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

(prepared by the Secretariat)

<i>Summary</i>	<i>Information on</i> • <i>the Research Scholarships Programme</i> • <i>Action in support of legislative work</i> • <i>Co-operation with OHADA in drafting a Uniform Act on contracts</i>
<i>Related Documents</i>	<i>A.G.(56)2 ; Study LXV – Scholarships Impl. 17</i>

PRINCIPAL PARAMETERS FOR DISCUSSION PROPOSED BY THE SECRETARIAT

Priority			
	high	medium	low

I. Strategic Plan

- General Objective : 'Assistance to development through law' – cf. para. 9.
- Strategic Objective 2 : elaboration of research facilities and capacity-building;
- Strategic Objective 3 : the conversion of legislative capabilities into proactively employed outreach resources (cf. para 24-31)

II. Work Programme 2006-2008

Yes

III. Current Assessment

On time			
	yes	slightly delayed	no

Objectives	To propose a dynamic Legal Co-operation Programme within the confines of the Secretariat's extremely limited financial and human resources
Staffing Implications	One research officer (whose principal task is as publications manager – cf. doc. C.D. (85) 14) One part-time secretary to deal with the logistics of the Scholarships Programme
Budgetary Implications	In 2005 : Research Scholarships Programme: UNIDROIT Budget Chap. 11 : € 15,000; Voluntary contribution by the Government of the Republic of Korea: € 8,057 (Total: € 23,057) Preparation of a draft OHADA Uniform Act on contract law: extra-budgetary grant from the Swiss Government in September 2003 (CHF 190,000 – approx. 120,000 €) Extra-budgetary funding required for future technical assistance as mentioned in paragraph 8 and 11 <i>et seq.</i>
Recommendations/ Guidance sought/	Cf. <i>infra</i> , paragraphs 15-17.

1. The special needs of developing countries and countries in economic transition when modernising their legal infrastructure in response to the challenges of trade globalisation, are one of UNIDROIT's main concerns and are a major focus of its legislative work.¹ However, specific action is required to boost the impact of that work – and this is especially true of a small organisation whose achievements are yet too little known –, with a view to providing beneficiaries with appropriate information on the existence and practical implementation of the instruments prepared by the Institute, and to give them access to expertise in the relevant subject matter.

2. As to the objectives and resources of the Legal Co-operation Programme, the Secretariat gave a detailed presentation on the occasion of the 2002 session of the General Assembly (cf. A.G. (56)2). Suffice it here to recall that the General Assembly decided in 1989 to allocate an amount equivalent to 1% of member States' contributions (other than that of Italy) to the annual budget in recognition of the Organisation's efforts to promote the legal co-operation process in developing countries and countries in economic transition, leaving scope for voluntary contributors to make supplementary grants to fund the research scholarships. The Governing Council for its part granted priority status to legal co-operation in the 1990-1992 Work Programme.

3. The *Legal Co-operation Programme* has broad potential and can take many forms. However, the Secretariat has consistently sought to focus its efforts on those activities with the highest cost/benefit ratio to make the best of the very modest, indeed marginal, resources at its disposal. The emphasis has accordingly been on • the research scholarships programme for lawyers from developing countries and countries in economic transition • support in the shape of publicity for the Institute's legislative work in member and non member countries (organisation of seminars, promotion of institutional and personal contacts, dissemination of information through its

¹ The preparatory work on all instruments under preparation refers to developing countries and countries in economic transition as privileged beneficiaries (model law on leasing ; international interests in mobile equipment ; UNIDROIT Principles, harmonised rules for emerging financial markets.

publications and via the Internet, etc.) to enable the legal community in these countries to become more closely involved with UNIDROIT's work and to take full advantage of the corresponding benefits • *ad hoc* technical support, a particularly telling example being the preparation of a draft OHADA Uniform Act on contract law. Details of these various activities are set out below.

I. – THE RESEARCH SCHOLARSHIPS PROGRAMME 1993-2006

4. Reference is also made to the document prepared for the 83rd session (2004) of the Governing Council (cf. G.C. (83) 14). As to the annual implementation report for 2005 : see Study LXV - Scholarships: Impl. 17.

a) Objectives

5. In brief:

- **150 researchers** have been hosted by UNIDROIT to date, funded in full or in part by UNIDROIT or by external donors, for stays of two months' average duration, to conduct research connected with UNIDROIT instruments – or on uniform law in general. These top-level researchers generally derive maximum benefit from the considerable resources of the UNIDROIT Library;
- the scholars' **countries of origin also benefit**, in respect of the modernisation of law, the implementation of uniform law instruments, training and information (through articles, advice to Governments, updating of university curriculae, etc.);
- **considerable spin-off for UNIDROIT**: former scholars constitute a network of experts in 50 countries who help to reinforce member States' part in the life of the Institute and to forge academic or institutional links with non member States and with other international organisations, all of which elements play a key role in promoting and propagating UNIDROIT's work.²

b) Resources

6. It is no exaggeration to say that the resources allocated to the Programme are purely symbolic.

- **Allocation of Chapter 11 of the Budget**: this stood at 0.90% of member States' contributions other than that of Italy (*i.e.* 15,000 €) in the 2006 budget, less than the 1% target set when the budget item was first created (and which would bring the total to 16,500 €). Although the budget allocation covers the Legal Co-operation Programme in general, most of the funds go towards financing the research scholarships.

