



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

UNIDROIT 2006
C.D. (85) 11 a)
Original: French
May 2006

**Item No. 11 a) on the agenda: Status of implementation and promotion of
UNIDROIT instruments**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Status of implementation of UNIDROIT Conventions and promotion of the instruments</i>
<i>Action to be taken</i>	<i>• Information concerning Governments' intentions; • Assessment of the priority to be given to the promotion of UNIDROIT instruments with a view to determining the financial resources to be allocated</i>
<i>Related documents</i>	<i>C.D. (85)2 (Report on the Activity of the Institute in 2005) and various other documents for this session; UNIDROIT website</i>

DISCUSSION OF LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT



I. Strategic Plan

Yes, cf. *Strategic Objective N°11*: the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the Institute's auspices.

II. Work Programme 2006-2008

Yes

III. Current assessment

Importance of promoting instruments regularly emphasized by the different UNIDROIT organs (Governing Council and General Assembly), but specific problems in respect of instruments already adopted.

Problems to be overcome	Lack of financial resources; at times, work overload of officers
Staff implications	Depending on the instrument "already adopted", the officer "in charge" (time allocated depending on requests for assistance and time available); officer in charge of the depositary functions
Budget implications	<i>Chapter 10 – Promotion of UNIDROIT instruments: only 5,000 euros (covers all instruments, including those under preparation)</i> <i>Chapter 11 – Programme of legal co-operation; Chapter 2 -- Salaries</i>
Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	a) Principally, the Secretariat would recommend that the Council support a 5% increase for each of the financial years 2008-2012 to be devoted to the promotion of instruments. b) If the financial organs were to refuse to accede to this proposal, the Secretariat would request the Council to authorise that additional means be found from other Chapters or that the priority status be changed.

I. IMPLEMENTATION OF INSTRUMENTS ADOPTED UNDER THE AUSPICES OF UNIDROIT

◆ *Cape Town Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment (2001)*

The most significant element in 2005 was the fulfilment of the conditions for the entry into force of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*.

As to the state of implementation of these two instruments see, in particular, document C.D.(85) 11 b) – Exercising of the Institute's depositary functions under the Cape Town Convention and the Aircraft Protocol. It should be noted that a further State has acceded to both instruments since this document was drafted and sent to the members of the Governing Council: the Republic of Angola, on 1 May 2006 (entry into force: 1 August 2006). Two States have in the meantime completed their internal accession procedures. Further information will be given verbally during the Governing Council session.

◆ *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)*

By 30 April 2005, twenty-seven Contracting States had acceded to the UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects. The position of one State, the Federal Republic of Nigeria, remains to be clarified with the Italian Government, Depositary of the Convention.

Ratification or accession procedures have been completed (in Greece, for example, where the formal deposit of the instrument is imminent) or are underway in other countries.

◆ **Other UNIDROIT Conventions**

- *UNIDROIT Convention on International Leasing (1988)*: The Governments of Kazakhstan and Ukraine have announced that they have amended their domestic legislation with a view to speedy accession to the 1988 Convention.

- *Model Franchise Disclosure Law (2002)*: News has reached the Secretariat of the first certain instance in which the Model Franchise Disclosure Law was consulted by the legislature of a country. After an uncertain start - the appeal court judge entrusted by the Swedish Government with the investigation into the need for legislation on franchising using the Model Law as a source of inspiration had excluded recourse to that model - the Swedish Government on 26 January 2006 transmitted a proposal for legislation on franchising to the Law Council (*Lagrådet*). This proposal, entitled "*Förstärkt skydd för franchisetagare*" ("Increased protection for franchisees") draws heavily on the Model Law, partly in the text of the proposal, but more extensively in the accompanying comments. Examination by the Law Council, a consultative organ made up of Justices and former Justices of the Supreme Court and the Supreme Administrative Court which examines proposals from the point of view of their constitutionality and conformity with the law, precedes transmission of the proposal to Parliament for adoption. Moreover, the Spanish version of the Model Law is almost ready and will be posted on our Website as soon as possible.

As to the state of implementation (on 31 December 2005) of all *the Conventions prepared by UNIDROIT* and approved at Diplomatic Conferences convoked by UNIDROIT Member States, see the Annex to document C.D. (85) 2 (Annual Report 2005 – situation on 31 December 2005) and/or the UNIDROIT website (<http://www.unidroit.org/english/conventions/c-main.htm>) (which is regularly updated).

