



**GENERAL ASSEMBLY**  
**58<sup>th</sup> session**  
**Rome, 26 November 2004**

UNIDROIT 2004  
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## **REPORT**

(prepared by the Secretariat)

### **I. INTRODUCTION**

#### *Opening of the session and election of the President of the General Assembly*

The 58<sup>th</sup> session of the General Assembly was held on 26 November 2004 at the seat of UNIDROIT. The session was attended by the diplomatic representatives in Italy of 42 member States and one observer (cf. list of participants set out in APPENDIX I hereto). The session was opened by Mr B. Libonati, President of UNIDROIT, at 9.35 a.m.

*The President* welcomed the representatives of UNIDROIT member States and the observer attending the session. It was a particular source of pleasure for him as he came to the end of his first term of office to note that, notwithstanding the financial difficulties facing the Institute, it had in 2004 been able to complete on time two major projects, a revised version of the Principles of International Commercial Contracts and the Principles of Transnational Civil Procedure. He also noted that the General Assembly would be called upon at this session to launch a revision of Article 7 of the Regulations of the Institute designed to ensure that it would not again be possible for a whole continent to be excluded from the Governing Council, as had been the result of the most recent elections to that body, held on the occasion of the 57<sup>th</sup> session of the General Assembly, held in Rome on 28 November 2003. It was also with a view to addressing this problem that the Governing Council, at its 83<sup>rd</sup> session, held in Rome from 19 to 21 April 2004, had proposed that the General Assembly consider electing an additional member of the Governing Council from among the sitting judges of the International Court of Justice, in accordance with the faculty that it was accorded under Article 6(3) of the Statute. This was the background to the Secretariat's proposal that H.E. Judge N. Elaraby, the Egyptian judge of the International Court of Justice, be elected an additional member of the Council. He also highlighted the draft Resolution that the General Assembly would be called upon to pass with a view to reducing the longstanding accumulation of arrears by member States, stressing the importance of this problem for the Institute, given the negative impact that delays in the settlement of members' contributions had on its already weak financial structure. He informed the General Assembly that the Deputy Secretary-General, after giving long years of distinguished service to the Institute, had retired on 30 September 2004 and that the Governing Council had provisionally appointed the senior official of the Secretariat, Mr M.J. Stanford, to succeed him. He thanked Mr Stanford for having agreed to take on this onerous task. He added that, provided that the necessary additional funding was forthcoming from member States, the Secretariat hoped to be in a position to appoint a permanent successor to the retiring Deputy Secretary-General in 2006, through advertising for applications, from both within and outside

the ranks of the current Secretariat. He expressed the Institute's sincere thanks to the Government of the United Kingdom for its secondment of an official from the Department of Trade and Industry for one year as from 1 January 2005. He was sure that her help would be invaluable in enabling the Secretariat to fill the gaps that would be created by the Deputy Secretary-General *a.i.* no longer being able to give the same attention to his normal responsibilities. He thanked the Italian Government for the work that it had generously carried out on restoring the seat of the Institute, of which not the least beneficiary had been the principal staircase. It was hoped that the funding for the planned substantial further restructuring work would be found in time to permit its commencement in 2005. Finally, he gave the floor to Mr G. Nair, the representative of the outgoing President of the General Assembly, H.E. Mr H. Som, Ambassador of India in Italy.

*Mr Nair* (India) regretted that his Ambassador was unable to attend the session, owing to unforeseen urgent business abroad. Speaking on behalf of his Ambassador, he focussed on two particular issues before the General Assembly at its 58<sup>th</sup> session, first, the fallout from the failure of any African candidate to be returned in the elections to the Governing Council that had taken place on the occasion of the previous session of the General Assembly and, secondly, the importance of the Institute being guaranteed the minimum necessary funding for its activities. In connection with the first of these issues, he noted that the fact that the Government of South Africa had taken the decision to host the diplomatic Conference for what was to become the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Cape Town Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), both opened to signature in Cape Town on 16 November 2001, and that the Conference had attracted such high-level representation from all over Africa bore witness to the special relevance of the Institute's work to Africa and its aspirations. From this he deduced, however, that for the Institute's work to be perceived by African countries as being genuinely relevant to their needs, it was essential that these countries should be properly represented in the Institute's policy-making body, an argument which was equally valid for all the geographic regions of the world represented amongst its membership. His Government therefore commended the Secretariat's proposal contemplating the amendment of Article 7 of the Regulations governing elections to the Governing Council and heartily endorsed the Secretariat's proposal for the establishment by the Assembly of a committee to prepare proposals designed to ensure a minimum representation of all the geographic regions of the world represented among the Institute's membership. His Government furthermore supported the related proposal for the election of Judge Elaraby as an additional member of the Governing Council. Turning to the problem of the Institute's funding, he noted that the accumulation of arrears in member Governments' contributions to an Organisation as small as UNIDROIT caused very real problems for its running, gradually undermining as it did its very ability to continue carrying out even its most essential activities. His Government noted that, unless the level at which arrears were currently growing were checked as a matter of urgency, these arrears would ultimately lead to a strangling of the projects which were the Institute's very lifeblood. His Government accordingly commended the Secretariat's draft Resolution on the subject, which it found to be both carefully thought out and well-balanced.

Upon a proposal from *the representative of Spain*, seconded by *the representative of Canada*, Mr H.A.H. Bedir, Ambassador of Egypt in Italy, was elected President of the General Assembly for the year ahead.

#### *Documentation for the session*

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

1. Draft agenda (A.G. (58) 1 rev. 2)

2. Extension of the Work Programme for the triennial period 2002–2004 by one year (A.G. (58) 2)
3. Presentation of the Principles of Transnational Civil Procedure (A.G. (58) 3)
4. Approval of the accounts for the 2003 financial year (A.G. (58) 4 and Accounts 2003)
5. Adjustments to the budget for the 2004 financial year (A.G. (58) 5)
6. Arrears in contributions of member States (A.G. (58) 6 rev.)
7. Amendment to Article 7 of the Regulations of the Institute (A.G. (58) 7)
8. Approval of the draft budget for 2005 and fixing of the contributions of member States for that financial year (A.G. (58) 8)
9. Appointment of a member of the Governing Council from among the judges in office of the International Court of Justice (A.G. (58) 9).

## II. CONSIDERATION OF THE BUSINESS ON THE GENERAL ASSEMBLY'S AGENDA

Item No. 1 - *Adoption of the draft agenda* (A.G. (58) 1 rev. 2)

*The President of the General Assembly* proposed that the order in which two of the items on the draft agenda prepared by the Secretariat were proposed to be taken be changed. He proposed, first, that item No. 9 on the draft agenda, dealing with the amendment of Article 7 of the Regulations, be moved up to be taken immediately after item No. 2 *bis*, dealing with the appointment of an additional member of the Governing Council, given the close link between the objectives of the two items. He proposed, secondly, that item No. 10 on the draft agenda, dealing with the approval of the draft Budget for 2005 and the fixing of the contributions of member States for that financial year, be moved up to be taken immediately after item Nos. 5 and 6 on the draft agenda, dealing with the approval of the Accounts for the 2003 financial year and adjustments to the Budget for the 2004 financial year respectively, on the ground that it was more logical for consideration of items dealing with the financial picture of the Institute to be taken together, one after the other.

*It was so decided. The General Assembly accordingly adopted the draft agenda prepared by the Secretariat, as amended pursuant to the proposal made by its President* (reproduced in APPENDIX II hereto).

Item No. 2 - *Statement regarding the Institute's activities in 2004*

*The Secretary-General* informed the Assembly, first, of developments in the Institute's legislative programme. He indicated that the Cape Town Convention had entered into force on 1 April 2004, albeit only as regards a category of objects to which a Protocol applied. The deposit of the fifth instrument of ratification in respect of both the Cape Town Convention and the Aircraft Protocol by the Government of the United States of America on 28 October 2004 led the Secretariat to hope that it would not be long before the Cape Town Convention as applied to aircraft objects would be in force too. The International Registry intended to underpin the Cape Town Convention as applied to aircraft objects was due to be operational by February or March 2005. Ireland's candidate, Aviareto, had been selected as the first Registrar by the Preparatory Commission for the establishment of the International Registry for aircraft objects, at its second meeting, held in Montreal on 27 and 28 May 2004. Two regional seminars on the Cape Town Convention and the Aircraft Protocol had been organised in 2004, one for countries of Asia and the Asia-Pacific region, that had taken place in Singapore on 28 and 29 April, the other for new European Union accession and candidate States, held in Prague on 2 and 3 November.

