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Item No. 19 on the Agenda : The UNILAW Data Base

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>The document illustrates developments in the preparation of the UNILAW data base and expected developments in the coming year</i>
<i>Action to be taken</i>	<i>Council members are requested to assist the staff working on the data base</i>
<i>Related documents</i>	<i>None</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	high	medium	low	to be determined

1. INTRODUCTION

1. The decision to set up a data base on uniform law was taken by the Governing Council of UNIDROIT in 1994 when it decided that the Institute should become a "centre of excellence", a focal point for uniform law concentrating information on how uniform law instruments are applied in practice. It should be pointed out that the philosophy of the data base has always been that the product offered by the data base should have considerable value added: the material should be analysed and classified.

2. STATE OF DEVELOPMENT

2. A summary of the state of development of the insertion of materials in the data base is to be found in Annex 1 to this document.

(A) SOFTWARE

3. The software is currently being modified. The logo and colour have already been updated, and further modifications are being made to add more conventions as well as sections on the court systems of the countries for which cases are inserted and on collaborators.

(B) INSTRUMENTS DEALT WITH

4. The *1956 Geneva Convention on Contracts for the International Carriage of Goods by Road (CMR)* is still the only convention to be visible, but others are at different stages of development. The next instruments to be dealt with are the *2001 Cape Town Convention on International Interests in Mobile Equipment* and its *Aircraft Protocol*. Both the English and French issues and keywords have been elaborated for the Convention (see the example in Annex 2). The issues and keywords to the Aircraft Protocol are being prepared. The contribution of Mr John Atwood in checking the issues and keywords prepared for the Cape Town Convention is gratefully acknowledged.

(C) BIBLIOGRAPHY

5. The bibliography is taken from the bibliography published in the *Uniform Law Review*. It is classified, and keywords and references to the relevant articles of the Convention are added. Examples of the bibliographies relating to the CMR and the *International Interests* are to be found in Annex 3.

(D) CASES

6. The full text of the cases are first and foremost retrieved from the reviews in the library of the Institute, but also from the online data bases kept by some national courts. An example in Word format of a case which has been inserted in the data base complete in English and French is to be found in Annex 4.

7. In view of the difficulty to obtain summaries, the Secretariat has started to insert cases which have no summary at all (most of the Austrian and German cases), or which have summaries only in one language (most of the Belgian cases and the Hungarian cases). As regards the summaries, UNILAW uses also the summaries published in the *Uniform Law Review*, as instructed by both the Board of Governors of the *Uniform Law Foundation* and the Governing Council of the Institute. In the selection of the conventions to be dealt with in the future, so as not to lose the benefit of the work already done for the Review, consideration will be given to the case summaries already available.

3. PROPOSED DEVELOPMENT 2007

8. A summary of the proposed development of the UNILAW data base in 2007 is to be found in Annex 5.

9. When the development of the data base is considered, the discussion that took place in the meeting of the Board of Governors of the Foundation on 30 November 2006 should also be reported. Concern was expressed by Sir Roy Goode, President of the Foundation, and Mr H. Kronke that the number of cases might be so overwhelming as to prove unmanageable. Consequently, they suggested that a selection be made, considering also the difficulty to attain completeness. A discussion ensued, in which *inter alia* the incomplete nature of all data bases was stressed. In the end, the Board approved a suggestion by Mr Putzeys that a list of all published cases should be given on the UNILAW website containing simply the relevant report references, and then a number of cases selected for their value by Mr Putzeys and, if he is willing, Mr Clarke, should be given full treatment. It was agreed that also other conventions in addition to the CMR should be dealt with as soon as possible, the Cape Town Convention being next on the list.

(A) ASSISTANCE

10. Attempts should be made to enlist the assistance of academics expert in the fields we are considering

- to either prepare, or supervise the preparation of, case summaries
- to prepare or check the issues and keywords prepared on the basis of the text of conventions
- to send us interns
- possibly to start a (post-)graduate programme at their universities to assist us with the data base.

