



GOVERNING COUNCIL
88th session
Rome, 20-23 April 2009

UNIDROIT 2009
C.D. (88) Misc. 3 Corr.
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CONCLUSIONS

Item 1 on the agenda: Adoption of the agenda (C.D. (88) 1 rev.)

The draft agenda was adopted as proposed.

Item 2 on the agenda: Annual Report 2008 by the Secretary-General (C.D. (88) 2)

The Governing Council took note, with great appreciation, of the exhaustive overview provided by the Secretary-General in this Annual Report.

Item 3 on the agenda: Report on the Uniform Law Foundation

The Council took note with appreciation of the report on the Uniform Law Foundation and expressed its recognition and gratitude to the Uniform Law Foundation, and in particular to Sir Roy Goode, for their generous contributions and continued efforts to support the Institute's work.

Item 4 on the agenda: Appointments (C.D. (88) 1 rev.)

(a) First and Second Vice-Presidents of the Governing Council

The Council renewed Professor Arthur Hartkamp's appointment as First Vice-President of the Governing Council and appointed Mr Biswanath Sen Second Vice-President.

(b) Members ad honorem of the Governing Council

The Council appointed the following former members as members *ad honorem* of the Governing Council: Mr Martin Adensamer, Mr Tuğrul Arat, Mr Antonio Boggiano, Mr Gerard Hogan, Mr Nabil Elaraby, Mr Kiyoshi Hosokawa, Mr Anthony Inglese, Mr Alexander Komarov, Mr Bruno Sturlèse, Mme Anne-Marie Trahan, Mr Evelio Verdera y Tuells, Mr Pierre Widmer, Mr Zhang Yuqing.

(c) Members of the Permanent Committee

The Governing Council re-appointed Professor Arthur Hartkamp as a member of the Permanent Committee and appointed the following new members: Professor Jorge Sánchez Cordero; Professor Hans-Georg Bollweg; Mr Ian Govey and Ms Rachel Sandby Thomas.

(d) Members of the Scholarships Subcommittee

The Governing Council appointed the following members: Professor Bouza Vidal, Professor Jametti Greiner, Professor Lyou, Professor Operti Badán and Professor Mo.

Item 5 on the agenda: International Interests in Mobile Equipment***(a) Preliminary draft Protocol on Matters specific to Space Assets (C.D. (88) 3(b))***

The Governing Council took note with satisfaction that work on this project was well back on track, and authorised the Secretariat, subject to the success of the meetings of the UNIDROIT Steering Committee and of its Sub-committee on public service in May 2009, and in consultation with the Chairman of the Committee of governmental experts and the Steering Committee, to reconvene the Committee of governmental experts in late 2009.

(b) Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (C.D. (88) 3(a))

The Governing Council took note of the progress made in implementing the Depositary functions under the Convention.

(c) Preparation of a Protocol on Matters specific to agricultural, mining and construction equipment (C.D. (88) 3 (c))

The Governing Council took note of the results of the consultations on the draft tentative text for such a Protocol and mandated the Secretariat to continue sounding out Governments and private actors and to seek ways of narrowing down the scope of the proposed instrument, and to lay the results before the Governing Council at its 89th session in 2010.

Item 6 on the agenda: Draft Convention on Substantive Rules regarding Intermediated Securities (C.D. (88) 4)

The Governing Council took note with satisfaction of the steady progress made in the run-up to the second session of the diplomatic Conference to adopt the Convention in October this year; it recommended that, resources permitting, the Acts and Proceedings of the Conference should be made available in electronic form; and expressed the view that, subject to the availability of resources, the preparation of a Guide to Declarations made in respect of the future Convention was desirable.

Item 7 on the agenda: Principles of International Commercial Contracts (C.D. (88) 5)

The Governing Council expressed its gratitude to Professor Bonell for his invaluable contribution to the ongoing work on and the promotion of the UNIDROIT Principles and took note with satisfaction that the new chapters of the Principles were set to be finalised by the end of next year.

