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Report on the Session

(prepared by the Secretariat)

Item No. 1 on the agenda: Welcome and adoption of the agenda

1. The President welcomed H.E. Mr Gabriel Valdés Subercaseaux, Ambassador of Chile in Italy and President of the General Assembly, and Mr Kent Vachon, Chairman of the Finance Committee, as well as the members of the Council (see Appendix I). Messrs Arat, Elaraby, Harmathy, Hosokawa, Sen and Zhang were unable to attend and Mr Hosokawa had asked to be represented by Mr Hiroo Sono in accordance with Article 6 (6) of the Statute.

2. The President then highlighted the adoption of the Protocol on Matters Specific to Railway Rolling Stock to the Cape Town Convention by the diplomatic Conference, held from 12 to 23 February 2007 under the joint auspices of OTIF and UNIDROIT, as the most visible progress made during the year under review. He reiterated the expression of the Institute's gratitude to the Government of the Grand Duchy of Luxembourg for having hosted a diplomatic Conference that had been memorable both for its perfect organisation and the warm and generous hospitality.

3. As regards the governance of the Institute the President emphasised the importance of restoring effectively the post of Deputy Secretary-General acting as chief administrative officer. He thanked the Government of the United Kingdom for its third extra-statutory contribution towards the funding of the post which had greatly helped in easing the otherwise inevitable budgetary tensions that had been created by this measure.

4. The draft agenda was adopted as proposed (see Appendix II).

Item No. 2 on the agenda: Appointment of the first and Second Vice-Presidents

5. The Council, on a proposal moved by Mr Inglese, renewed Professor Hartkamp's appointment as First Vice-President of the Governing Council and appointed Mr Govey Second Vice-President, in both cases as from the end of the 86th session of the Council.

Item No. 3 on the agenda: Annual Report

6. The *Secretary-General*, in introducing this item, recounted the difficult history of the Rail Protocol – a typical product of the Institute's work - for years, ahead of its time but ready now that many countries around the world urgently needed it. Only a Government as open-minded, experienced in managing economic innovation and un-bureaucratic as the Government of Luxembourg could have made the necessary decisions and prepared, in co-operation with the UNIDROIT Secretariat, a diplomatic Conference as effectively and successfully. While the sessions of the Committee of governmental experts had never been attended by more than 27 delegations, 42 States from all five continents had negotiated the Luxembourg Protocol as adopted on 23 February 2007. In particular, the participation of developing countries from Africa, the Middle East and Asia with important rail interests and the number of preliminary offers for the organisation of regional implementation seminars in Jordan, Kenya, Nigeria, the Russian Federation and Vietnam was encouraging. The Preparatory Commission, established by the diplomatic Conference for the procedure to select the operator of the International Registry and to draw up the Regulations, was to meet before the summer break.

7. With respect to the preliminary draft Convention on Substantive Rules regarding Intermediated Securities, substantial proposals had been made. However, the Committee of governmental experts had preferred a prudent approach and was to meet for a fourth session in May 2007 with a view to finding an analytically sound mechanism for including so-called transparent systems in important securities markets (e.g. Brazil, China, Colombia, Malaysia, the Nordic States and Spain) in a satisfactory manner into the global system.

8. With respect to the first session of the new Working Group for the preparation of additional chapters to the UNIDROIT Principles of International Commercial Contracts (UPICC), the Secretary-General interpreted the participation of an impressive number of observers, in particular all leading arbitration institutions, as a sign that boded well for the future of the project.

9. With respect to the recurrent item relation with Governments, he noted, with satisfaction, that Lithuania had acceded to the Statute effective 1 January 2007, thus becoming the Organisation's 61st member State. The Secretary-General reported, moreover, on the development of the draft uniform act on contracts, commissioned by the Council of Ministers of OHADA, and outlined a possible "ASEAN Initiative" that would build on a number of informal and official contacts and requests from Governments in that region.

10. As regards the research scholarship programme, he drew the Council's attention to the fact that ever greater attractiveness of the programme contrasted with fewer and fewer funds placed at the Institute's disposal for this purpose. *Mr Govey* reacted immediately, and the Secretariat wishes to place its gratitude to the Australian Government on record for funding one additional scholarship which was used in the framework of the ASEAN Initiative".