The Secretariat would be most appreciative if the members of the Governing Council were to get in touch with the authorities in their respective countries with a view to obtaining more information, where appropriate, about their Governments' intentions with regard to UNIDROIT Conventions.

II. PROMOTION OF UNIDROIT INSTRUMENTS

A distinction should of course be made between instruments under preparation and instruments that have already been adopted at a Diplomatic Conference or otherwise, depending on the type of instrument involved. However, it should be noted that *Chapter 10 – Promotion of UNIDROIT Instruments* does not make this distinction and that the 5,000 euros allocated for 2006 and 2007 (no increase means a cut) are not intended to cover adopted instruments alone.

A. *Instruments under preparation*

As to instruments under preparation, these are of course promoted throughout the preparatory stage when the various committees meet, during national or regional seminars, by means of articles published in *Uniform Law Review/Revue de droit uniforme*, by the scholars hosted by the Institute and through the UNIDROIT Internet website. There is no need here to recall the importance of these various means in promoting the Institute's work; suffice it to refer to the respective Council documents dealing with each of the topics on the Work Programme for further information and, in particular, to the document on the *Legal Co-operation Programme* for developing countries and countries in economic transition (G.C.(85)12).

Most of these activities are financed by the Institute's ordinary budget. As a rule, however, this does not apply to national seminars, which are usually organised by the interested States.

B. Instruments already adopted under the auspices of 'UNIDROIT

The most pressing problems facing the Institute relate to instruments already adopted, owing to lack of financial and staff resources, however much the different UNIDROIT organs may reiterate the importance of promoting our instruments. We may well ask why we bother to elaborate new Conventions if we do not continue, after they are adopted, to promote them so as to ensure their widest possible application.

UNIDROIT'S *non-political status* is an asset when it comes to elaborating its instruments – the representatives who participate in the working sessions are experts in the matter under discussion -, but it can also be a *handicap* when it comes to Parliaments ratifying or acceding to the resulting Conventions. What is more, UNIDROIT instruments are open to non Member States that have not acquired the know-how that comes from participating in the negotiating process and therefore need to strengthen their capacities in order to incorporate, implement and properly apply these instruments. This makes further calls on the Secretariat's time which, of course, do also something apply to non Member States.

It is this work which is especially vulnerable to the budgetary restrictions, affecting some instruments more than others; only some of the more recent instruments will be examined here.

◆ UNIDROIT Principles on International Commercial Contracts (2004)

This is one of the Institute's key instruments and the staff member responsible has devoted most of his time promoting these Principles (participation in a large variety of events, publications, articles, UNILEX, etc.) since they were first approved by the Governing Council in 2004 (see in particular the Report on the Activity 2005, pp. 9 and 10). The Secretariat has been able to participate in such conferences thanks to the generosity of their organisers.

It is worth mentioning an important colloquy organised by the Swiss Institute of Comparative Law (ISDC) which is to take place in Lausanne on 8 and 9 June 2006 entitled "Colloquy on the UNIDROIT Contract Principles 2004 - Their Impact on Contractual Practice and Jurisprudence, as well as on National, Regional and Supranational Codification", under the auspices of UNIDROIT, the Swiss Bar Association and the *Association des amis et alumni ISDC*. Finally, it is worth recalling the decision taken by the Council in 2005 to prepare new Chapters (cf. C.D.(85) 6).

◆ ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)

In addition to the English and French versions of the ALI/UNIDROIT Principles, which have been published with Cambridge University Press, the black letter rules are now available in German.

The PTCP were presented by the Secretary-General and experts from member States at seminars, conferences and workshops in Germany, Indonesia, Ireland, Thailand and the United States.

◆ Cape Town Convention and Aircraft Protocol (2001)

The economic impact of these two instruments is obvious and they have aroused great interest (see, for example, the impressive sales figures for the Official Commentary by Sir Roy Goode, and the holding of a seminar on the "Cape Town System" to launch the UNIDROIT Foundation in the United Kingdom, both important money-spinners for the Institute, as well as other seminars organised in Miami and London at the initiative of the Aircraft Working Group and another scheduled to take place in New York or Washington in the autumn).