² Some former UNIDROIT scholars now occupy key posts in their respective Governments and have become spokesmen for UNIDROIT within their respective departments. Several of them have been appointed UNIDROIT correspondents, and one other has become a correspondent of the Review; no few of them have participated (also as representatives of their Governments) in meetings and seminars organised by UNIDROIT; negotiations in view of the accession of new member States are now underway thanks to the efforts of former UNIDROIT scholars; - institutional links have been established with other international organisations, among which 'OHADA; - there are innumerable examples of ex-scholars translating UNIDROIT instruments and promoting them in their countries of origin, which in some cases has led to their ratification by these countries.

• **Voluntary contributions by external donors:** The Secretariat regrets to report a negative balance. Different categories of potential donors have repeatedly been approached, involving a fairly substantial overall outlay in terms of time (preparation of documents, face-to-face talks and telephone conversations, correspondence, etc.), but to no avail. Among such potential partners, member Governments with a traditionally open co-operation policy have been approached again and again, but without success. In 2006, the only external contribution to the Programme is that of the Republic of Korea (the amount is modest enough but has remained unchanged since 2001), whereas the contribution which the People's Republic of China pledged in 2003 will enable UNIDROIT to host two researchers proposed by the Chinese Government. The Secretariat is aware that States' co-operation policies are often on a more ambitious scale and frequently conducted on a bilateral basis, and that the requests made by UNIDROIT, mostly for trivial amounts, refer to low-priority items in the national budgets which are the first to be axed in the event of national budget cuts, which explains the withdrawal of contributors who supported the Programme in previous years.

II. – TECHNICAL ASSISTANCE TO AID THE IMPLEMENTATION OF UNIFORM LAW INSTRUMENTS

7. This activity is intended to help promote understanding of how UNIDROIT legislative instruments work and how they can be applied at the national level, particularly with the developing countries and countries in economic transition in mind. In this connection, it is worth noting the ongoing work to improve the UNIDROIT Internet website by pooling relevant information on each individual instrument (or on the Institute's current work) and presenting it in a standard form.

8. Moreover, the Secretariat seeks to ensure efficiency in its co-operation with Governments and other international organisations in order to rationalise the use of resources and improve the quality of its work. Seminars are excellent vehicles in this respect, among which it is worth mentioning:

– At a seminar on UNIDROIT instruments jointly organised by the Government of the Republic of Indonesia and UNIDROIT (with support from the Australian federal judiciary and the Aviation Working Group), held on 28 November 2005 in Jakarta, the Secretary-General, Justice James Allsop, and local correspondents and former UNIDROIT scholars introduced some 300 civil servants, practitioners, judges and businessmen to a number of UNIDROIT products. The seminar was the basis for the current discussions regarding Indonesia's accession to the Organisation. Moreover, the Government of Indonesia has requested the Secretariat to draw up a programme for a two-day capacity-building workshop in October 2006, possibly co-sponsored by member States with special interests in the Asia-Pacific region and in particular in Indonesia. Extra-budgetary funding will be needed for this and similar initiatives.

– At the invitation of the Ministry of Culture of the Former Yugoslav Republic of Macedonia and of UNESCO's Regional Office in Venice, the UNIDROIT Secretariat participated in a seminar on "Prevention of Illicit Traffic of Cultural Properties and other Illegal Actions" which was held in Ohrid from 15 to 18 March 2006.

– UNIDROIT, the Hague Conference and UNCITRAL are currently in the process of discussing joint seminars with the World Bank and the International Monetary Fund on secured transactions and intermediated securities. It is envisaged to publish jointly implementation-facilitating materials on UNIDROIT, UNCITRAL and Hague instruments in those and, possibly, other areas of international commerce and finance.

– UNIDROIT is a partner in the programme launched by the International Trade Center (WTO/UNCTAD) to provide information to developing countries and countries in economic transition in respect of existing international instruments, particularly those dealing with trade and investment and with the fight against illicit transactions. UNIDROIT was represented at a seminar organised in Geneva from 31 October to 3 November 2005.