11. With respect to the organisation and the operation of the Secretariat, the Secretary-General highlighted the positive effects of having restored, thanks to extra-budgetary funding provided by the UK, the post of one of the Deputy Secretaries-General specifically tasked with the functions of a Chief Administrative Officer. He noted that Ms Alison McMillan, on secondment from the UK Department of Trade and Industry, Mr Brian Hauck, seconded from the law firm Jenner & Block, and Ms Claire Baradat, *volontaire internationale*, placed at the Institute's disposal by the French Government, had all left its services. He expressed the Institute's gratitude both to the former colleagues and the seconding Governments and Organisations. Mr

Philipp Paech, private-sector funded collaborator in charge of administrating the intermediated securities project, had also left the Institute.

12. Professor Sir Roy Goode, Honorary member of the Council and President of the Uniform Law Foundation, gave an overview of the activities of the foundation, in particular those directed at project-related fund raising aimed at supporting UNIDROIT'S work.

13. The Council took note, with satisfaction, of the law librarian's relentless and successful efforts to maintain the level of quality of the Library notwithstanding decreasing funding under the regular budget at times of significant increases of publishers' prices. The Council expressed its high appreciation for the results achieved in making the catalogue now available online and linking the UNIDROIT catalogue to those of other leading comparative libraries in Europe.

Item No. 4 on the agenda: Implementation of the Strategic Plan

14. Identifying the areas where significant or at least some progress had been made, the *Secretary-General* focused on (a) certain details of the state of affairs regarding the draft Convention on intermediated securities, the Cape Town Convention and two of its protocols and the implementation of those instruments in a number of States; (b) the completion of the herculean effort to make the Library's catalogue available on line and transforming this historically most prominent among the Institute's outreach resources effectively in a tool available in all four corners of the world; (c) the legal co-operation and assistance programmes; (d) gradual changes regarding governance and administration, in particular the greater depth and transparency of the documentation underlying and reflecting the process of developing the budget and monitoring the efficiency of spending.

15. The *Secretary-General* then turned to those areas where no or only unsatisfactory progress had been made: (a) the preliminary draft Space Protocol to the Cape Town Convention had suffered partly from the industry's not playing its part but most importantly from Mr Stanford's temporary administrative assignments as Deputy *Secretary-General*, a textbook case for how improvisation and the belief that one could save on human resources for core functions will eventually turn out to be an exceedingly high price to be paid. (b) With respect to the implementation and monitoring of adopted instruments and in particular the complex and demanding task of counselling Governments contemplating to ratify the Cape Town Convention and the Aircraft Protocol, the high quality of the substance of the work was guaranteed and the name of Mr John Atwood stood for that guarantee. However, the fact that the position as such was still *hors cadre* and materially under-paid was not acceptable and had to be adequately addressed by the Council and member Governments.

16. The *Secretary-General* finally drew the Council's attention to the serious discrepancies between the projection of resources agreed on with adoption of the Strategic Plan in 2004 and the reality in 2007. The *Secretary-General* of UNCITRAL, for whose attendance he was grateful, would no doubt testify that, for the work load on the Organisation's hand, 13 to 15 units of professional staff were required whereas the Secretariat could count on no more than 7 plus one consultant and one private-sector sponsored officer. As regards the latter, he emphasised the importance of striking an acceptable balance between proper governmental funding of an intergovernmental organisation and private-sector funding which should, in his view, not be needed for core business but enable the Institute to take on additional tasks.

17. In concluding, the Secretary-General discussed details of the background to Doc. C.D. (86) 4 Add. regarding the Institute relationship with the European Union and contacts he had had with the European Commission.