11. In 2006 relations were established with the following:

Mr Gábor Palásti, Adjunct Professor, Department of European Law and Private International Law, Faculty of Law, University of Miskolc, Hungary

Mme Cécile Legros, *Maître de Conférence en droit privé à l'Université de Rouen*, France

Mr Carlos Llorente, Attorney, University Carlos III, Madrid, Spain.

12. So far Mr Palásti has sent the Secretariat 19 case summaries which have been inserted into the data base. Mr Leo Van den hole, a former intern and currently attorney with LeBoeuf Lamb Green & MacRae LLP in Brussels, at the beginning of 2006 sent the Secretariat 24 Belgian case summaries together with the full text of the cases scanned and proof-read, and at the beginning of March 2007 he sent summaries of a number of Dutch cases. He is currently working on more Dutch cases. Their contribution is gratefully acknowledged.

13. A very welcome development is the collaboration of Ms Stéphanie Gehlen, *Conseiller d'État* and former partner of Mr Putzeys. We are also pleased to acknowledge the assistance of Mr Malcolm Clarke, Professor at the University of Cambridge, to obtain the permission of the publishers of Lloyd's Law Reports to reproduce the text of English cases.

14. Obtaining case summaries is difficult, but it would appear to be even more difficult to obtain assistance with the extrapolation of issues and keywords from the texts of the conventions. Mr Clarke is helping with the issues for the *1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air*, and Mr Kurt Siehr is working on the issues and keywords for the *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*.

15. As regards interns, the beginning of 2007 has seen two interns, Mr Francesco Chattelli (Italy) and Mr Alexander Wulf (Germany), and the autumn will see two more: Mr Laurent Ramette (France) and Ms Anja Hauth (Germany).

16. At a clerical level, the contribution of Ms Judit Kisely is gratefully acknowledged.

(B) ACCESS TO THE DATA BASE

17. It is intended that access to UNILAW will over time be against a fee, which would help finance the data base. This development should take place when the data base has more data, both cases on the CMR and on other conventions. Hopefully, this should be possible sometime during the last quarter of 2007, but much depends on how much time can be devoted to working on the data base, considering also the other commitments of those involved, first and foremost the Secretariat.

SUMMARY OF THE STATE OF DEVELOPMENT OF THE UNILAW DATABASE

ANNEX/ANNEXE 1

INSTRUMENT	TEXT	Issues	KEYWORDS	BIBLIOGRAPHY	No. CASES COLLECTED AS AT 1.2.2007	CASES INSERTED IN DATA BASE	CASE SUMMARIES
1956 CMR	Inserted E/F and visible	Done E/F	Done E/F	Classified and inserted progressively	1,266	409 inserted 369 visible ca. 200/250 scanned or downloaded	ca 300 summaries in E, not all visible yet ca 100/120 in French
1929 Warsaw	Inserted E/F not visible	E/F Text prepared for treatment	E/F Text prepared for treatment	Bibliography on Air Transport prepared for classification	196		
1999 Montreal	Inserted E/F not visible	E in progress	E in progress		2		
1978 Hamburg Rules		E Text prepared for treatment	E Text prepared for treatment	Bibliography on Sea Transport being prepared for classification	18		
1910 Brussels					8		
1952 Brussels Arrest					58		
1924 Hague Rules		E Text prepared for treatment	E Text prepared for treatment		146		
1968 Hague-Visby Rules					85		
1972 London Collisions at Sea					1		
1974 York-Antwerp Rules					3		
1976 London LLMC					26		
1970 Brussels CCV		E Text prepared for treatment	E Text prepared for treatment				
1991 OTT		E Text prepared for treatment	E Text prepared for treatment				
1973 Washington Wills		E Text prepared for treatment	E Text prepared for treatment				
2001 Cape Town Convention	Inserted E/F not visible	Inserted E/F not visible	Inserted E/F not visible	Classification in progress	-		
2001 Aircraft Protocol CT	Inserted E/F not visible				-		
1954 Cultural Property					1		
1995 Cultural Property	Inserted E/F not visible	E in progress	E in progress	Prepared for classification	2		
1988 Leasing	Inserted E/F not visible	E/F Text prepared for treatment	E/F Text prepared for treatment		2		
1988 Factoring		E/F Text prepared for treatment	E/F Text prepared for treatment		-		

Single cases have been collected for a number of conventions not in the above table.