In the run-up to a planned diplomatic Conference for the adoption of the preliminary draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock, two regional seminars had hitherto been held, one in Warsaw, for the countries of Central and Eastern Europe, on 15 and 16 April 2004, the other in Mexico City, for the Americas, on 11 and 12 October 2004. The scope of this last seminar had been broadened to take in also consideration of the Cape Town Convention and the Aircraft Protocol.

The Institute's preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets had been the subject of a regional seminar, for the countries of Asia and the Asia-Pacific region, held in Kuala Lumpur on 22 and 23 April 2004 as also of a special meeting for satellite operators, held, in co-ordination with the European Satellite Operators Association, in Rome on 25 October 2004. The UNIDROIT Committee of governmental experts considering the preliminary draft Protocol had held its second session in Rome from 26 to 28 October 2004.

An enlarged new edition of the UNIDROIT Principles of International Commercial Contracts was adopted by the Governing Council at its 83<sup>rd</sup> session. This was set to become the nucleus of a code of soft law for international commercial contracts for all countries of the world. It was due to be formally presented to the international community for the first time at a seminar hosted jointly by UNIDROIT and the International Court of Arbitration of the International Chamber of Commerce, to be held in Paris on 10 December 2004.

At its 83<sup>rd</sup> session the Governing Council was also able to approve the Principles of Transnational Civil Procedure drawn up by a working group convened jointly by UNIDROIT and the American Law Institute (see under item No. 4 on the agenda, at p. 7, *infra*).

The UNIDROIT Study Group for the preparation of a preliminary draft Convention on indirectly held securities had completed its work at its fifth session, held in Budapest from 18 to 22 September 2004. The text of the preliminary draft Convention that had resulted from the Study Group's work would shortly be submitted to the Governing Council for approval. Subject to the Council granting such approval, the intention was for the text then to be transmitted to Governments with a view to the holding of a first session of a UNIDROIT Committee of governmental experts in May 2005. He noted that the mandate that the Study Group had received from the Governing Council had thus been executed in record time. In order to appreciate the urgency of expediting the completion of work on this project it sufficed to bear in mind that the volume of transactions in indirectly held securities currently represented some U.S.\$ 50,000,000,000,000 every 19 trading days.

Turning to the Institute's non-legislative work, he highlighted the draft Uniform Act on Contracts of the Organisation for the Harmonisation of Business Law in Africa (O.H.A.D.A.), based on the UNIDROIT Principles of International Commercial Contracts, which was to be the subject of institutional consultations between the Permanent Secretariat of O.H.A.D.A. and the member States of that Organisation. O.H.A.D.A. asked UNIDROIT to assist in the preparation of this draft Uniform Act. Mr M. Fontaine, a member of the UNIDROIT Working Group for the preparation of the Principles of International Commercial Contracts, had acted on behalf of UNIDROIT in this connection. He reiterated the Institute's gratitude to the Swiss Government for the generous extra-budgetary contribution which had permitted UNIDROIT's involvement in this project.

He indicated that 15 highly qualified lawyers from Argentina, Cameroun, the People's Republic of China, India, the Islamic Republic of Iran, Morocco, Romania, the Russian Federation, Tunisia and Vietnam had benefitted from the Institute's scholarships programme during 2004. Noting, however, that an ever smaller group of member Governments was funding this programme, he placed on record the Institute's special gratitude to the Governments of the

People's Republic of China, Greece and the Republic of Korea for their continuing financial support of this programme.

The Secretariat had also been active during 2004 in making the Institute's work more widely known in five countries (Hungary, Malaysia, Mexico, Slovakia and Thailand) and in seeking, where appropriate, to broaden its membership. Such trips made it possible to discuss both implementation of UNIDROIT instruments and current work with a whole range of officials (and not just, in the case of a member State, the individual specifically responsible for following UNIDROIT'S work in the Administration of that State). In Malaysia he and the Deputy Secretary-General *a.i.* had thus been able to present all aspects of the Institute's work at a meeting organised by the Attorney-General's Chambers. In Thailand he had come away from his meeting with the Minister of Foreign Affairs convinced that it was only a matter of time before the Government of Thailand decided to accede to the Statute. In Slovakia he had met the Minister of Foreign Affairs, who had placed on record his Government's willingness to lend its support to UNIDROIT'S projects, in particular as regards co-ordination with the European Union. In Hungary the President, a former member of the Governing Council, had organised a meeting with Government officials. In Mexico, following the aforementioned regional seminar, he had been invited by the Judicial and Institutional Reform Commission of the Senate to discuss the way in which the work of international law-making Organisations like UNIDROIT was dealt with at the national level in Mexico.

Turning to staff matters, he noted that Mr W. Rodinò, who had been not only the Institute's Deputy Secretary-General but also its face to the outside world for so many years, had retired on 30 September. Member States not being willing to provide the funding for a full-time replacement, the President of the Institute had invited Mr Stanford to take on the responsibilities of Deputy Secretary-General on an *ad interim* basis. He further noted that, since provisional solutions had a way of becoming definite solutions, importance attached to the efforts that would need to be made in the context of the preparation of the draft budget for the financial year 2006 to finding the funding necessary to appoint a full-time Deputy Secretary-General as soon as possible. He added that the intention was for applications for the post of Deputy Secretary-General to be welcomed from both within and without the ranks of the Secretariat. He had good news to bring, in the shape of the arrival, in late September, of Mr J. Atwood, formerly with the Attorney-General's Department of Australia, to deal with the Institute's new depositary functions and the impending arrival, in January 2005, of Ms A. McMillan, an official of the Department of Trade and Industry of the United Kingdom, to assist the Deputy Secretary-General *a.i.* with the carrying out of his normal functions.

Finally, he reported on those objectives contained in the Strategic Plan presented by the Secretariat to the General Assembly at its 57<sup>th</sup> session on which it had proven possible to make progress in the interim. He noted that some progress had been made in the updating and unification of procedures for the electronic management of the Institute's documentation and archive and in career development, this last in the shape of language training for messengers, secretaries and Library staff. Notwithstanding the recent or impending arrival of two new officials, the unwillingness of member States to provide the Institute with the funding necessary to take on a full-time Deputy Secretary-General and the fact that one official was entirely funded by the German Banking Federation meant, however, that the Secretariat was short of two Category A officials.

*The General Assembly took note of the Secretary-General's statement regarding the Institute's activities in 2004 and thanked him therefor.*

Item No. 3 – *Appointment of a member of the Governing Council from among the judges in office of the International Court of Justice (A.G. (58) 9)*

Introducing this item on the agenda, *the President of the General Assembly* recalled that the Governing Council, at its 83<sup>rd</sup> session, had invited the General Assembly to consider electing an additional member of the Governing Council from among the sitting judges of the International Court of Justice, under the faculty that it was accorded under Article 6(3) of the Statute. The Secretariat proposed that H.E. Judge N. Elaraby, the Egyptian judge of the International Court of Justice, be elected to this seat for the duration of the term of office of the current Governing Council. He vouched for the excellence of Judge Elaraby's credentials, highlighting in particular the fact that he had been the Permanent Representative of Egypt to the United Nations in New York from 1991 to 1999 and had also served as Ambassador of his country.

*The General Assembly elected H.E. Judge N. Elaraby (Egypt) an additional member of the Governing Council, with immediate effect, until 31 December 2008.*

Item No. 4 – *Amendment of Article 7 of the Regulations of the Institute (A.G. (58) 7)*

Introducing this item on the agenda, *the Secretary-General* indicated that, as with the Finance Committee, committees of the General Assembly were open to all member States. He suggested that, if the General Assembly were to agree to the Secretariat's proposal that an *ad hoc* committee of the General Assembly be set up to prepare proposals for the amendment of Article 7 of the Regulations of the Institute with a view to ensuring a minimum representation of each of the different geographic regions of the world on the Governing Council, invitations to participate in such a committee be sent out to the Embassy of each member State in Italy, leaving the terms of reference of the Committee and both the time within which it should report and its timetable to be determined by the Committee itself.

*The President of the General Assembly* suggested that, should the General Assembly endorse the Secretariat's proposal, the Committee should elect its own chairman and present recommendations for consideration by the Governing Council at its following session.