18. In opening the discussion of joint items 3 and 4, *Mr Inglese* expressed his appreciation and satisfaction at the progress made with respect to the management of the projects and, generally, the Institute's administration. Further improvements were discernible and at arms reach provided the Secretariat and the Council kept their focus and continued on their way down that path. As regards the determination of priorities, clearly identified in the documents as the Council's responsibility and commented on by the Secretary-General in his report, his Government's position was this: among current and possible future projects the draft Convention on intermediated securities had the highest and certain non-legislative activities that had already been categorised as "low" priority in the past as well as a fourth protocol to the Cape Town Convention on agricultural, construction and mining equipment had the lowest priority. Regarding relationships with Governments, governance and development of the Institute's global reach, the ASEAN Initiative and the definite and irrevocable instalment of a Deputy Secretary-General in the sense of chief administrator had the highest and the depositary functions the lowest priority. Turning to the aspect of the Organisation's governance, the working methods of the Council should not be overlooked. For example, one might make better use of the council's time by working in smaller groups where more effective and fruitful exchange would be possible. Early work on the future Work Programme or the carrying out of the mandates given to *ad hoc* Sub-committees of the Permanent Committee might be suitable fields for testing this proposition.

19. *Mr Hartkamp* welcomed and supported the idea of discussing substance in smaller groups who would then report back to the plenary and submit proposals for the decision-making process.

20. *Mr Widmer* agreed that the idea was interesting. However, in his view one had to distinguish: for so-called 'scientific' work, i.e. discussion of the substance of the projects, it would certainly be beneficial. On the other hand, matters regarding general policy decision, the administration of the Institute and its finances needed the attention of and the full input from the Council as a collegiate body.

21. *Ms Trahan*, while agreeing that some more fine-tuning in details lay ahead, wished to underscore the very significant achievements that had been made based on the results of the joint brainstorming sessions in 2002 and since the presentation and adoption of the Strategic Plan in 2003. For the first time in its history, the Institute had charted the way forward as envisaged by the governing bodies and the Secretariat had consistently mustered the courage of not treating every idea, project or, in general, activity as equal, but of defining priorities and staying the course even in the face of comprehensible special-interest opposition. It was only in this way that UNIDROIT had been able to turn out quality products such as the Cape Town Convention and protocols and to open up to new and economically relevant areas such as the capital markets projects which would ensure its future relevance. What was now needed was renewed and greater interest and involvement of the Council and its members in the substance of the Institute's work.

22. *Mr Sturlese* welcomed the Secretariat's persistence in measuring the results of its work against a clearly structured Strategic Plan and its highlighting not only success but also disappointments and identified weaknesses. While the progress regarding all three Cape Town protocols merited to be acknowledged, he could not recommend to accord any priority

whatsoever to work on a fourth protocol devoted to secured transactions for the acquisition of agricultural equipment. With respect to the Council's working methods, he cautioned against delegating too much to sub-groups as the Council was and needed to continue to be the policy-shaping body of the Organisation. However, well-circumscribed issues, such as the Council's approach to the possible accession of the European Community to UNIDROIT, might usefully be discussed in *ad hoc* Committees. As regards the general and budget-related questions raised in the Secretary-General's report, extra-budgetary contributions should not interfere with decisions on core functions and the governance structure but be devoted to specific items on the Work Programme.

23. *Mr Soltysinski* supported the idea of working in more productive sub-groups suggesting that, for each session, one afternoon should be set aside for the discussion of specific items that were to be identified in advance. He emphasised that the Organisation's attending conscientiously to the depositary functions under the Cape Town instruments as well as future UNIDROIT instruments should not be underestimated and that they could hardly be overestimated. They had more than their legal face value as determined in the instruments themselves and recognised by the States that had negotiated them, namely the public-relations effect, i.e. their unique potential to raise UNIDROIT's visibility among member and non-member Governments.

24. *Mr Voulgaris* agreed with Mr Sturlese adding to the observations on the procedure handling for a possible EC accession to UNIDROIT the warning that a great number and variety of policy issues were involved which considered careful and thorough discussion. He echoed Ms Trahan's assessment that only a clear focus on and continued priority for work considered as relevant by industry and markets, such as the draft Convention on intermediated securities, would guarantee the Institute's future and its distinct and autonomous profile.

25. *Mr Govey* joined other speakers in acknowledging the significant progress that had been made in the course of the past years with respect to both forward planning and retrospect monitoring and accounting on the basis of priorities established in a now well-working dialogue between Governments and the Council. He indicated that he personally but also his Government placed the greatest importance on the diligent performance of the depositary functions, not only but in particular with respect to the Cape Town instruments which were unequalled in terms of complexity and would not generate the full benefits envisaged by the States that had negotiated them if the Depositary was not provided with necessary resources.

