



GOVERNING COUNCIL
85th session
Rome, 8-10 May 2006

UNIDROIT 2006
C.D. (85) 6
Original: English
March 2006

Item No. 6 on the agenda: Principles of International Commercial Contracts

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Preparation of a new edition of the UNIDROIT Principles of International Commercial Contracts with five additional topics</i>
<i>Action to be taken</i>	<i>See paragraph 5.</i>
<i>Related document</i>	<i>UNIDROIT 2006 – Study L – Doc. 99</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority			
	High	medium	low

I. Strategic Plan

UNIDROIT'S unique position to prepare a non-binding instrument of high technical quality (see Strategic Objective No.1) and establish a balanced set of rules relating to international commercial contracts in general for use throughout the world irrespective of the legal traditions and the economic and political conditions of the countries in which they are to be applied (see Strategic Objective No.7).

II. Work Programme 2006-2008

Yes.

III. Current assessment

Considered one of the Institute's most promising projects.

On time	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	yes	slightly delayed	no
	Timeframe determined by Working Group/Governing Council		<input type="checkbox"/>
	Timeframe to be determined at this session		<input checked="" type="checkbox"/>
Problems to be Overcome	None		
Staffing implications	One consultant and one officer (50%).		
Budget implications	About €40,000 for a one week session per year, plus €15,000 for one inter-sessional meeting of the Drafting Group per year in the final stages of the project		
Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	Confirmation of the new topics to be dealt with in the new edition of the UNIDROIT Principles of International Commercial Contracts. Determination of timeframe. Action to be taken with respect to the proposal for a general declaration by the Council concerning "the ethics of contracts at transnational level".		

BACKGROUND

1. At its 84th session (2005) the Governing Council instructed the Secretariat to set up a new Working Group with the task of preparing a third edition of the UNIDROIT Principles of International Commercial Contracts. With respect to the new topics to be dealt with the Council expressed a clear preference for the following:

- (a) unwinding of failed contracts;
- (b) illegality;
- (c) plurality of debtors and of creditors;
- (d) conditions;
- (e) termination of long-term contracts for cause.

2. The members of the new Working Group are the same as those of the former, except for a few who for contingent reasons had to be replaced. On account of the positive experience with respect to the participation of observers also this time a number of interested international organisations and arbitration centres were invited to appoint experts to represent them in the Working Group.¹

¹ The following organisations accepted the invitation: American Arbitration Association, Cairo Regional Center for International Commercial Arbitration, Center for American and International Law - Institute for Transnational Arbitration, Chamber of National and International Arbitration of Milan, Deutsches Institut für Schiedsgerichtswesen, Emirates International Law Center, ICC International Court of Arbitration, London Court of International Arbitration, National Law Center for Inter-American Free Trade, New York City Bar, Regional Centre for Arbitration Kuala Lumpur, Study Group for a European Civil Code, Swiss Arbitration Association, United Nations Commission on International Trade Law (UNCITRAL).

3. Following the Council's discussion on the new topics to be dealt with in the new edition of the UNIDROIT Principles, the Secretariat prepared a position paper examining in more detail each of the topics referring, wherever appropriate, to the way in which they have been addressed in other similar international instruments (see UNIDROIT 2006 – Study 50 – Doc. 99).

4. A suggestion was made by Council Member Justice A.-M. Trahan that the Council adopt a general declaration on "the ethics of contracts at transnational level" (see APPENDIX) .

ACTION TO BE TAKEN

5. *The Governing Council is invited to confirm the new topics to be dealt with in the new edition of the UNIDROIT Principles of International Commercial Contracts, to determine a timeframe in consultation with the Working Group, and to decide the action to be taken with respect to a proposal for a general declaration by the Council concerning "the ethics of contracts at transnational level".*

APPENDIX

“Ethics of contracts at transnational level”

1. On the occasion of a meeting of members of the Bench, Bar and Chair held in November 2005 in Montreal at the invitation of Council member Justice Anne-Marie Trahan to discuss new topics for inclusion in a future edition of the UNIDROIT Principles of International Commercial Contracts, the question was raised as to the advisability of addressing the issue of “the ethics of contracts at transnational level” (“l’éthique du contrat au niveau transnational dans le contexte du respect des lois d’ordre public et de la promotion d’une éthique transnationale de façon à ce que les cocontractants tiennent compte de leurs responsabilités morales”). In this context reference was made among others to Article 15:101 of the Principles of European Contract Law which states that “[a] contract is of no effect to the extent that it is contrary to principles recognised as fundamental in the laws of the member States of the European Union”. While there was wide consensus with respect to the idea of dealing with this issue, it was however considered preferable not to include in the UNIDROIT Principles a black letter rule along the lines of Article 15:101 which after all was clearly restricted to the member States of the European Union. It was suggested that a general statement on the ethical aspect of international commercial contracts, in particular on the duty of the parties to act in good faith and in a spirit of solidarity, be placed either in the Preamble or even better in the Introduction to the UNIDROIT Principles. It was also felt that, given the importance of such a statement, it would be appropriate for it to be formulated not by the Working Group but by the Council itself.

2. The Council may wish to consider this proposal and, if it decides to have in the UNIDROIT Principles a general statement on the ethics of contracts at transnational level, to appoint from among its members one or more Rapporteurs with the task of preparing a draft.