*The representative of South Africa* indicated that her Government recognised the importance of the work to be accomplished by the Committee and supported the proposal to amend Article 7 of the Regulations. She indicated that her Government would be happy to serve on the Committee.

*The representative of India* indicated that his Government too would be prepared to serve on the Committee.

*The representative of Japan* indicated that his Government took the view that members of the Governing Council did not represent their own countries but were chosen on their individual merits. However, if a majority of the General Assembly were in favour of the Secretariat's proposal, then his Government would not wish to block the formation of consensus.

*The President of the General Assembly*, commenting on the remarks made by the representative of Japan, noted that, if the merits of the individual candidates for election to the Governing Council were the only criteria to be followed in choosing among them, then it could happen that the Council might end up being formed of representatives of only two continents, whereas it was important that all continents should be represented.

*The representative of the United Kingdom* indicated that his Government would also wish to serve on the Committee.

*The representative of Spain* indicated that his Authorities supported the Secretariat's proposal, favouring the finding of a solution that would permit the representation of all

geographic regions of the world on the Council. As regards membership of the proposed Committee, he further indicated that his preference would be for the Secretariat to send invitations to all member States, in particular since it was possible that some member States might not yet be ready to commit themselves to serving on the Committee but might subsequently wish to serve thereon.

*The representative of Argentina* indicated that his Authorities also favoured the Secretariat's proposal for the amendment of Article 7 of the Regulations.

*The representative of Tunisia* indicated that her Government too supported the Secretariat's proposal and would like to be a member of the proposed Committee.

*The President of the General Assembly*, speaking on behalf of his Government, indicated that it too would be pleased to serve on the Committee.

Summing up the Assembly's deliberations on this item, he noted that it had indicated its approval of the Secretariat's proposal for the setting up of an *ad hoc* committee to prepare proposals for the amendment of Article 7 of the Regulations with a view to ensuring a minimum representation of each of the different geographic regions of the world on the Governing Council. He further noted that, while the representatives of Egypt, India, South Africa, Tunisia and the United Kingdom had specifically declared their willingness to serve on the Committee, all member States were to be invited to participate in its work, expressing the hope that it would include representatives of all the regions of the Institute's membership. He finally noted that the Committee should determine its own terms of reference as also its timetable and that it should lay its recommendations before the Governing Council at its following session.

*It was so decided.*

Item No. 5 – *Extension of the Work Programme for the triennial period 2002–2004 by one year* (A.G. (58) 2)

Introducing this item on the agenda, under which the General Assembly was invited to endorse the Governing Council's proposal that the Institute's Work Programme for the 2002–2004 triennium be extended by one year, *the Secretary-General* explained that, whereas, in the past, the Institute's Work Programme contained many items and there was not the same pressure for the conclusion of work on any one item, nowadays it contained only a select number of items, thus making it clearer what the Institute was actually working on. For the time being, the Institute's Work Programme was essentially built around the Cape Town Convention and the Protocols thereto, the Principles of International Commercial Contracts and the capital markets project and this was quite enough for the Secretariat to be getting on with. By 2005 it should be clearer whether resources might be available for an additional project or which of the remaining items featuring on the Institute's capital markets project should be accorded priority.

*The General Assembly accordingly decided to extend the 2002-2004 Work Programme by one year.*

Item No. 6 – *Presentation of the Principles of Transnational Civil Procedure* (A.G. (58) 3)

*Mr M.J. Bonell*, a consultant to UNIDROIT, illustrated the main features of the Principles of Transnational Civil Procedure prepared by a joint American Law Institute / UNIDROIT working group, referred to in the Secretary-General's statement on the Institute's activities in 2004. The slides used by Mr Bonell are reproduced in APPENDIX III hereto.

*The General Assembly took note of the Principles of Transnational Civil Procedure and thanked Mr Bonell for his presentation.*

Item No. 7 - *Approval of the Accounts for the 2003 financial year* (A.G. (58) 4 and Accounts 2003)

Introducing this item on the agenda, *the Deputy Secretary-General a.i.* indicated that the Budget for the 2003 financial year had provided for actual expenditure of € 1,818,050, to be funded by receipts of € 1,795,550 and the estimated surplus of € 22,500 from the 2002 financial year. The Accounts for the 2003 financial year showed that at the close of that year the Institute had received, first, contributions from member States to a value of € 1,615,714.72 - that is € 128,885.28 less than the amount estimated - secondly, € 58,681.22 in cash, mainly from the sale of publications - representing € 7,731.22 more than the amount estimated - and, thirdly, € 825.10 by way of extraordinary receipts. The Accounts for 2003 further showed that, in line with the lower than anticipated trend in receipts, actual expenditure had amounted to € 136,610.27 less than the amount estimated in the Budget for that year. This meant that, leaving aside the surplus from the 2002 financial year, during 2003 the Institute's actual receipts amounted to € 1,675,221.04 and its actual expenditure to € 1,681,439.74, yielding a deficit over the year of € 6,218.70. This deficit was, however, offset by the surplus from the 2002 financial year, which amounted to € 29,976.28. At the close of the 2003 financial year the Institute thus had a surplus of € 23,757.58 standing to its credit - as opposed to the estimated surplus of € 50,000 included in the Budget for 2004.

The principal reason why the receipts actually received in the 2003 financial year differed from those budgeted for was attributable to the shortfall in the settlement of member States' contributions for that year. In line with the instructions given by the Finance Committee at its 57<sup>th</sup> session, held on 9 October 2003, and the Sub-committee of the Finance Committee, at its 102<sup>nd</sup> session, held on 18 March 2004, the Secretariat had been active in urging those member States in arrears with the settlement of their contributions to regularise their position at the earliest possible opportunity (see also under item No. 10 on the Agenda, *infra*).

The other major variations in the Accounts over the Budget for the 2003 financial year concerned those chapters or articles relating to staff. The Secretariat had, however, sought savings, wherever possible, in this connection, having regard at all times more to the actual cash flow situation than to the amount theoretically available. It had always followed a policy of seeking, to the extent possible, to concentrate expenditure in the second half of each financial year, that is at a time when it was easier to adapt expenditure to the financial resources actually available, with a view to avoiding the danger of ending up with a substantial deficit.

At its 58<sup>th</sup> session, held in Rome on 15 June 2004, the Finance Committee gave a favourable opinion on the approval of the Accounts for the 2003 financial year.

*The General Assembly approved the Accounts for the 2003 financial year.*

Item No. 8 - *Adjustments to the Budget for the 2004 financial year* (A.G. (58) 5)

Introducing this item on the agenda, *the Deputy Secretary-General a.i.* indicated that the Secretariat did not see any need for adjustments to the Budget for the 2004 financial year.

*The General Assembly took note of the fact that no adjustments to the Budget for the 2004 financial year were contemplated.*

Item No. 9 – *Approval of the draft Budget for 2005 and fixing of the contributions of member States for that financial year* (A.G. (58) 8)

Introducing this item on the agenda, *the Deputy Secretary-General a.i.* indicated that the draft Budget for the 2005 financial year had been the subject of wide-ranging consultation. First, the Secretariat had prepared a first set of estimates of expenditure for preliminary consideration



by the Sub-committee of the Finance Committee at its 102<sup>nd</sup> meeting. On the basis of the Sub-committee's preliminary opinion, the Secretariat had prepared a draft Budget for consideration by the Governing Council at its 83<sup>rd</sup> session. This draft Budget had then been submitted for consideration by the Finance Committee at its 58<sup>th</sup> session. The draft Budget as it had come out of that session had been transmitted to the Governments of all member States for comment by 30 September 2004. These comments had been considered by the Finance Committee at its 59<sup>th</sup> session, held on 8 October 2004, on which occasion it had expressed a favourable opinion on the draft Budget for 2005 as set out in Appendix I to A.G. (58) 8.

The major issue that had fallen to be resolved in the context of the preparation of the draft Budget for 2005 was how to find the funding necessary to replace the retiring Deputy Secretary-General. For some four years the cost of the Deputy Secretary-General had been considerably reduced by virtue of the fact that, since reaching the age of retirement, the retiring Deputy Secretary-General had acted as such on a part-time basis. Thus, for example, the cost to the Institute of the nine months of his employment in 2004 had amounted to a mere € 30,000. It was primarily the cost of finding a full-time replacement for the retiring Deputy Secretary-General for 2005 that had explained the Secretariat's proposed increase of € 145,000 in the first estimates of expenditure laid before the Sub-committee. And this, moreover, even though the Secretariat proposed filling the post with a Category A5 official rather than a Category A6 official, as provided for under the Institute's Organigramme. This proposal had however been rejected by the Sub-committee, essentially as being financially unacceptable.