26. Following a brief introduction of Doc. C.D. (86) 4 Add. by the Secretary-General, *Mr Hans van Loon*, Secretary-General of the Hague Conference on Private International Law, gave an overview of the procedure that had led to the EC's accession to that Organisation, the substantive issues that were identified as relevant and needed to be taken into consideration in revising the Conference's Statute, as well as the specific political concerns felt by the EU-Member States on the one hand and, on the other hand, by non-European member States of the Conference. An informal sub-group, comprising those members of the Council who were not contemporaneously engaged in meetings of the Permanent Committee and the *ad hoc* Sub-Committee on the revision of the Institute's Regulations, devoted a half-session to this issue. Upon re-convening the plenary Messrs *Adensamer*, *Bollweg*, *Elmer*, *Gabriel*, *Soltysinski* and *Sturlese* briefly addressed both basic policy issues and a number of details raised in the sub-group's discussions (see report as Appendix III).

27. The Council took note of the Secretary-General's report on the implementation of the Strategic Plan during 2006. The Council underlined the significant progress that had been made with respect to financial planning and monitoring, the setting of priorities and, in general, the

transparency of management procedures. With respect to the Institute's legislative activities, the Council emphasised the importance of the depository functions under the Cape Town Convention. As regards further broadening of the membership basis, the ASEAN Initiative which had already drawn support from the Governments of Australia, Japan and the Netherlands, was considered to be timely and well-chosen. With respect to the proposal for members of the Council to meet to discuss particular issues in *ad hoc* sub-committees during Council sessions this should be tried out during the 86th session for the purposes of conducting a preliminary examination of the procedure that might be followed in the event of the European Community acceding to the UNIDROIT Statute. On the merits, the Council agreed that, while it was for Governments to make any decisions, further and careful analysis of this matter by the Council would be beneficial.

Item No. 5 on the agenda: Preparation of the draft budget for the 2008 financial year

28. The *Deputy Secretary-General, Ms Alessandra Zanobetti*, introduced document C.D. (86) 5 explaining both new structural features of the budget-related documentation and details regarding individual items, as proposed by the Secretariat.

29. *Ms Trahan* and *Mr Voulgaris* proposed that now was strategically the right moment for demanding that member States footed the bill of decisions taken by them, first in 2001 in Cape Town and now again in Luxembourg, i.e. that UNIDROIT act as depository of the most complex and technically demanding commercial law convention that was ever adopted. A substantial increase capable of covering inclusion of the officer in charge into the organisational chart including full social charges, communication expenses, duty travel and all other related expenditure was to be permanently guaranteed by the Governments that had assigned this task to the Institute knowing full well that it entailed additional pressure on its resources

30. *Mr Sturlese* and *Mr Bollweg* congratulated the Secretariat on improvements of the documentation which greatly enhanced transparency. While they could not but express warm gratitude to the UK Government, they pointed out that the post of Deputy Secretary-General was functionally irreplaceable and needed to be integrated into the expenditure provided for by the regular budget. At the same time, budgetary restraints their ministries were exposed to made it unrealistic to count on their approving any significant increases.

31. *Mr Widmer* agreed with the previous speakers as regards the objectives to be pursued. He wished to place on record, however, that Governments needed to be confronted with their responsibilities. The Council also had to make the necessary distinctions and explain to Governments that UNIDROIT, if one measured its output against the resources at its disposal, was more productive than others. The post of Deputy Secretary-General was indispensable if the work on substance was not to suffer serious harm. In general, it was the Council's responsibility of stemming the tide of ever greater bureaucraticisation of the Organisation at the expense of its ability to produce substance.

32. *Mr Lyou* indicated his agreement with Mr Widmer. However, the analysis needed to go further and the Council had to make the point that Governments' sterile insistence on zero, or low, nominal growth was simply irreconcilable with their ever greater demand for more and sustained output in shorter periods of time. While UNIDROIT might be able to find new and alternative sources of funding in the long run, at this point in time, Governments had to accept that the Institute's activities were their activities, and that the greater part of them could only be carried out by this and no other Organisation.

