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Item No. 12 on the Agenda : Legal Co-operation Programme

(memorandum prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Information on</i> • <i>the Research Scholarships Programme</i> • <i>co-operation with OHADA with a view to the preparation of a uniform act on contracts</i>
<i>Action to be taken</i>	<i>None</i>
<i>Related documents</i>	<i>Study LXV - Scholarships Impl. 16, Etude LXV/L - Doc. 2</i>

1. The Legal Co-operation Programme covers any action taken by the Secretariat aimed in particular at promoting UNIDROIT activities and uniform law in developing countries and countries in economic transition. The Programme is two-pronged: it comprises, on the one hand, the Research Scholarships Programme for lawyers from the aforementioned countries and, on the other hand, activities surrounding the implementation of its legislative work, focusing in particular on the dissemination of information about UNIDROIT'S work in member and non member States (by means of seminars, the promotion of institutional and personal contacts, UNIDROIT publications and the Internet, etc.), with a view to enabling the interested legal circles in those countries to take a more active part in the work of the Institute.

I. – THE RESEARCH SCHOLARSHIPS PROGRAMME

(a) Objectives – Resources – Implementation 2004-2005

2. A detailed overview of the objectives and resources of this Programme was reproduced in Document G.C. (83) 14 submitted to the 83rd session of the Governing Council (19-21 April 2004). Salient features of that document may be found in the annual implementation report for 2004: Study LXV – Scholarships: Impl. 16.

3. At this juncture, we need only stress once again the importance of this Programme (which, it may be recalled, is a prime user of the documentary and technical resources of the UNIDROIT Library) and the key contribution it makes to the harmonisation and modernisation process, in particular where the implementation of uniform law instruments, training and dissemination are

concerned. There is conclusive evidence not only that its beneficiaries derive great professional benefit from their research in Rome, but also that the advantages to UNIDROIT itself are legion: most ex-scholars keep in touch with the Institute and are often key go-betweens in promoting institutional contacts with member and non member Governments and with other international Organisations, as well as providing assistance in promoting and disseminating UNIDROIT's work.

(b) Development

4. Identified as one of the priority outreach resources listed in the Secretary-General's *Strategic Plan - Horizon 2016* (28 November 2003), the Programme clearly dovetails with the full range of the Institute's other activities. The Secretariat at all times seeks to make the most of the resources at its disposal and to continue developing the Programme. An ongoing effort is made to secure funding from new donors, also in light of the support extended to OHADA in preparing a draft uniform Act on contracts.

5. As to the selection of beneficiaries for 2005-2006, particular attention will be paid to the Programme's role as a promotional tool in institutional terms. The Secretariat will accordingly propose that the Scholarships Sub-Committee of the Governing Council use a more clearly political criterion in granting this year's scholarships, with preference being given to applicants proposed by those of the member State Governments whose greater involvement in the life of the Organisation would be opportune, or by the Governments of non member States in an attempt to kindle their interest in UNIDROIT and its work.

II. – CO-OPERATION WITH OHADA IN VIEW OF THE PREPARATION OF A UNIFORM ACT ON CONTRACTS

6. In the Spring of 2002, further to a request by the Council of Ministers of the Organisation for the Harmonisation of Business Law in Africa (OHADA)¹ (formulated at its meeting in Brazzaville in February 2002) for UNIDROIT to provide its expertise in preparing a draft law in the light of the UNIDROIT Principles of International Commercial Contracts. UNIDROIT obtained financial sponsorship from the Swiss Government (Development and Co-operation Agency), and Professor Marcel FONTAINE, the Belgian member of the UNIDROIT Principles Working Group, undertook to prepare, on behalf of UNIDROIT, a draft OHADA Uniform Act on contract law.

7. Work on the operational phase of the project started in October 2003, on the basis of the objectives and in accordance with the procedures agreed by the OHADA and UNIDROIT Secretariats. In September 2004, Professor Fontaine submitted a preliminary draft (Study LXV/L – Doc. 1) accompanied by an Explanatory Note (Study LXV/L – Doc. 2) to the UNIDROIT Secretariat, which transmitted both documents – together with the integral version of the UNIDROIT Principles 2004 – to the Permanent Secretariat of OHADA. In accordance with the institutional procedures set in place by that Organisation, these documents will now be sent to member States for comments, upon which they will be discussed by the national committees in plenary session, amended if necessary, vetted by the Joint Court of Justice and Arbitration and, ultimately, adopted by the OHADA Council of Ministers.

¹ OHADA, established in 1992, has 16 member States (Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal and Togo), while membership negotiations are underway with the Democratic Republic of Congo.

8. The UNIDROIT Secretariat is actively involved in the implementation of this high-impact project – possibly the most ambitious form of application ever of a UNIDROIT instrument. Close attention is being paid in particular to ensuring the cohesion of the scheme with other projects, especially with work on a draft uniform act on consumer contracts – which is already before the OHADA national committees – and on a draft uniform act on evidence of legal acts, which has been included in the harmonisation programme adopted by the OHADA Council of Ministers. In addition, official and informal contacts with numerous bodies – non-governmental and intergovernmental organisations in Africa and in the traditional sponsor countries – suggest that interest in unification transcends the strictly francophone part of Africa, and the OHADA/UNIDROIT harmonisation initiative in the field of contract law will no doubt be perceived as particularly opportune. It should be noted that *Uniform Law Review* published an article by Professor Fontaine (*Unif. L. Rev. / Rev. dr. unif.* 2004-2, p. 253 (French version) and *Unif. L. Rev. / Rev. dr. unif.* 2004-3, p. 573 (English version)) together with a commentary by Professor Kofi Date-Bah (“Reflections on the OHADA Project from the Perspective of a Common Lawyer from West Africa”).

9. The co-operation project with OHADA has prompted a great many exchanges and contacts with African lawyers and institutions within OHADA or otherwise linked to the Organisation. These good relations, and especially the availability of UNIDROIT skills in response to African needs, may in time lead to this type of co-operation as instituted in the field of contract law being extended to other areas of legislative drafting. In addition, the UNIDROIT Secretariat is currently seeking financial sponsorship for other forms of co-operation, particularly in the field of training, to complement these legislative activities.

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