III. – COOPERATION WITH OHADA TO DRAFT A UNIFORM ACT ON CONTRACTS

9. In the Spring of 2002, UNIDROIT was requested by the Council of Ministers of the Organisation for the Harmonisation of Business Law in Africa ³(OHADA) at its meeting in Brazzaville in February 2002 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, then undertook to prepare, on behalf of UNIDROIT, a draft OHADA Uniform Act on contract law.

10. After completing the preparatory work on the basis of the objectives and procedures agreed by the OHADA and UNIDROIT Secretariats, the UNIDROIT Secretariat transmitted the draft text (Study LXV/L – Doc. 1) and an Explanatory Note (Study LXV/L – Doc. 2) prepared by Professor Fontaine to the OHADA Permanent Secretariat in September 2004; an amendment (new Article 00/1) designed to ensure perfect compatibility between the spirit of that draft and that of the draft Uniform Act on consumer contracts, also under preparation, in September 2005. The OHADA Permanent Secretariat has since informed the UNIDROIT Secretariat that the institutional procedure by which the draft Uniform Act on contract law will be examined by the national committees got underway in February 2005, when the draft Act (and the amendment subsequently introduced) together with the Explanatory Note were transmitted to the OHADA national committees for their opinion.

11. OHADA is reportedly now engaged upon institutional matters and other issues that require priority attention, so that no deadline has as yet been set for the continuation of the consultation procedure, e.g. the convoking of a plenary Conference of the national committees in an OHADA member State. However, UNIDROIT cannot fine-tune the amended version of the draft Act, as it is required to do under the contract between the Swiss Cooperation and UNIDROIT to mark the conclusion of its agreement with OHADA on this project, until the next stages of the institutional procedure (opinion of the OHADA Joint Court of Justice and Arbitration followed by adoption by the OHADA Council of Ministers) have been completed.

12. The UNIDROIT Secretariat is closely monitoring the consultation process with the OHADA Permanent Secretariat, where possible contributing to the ongoing debate. For example, *Uniform Law Review* (2005, pp. 683-718) published an article by Félix ONANA ETOUNDI (Magistrate at the OHADA Joint Court of Justice and Arbitration), who was granted a UNIDROIT (partial) research scholarship with a view to preparing his opinion on the draft Act for the Court. This article, entitled “The UNIDROIT Principles and Legal Certainty of Commercial Transactions in the Preliminary Draft OHADA Uniform Act on Contract Law” – has also been posted on the UNIDROIT and OHADA Internet websites. This is just another example of how the journal’s role dovetails with the Institute’s general activities.

³ OHADA, founded 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, Togo) and the accession of the Democratic republic of the Congo is on the way.

13. Moreover, several schemes are in the pipeline to give the widest possible publicity for the project to interested legal circles. In particular, the possibility of organising a meeting in an OHADA member State on the reform of the law of obligations and the UNIDROIT Principles is being explored. In this connection, the Colloquium to be held at Lausanne on 8-9 June under the joint auspices of UNIDROIT and the Swiss Institute of Comparative Law on "The UNIDROIT Contract Principles 2004 – Their impact on contractual practice and jurisprudence, as well as on national, regional and supranational codification", could be an example to be followed. Any meeting to be held in Africa would need to draw the greatest possible number of participants, and the Secretariat will contact members of the Council in due course to seek their assistance in identifying sponsors in their own countries.

14. 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 that Organisation. These friendly relations, and especially the coming together of skills and 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 the granting of research scholarships, to complement these legislative activities.

IV. – CONCLUDING REMARKS

15. While the Legal Co-operation Programme generally enjoys wide support in principle, it attracts very limited recognition in terms of the resources to be allocated to it. The Secretariat seeks to use the available resources to best effect and neglects no opportunity to bring the Programme to the public notice, yet it cannot but record that its room for manoeuvre is severely curtailed.

16. The Secretariat is aware of the restrictions affecting the budget as a whole. Yet it is convinced of the need to maintain the budget allocation for the Legal Co-operation Programme at its previously agreed level of 1% of the contributions of member States other than Italy in order to affirm the Institute's commitment and to preserve a minimum scope of action without resorting to external support which, being voluntary, is highly unpredictable.

17. Nevertheless, the Programme must widen its scope by means of *ad hoc* support, and the Secretariat fully intends to continue seeking financial sponsorship, but given the poor results obtained to date, the outlook is not very encouraging. This trend can, however, be reversed. For example, within the family of member States, the Council and its members would need to display a strong political will to persuade the competent national authorities to make voluntary contributions. A sizeable injection of funds would enable us to fund more researchers under the Scholarships Programme, which is able to accommodate a greater number of scholars than is currently the case. Such an injection could also be used to increase our participation in the various promotional activities, in particular by organising conferences. The Workshops scheduled in Indonesia in an OHADA member State on the draft OHADA Uniform Act on contracts prepared by UNIDROIT could be good examples of such involvement.

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