33. *Mr Kent Vachon*, Chairman of the Finance Committee, explained in more detail the procedure underlying, in the case of the Government of Canada, the requirements of and the criteria for formulating a position on the draft budget as it was shaped by the Council's deliberations. His Government needed to ascertain whether the resources that were actually available were maximised according to the priorities set. UNIDROIT had always been a special case and been treated differently and more generously as compared to other Organisations.

34. *Mr Inglese* emphasised that his Government had preferred a pragmatic rather than a theoretical approach to the issue of funding the post of the Deputy: it wanted to see whether the presence of a skilled and focused administrator produced results, which it undoubtedly did. Now the UK Government was prepared to test what would happen if the UK stopped paying a yearly amount apart from its assessed contribution. He submitted that colleagues would agree that, in that scenario, projects and treaty duties would necessarily be dropped. Were others prepared for that? And, if so, which ones among the high-priority items were they prepared to shelve?

35. *Mr Elmer* recalled the constitutional framework, i.e. that colleagues around the table were the Council, and that the *Council* was mandated to *govern* the Organisation. Neither the Secretariat nor member Governments could take the burden of making the necessary decisions off its shoulders.

36. The Council having taken note of a comprehensive presentation of Governments' views made by the Chairman of the Finance Committee and having discussed the draft budget's key features as well as aspects regarding its future developments, approved the draft made on the basis of first estimates as modified by an extra-statutory contribution by the United Kingdom and instructed the Secretariat to allocate the amount of that contribution to the purposes specified by the donor Government.

Item No. 6 on the agenda: Report on the work of the ad hoc Committee on the Regulations regarding the Organisation of the Institute – Financial Administration – Staff

37. The Council took note of the report of the *ad hoc* Committee which had finished work on Parts One and Two. The Council is now awaiting a draft of the amended provisions for approval and transmission to the General Assembly. The Council took further note of the *ad hoc* Committee's intention to proceed to work on Part Three after appropriate consultation of the Institute's staff.

Item No. 7 on the agenda: Procedure and timetable for the selection of a successor to the Secretary-General

38. The Council decided to call for applications for the position by 30 September 2007 and to set up a Sub-Committee of the Permanent Committee which would conduct the selection and invite short-listed candidates for interview to be held from 8 to 10 November 2007 so as to be able to submit a proposal for the appointment by the Council at its 87th session from 21 to 23 April 2008.

Item No. 8 (a) on the agenda: International interests in mobile equipment – Luxembourg Protocol to the Cape Town Convention on Matters Specific to Railway Stock

39. *Mr John Atwood*, UNIDROIT Secretariat, reported in detail on the outcome of the diplomatic Conference as well as on its decision with respect to the Protocol's implementation highlighting, in particular, the role assigned to the UNIDROIT and OTIF Secretariats with respect to

the work of the Preparatory Commission and the selection of the Registrar by way of an open international Request for Proposals.

40. The Council took note, with satisfaction and conveying its gratitude to the host Government of the Grand Duchy of Luxembourg, of the success of the diplomatic Conference and the adoption of the Protocol on 23 February 2007. The Council recommended that the General Assembly, at its 61st session, pass a Resolution calling upon Governments to lodge instruments of ratification or accession as well as the declarations required or permitted under the Convention and the Protocol only in English and French, the working languages of the Institute, although German was an official language of the Conference and is an authentic language version of the instrument. The Council instructed the Secretariat to take all necessary steps for it to be prepared to efficiently carry out the depositary functions in accordance with Article XXXIV of the Protocol. The Council furthermore instructed the Secretariat to participate in the work of the Preparatory Commission with a view to making sure that the Supervisory Authority be established and the International Registry be operational in a timeous fashion. Finally, the Council decided that, while an Official Report would be drawn up by the Rapporteur and a complete collection of the Conference documents be made available, no record of the proceedings should be produced.

Item No. 8 (b) on the agenda: International interests in mobile equipment – Implementation and status of the Cape Town Convention and the Aircraft Protocol

41. Mr John Atwood, UNIDROIT Secretariat, reported on the instruments' status, details regarding the kind of assistance the Secretariat provided to Governments, in particular Governments of developing countries, in the preparation of accession documents as well as with respect to the judicial interpretation and application as well as the administrative implementation once the decision to ratify or to accede had been taken.