Since UNIDROIT is the Depositary for these two instruments, a full-time Research Officer has been recruited to carry out the work involved. Among other things, this Officer assists States during the phase leading up to ratification/accession (and it should be noted that a considerable number of non Member States are involved such as Angola, Senegal and the Sultanate of Oman). He has also helped to bring these instruments further into the limelight and to improve access to information by developing the Internet website dealing with the functions of the Depositary (the French version thereof is still in the making).

In addition, work on two further Protocols - the Rail Protocol and the Space Protocol - constitutes a permanent source of promotion for the Convention and the Aircraft Protocol.

◆ ***UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)***

This is the UNIDROIT Convention with the most States Party (27) to date and the instruments which has helped the Institute become known outside the commercial sphere. The Secretariat receives frequent calls to participate in national, regional or international training sessions, or more specifically, by Governments in need of technical assistance with a view to ratifying or acceding to the Convention. Some examples: events organised in Algeria (national training), Cuba, Spain, the former Yugoslav Republic of Macedonia (regional training) and France (international training). Tailored technical assistance was extended this year for example to Nigeria, Colombia and Greece, while the Albanian authorities are planning a three-day training session next June.

Owing to budget cuts, UNIDROIT has been able to promote this instrument only - with rare exceptions - thanks to external funding from international organisations such as UNESCO or the European Union's TAIEX Programme, or from the countries interested in training or assistance. It should be borne in mind, however, that organisations such as UNESCO are themselves increasingly facing budgetary restrictions and no longer refund the expenses of representatives of other international organisations. The Secretariat wishes here to express its warm gratitude to Mr Sánchez Cordero for making it possible for the Officer in charge of the 1995 Convention to take part in the UNESCO Seminar which took place in Cuba last December and which was attended by representatives of the majority of Latin American and Caribbean countries (a special half-day session was devoted specifically to the UNIDROIT Convention). Mr Sánchez Cordero also financed the participation of the Guatemalan representative who explained the advantages to countries in this continent of accession to the UNIDROIT Convention. UNIDROIT was unfortunately unable to participate in another UNESCO regional seminar held in India that was attended by 22 Asian countries - here, a mere 500 euros were all that was needed for UNIDROIT to be able to increase the visibility of its work in this field in an area of the world where most countries are not members of the Organisation.

It is highly to be regretted that UNIDROIT was unable properly to celebrate the 10th anniversary of the adoption of the Convention, there being no funds allocated in the budget (neither for 2005 nor for 2006). Again, it was UNESCO that jumped into the breach by organising a day-long event in Paris, in the presence of its Director-General, Mr Maatsura. A detailed account of this seminar and two articles based on papers given there were published in *Uniform Law Review/Revue de droit uniforme* (2005, 536 and 2006, 83, 93). The Secretariat was also forced to abandon the idea of bringing together national export legislation in respect of cultural property (the Convention requires Contracting States to communicate this to the Depositary) in a single database accessible on the UNIDROIT Internet website. It had in the end to resort to UNESCO which has the financial and human resources that the Institute has not, and which has recently placed a similar (but much more extensive) database on line. Finally, owing to the work overload of the Officer in charge, the Secretariat was unable to let States have the questionnaire asking them to assess the application

of the Convention (concrete cases and any problems arising) – the answers to which would have served as a basis for a session of the follow-up committee. Requests and proposals for training material (for example, a good practice guide) could not be taken up. Yet the time for such matters will have to be found since it is important to make information about the Convention more readily accessible.

♦ ***UNIDROIT Convention on International Leasing (1988)***

The text of the draft Model Law on Leasing largely takes its inspiration from the Ottawa Convention and, after the text has been adopted at the end of 2006, the International Finance Corporation intends to propose the implementation of the Model Law in all the countries where it operates. This is a good example of indirect promotion of the Ottawa Convention (cf. G.C. (85) 9 rev.).