He noted that, at its 105<sup>th</sup> meeting, held during the 83<sup>rd</sup> session of the Governing Council, the Permanent Committee of the Governing Council, the body responsible for UNIDROIT staff matters, had accordingly decided to appoint him Deputy Secretary-General *ad interim*, however without any change in salary, deciding, at the same time, first, that a junior official should be taken on, on a temporary basis, as from 1 January 2005 to assist him with the carrying out of his normal duties whilst also carrying out those of Deputy Secretary-General *a.i.* and, secondly, to explore the possibility of taking on a full Deputy Secretary-General by drawing up a job description and agreeing that a public vacancy advertisement should be placed, specifying that both internal and external applications would be welcomed but leaving the salary to be offered to be determined by the Institute's financial organs. This decision of its Permanent Committee was endorsed by the Governing Council at its 83<sup>rd</sup> session.

He added that, at its 58<sup>th</sup> session, the Finance Committee had recommended that the launching of a selection procedure for the appointment of a full Deputy Secretary-General be suspended for the time being and that he act as Deputy Secretary-General *a.i.* from 1 October 2004 until further notice. The Secretariat had at the same time been invited to draft a proposal for the appointment of a full Deputy Secretary-General for consideration by the Finance Committee in the context of the preparation of the draft Budget for 2006, the Finance Committee nevertheless reiterating its insistence on the need for the future funding of the Institute's new depositary functions under the Cape Town Convention and Aircraft Protocol to be met directly out of its regular Budget and noting that any funds to be earmarked for the appointment of a full Deputy Secretary-General should in no way prejudice the funding that would need to be found in order to enable the Secretariat to carry out its depositary functions in an appropriate manner.

He noted that the picture had been completed at the 59<sup>th</sup> session of the Finance Committee, with the announcement by the representative of the United Kingdom of her Government's decision to second an official of the Department of Trade and Industry to work with the Institute, and in particular to assist him as Deputy Secretary-General *a.i.* with the carrying out of his normal functions, for the duration of 2005. While this decision had set free the funds previously earmarked under the draft Budget for 2005 for the taking on of a junior

official, it was clear, however, that the arrival of another professional member of staff as from 1 January 2005 would considerably aggravate the already intolerable burden of work falling on the shoulders of the two secretaries looking after the needs of all professional officers with the exception of the Secretary-General, a burden that had already been greatly added to over the previous two months with the arrival of the new official looking after the Institute's depositary functions. Furthermore, as mentioned earlier, the financial organs of the Institute had made it clear that its new depositary functions had in future to be funded from the regular Budget and that the finding of funds for the appointment of a new Deputy Secretary-General must not be allowed to interfere with its carrying out of these functions in an appropriate manner. The Finance Committee, at its 59<sup>th</sup> session, had accordingly given a favourable opinion on the Secretariat's proposal that € 55,000 of the € 60,000 earmarked for the salary of the junior official under the draft budget be allocated, on the one hand, to the taking on of a new secretary, to assist the Deputy Secretary-General *a.i.*, and to topping up the voluntary extra-budgetary contributions that had permitted the Institute to take on the new official looking after its new depositary functions in such a way as to enable him to be granted a full three-year contract. The idea was for the new secretary only to be taken on for a one-year trial period, to match the period during which the Deputy Secretary-General *a.i.* was sure to have to go on acting as such. This trial period would enable the Secretariat objectively to assess whether it would in future be able to do without such reinforcement on a permanent basis, in particular in the light of all the additional work that was to be anticipated as flowing from the convening in 2005 of the new Committee of governmental experts on indirectly held securities and the holding of a diplomatic Conference for the adoption of the preliminary draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock.

At its 59<sup>th</sup> session, the Finance Committee, had given a favourable opinion on the Secretariat's proposal that the remaining € 5,000 of the € 60,000 originally earmarked for the taking on of a junior official be allocated to cover the anticipated increase in staff salaries and allowances under the O.E.C.D. salary scales applied by the Institute.

Apart from those proposed increases in expenditure under Chapter 2 (Salaries and allowances), Article 1 (Salaries of Categories A, B and C staff), the only other headings of the draft Budget under which increases in expenditure were proposed for 2005 were Chapter 2, Article 2 (Remuneration for occasional collaborators and special work (legal research, translation and various studies)) and Chapter 9 (Library), Article 3 (Software).

The relatively small increase of € 5,000 proposed under Chapter 2, Article 2 - taking expenditure under this heading up to € 17,500 - was designed to cover the technical assistance that the Secretariat found itself increasingly obliged to resort to in respect of its various computers, as a result of the growing incidence of viruses and the regular need to update its software. To put this proposed increase into perspective, it had to be borne in mind that expenditure under this heading had been reduced from € 36,152 to € 12,500 in the 2003 budget. This was moreover an area where the Institute's need to keep abreast of the latest technology had to be seen as fundamental for its ability adequately to discharge its duties to its member States.

The other increase proposed in the budgetary allocations for 2005 was designed to permit the acquisition of new software for the Institute's Library. The reasons why the Secretariat had come down in favour of the acquisition of the Aleph 500 library management programme and the cost of its acquisition of the programme were explained in detail in Appendix II to A.G. (58) 8. He recalled that the creation of a UNIDROIT information centre at the disposal of Governments of member States formed a key element of the outreach resources called for under the Strategic Plan and that the placing of the Library's resources on line was a necessary first step in any such plan. The basic reasons why the acquisition of the Aleph 500 software was seen as the most

appropriate means of accomplishing this objective were essentially three, first, data protection, secondly, economies of scale and, thirdly, the installation of a more efficient and less costly library management and cataloguing system. The data protection argument would become particularly relevant once Governments started using these resources. The anticipated economies of scale would, on the other hand, result from the Library being connected to a network of leading world libraries working in the same field as the Institute, thus multiplying the resources available to both persons consulting the Library in Rome and also Governments and other institutions working with the Institute in other countries. It was proposed covering the cost of acquiring the new programme over five annual instalments, starting in 2005. While the additional cost under this heading for 2005 amounted to € 15,000, the total cost would come to € 143,000, with € 15,000 being allocated to this item for each year from 2005 to 2009 and € 7,000 being allocated for each subsequent year, essentially to cover the maintenance of the programme and the presentation of the catalogue on Internet. The additional cost of the acquisition of the programme would be met out of the Library's own allocation.

He noted that the draft Budget for 2005 as proposed involved no increases under any other headings, the Secretariat having made every effort to contain expenditure on those items at the same level as it had stood in 2004.

Overall, the expenditure being proposed for 2005, € 1,963,850, amounted to € 80,000 more than the amount budgeted for in 2004, representing a percentage increase of 4.2%. The Secretariat had however managed to contain the effects of this increase to a proposed increase in the contributions of member States other than Italy of 1.65%, a rate moreover much lower than the anticipated rate of inflation in Italy. This had been achieved in four ways, first, by estimating the surplus to be carried over from the 2004 financial year at € 20,000, secondly, thanks to the Government of Italy's announcement of its willingness to make an increase of € 30,000 in its contribution for 2005, thirdly, by estimating miscellaneous receipts - from such sources as the sale of its publications - at € 52,854 and, fourthly, thanks to a number of member States the contributions of which to the United Nations Budget had been raised for the 2004/2006 triennium signalling their willingness to contemplate comparable increases in their contributions to UNIDROIT. He recalled that the classification of member States in the UNIDROIT contributions chart was, in particular, modelled on the percentage of their contributions to the United Nations Budget. 23 additional units of account had been pledged in this way, 11 from the People's Republic of China, three from Greece, one from Poland, one from Portugal and seven from the Republic of Korea. He acknowledged the Institute's special debt of gratitude to the Governments of these States for their generosity. The units of contribution of two other member States that the Secretariat had contacted in this connection would not change, for the time being at least. The Fifth Committee of the United Nations General Assembly having approved a Resolution temporarily reducing the contribution of Argentina, the Embassy of Argentina in Italy had therefore asked that any decision to reclassify its Government in the UNIDROIT contributions chart be postponed. Likewise, the Embassy of Mexico in Italy had requested a similar postponement in the reclassification of its Government, in view of the special economic difficulties its Government was encountering.