42. The Council took note of the excellent progress that was made since the last session and invited member States' Governments to (a) work towards further ratifications and accessions and (b) make appropriate efforts to ensure that the Institute would continue to be in a position to carry out the depositary functions, in particular through funding of the post of the officer attending to those functions.

Item No. 8 (c) on the agenda: International interests in mobile equipment – Preliminary draft Protocol to the Cape Town convention on Matters Specific to Space Assets

43. The Deputy Secretary-General, Mr Martin Stanford, introduced the item by giving detailed background information regarding document C.D. (86) 8 (c).

44. The Council approved the reconvening of the Committee of governmental experts, subject to the success of the New York Forum to be held in May, on the basis of an accelerated timetable for completion of the project.

Item No. 8 (d) on the agenda: International interests in mobile equipment – Preparation of an additional Protocol to the Cape Town Convention on Matters Specific to Agricultural, Construction and Mining Equipment

45. Ms Lena Peters, UNIDROIT Secretariat, reported on the research and data collection carried out since the Council's previous session illustrating a number of details and emphasising queries raised in document C.D. (86) 8 (d). She furthermore replied to Mr Bollweg's and Mr Gabriel's

questions regarding both the envisaged methodology and responses received from Governments and industry.

46. The Council expressed its satisfaction with the excellent quality of the preparatory work completed by the Secretariat. The Council instructed the Secretariat to invite Governments to submit additional comments on the preparatory study contained in document C.D. (86) 8 (d). The Council decided that, in view of other priority items on the work programme and overstretched resources, further work had to be postponed until such time as the next triennial work programme would be discussed.

Item No. 9 (a) on the agenda: Preliminary draft Convention on Substantive Rules regarding Intermediated Securities

47. The *Secretary-General* introduced document C.D. (86) 9 (a) and elaborated further on certain details.

48. *Mr Sturlese* stressed the importance of compatibility between the instrument that UNIDROIT was developing for the global context and the parallel work the so-called Legal Certainty Group had embarked on in view of preparing an EC Directive on the same and related subject matters. He noted that a thorough discussion of the envisaged nature of the future instrument was still outstanding and enquired of the Committee's and the Secretary-General's assessment regarding the frequent references to the "non-Convention law".

49. *Mr Voulgaris* shared with the Council his views, formed in his capacity of Head of the Greek delegation, regarding both a number of details – including the references to the non-Convention law and the opt-in/opt-out mechanisms – and the excellent quality of the work and the current state of the draft.

50. The *Secretary-General*, in responding to Mr Sturlese's queries, recalled that the European institutions (Commission and ECB) had based their – so far constructive and co-operative – participation throughout on the premise that the – more loosely knit – global instrument had precedence and that the more detailed rules a country or a regional Organisation – such as the EC – might wish to design would flow from the global instrument and add what was required in terms of more detail at the regional level.

51. Messrs *Gabriel* and *Widmer* indicated that, in their personal and their Governments' view the assurances given by the Secretary-General with respect to the replacement found for the collaborator who had left the Institute and, in particular, the Secretary-General's continuing personal availability until and possibly after the diplomatic Conference, was of utmost importance.

52. The Council took note, with satisfaction, of the excellent progress the Committee of governmental experts had made. The Council agreed to make a decision as to the approval of the draft and its transmission to a diplomatic Conference, for adoption, as early as practical in 2008, depending on the outcome of the Committee's 4th session and on the basis of the text as finalised by the Committee and the report on its 4th session. The Council furthermore decided that, if the date for the holding of the diplomatic Conference were to be postponed until after the regular end of the Secretary-General's term of office, appropriate measures should be taken to retain his services until completion of the work on this instrument.

Item No. 9 (b) on the agenda: Principles and rules capable of enhancing trading in securities on emerging markets

53. The Council confirmed the priority status of this project, subject to the understanding that resources can be devoted to this item only at such time as additional resources are available or the draft Convention on intermediated securities will have been adopted.

