY

Mr Carlos Alejandro BARROS, Ambassador
Embassy of Uruguay in Italy
Mr Gerardo ARIEL RUSIÑOL SALLÚA,
Minister Counsellor, Embassy of Uruguay in Italy
Mr Alfredo BOGLIACCINI LLAMBI,
Second Secretary, Embassy of Uruguay in Italy

VENEZUELA

Ms Angela DELGADO de SALAZAR,
Chargé d'affaires, Embassy of Venezuela in Italy

OBSERVER/*OBSERVATEUR*

SOVEREIGN MILITARY ORDER
OF MALTA/*ORDRE SOUVERAIN
MILITAIRE DE MALTE*

His Excellency Marquis Aldo PEZZANA
CAPRANICA DEL GRILLO, Ambassador

UNIDROIT

Mr Herbert KRONKE, Secretary-General/*Secrétaire-Général*
Mr Walter RODINO', Deputy Secretary-General/*Secrétaire Général adjoint*
Mr Martin STANFORD, Principal Research Officer / *Chargé de recherches principal*
Ms Lena PETERS, Research Officer / *Chargée de recherches*

**APPENDIX II
ANNEXE II**

AMBASSADOR

AUSTRALIAN EMBASSY
Via Alessandria 215
00198 ROME

Prof. Herbert Kronke
Secretary-General
UNIDROIT
Via Panisperna 28
00184 ROME

Dear Professor Kronke

As you will be aware from our ongoing discussions on the long-standing issue of Italy's contribution to UNIDROIT, I have been pursuing on a regular basis the mandate given to me by the last General Assembly to seek from the relevant Italian authorities both a revision of the matter of their outstanding contributions and assurances in relation to their future budget contributions to restore this to the previous percentages, under a stabilised system which would provide a better basis for UNIDROIT planning rather than having Italy as the only member providing support on a voluntary basis.

I wish to advise that after extensive efforts, including a number of discussions with the various operative levels within relevant ministries, I have recently had a meeting with the Office of the Minister for Foreign Affairs – Minister Frattini's Chief of Staff Min. Cesare Maria Ragaglini.

Min. Ragaglini advised me that he was speaking on behalf of both the Foreign Ministry and the Finance Ministry, after those two agencies had held internal consultations pursuant to the Assembly's questions put to them in our earlier Nota Verbale.

After listening closely to my reiteration of the Assembly's concerns, Min. Ragaglini confirmed to me the welcome advice, which I understand was also conveyed by the Italian Delegation to the Finance Committee, that Italy will now be able to pay the outstanding shortfall (some euros 38,000) from its 2002 contribution during 2004. This brings Italy's 2002 contribution up to the amount of 258,000 euros.

In respect of Italy's likely future contributions and their system for determining the levels, Min. Ragaglini said that the concept of amending the legislation to provide for "mandatory" contributions at a percentage level reflecting Italy's earlier historical levels of support (which had been advanced by some delegations during recent UNIDROIT General Assembly and Finance Committee meetings) was not judged feasible. He indicated that not only was such a procedure extremely complex in terms of its bureaucratic and parliamentary requirements, it would also have the less-than-desirable effect of removing the discretionary scope currently available for Italy to determine when the occasion might exist for positive variations in their contribution.

Min. Ragolini said that the reductions in Italy's contribution which had occurred in 2002 had not been solely directed at UNIDROIT. Indeed Italy had reduced its regular contributions to all (underline one) international organizations by 10% at that time. He said he understood that Italy had not been unique among EU members making such cutbacks, reflecting the difficulties of those governments concerned in containing expenditure under current economic circumstances.

In confirming that Italy expected to make the same level of regular budget contribution next year as had been made in 2003 (I understand that this means a continuation at the level of 220,000 euros) Min. Ragolini also asked me to note, for the information of the Assembly, that event at this level Italy remains the largest single contributor. In percentage terms Italy's percentage contribution was roughly double that of the other main developed member countries whose levels were each at about 6% of the total. He also noted that this was before taking account of the other substantial contributions Italy made in terms of support for the Secretariat especially maintenance of its premises.

Looking to the future, and obviously without any specific commitment, Min. Ragolini said he hoped that the flexibility inherent in the system might enable Italy to make greater contributions when circumstances permitted.

He also asked me to reassure the Assembly that Italy remained committed to playing an active and positive role in UNIDROIT and said that Italy was particularly appreciative of the opportunities it would have during the discussions of the Strategic Plan to make inputs into further defining priorities for UNIDROIT's future work against a known budget base.

On behalf of the General Assembly, I thanked Min. Ragolini for having provided a clear response, even if it had not been that for which we had hoped. I indicated that the Assembly might wish to further consider the issue and expressed the hope that indeed the circumstances might come to exist under which Italy could use its "discretion" to again increase its contributions.

If you believe it suitable, perhaps this letter could be circulated to members of the General Assembly so that they are aware of the Italian position.

Yours sincerely,

Murray Cobban

AGENDA

1. Welcome and opening of the Session
2. Report on the activities of the President of the General Assembly, 2002-2003
3. Election of the President of the General Assembly for 2003-2004
4. Adoption of the agenda (A.G. (57) 1 prov. rev.)
5. Statement regarding the Institute's activity in 2003
6. Election of the Governing Council's members (A.G. (57) 2 rev.)
7. Final modifications to the budget and approval of the accounts for the 2002 financial year (A.G. (57) 4 and Accounts 2002)
8. Adjustments to the budget for the 2003 financial year (A.G. (57) 5)
9. Arrears in contributions of member States (A.G. (57) 6 rev.)
10. Approval of the draft budget for 2004 and fixing of the contributions of member States for that financial year (A.G. (57) 7 and Add. 1)
11. Presentation of the "Strategic Plan" designed to outline the Institute's future development (A.G. (57) 3)
12. Appointment of the auditor (A.G. (57) 8)
13. Presentation of the current state of work with respect to the Study Group on Harmonised Substantive Rules regarding Indirectly Held Securities (A.G. (57) 9)
14. Other business