Item 8 on the agenda: Model Law on Leasing (C.D. (88) 6)

The Governing Council took note with satisfaction of the procedure put in place for the preparation of the Official Commentary and for the preparation of unofficial Arabic, Chinese, Russian and Spanish versions of the Model Law; it took the view that it was best to hold off from organising promotional seminars for the time being; and passed a Resolution recognising the extraordinary contribution to the timely completion of the Model Law made by UNIDROIT correspondents and by Mr R.M. DeKoven in particular.

Item 9 on the agenda: Triennial Work Programme of the Organisation (2009-2011) (C.D. (88) 7)

(a) Proposal for a Convention on the Netting of Financial Instruments (C.D. (88) 7 Add. 1)

The Governing Council agreed that a great many questions remained as to the potential scope and form of such an instrument and that a realistic assessment would need to be made of the human and financial resources that would be required. It agreed to maintain this topic for inclusion in the UNIDROIT Work Programme but mandated the Secretariat to consult with member States' governments to ascertain the level of potential interest and to gauge the volume of work and resources required in this area and to include the conclusions of those consultations in the feasibility study to be prepared for next year's session.

(b) Study for an International Legislative Project on (Contractual) Counterparty Classification (C.D. (88) 7 Add. 2)

The Council agreed on the importance of the topic, in view of the legal uncertainty experienced by market participants as a result of diverging counterparty classification schemes. However, the Council was concerned about the regulatory implications of the proposed project to the extent that issuers, financial market participants and financial intermediaries would have varying degrees of obligations in respect of disclosure of information, notices and filing of documents depending on whether a counterparty would be classified as professional or non-professional investor. The Council was mindful of the political sensitivity of consumer protection and similar rules that had informed the development of regulatory frameworks for financial markets in several jurisdiction and was not persuaded of the feasibility of developing widely acceptable uniform definitions.

The Council therefore decided that it would not be opportune to include this project as such in the Institute's Work Programme at this time. Nevertheless, the Council agreed that the matter of counterparty classification could be usefully addressed in a project of a different nature, such as a possible legislative guide that UNIDROIT might prepare with a view to enhancing trading in securities in emerging markets.

(c) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (88) 7 Add. 3)

The Governing Council decided to recommend to the General Assembly that work on such a Legislative Guide should be included in the Institute's Work Programme work and mandated the Secretariat to start a feasibility study for this project for submission to the Governing Council at next year's session.

(d) Possible Future Work on Civil Liability for Satellite-based Services (C.D. (88) 7 Add. 4)

The Governing Council mandated the Secretariat to prepare in a detailed feasibility study focusing in particular in gaps in liability resulting from malfunction of satellite-based navigation systems under existing conventions on carriage of goods and passengers by air, rail, road and sea, as well as conventions governing liability for environmental damage and third party liability by those modes of transport, including related insurance and reinsurance arrangements. The Secretariat was asked to submit its study to the ad hoc committee for review prior to finalising the study for consideration by the Council at its 89th session, in 2010.

(e) Proposal for a Model Law on the Protection of Cultural Property (C.D. (88) 7 Add. 5)

The Governing Council expressed its gratitude to UNESCO for its proposal and - subject to the decision that will be taken by the UNESCO Member States at the 15th session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in Paris next May on the basis of a detailed proposal to that Committee - agreed in principle to collaborate with UNESCO - in a manner the details of which still need to be

decided – in preparing an instrument to facilitate both the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention and their ratification by as many States as possible.

(f) Possible Future Work in the Area of Private Law and Development (C.D. (88) 7 Add. 6)

The Governing Council recalled the repeated appeals that had been made in recent years that UNIDROIT should give adequate consideration to the needs of developing countries when formulating recommendations for the work programme of UNIDROIT to the General Assembly. The Council agreed that the broad mandate of UNIDROIT in the area of private law offered a wide range of opportunities for the Institute to contribute to the achievement of development goals agreed upon by the international community. Opening a line of work specifically devoted to the interplay between private law and economic and social development, in particular in the area of agricultural production and regulation, but also in the area of legal aspects of social businesses, might also permit to better explore synergies with other inter-governmental organisations and to develop joint projects in cooperation with selected organisations.