Item No. 10 on the agenda: Preparation of additional chapters to the UNIDROIT Principles of International Commercial Contracts

54. *Mr Bonell*, UNIDROIT Secretariat, reported on the first session of the new Working Group as well as other developments connected with the Institute's work on this item.

55. *Mr Carbone* raised a few queries regarding specific issues of the new chapters, e.g. the chapter on illegality and its embeddedness in general yet doubtful doctrinal categories, such as "causa" or "cause", as a requirement for a contract becoming effective.

56. *Mr Sekolec*, Secretary of UNCITRAL, underlined the great importance the Commission attached to the further development of the UPICC and UNCITRAL's co-operation with UNIDROIT aimed at raising the international legal community's awareness of the instrument. He indicated that, as agreed with the Secretary-General, preparations for a formal endorsement by the Commission were under way.

57. The Council took note, with satisfaction, of the Secretariat's report on the first session of the Working Group and the outline of the work envisaged for the year 2007.

Item No. 11 on the agenda: Model Law on Commercial Leasing

58. The *Deputy Secretary-General, Mr Martin Stanford*, introduced documents C.D. (86) 11, C.G.E./Leasing/1/ W.P.3 and C.G.E./Leasing/1/W.P.2

59. *Ms Trahan, Messrs Inglese, Hartkamp, Soltysinski and Gabriel* as well as *Mr Sekolec*, as observer, raised a number of questions regarding the future work, in particular work aimed at ensuring compatibility with existing UNIDROIT and UNCITRAL instruments and the future UNCITRAL Guide on Secured Transactions, to which the Deputy Secretary-General supplied additional information.

60. The Council confirmed the procedure agreed upon at its 85th session, namely, at such time as it may be considered to be the subject of consensus among participating Governments, and hopefully following the second session thereof, to lay it before member Governments at an extraordinary session of the General Assembly, for finalisation and approval.

Item No. 12 on the agenda: Implementation and promotion of UNIDROIT instruments other than Cape Town instruments

61. The Council, while expressing concern at the ever decreasing financial means at the Secretariat's disposal for the promotion of adopted instruments, expressed its satisfaction as regards the success of the Secretariat's efforts with respect to a few instruments such as the 1995 Convention on Stolen or Illegally Exported Cultural Objects.

Item No. 13 on the agenda: Legal co-operation programme

62. Ms *Frédérique Mestre*, UNIDROIT Secretariat, presented document C.D. (86) 13 and provided additional information, in particular with respect to the planned conference on the draft OHADA Uniform Act on contracts and the research scholarships programme (see Appendix IV).

63. Ms *Trahan* and Messrs *Sturlese, Komarov, Lyou, Opertti Badán* and *Widmer* commented on a number of details, focusing in particular on the aspect of ever decreasing funding and mid-term prospects for returning to the envisaged percentages of the UNIDROIT budget as well as alternative sources.

64. The Council took note, with satisfaction, of the continuing success of the research scholarship programme. While the decreasing percentage of the ordinary budget applied to the scholarship programme was a matter of concern, the Council expressed its gratitude to the Korean Government as well as private donors who continued to support this very important outreach function. The Council congratulated the Working Group for the preparation of Principles of International Commercial Contracts and the Secretariat on the significant progress made with respect to organising a seminar in Ouagadougou (Burkina Faso) devoted to launching a broad debate on the draft OHADA Uniform Act on the law of contracts.

Item No. 14 on the agenda: Situation of the Library

65. Ms *Bettina Maxion*, UNIDROIT Secretariat, introduced document C.D. (86) 14 elaborating further on specifics regarding the on-line catalogue and the importance of the exchange arrangements of the Uniform Law Review for maintaining the level of numbers of periodicals available. She expressed the Institute's gratitude to the principal donors, i.e. the Max Planck Institute in Hamburg, the Law Library of the University of Lucerne and the UK Government.

66. Messrs *Adensamer, Boggiano, Soltysinski* and *Widmer* as well as Mme *Trahan* commented insisting on the need to provide support for this most essential of the Institute's outreach resources.