*
* *

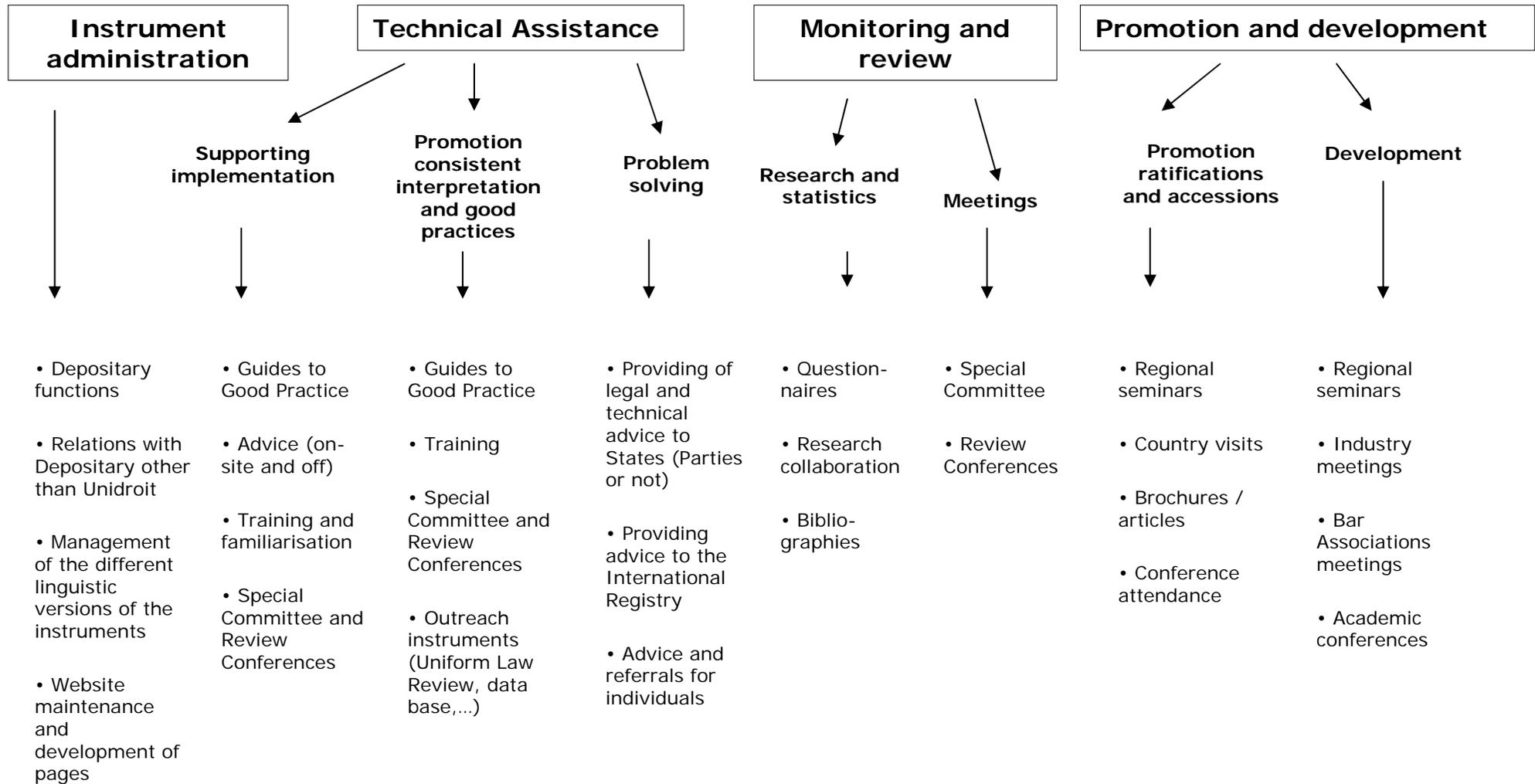
Just as, for example, the Hague Conference on Private International Law which devotes over 60% of its time and resources to the follow-up of its Conventions, so UNIDROIT ought to be in a position to develop whatever activities are vital to promotion, education and training in respect of its instruments (see the Annex to this document for details).

UNIDROIT has consistently stressed the importance of efficient co-operation with Governments and with the other international Organisations with a view to rationalising the use of resources and improving the quality of the assistance given (cf. § 8 of document G.C.(85)12), but this should not mean that it should not promote its own instruments as much as possible on its own too. Of course, promotion also implies the use of *ad hoc* means, but it should not be forgotten that fund-raising takes time (which the Secretariat currently does not have).

The Secretariat is now the Depositary of two instruments and is in favour of becoming the Depositary of all its future instruments. This obviously has repercussions for its post-Convention activities which will henceforth involve obligations. Will we be able to invest the necessary resources without neglecting other instruments?

What we need is support, not in principle, but in practice, by freeing real resources to enable us to establish a strategy and determine priorities both in terms of time and money.

Post-adoption services relating to UNIDROIT's instruments *



* The structure of this table is based on one of the Hague Conference on Private International Law, adapted to UNIDROIT's specificities.