Replies were still awaited from two other member States, Brazil and Israel, as to whether or not they would accept reclassification. The Finance Committee, invited by the Secretariat to express its opinion as to how any additional units of account that might be pledged as a result should be allocated, had recommended that both any such additional units of account and any arrears that might be settled in the meantime should be used to bolster the surplus to be carried forward to the Budget for 2006.

Summing up, he therefore invited the General Assembly, first, in general, to approve the draft Budget for 2005, secondly, in particular, to approve the proposed additional expenditure of

€ 80,000 - designed to permit the taking on of a new secretary, the granting of a full three-year contract to the new official looking after the Institute's depositary functions and the acquisition of the Aleph 500 library management programme - and, thirdly, to decide how any additional units of account that might be pledged should be allocated.

*The representative of Poland* indicated that his Authorities had instructed him to vote against the proposed increase in the unit of contribution under the draft Budget for 2005.

*The representative of Argentina* indicated that, whilst, in view of the tremendous financial crisis that his country was passing through, his Government would not be able to vote in favour of the proposed increase in the contributions of member States other than Italy under the draft Budget for 2005, it nevertheless understood the reasons adduced in support of the proposal.

*The representative of Canada* indicated that, recognising the financial pressures under which UNIDROIT was operating and the fact that it was making the most of the limited resources at its disposal, his Government did not wish to block approval of the draft Budget. It nevertheless reiterated the view that it had espoused in both the Sub-committee and the Finance Committee, namely that the main reason for drawing up the Strategic Plan had been to set priorities that would enable the Institute to work within the principle of zero nominal growth. His Government very much regretted that it had not been possible to do this in the context of the draft Budget for 2005 and urged the Secretariat to make every effort in the years ahead to respect the financial restraints under which member Governments were themselves obliged to operate, in particular to review priorities in the context of the preparation of the draft Budget for 2006 and as it moved forward with the preparation of the Work Programme for the 2006-2008 triennium. His Government wished to see clear priorities set out in that Work Programme, as also an explanation as to how those priorities had been arrived at. It renewed its suggestion that the Institute consider following the approach, taken by the Hague Conference on Private International Law and other Organisations, whereby, in addition to the core Budget, there could also be a supplementary budget for activities that would only be undertaken if voluntary contributions were forthcoming.

*The General Assembly approved the Budget for 2005 as set out in Appendix I to A.G. (58) 8 and fixed member States' contributions for that financial year as indicated in Appendix III thereto.*

#### Item No. 10 - *Arrears in contributions of member States* (A.G. (58) 6 rev.)

Introducing this item on the agenda, *the Deputy Secretary-General a.i.* recalled the words of the representative of India earlier in the proceedings (cf. p. 2, *supra*), drawing attention to the insidious way in which the accumulation of arrears in the settlement of member States' contributions to an Organisation as small as UNIDROIT, if not checked in time, gradually undermined its ability to continue carrying out even its most essential activities.

He noted that the situation regarding arrears in the settlement of certain member States' contributions was a genuine cause of concern: as of 24 November 2004, the amount of member States' contributions to the Institute's budget for the 2004 financial year still outstanding stood at € 224,036.62 - representing 12.48% of all member States' assessed contributions for that year - and the amount of arrears outstanding from certain member States in respect of their contributions for years prior to the 2004 financial year - in effect, with two exceptions, for the 2002 and 2003 financial years - stood at € 205,910.93 (cf. Appendix II to A.G. (58) 6 rev.).

Whilst in no way wishing to minimise the size of the problem that these figures represented, he nevertheless sought to temper the ill tidings that they would, at first sight, seem to betoken with some encouraging news that had recently come to hand concerning three of the four member States with the most serious arrears. First, one of these States had settled its

arrears for 2001 and 2002 and almost all its arrears for 2003. Secondly, the Minister of Foreign Affairs of another State had informed the Secretariat that, while budgetary difficulties had in recent years caused her Government to fall behind with the settlement of its contributions to international Organisations in general - and not just UNIDROIT - it would be settling its arrears for 2002 by the end of 2004 and those for 2003 and 2004 during the year ahead. Thirdly, he had been informed by the Attorney-General and Minister of Justice of another State which had in recent years fallen seriously behind with the settlement of its contributions to international Organisations in general - and not just UNIDROIT - that his President had authorised not only the settlement of all its arrears but also the settlement of its contribution for the 2004 financial year, with instructions having been given for the corresponding sums to be credited to the Institute's bank account shortly.

He noted that, while the settlement or anticipated settlement of the arrears of three of the four member States having accumulated the most serious arrears did not alter the basic problem as to how to avoid individual member States, by accumulating longstanding arrears, in future continuing to imperil the Institute's ability to carry out the mission entrusted to it by the entirety of its membership, it did seem to suggest that the process of the settlement of arrears was perhaps regaining momentum after a period of some inertia. Moreover, the Secretariat would continue to spare no effort in its attempts to recover arrears through the customary diplomatic channels and in particular, as from 2005, intended to arrange periodic briefings for the Embassies of member States in Italy, as a means of better reaching out to those diplomatic representatives whose only occasion for coming face to face with the Institute would currently often be the annual session of the General Assembly. Such briefings could both permit members of UNIDROIT's staff to brief the diplomatic representatives present on its current activities, thus enabling them to develop a keener perception of the tangible benefits of membership, and provide a forum - say, with the sitting President of the General Assembly and the sitting Chairman of the Finance Committee both present - for informal discussion of the ongoing situation regarding arrears with the diplomatic representatives present.

The problem of arrears and how best to deal with it was one that had been thoroughly considered by the Finance Committee and the Sub-committee throughout 2004. While recognising the continuing utility of the Secretariat's efforts to recover arrears and that there were special explanations for some of the arrears accumulated by certain member States in recent years - in particular the fluctuations in the exchange rate between the U.S. dollar and the euro - both the Sub-committee and the Finance Committee were firmly of the view that the situation regarding arrears had nevertheless reached a point where, unless checked, it could threaten the long-term soundness of the Institute's administration and that a toolbox of sanctions to employ against seriously defaulting member States had therefore at this stage to be contemplated. The bottom line emerging from these discussions was that it was not right for member States that settled their contributions on time then to have to offset the failure of other member States to do the same, through having their contributions in effect increased in order to make up the shortfall resulting from the arrears accumulated by other member States.

It was however agreed from the outset that expulsion, the solution advocated when the General Assembly last looked at this question in 1993, was in effect a solution too far, in that it proposed an unduly radical solution when set against all the efforts that necessarily went into getting a State to become a member in the first place. It was also felt that non-settlement of arrears should not provide member States with a cheap way of leaving the Organisation.

The solution that the Finance Committee and its Sub-committee therefore came up with was progressively to suspend the essential privileges of membership for those member States having accumulated more than three years' arrears in the settlement of their contribution, thus building on the sanction (loss of the right to vote in the General Assembly) that already existed,

under Article 16(7) of the Statute, for member States with arrears of more than two years. Both the Finance Committee and its Sub-committee took the view that, for the message embodied in sanctions to strike home, they needed to strike directly at the benefits that member States derived from their membership.

Under the draft Resolution prepared by the Secretariat - in conjunction with the Chairman of the Finance Committee - for consideration by the General Assembly, whilst it had been left to the latter to determine the precise number of years at which the proposed new sanctions should kick in - hence the square brackets around the relevant numbers - it was therefore proposed that the starting point at which the proposed sanctions should kick in be where a member State had accumulated more than three years' arrears and then progressively escalate as a member State accumulated, first, more than four years' arrears and, then, more than five years' arrears.

The three introductory clauses of the draft Resolution rehearsed the reasons why it was necessary for the General Assembly to take action on this issue. The first clause drew attention to the particularly deleterious effect that member States' accumulation of arrears had on the financing of the Institute's activities, and in particular the distortions that it created in the calculation of the amount of receipts that the Secretariat could count on for the year ahead. The second clause highlighted the different Resolutions through which the General Assembly had sought, without marked success, to remedy this problem in the past. The third clause drew the conclusion that the only solution open to the General Assembly at this stage - short, that is, of expulsion - was progressively to suspend the essential privileges of membership for those member States having accumulated more than a certain number of years' arrears.

