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**Item No. 6 on the Agenda: Adoption of the Organisation's Work Programme
for the 2009-2011 triennium**

(memorandum prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Consideration of the Work Programme for the 2009/2011 triennium as drawn up by the Governing Council</i>
<i>Action to be taken</i>	<i>Adoption by the General Assembly</i>
<i>Related documents</i>	<i>A.G. (63) 3; C.D. (87) 12</i>

WORK PROGRAMME FOR THE TRIENNIUM 2009/2011

*as drawn up by the Governing Council at its 87th session
(Rome, 21/23 April 2008)*

I. Introduction

1. In accordance with Article 5 (3) of the UNIDROIT Statute, it is incumbent upon the General Assembly at its 63rd session to approve the Work Programme for the 2009-2011 triennium.

2. In determining the criteria for future UNIDROIT Work Programmes the Council and the General Assembly established the following guidelines (for details, see UNIDROIT 2005 C.D. (84) 19; A.G. (59)4):

(a) *clear evidence of potential benefits*, to be assessed against Governments', relevant international Organisations' and the concerned industry's *request that UNIDROIT undertake work*;

(b) *persuasive arguments that UNIDROIT is better placed* than other Organisations to carry out work on a specific project;

(c) *no risk of duplication or harmful overlap* with work underway in other Organisations as well as safeguards for proper co-ordination among Organisations;

- (d) ensure that, at any point in time, at least one of the items featuring on the programme be clearly aimed at the needs of developing countries;
- (e) realistic and predictable *timelines* for completion;
- (f) *adequate funding* under regular budget or by earmarked extra-statutory or private-sector contributions.

II. The Governing Council's recommendations

3. At its 87th session, the Governing Council examined the triennial work programme of the Institute on the basis of the Secretariat's inquiry with Governments, international Organisations and industry as well as with the Institute's correspondents.

4. Member Governments had been informed about the status of all items on the current and proposals for the future triennial Work Programme by Note Verbale (refce: 280/WP) dated 1 February 2008. 9 Governments replied by 14 April 2008: Australia, Finland, Germany, Italy, Latvia, Luxembourg, Spain (provisional and subject to further consultations), United Kingdom, United States of America.

5. Relevant international Organisations had been informed about the status of all items on the current and proposals for the future triennial Work Programme by letter dated 6 February 2008. The following intergovernmental Organisations replied by 14 April 2008: Committee of European Securities Regulators (CESR), European Central Bank (ECB), European Commission, Hague Conference on Private International Law, UNCITRAL. Furthermore, the following nongovernmental Organisations replied: International Swaps and Derivatives Association (ISDA), *Académie Internationale de Droit Comparé*/International Academy of Comparative Law, Max Planck Institute for Comparative and Private International Law.

6. Seven of the Institute's correspondents submitted comments: Mr Cuming (Canada), Mr Boudahrain (Morocco), Ms Fresnedo (Uruguay), Mr Kozuka (Japan), Mr Özsunay (Turkey), Mr Morán Bovio (Spain), Mr Zumbo (Australia).

7. Four out of five of the Members of the Advisory Board on projects regarding transactions on transnational capital markets submitted comments: Mr de Vauplane (France), Mr Kanda (Japan), Mr Hopt (Germany), Mr Wymeersch (Belgium).

8. Following an in-depth discussion, the Governing Council made the following recommendations to the General Assembly in respect of the Work Programme for the triennium 2009-2011 (see UNIDROIT 2008 – C.D. (87) 23, para. 118):

(a) With respect to legislative activities, priority should be accorded to (i) finalisation of the additional chapters of the UNIDROIT Principles of International Commercial Contracts currently under preparation; (ii) finalisation of the Space Protocol to the Cape Town Convention; (iii) work on an instrument on netting in financial services, a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets and, resources permitting and possibly included in that guide, rules facilitating convergence of national investor classification systems.

(b) As regards future work on an additional protocol to the Cape Town Convention (on agricultural and, possibly, other equipment), definite decisions should be taken based on the assessment of further research and tentative drafting to be carried out by the Secretariat.

(c) As regards work on an instrument on civil liability for malfunctions in satellite-based services, definite decisions will be taken on the basis of further consultations carried out by an *ad hoc* committee set up by the Council.

(d) With respect to non legislative activities, the Council recommended that, apart from the Library and its priority status, high priority should be accorded to the research scholarship programme, the Uniform Law Review, and the UNILAW Database.

9. The Governing Council concluded its recommendations with an invitation to the General Assembly to provide for some margin of discretion so as to permit the incoming Secretary-General to personally assess the situation in light of available resources and to sharpen the Work Programme's profile in accordance with the Strategic Plan.

III. Additional factors submitted to consideration of the General Assembly

10. It should be noted that, when formulating the above recommendations, the Governing Council expected that the draft Convention on Substantive Rules Regarding Intermediated Securities (hereafter "the draft Convention on intermediated securities") would be adopted at the diplomatic conference which was to be held, at the invitation of the Swiss Government, in September 2008. The Governing Council assumed therefore that the resources devoted by the Secretariat to that project, including expert advice obtained from outside sources, would soon become available for other projects in the area of financial markets law (see above, para 8 (a), subparagraph (iii)).

11. The Secretariat wishes to point out that, while the diplomatic conference (Geneva, 1-12 September 2008) made considerable and very significant progress on the draft Convention on intermediated securities, the work was not concluded, largely because of the complexity of the topic. A second session of the diplomatic conference will, therefore, take place on the second half of the year 2009 to finalise this project. The Secretariat further wishes to point out that the diplomatic conference also requested that an official commentary to the convention be drafted with the assistance of the UNIDROIT Secretariat and circulated for Governments for comments ahead of the second session of the Diplomatic Conference.

12. The Secretariat suggests therefore that the General Assembly may wish to assign the highest priority to the following topics:

(i) the work entailed by the finalisation of the draft Convention on intermediated securities;

(ii) the finalisation of the additional chapters of the UNIDROIT Principles of International Commercial Contracts currently under preparation and

(iii) finalisation of the Space Protocol to the Cape Town Convention.

13. The Secretariat further suggests that the General Assembly, while endorsing the remaining recommendations made by the Governing Council at its 87th session (see para. 8 above), may wish to reconsider the triennial work programme at its 64th session in 2009, in the light of any recommendations to that effect that the incoming Governing Council and the Secretary-General may then submit.