The Council requested the Secretariat to start feasibility studies, in consultation with other international organisations, identifying possible areas of work, in particular as regards legal aspects of social business and private law aspects of agricultural production and regulation, for consideration by the Governing Council at next year's session.

Item 10 on the agenda: Preparation of the draft budget for the 2010 financial year and other institutional, financial and personnel matters (C.D. (88) 8)

The Governing Council approved the draft budget for 2010, and mandated the Permanent Committee and the Secretary-General to look at ways of streamlining the Institute's staffing structure, also in light of the need to constitute a reliable budget reserve to face unforeseen expenditures required to ensure progress of the work programme, and submit proposals thereto in time for discussion at the Governing Council's next session in 2010.

Item 11 on the agenda: Strategic Plan (C.D. (88) 9)

The Governing Council took note, with great appreciation, of the report on progress in respect of the Strategic Objectives set out in the Strategic Plan and agreed to return to a consideration of the possible need to re-assess some of these objectives at its 89th session in 2010, in the light of a draft revised Strategic Plan, which the Secretary-General was requested to prepare. The Council encouraged its members to assist the Secretary-General in that process.

Item 12 on the agenda: Implementation and promotion of UNIDROIT instruments other than Cape Town instruments (C.D. (88) 10)

The Governing Council took note of calls for a more pro-active promotion strategy and of the need to allocate the necessary resources particularly for the promotion of instruments already adopted.

Item 13 on the agenda: Legal co-operation programme (C.D. (88) 11)

The Governing Council took note of the information supplied by the Secretariat and supported the action taken by the Secretariat to secure funding to the Research Scholarships Programme. The Council expressed its gratitude to the donor Governments, to the United Kingdom Foundation and to the American Foundation for International Uniform Law for their support, and to the Secretary-General for his personal contribution which funded one research grant. The members of the Council moreover decided to make a collective contribution with a view to funding a two -months grant.

Item 14 on the agenda: Correspondents (C.D. (88) 12)

The Governing Council took note of the existence of the network of correspondents and decided to give thought, in particular, to the modalities for renewal as well as the content of their mandates and to ways of correcting the current imbalance in the number of correspondents from member as opposed to non-member States; the Council also agreed to the Secretariat's proposal to appoint Mr Brian Hauck as correspondent of the Institute in recognition of his outstanding contribution to the preparation of the Model Law on Leasing.

Item 15 on the agenda: Library (C.D. (88) 13)

The Governing Council took note, with satisfaction, of the report on the situation of the Library.

Item 16 on the agenda: Uniform Law Review/ Revue de droit uniforme and other publications (C.D. (88) 14)

The Governing Council took note, with satisfaction, of the progress report.

Item 17 on the agenda: The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (88) 15)

The Governing Council took note, with satisfaction, of developments in respect of the UNIDROIT website and the Depository Libraries for UNIDROIT documentation.

Item 18 on the agenda: The Uniform Law Data Base (C.D. (88) 16)

The Governing Council took note of the report on the state of play and expressed its appreciation to the Secretariat for the efforts taken since the Council's 87th session to review the focus of the database, both in terms of content and search capabilities, in view of its target users, and to substantially increase the amount of information contained in the database, in particular case law. The Council agreed that access to the database should continue to be provided free of charge and agreed to discuss the matter in more detail at its next session.

Item 19 on the agenda: Date and venue of the 89th session of the Governing Council

The Council agreed that its 89th session would be held from 10 to 12 May 2010 in Rome.

Item 20 on the agenda: Any other business

The Council agreed, upon a proposal by the President, to appoint the former Secretary-General, Professor Herbert Kronke, as an honorary member of the Governing Council.

With respect to the project of a "Centre for Transnational Financial Markets Law" the Council was reminded that, at its 87th session, in 2008, it had agreed that a Memorandum of Understanding providing for details regarding the organisation of the Centre and its tasks shall be drawn up and laid before the Governing Council, for approval. The Council took note of the status of the negotiation of the Memorandum of Understanding. The Council requested the Secretary-General to continue those negotiations with a view to further clarifying matters such as the sources of financing for the Centre and its legal form.

Closing discussion: UNIDROIT working methods and longer-term work programme and strategy

Closing of the session