The sanctions provided for under the operative part of the draft Resolution had been arranged in an ascending order of severity. The least severe sanction, kicking in with the accumulation of more than three years' arrears, would involve forfeiture of the right to present candidates for the awarding of UNIDROIT research scholarships and access to the UNIDROIT library. The next most severe sanction, kicking in with the accumulation of more than four years' arrears, would involve losing the right to receive the Institute's documentation. The most severe sanction would kick in with the accumulation of more than five years' arrears and would involve member States losing the right to receive invitations even to participate in sessions of the General Assembly and Committees of governmental experts convened by UNIDROIT, and perhaps also diplomatic Conferences convened under its auspices. The Secretariat recognised that there might be differences of opinion as to which of these sanctions was potentially the most or the least severe: it had simply sought to lay a proposal before the General Assembly as a basis for its decision. It believed, however, that the order in which it had constructed the set of sanctions could broadly be considered to correspond to the importance of the benefits that member States potentially derived from their membership.

By way of explanation concerning the sanction involving loss of the right to participate in Committees of governmental experts, he pointed out that, even if non-member States were, for instance, participating - and not just as observers - in the current UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space Assets, this was a special case and membership of UNIDROIT Committees of governmental experts was, in principle, only open to member States. The participation of non-member States in the aforementioned Committee was the result of the Resolution passed by the Cape Town diplomatic Conference in 2001, inviting the Institute to give all member States of the United Nations, including non-member States of UNIDROIT, an opportunity to participate in the negotiation and adoption of all further Protocols to the Cape Town Convention and the decision taken by the Governing Council that same year that membership of this Committee should be open also to members of the United Nations Committee on the Peaceful Uses of Outer Space, which had been closely following the

preparation of the draft Space Protocol, in particular given the consideration that it was giving to the question as to whether the United Nations should act as Supervisory Authority of the future International Registry for space assets. Such one-off broadening of the participation in UNIDROIT Committee of governmental experts clearly, though, did not provide a precedent for other such Committees: member States would thus otherwise continue to be exclusively entitled to participation in UNIDROIT Committees of governmental experts.

By way of explanation of the square brackets appearing around the words “and diplomatic Conferences convened under the auspices of” in the third operative clause of the draft Resolution, he added that there had to be a question whether the sanction contained in this clause could realistically extend to diplomatic Conferences for the adoption of UNIDROIT drafts, in the sense that, UNIDROIT not itself having the means to convene such Conferences, those member Governments offering to host them would probably not necessarily see themselves bound by the draft Resolution in the same way as UNIDROIT itself.

On this and the other question (the precise number of years at which the different sanctions should kick in) left open in the draft Resolution, he indicated that the Secretariat would welcome the advice of representatives attending the session. In summing up, he recalled the importance attached by the Finance Committee and its Sub-committee to the urgency of action being taken with a view to ensuring that the long-term soundness of the Institute’s administration be not imperilled by the further longstanding accumulation of arrears by member States and commended the draft Resolution to the General Assembly, as, hopefully, a step in the right direction.

*The President of the General Assembly* enquired as to the conditions for the entry into force of the draft Resolution, if passed by the General Assembly.

*The representative of Canada* commended the Secretariat and the Chairman of the Finance Committee for the draft Resolution and proposed that it be passed with the inclusion of the words in square brackets.

*The representative of France*, while commending the Secretariat for its efforts to recover arrears, indicated that his Authorities were nevertheless extremely concerned at the level arrears had reached: he pointed out that they amounted to 25% of the amount of the Budget for 2005. His Government therefore supported the passing of the draft Resolution, with the square brackets being removed.

*The representative of Japan* indicated that his Government also supported the passing of the draft Resolution, with the square brackets being removed.

*The representative of Italy* indicated that his Government also supported the passing of the draft Resolution, with the square brackets being removed, subject to two minor drafting amendments: he proposed, first, that the word “remedy” in the third line of the second introductory clause be replaced by “provide a satisfactory remedy to” and, secondly, that the word “only” in the first line of the third introductory clause be replaced by “best”.

Commenting on the first drafting amendment proposed by the representative of Italy, *the President of the General Assembly* suggested, as an alternative reformulation, that the words “failed to remedy” could be replaced by something along the lines of “not produced the desired results”.

*The representative of Austria* indicated that his Government too supported the passing of the draft Resolution, with the square brackets being removed. He could also support the amendments proposed by the representative of Italy. Noting, however, that, under the second operative clause of the draft Resolution, member States with more than four years’ arrears were to be deprived of UNIDROIT documentation, he imagined that this was not to be understood to

cover the documentation necessary for States to be able to participate in the General Assembly, without which their participation would be meaningless. He indicated that, if his understanding was correct, then it would be sufficient for it to be so recorded in the report on the session.

*The representative of Colombia* enquired whether, her Government having informed the Secretariat that it would be settling its arrears for 2002 by the end of 2004 and its arrears for 2003 and its contribution for 2004 in 2005, it would be possible for this to be duly recorded.

*The Deputy Secretary-General a.i.* confirmed that the record would indeed be corrected - and the Secretariat would advise the Embassy of Colombia in Italy accordingly - once the Government of Colombia had indeed settled its arrears for 2002 and 2003 and its contribution for 2004. The Secretariat greatly welcomed the similar news that it had recently been given by the Minister of Foreign Affairs of Colombia. Referring to the question raised by the President of the General Assembly, he indicated that the draft Resolution, if passed, would enter into force immediately, not involving any amendment of the Statute and therefore requiring ratification by two-thirds of member Governments. He indicated that the Secretariat was particularly sensitive to the point raised by the representative of France and hoped that the news that he had given the Assembly would enable the situation to be considerably improved over the following months. The Secretariat also supported the amendment proposed by the representative of Italy. It also confirmed that the second operative clause of the draft Resolution was to be understood in the way suggested by the representative of Austria.

*The representative of Germany* indicated that his Government could also support the passing of the draft Resolution, with the amendments proposed by the representative of Italy.

*The representative of the United Kingdom*, first, enquired as to how the situation regarding arrears would look following the anticipated settlement of the arrears owed by certain member States announced by the Deputy Secretary-General *a.i.* Secondly, he commended the Secretariat for the tough approach embodied in the draft Resolution and hoped that its will to implement the draft Resolution, if carried, would be equally determined. Thirdly, he enquired as to the effect that a member State's agreement to settle its arrears by instalments would have on the operation of the different sanctions proposed therein and how it would be monitored by the Secretariat. Finally, he raised a question as to the likelihood of the draft Resolution, if carried, having the desired effect on the current level of arrears, since it only dealt with member States having accumulated more than three years' arrears and Appendix II to A.G. (58) 6 rev. showed that only one member State had more than three years' arrears.

Responding to the points raised by the representative of the United Kingdom, *the Deputy Secretary-General a.i.* indicated that he had not previously considered it diplomatic to name the member States he was referring to in connection with their arrears. However, since the representative of Colombia had at this stage already identified her Government as one of these, he specified that the other two member States he was referring to were Venezuela and Nigeria. The Government of Venezuela having settled its arrears for 2001 and 2002 and almost all its arrears for 2003, it only appeared in Appendix II to A.G. (58) 6 rev. in respect of the amount outstanding in respect of its arrears for 2003 and its contribution for 2004. The Government of Nigeria had the most serious arrears (for the period 1999/2003) but, as he had mentioned earlier, the Attorney-General and Minister of Justice had informed him two days previously of his President's authorisation of the imminent settlement of all that Government's arrears and its contribution for 2004. He added that the Attorney-General had apologised for his inability to bring this news to the General Assembly in person and thanked other member States for their comprehension. Referring to the third question raised by the representative of the United Kingdom, he indicated that the possibility of member States agreeing with the Secretariat to settle their arrears by instalments was indeed intended to be covered by the introductory "subject to ..." language of each of the operative clauses of the draft Resolution. This language



highlighted the necessary degree of flexibility that the Finance Committee believed the Secretariat should be left in the implementation of the proposed sanctions. Commenting on the last point raised by the representative of the United Kingdom, he stressed that the draft Resolution had been conceived principally as a deterrent and he suggested that the news he had brought from the Government of Nigeria indicated its potential effectiveness at least with countries having accumulated more than three years' arrears.

*The representative of the United Kingdom*, welcoming the explanation provided by the Deputy Secretary-General *a.i.*, requested that member States be kept informed of progress in the recovery of arrears, in particular through the Finance Committee.