2001 Cape Town Convention on International Interests in Mobile Equipment: Issues and Keywords**ANNEX/ANNEXE 2**

TEXT	ISSUES	KEYWORDS
Article 22 — Searches		
Article 22 — Consultations		
1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.	22. Searches 22.01 Persons entitled to make or request search	Search of International Registry Persons entitled to make search Persons entitled to request search Electronic means
1. Toute personne peut, selon les modalités prévues par le Protocole et le règlement, par des moyens électroniques, consulter le Registre international ou demander une consultation au sujet de toute garantie ou garantie internationale future qui y serait inscrite.	22. Consultations 22.01 Personnes habilitées à faire ou demander une consultation	Consultation du Registre international Personnes habilitées à faire une consultation Personnes habilitées à demander une consultation Moyens électroniques
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object: (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or (b) stating that there is no information in the International Registry relating thereto.	22. Searches 22.02 Registry search certificate 22.02.01 Information specified in certificate 22.02.02 Statement no information available	Registry search certificate Registrar Registered information Statement of registered information and date of registration Statement non-availability of information Electronic means
2. Lorsqu'il reçoit une demande de consultation relative à un bien, le Conservateur, selon les modalités prévues par le Protocole et le règlement, émet par des moyens électroniques un certificat de consultation du Registre: a) reproduisant toutes les informations inscrites relatives à ce bien, ainsi qu'un relevé de la date et de l'heure d'inscription de ces informations; ou b) attestant qu'il n'existe dans le Registre international aucune information relative à ce bien.	22. Consultations 22.02 Certificat de consultation du Registre	Certificat de consultation du Registre: Conservateur Informations inscrites Relevé des informations inscrites et de la date de l'inscription Relevé de la non disponibilité d'informations Moyens électroniques
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.	22. Searches 22.03.01 Indication of acquisition or intended acquisition of international interest 22.03.02 No indication whether international interest or prospective international interest	Registry search certificate Data in Registry search certificate

BIBLIOGRAPHY

ANNEX/ANNEXE 3

(A) CMR BIBLIOGRAPHY

	AUTHOR	TITLE	REFERENCES	ARTICLE OF CMR	KEYWORDS ENGLISH	KEYWORDS FRENCH	BIBL. AREAS
1.	BLASCHE, G.	Die Verjährung, die Kompensation und der böse CMR-Frachter	Verkehr, 1973, 683	32(2) – (4), 39(4)	limitation of actions, compensation	prescription des actions, indemnités	Conclusion and performance of the contract of carriage / Conclusion et exécution du contrat
2.	BLASCHE, G.	Zum Haftungsumfang nach der CMR: Ein Fall aus der Praxis	Verkehr, 1973, 1407	23	liability case study	responsabilité étude de cas	Liability / Responsabilité
3.	BLOM, A.	The necessity of the operation of a "casualty" during the period of cargo insurance [Belgisch-Nederlands CMR-Seminar, 26 mei 2000]	European Transport Law, 35 (2000-3), 375-379	6	Insurance Casualty	Assurance accidentés	Insurance / Assurance
4.	BOGGIO, L.	La C.M.R. è imperativa, ma il vettore stradale internazionale non risponde	Diritto Marittimo, 101 (1999), 833-856		Italy Mandatory nature of the CMR	Italie Caractère d'ordre public de la CMR	Convention in General / La Convention en général
5.	BOGGIO, L.	Il trasporto di merci su strada tra CMR e Convenzione di Roma (sulla legge applicabile alle obbligazioni contrattuali). [Note :] Corte d'Appello di Trieste 5 novembre 2001 (Autamarocchi S.P.A. v. Alpina Versicherung AG)	Il Diritto Marittimo, 104 (2002), 978-983		1980 Rome Convention of the Law applicable to Contractual Obligations Italy case law	Convention de Rome de 1980 sur la loi applicable aux obligations contractuelles Italie jurisprudence	Convention in General / La Convention en général
6.	BOMBEECK, M. – HAMMER, P. – VERHAEGEN, B.	La responsabilité du transporteur routier dans le transport par car-ferries. L'article 2 de la Convention relative au contrat de transport international de marchandises par route	European Transport Law, 25 (1990), 110.	2	liability of carrier combined transport	responsabilité du transporteur transport combiné	Liability / responsabilité Combined transport / Transports combinés

(B) INTERNATIONAL INTERESTS BIBLIOGRAPHY

Inst	No.	Author	Title	References	Article of CT	Keywords English	Keywords French	Bibl. Areas
C	1.	DIEDRICH, F.	Warenverkehrsfreiheit, Rechtspraxis und Rechtsvereinheitlichung bei internationalen Mobiliarsicherungsrechten	Zeitschrift für vergleichende Rechtswissenschaft, 104 (2005), pp. 116-122.				
C A S	2.	DIVIS, D.A.	Pact to make aerospace loans obtainable	Space.com at < http://www.space.com/business/technology/business/space_treaty_000707.html >				C in general SP in general
C A	3.	DJOJONEG ORO, A.	The Unidroit proposal for a uniform air law: a new aircraft mortgage Convention?	Annals of Air and Space Law, 22 (1997), Part II, 53-66.				AP in general C in general Leasing

EXAMPLE OF CASE (WORD FORMAT)

ANNEX/ANNEXE 4

CASE LAW		
Convention: CMR		DB Number: CMR B 16
Country: Belgium	Court: Hof van Cassatie, Cour de Cassation (Supreme Court)	Date: 7 January 2000
Parties and/or Reference Number: Van Vlierden L., Engelen V., curator van het faillissement van Marcel Jans C/96.0204/N	Article(s) of the Convention: 32(2)	Other relevant Information: Lower instance: Cour d'appel d'Anvers 20 February 1996
Key words: Limitation of actions, suspension of period of limitation, written claim		
Mots-Clefs: Prescription des actions, suspensions de la prescription, Réclamation écrite		
Issues: 32.1.3; 32.2		
<p>Summary:</p> <p>A road carrier, when forced to apply to the courts to secure payment of invoices arising out of carriage, has one year in which to do so. Since such action concerns "another case" under the Convention, the limitation period begins to run "on the expiry of a period of three months after the making of the contract of carriage" (Article 32(1)(c) CMR).</p> <p>Can carrier issue a "written claim" prior to the court proceedings to suspend the limitation period until such time as its debtor "rejects the claim by notification in writing" (Article 32(2) CMR)?</p> <p>Quashing a decision by the Antwerp <i>Cour d'appel</i> of 20 February 1996 (unpublished), the <i>Cour de cassation</i> held that the suspension provided by Article 32(2) CMR was not applicable to actions brought by the carrier.</p> <p>French Summary:</p> <p>Un transporteur routier doit parfois avoir recours à la justice pour obtenir le paiement de ses factures de fret. Il dispose pour ce faire d'un délai d'un an; la prescription court, puisqu'il s'agit d'un "autre cas", "à partir de l'expiration d'un délai de trois mois à dater de la conclusion du contrat de transport" (article 32(1)(c) CMR).</p> <p>Peut-il faire précéder son action en justice d'une "réclamation écrite" qui suspende la prescription jusqu'au jour où son débiteur du fret la repousserait "par écrit" (article 32(2) CMR) ?</p> <p>Cassant un arrêt de la Cour d'appel d'Anvers du 20 février 1996 (non publié), la Cour de cassation considère que la suspension prévue par l'article 32(2) CMR ne concerne pas les actions mues par le transporteur.</p>		
<p>Full Text:</p> <p>HOF VAN CASSATIE VAN BELGIË (1ste kamer)</p> <p>7 januari 2000 C.96.0204.N</p> <p>[...]</p> <p>VAN VLIERDEN L. E.A. v. ENGELEN V, CURATOR VAN HET FAILLISSEMENT VAN MARCEL JANS HET HOF,</p> <p>Gehoord het verslag van afdelingsvoorzitter Verougstraete en op de conclusie van advocaat-generaal De Riemaecker;</p> <p>Gelet op het bestreden arrest, op 20 februari 1996 gewezen door het Hof van Beroep te Antwerpen;</p> <p>Over het middel, gesteld als volgt:</p> <p>schending van de artikelen 1 en 32 van het Verdrag van Genève van 19 mei 1956 betreffende de overeenkomst tot internationaal vervoer van goederen over de weg (CMR), goedgekeurd door de wet van 4 september 1962,</p> <p>[...]</p> <p>(...) dat (eisers) niet bewijzen deze schriftelijke vordering te hebben afgewezen: dat hun conclusies (waarin overigens geen standpunt ten gronde wordt ingenomen omtrent de litigieuze facturen) in eerste aanleg dateren van 26 augustus 1994 terwijl (verweerder) een nieuwe tegenvordering (waarvan de geldigheid niet betwist werd) heeft gesteld bij conclusies neergelegd op 15 september 1994; dat zodoende zelfs indien de conclusies van (eisers) in eerste aanleg genoemde afwijzing zou impliceren, de verjaring nog niet bereikt was op het ogenblik dat de tegenvordering op 15 september 1994 rechtsgeldig werd",</p> <p>[...]</p> <p>Te dezen de vordering tot het bekomen van betaling van achterstallige facturen uitging van de vervoerder en gericht was tegen de opdrachtgever, zodat geen schorsing van de verjaringstermijn overeenkomstig artikel 32.2 kon plaatsgrijpen,</p> <p>[...]</p>		
Source: Summary: ULR 2000, 852 / 853		
Text: European Transport Law, 2000, 671 – 674; <i>Revue de droit commercial belge</i> , 2000, 571		