*The President of the General Assembly* assured the representative of the United Kingdom that the Secretariat would comply with his request, concerning, as it did, such an important matter.

*The representative of Nigeria* confirmed that he had been instructed by his Attorney-General to inform the General Assembly that the settlement of the arrears owed by his Government was being processed and would be credited to UNIDROIT'S account shortly. He stressed that the matter had been handled at the highest possible level in his country, involving the President of Nigeria. He commended the approach taken by the Deputy Secretary-General *a.i.* to this problem. This approach had involved him in working hand-in-glove with the Embassy of Nigeria in Italy and it was in this way that it had been possible to bring the matter to the attention of the Attorney-General. He emphasised that his country was a strong believer in the work of UNIDROIT, which had an important role to play in Africa.

*The President of the General Assembly* added his thanks to the Secretariat, for the effective way in which it was tackling the problem, and to the Governments of Colombia and Nigeria, for their decision to settle their arrears. He noted that his own Government's contribution for 2004 should be settled as soon as possible.

*The General Assembly passed the draft Resolution proposed by the Secretariat, with the square brackets being removed and as amended by the proposal of the representative of Italy. Resolution (58) 1, as thus amended, is reproduced as Appendix IV hereto. The General Assembly further invited the Secretariat to keep member States posted regarding the situation concerning arrears.*

#### *Closure of the session*

No other business being raised, *the President of the General Assembly*, after thanking the Secretariat for the meticulous way in which it had prepared the session and indicating how much he looked forward to working over the year ahead with the Institute on its important mission, declared the session closed at 12.30 p.m.



## APPENDIX I

## LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

ARGENTINA/ARGENTINE	Mr Jorge Omar IREBA, Counsellor Embassy of Argentina in Italy
AUSTRALIA/AUSTRALIE	Mr Ross EDDINGTON, Third Secretary Embassy of Australia in Italy
AUSTRIA/AUTRICHE	Mr Karl PRUMMER, Counsellor Embassy of Austria in Italy
BELGIUM/BELGIQUE	M. Joris SALDEN, Consul Ambassade de Belgique en Italie
BOLIVIA/BOLIVIE	Excused / <i>excusé</i>
BRAZIL/BRESIL	Mr João André PINTO DIAS LIMA, Counsellor Embassy of Brazil in Italy  Ms Ana Paula KOTLINSKY SEVERINO, Lawyer Embassy of Brazil in Italy
BULGARIA/BULGARIE	Mr Rumen ALEXANDROV, Third Secretary Embassy of Bulgaria in Italy
CANADA	Mr Kent VACHON, Counsellor Embassy of Canada in Italy
CHILE/CHILI	Mr Sebastian SCHNEIDER, Third Secretary Embassy of Chile in Italy
CHINA/CHINE	Mr GUO Shaowei, Third Secretary Embassy of the People's Republic of China in Italy
COLOMBIA/COLOMBIE	Ms Paula TOLOSA ACEVEDO, First Secretary Embassy of Colombia in Italy
CROATIA/CROATIE	Excused / <i>excusé</i>
CYPRUS/CHYPRE	Excused / <i>excusé</i>
CZECH REPUBLIC/ REPUBLIQUE TCHEQUE	Excused / <i>excusé</i>
DENMARK/DANEMARK	Excused / <i>excusé</i>

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EGYPT/EGYPTE	H.E. Mr Helmy Abdel Hamid BEDEIR Ambassador of Egypt in Italy; President of the General Assembly / <i>Président de l'Assemblée Générale</i>  Mr Ossama EL HADY, Second Secretary Embassy of Egypt in Italy
ESTONIA / ESTONIE	Mr Urmas EIGLA, Third Secretary Embassy of Estonia in Italy
FINLAND/FINLANDE	Mr Renne KLINGE, First Secretary Embassy of Finland in Italy
FRANCE	M. Alexandre GIORGINI, Premier Secrétaire Ambassade de France in Italie
GERMANY/ALLEMAGNE	Mr Peter ADAMEK, Consul Embassy of Germany in Italy
GREECE/GRECE	Mr Ioannis VOULGARIS Professor of Private International Law and Comparative Law "Démokritos" University of Thrace; Member of the UNIDROIT Governing Council / <i>Membre du Conseil de Direction d'UNIDROIT</i>
HOLY SEE/SAINT SIEGE	M. Gianluigi MARRONE, Juge unique de l'Etat de la Cité du Vatican
HUNGARY/HONGRIE	Ms Andrea PERNYE, Counsellor Embassy of Hungary in Italy
INDIA/INDE	Mr Govindan NAIR, Minister (in charge of United Nations matters) Embassy of India in Italy  Mr Parimal KAR, Second Secretary Embassy of India in Italy
IRAN	Mr Sajad SOLTANZADEH, Third Secretary Embassy of the Islamic Republic of Iran in Italy
IRELAND/IRLANDE	Mr John McINNES, First Secretary Embassy of Ireland in Italy
ISRAEL	Mr Dario BURGARETTA Co-ordinator, Information Office Embassy of Israel in Italy

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ITALY/ <i>ITALIE</i>	Mr Agostino CHIESA ALCIATOR Counsellor Office of the Legal Adviser Ministry of Foreign Affairs
JAPAN/ <i>JAPON</i>	Mr Kazumi ENDO, Counsellor Embassy of Japan in Italy
LUXEMBOURG	Mlle Catherine DECKER, Chargée de Mission Ambassade du Luxembourg en Italie
MALTA/ <i>MALTE</i>	H.E. Mr Abraham BORG, Ambassador / Permanent Representative of Malta to the United Nations Specialised Agencies in Italy  Mr Pierre HILI, First Secretary Embassy of Malta in Italy
MEXICO/ <i>MEXIQUE</i>	Ms Ursula DOZAL, Third Secretary Embassy of Mexico in Italy
NETHERLANDS/ <i>PAYS-BAS</i>	Mr Loeik TEN HAGEN, Second Secretary Embassy of the Netherlands in Italy
NICARAGUA	Excused/ <i>excuse</i>
NIGERIA	Mr Eyo ASUQUO, Minister Counsellor Embassy of Nigeria in Italy
NORWAY/ <i>NORVEGE</i>	Excused/ <i>excusé</i>
PAKISTAN	Mr Riaz H. BUKHARI, Counsellor Embassy of the Islamic Republic of Pakistan in Italy
POLAND/ <i>POLOGNE</i>	Mr Wojciech UNOLT, Counsellor Embassy of Poland in Italy
PORTUGAL	Ms Carla SARAGOÇA, First Secretary Embassy of Portugal in Italy
REPUBLIC OF KOREA/ <i>REPUBLIQUE DE COREE</i>	Excused / <i>excusé</i>
ROMANIA/ <i>ROUMANIE</i>	Excused / <i>excusé</i>
RUSSIAN FEDERATION/ <i>FEDERATION DE RUSSIE</i>	Mr Oleg SOBOLEV, Commercial Attaché Trade Representation of the Russian Federation in Italy
SAN MARINO/ <i>SAINT-MARIN</i>	Mr Victor CRESCENZI

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SERBIA AND MONTENEGRO/ <i>SERBIE ET MONTENEGRO</i>	Mr Petar Pavic, Minister Counsellor Embassy of Serbia and Montenegro in Italy
SLOVAKIA/ <i>SLOVAQUIE</i>	Excused/ <i>excusé</i>
SLOVENIA/ <i>SLOVENIE</i>	Ms Mojca NEMEC, Second 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/ <i>ESPAGNE</i>	Mr Luis CUESTA, First Secretary Embassy of Spain in Italy
SWEDEN/ <i>SUEDE</i>	Ms Lisa BJUGGSTAM, First Secretary Embassy of Sweden in Italy
SWITZERLAND/ <i>SUISSE</i>	Mr Josef RENGGLI, First Secretary Embassy of Switzerland in Italy
TUNISIA/ <i>TUNISIE</i>	Mme Sihem SELTENE, Conseiller Ambassade de Tunisie en Italie
TURKEY/ <i>TURQUIE</i>	Excused/ <i>excusé</i>
UNITED KINGDOM/ <i>ROYAUME-UNI</i>	Mr 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 McGREGOR, Political Assistant Embassy of the United Kingdom in Italy
UNITED STATES OF AMERICA/	Excused / <i>excusé</i>
URUGUAY	Mr Gerardo ARIEL RUSIÑOL SALLÚA Minister Counsellor Embassy of Uruguay in Italy
VENEZUELA	Excused / <i>excusé</i>
<b>OBSERVER/OBSERVATEUR</b>	
SOVEREIGN MILITARY ORDER OF MALTA/ <i>ORDRE SOUVERAIN MILITAIRE DE MALTE</i>	H.E. Mr Aldo PEZZANA CAPRANICA DEL GRILLO, Ambassador