PROPOSED DEVELOPMENT OF THE UNILAW DATA BASE IN 2007

ANNEX/ANNEXE 5

INSTRUMENT	TEXT	Issues	KEYWORDS	BIBLIOGRAPHY	CASES COLLECTED	CASES INSERTED IN DATA BASE	CASE SUMMARIES
1956 CMR			Develop as cases and bibliography are developed	Continue progressive classification and insertion	Continue collection of cases	Insert as many as possible even if not complete	Obtain case summaries/insert those available, translate those
1929 Warsaw	Make visible	Prepare issues	Prepare keywords	Classify and insert		Insert at least those linked to ULR case summary	ULR case summaries, see if others can be obtained
1999 Montreal	Make visible	Prepare issues	Prepare keywords	Classify and insert		Insert at least those linked to ULR case summary	ULR case summaries, see if others can be obtained
1978 Hamburg Rules				Classify Bibliography on Sea Transport			
1910 Brussels							
1952 Brussels Arrest							
1924 Hague Rules		Prepare issues E/F	Prepare keywords E/F			Insert at least those linked to ULR case summary	ULR case summaries, see if others can be obtained
1968 Hague-Visby Rules							
1972 London Collisions at Sea							
1974 York-Antwerp Rules							
1976 London LLMC							
2001 Cape Town Convention	Make visible			Finish classification and insert			
2001 Aircraft Protocol CT	Make visible	Prepare issues E/F	Prepare keywords E/F	Finish classification and insert			
1995 Cultural Property	Make visible	Insert issues E/F Prepare Issues F	Insert keywords E Prepare keywords F	Classify and insert			
1988 Leasing	Make visible	Prepare issues E/F	Prepare keywords E/F	Classify and insert			
1988 Factoring	Insert in E /F	Prepare issues E/F	Prepare keywords E/F	Classify and insert			