UNIDROIT

Mr Berardino LIBONATI, President / *Président*

Mr Herbert KRONKE, Secretary-General/*Secrétaire-Général*

Mr Martin STANFORD, Deputy Secretary-General a.i./*Secrétaire Général adjoint a.i.*

Mr Michael Joachim BONELL, Consultant





**AGENDA**

1. Adoption of the agenda (A.G. (58) 1 rev. 2)
2. Statement regarding the Institute's activity in 2004
3. Appointment of a member of the Governing Council from among the judges in office of the International Court of Justice (A.G. (58) 9)
4. Amendment of Article 7 of the Regulations of the Institute (A.G. (58) 7)
5. Extension of the Work Programme for the triennial period 2002–2004 by one year (A.G. (58) 2)
6. Presentation of the Principles of Transnational Civil Procedure (A.G. (58) 3)
7. Approval of the Accounts for the 2003 financial year (A.G. (58) 4 and Accounts 2003)
8. Adjustments to the Budget for the 2004 financial year (A.G. (58) 5)
9. Approval of the draft Budget for 2005 and fixing of the contributions of member States for that financial year (A.G. (58) 8)
10. Arrears in contributions of member States (A.G. (58) 6 rev.)
11. Classification of States in the contributions chart of the Institute (to note)
12. Any other business.



**APPENDIX III**

# Principles of Transnational Civil Procedure

A joint ALI/UNIDROIT project

What is ALI?

- The American Law Institute (ALI), founded in 1920, is a U.S. non-profit organisation whose members are judges, lawyers and academics.
- Famous for its work on the “Restatements” of the law of contracts, torts, conflict of law, etc., and on the Uniform Commercial Code.

# ORIGIN OF THE PROJECT

- Initially an ALI project for a model code of transnational civil procedure.
- In 1998 ALI proposed to UNIDROIT to join the project with a view “to internationalise” it both in form and in content.
- The Governing Council of UNIDROIT, on the basis of a feasibility study by Professor Rolf Stürner (University of Freiburg) accepted the proposal.
- A joint ALI/UNIDROIT Working Group was set up composed of eight eminent experts from civil law and common law jurisdictions:
  - Mr Neil ANDREWS (United Kingdom)
  - Mme Frédérique FERRAND (France)
  - Mr Geoffrey C. HAZARD, Jr. (U.S.A.; Co-Rapporteur)
  - Mr Masanori KAWANO (Japan)
  - Mme Aida R. KEMELMAJER DE CARLUCCI (Argentina)
  - Mr Pierre LALIVE (Switzerland)
  - Mr Ronald T. NHLAPO (South Africa; Chairman)
  - Mr Rolf STÜRNER (Germany; Co-Rapporteur)

## DEVELOPMENT OF THE PROJECT

- It was decided to concentrate on basic “principles” rather than detailed rules of transnational civil procedure.
- The Co-Rapporteurs prepared successive drafts examined by the Group at its annual sessions between 2000 and 2003.
- Over the years the drafts were also discussed at regional seminars worldwide.
- The final text of the “Principles of Transnational Civil Procedure” was approved by the UNIDROIT Governing Council and by the Annual Meeting of the ALI in the Spring of 2004.

# WHY PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE?

- Rules of civil procedure traditionally strictly national both in form and substance (as opposed to the numerous international instruments governing arbitration)
- As a result, in disputes between parties of different nationalities, the foreign litigants are discriminated as compared to local plaintiffs or defendants.
- In fact, foreign plaintiffs or defendants have to plead
  - according to the local rules of procedure, unfamiliar to them
  - in a foreign language (the mother tongue of the judge and the local defendant or plaintiff)

# WHY “PRINCIPLES” OF TRANSNATIONAL CIVIL PROCEDURE?

- Rules of civil procedure traditionally prerogative of the *lex fori*
- Any attempt to unify/harmonise rules of civil procedure by legislative means (e.g. international convention) unrealistic
- Preparation of non-binding “Principles” a viable alternative (see the success of other soft-law instruments such as the Unidroit Principles of International Commercial Contracts and the UNCITRAL Model Law on International Commercial Arbitration)



# **WHY PRINCIPLES OF “TRANSNATIONAL CIVIL PROCEDURE”?**

- Chance of adoption by States only if scope of the “Principles” is restricted to transnational commercial disputes
- Need for uniform rules of procedure especially felt with respect to transnational commercial disputes

# ALI/UNIDROIT PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE: THE CONTENT

- ALI/UNIDROIT Principles aimed at reconciling existing differences among various national rules of civil procedure
  - Examples:
    - While in most legal systems parties are required to furnish from the outset in their pleadings the detailed factual basis of their legal contentions (“fact pleading”), under common law systems, in particular U.S. law, parties may present in their pleadings only a short and plain statement of their claims and defences and use the later discovery phase to find the real legal and factual issues of the case (“notice pleading”)
      - ?
- ALI/UNIDROIT Principles require that statement of claim and defence be “reasonably” specific (see Principle 11.3)

- Legal systems differ with respect to the circumstances under which a party, knowing or believing that evidence supporting its claim or defence is in the possession of the other party, can require its production by that party. According to some, this can be done only with respect to specified evidence by court order, while according to others parties themselves may do so and this even with respect to evidence still to be discovered (so-called “fishing expeditions”)

?

ALI/UNIDROIT Principles provide for “discovery” only of “relevant” and “reasonably identified” evidence and always under the supervision of the court (see Principle 16.2)

- ALI/UNIDROIT Principles aimed at taking into account the peculiarities of transnational disputes as compared to purely domestic ones
  - Examples:
    - ALI/UNIDROIT Principles prohibit in general any kind of illegitimate discrimination on the basis of nationality or residence and require the Court to take into account difficulties that might be encountered by a foreign party in participating in litigation (see Principle 3)
    - ALI/UNIDROIT Principles, while confirming that the proceedings ordinarily should be conducted in the language of the court, state that translation should be provided when a party or witness is not competent in that language (see Principle 6)

# ALI/UNIDROIT PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE: THEIR POSSIBLE USE IN PRACTICE

- ALI/UNIDROIT Principles may serve a number of purposes in practice

They may

- serve as guidelines for code projects in countries without longer procedural traditions
- initiate law reforms even in countries with long and high quality procedural traditions
- be applied in international commercial arbitration (by analogy)

**RESOLUTION (58) 1**

**as passed by the General Assembly of UNIDROIT member States at its 58<sup>th</sup> session  
(Rome, 26 November 2004)**

THE GENERAL ASSEMBLY,

MINDFUL of the ever more serious financial difficulties caused to the Institute by the failure over a number of years of certain member States to settle their contributions and of the distortions thereby created in the calculation of the annual receipts of the Institute,

CONSCIOUS of the fact that the measures so far adopted by the General Assembly, in its Resolutions (38) 1, (40) 1, (42) 1, (42) 2, (42) 4, (45) 2 and (47) 1, have failed to provide a satisfactory remedy to the situation created by the existence of longstanding arrears in the settlement by certain member States of their contributions,

CONVINCED that the best means of resolving the problems created by the accumulation of such longstanding arrears, in addition to the sanction provided under Article 16(7) of the Statute, is by progressively suspending the essential privileges of membership in the case of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the three, four or five immediately preceding years,

HAS DECIDED:

1. subject to any agreement that may be reached between the Secretariat and member States having accumulated arrears in the settlement of their contributions for the settlement of such arrears by instalments, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the three immediately preceding years to present candidates for the awarding of research scholarships and to access the UNIDROIT Library until such time as they have regularised their situation;
2. subject to any agreement referred to in clause 1, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the four immediately preceding years to receive UNIDROIT documentation until such time as they have regularised their situation;
3. subject to any agreement referred to in clause 1, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the five immediately preceding years to receive invitations to participate in sessions of the General Assembly and committees of governmental experts convened by, and diplomatic Conferences convened under the auspices of UNIDROIT until such time as they have regularised their situation.