67. The Council took note, with satisfaction, of the law librarian's relentless and successful efforts to maintain the level of quality of the Library notwithstanding decreasing funding under the regular budget at times of significant increases of publishers' prices. The Council expressed its high appreciation for the results achieved in making the catalogue now available online and linking the UNIDROIT catalogue to those of other leading comparative libraries in Europe.

Item No. 15 on the agenda: Uniform Law Review

68. Ms *Frédérique Mestre* introduced document C.D. (86) 15 focusing on the features added to the product Uniform Law Review, notably the General Index with full-text access in pdf-format. She also raised the issue of certain strategic decisions required and the guidance from the Council sought with respect to the co-existence of the paper format and prospects of an on-line review (against payment or free of charge).

69. Ms *Trahan* and Messrs *Elmer, Opertti Badán, Sánchez Cordero, Voulgaris* and *Widmer* congratulated the Secretariat, in particular the Editor of the journal, on the achievements. They agreed that the Council needed to engage in serious discussions on how the quality of the publication could be guaranteed under the ever greater pressure from Governments to reduce its cost.

70. *Mr van Loon*, Hague Conference on Private International Law, and *Mr Sekolec*, UNCITRAL, assured UNIDROIT of their Organisations' continuing highest appreciation and support for this unique periodical from which the work in their and other intergovernmental Organisations greatly benefited. They submitted practical suggestions regarding possible contributions and third-party support.

71. The Council took note, with satisfaction, of the Review's excellent state of health and expressed its high appreciation to the Editor for the work done throughout her tenure culminating in finalising the General Index with full-text access in pdf format. The Council set up an *ad hoc* working group tasked with making proposals as to how the present quality of the Review might best be preserved in times of ever greater budget pressure.

Item No. 16 on the agenda: Report on the situation regarding correspondents

72. The members of the Sub-Committee tasked, at the 85th session, with an in-depth analysis of the situation, *Messrs Gabriel* and *Soltysinski*, and *the Secretary-General* introduced document C.D. (86) 16. There was general agreement that, in the future, correspondents should be appointed for a term of three years and that the Secretary-General should approach all correspondents with a view to finding out, in as flexible manner as possible, whether there was a realistic chance to re-activate in particular "dormant" correspondents.

73. The Council adopted the *ad hoc* working group's proposals regarding future appointments.

Item No. 17 on the agenda: Proposals for the appointment of correspondents

74. The Government of the Russian Federation, *Mr Komarov*, the *President* and the *Secretary-General* proposed to appoint *Prof. Valery Fedchuk*.

75. The Government of Colombia and the *Secretary-General* proposed to appoint *Dr Manuel Leal Angarita*.

76. The *President* and the *Secretary-General* proposed to appoint *Mr Rafael Castillo-Triana* as well as *the Instituto Colombo-Panameño de Derecho Procesal*.

77. The Council appointed three new individual and one corporate correspondents proposed by the Governments of Colombia and the Russian Federation, the *President* and the *Secretary-General*.

Item No. 18 on the agenda: The UNIDROIT website and depositary library for UNIDROIT documentation

78. Ms Paula Howarth, UNIDROIT Secretariat, introduced document C.D. (86)18 and gave additional information regarding certain items mentioned in the document. She stressed that the Secretariat, due to the lack of major resources, continued to work on improvements of the website's feature only on condition that they entailed limited expenditure.

79. The Council took note, with satisfaction, of the excellent results achieved, at low cost, in upgrading the website and contributing to the dissemination of the Institute's work through both outreach tools.

Item No. 19 on the agenda: The Uniform Law Data Base

80. *Ms Lena Peters*, UNIDROIT Secretariat, introduced document C.D. (86)19.

81. *Ms Trahan* and *Messrs Adensamer, Gabriel, Inglese* and *Carbone* commented on various aspects, including issues of the data base's objectives and the priority grade accorded to this project.

82. The Council took note, with satisfaction, of the progress that had been made, since the last session, in making additional cases on the CMR accessible electronically.

Item No. 20 on the agenda: Liability for satellite based services

83. *Mr Carbone* and the *President* highlighted the reasons and the policy considerations guiding the Italian Government's proposal to commence work on civil liability for malfunctions of satellite-based services.

84. *Mr Bollweg* reported on his involvement in related work done within the framework of the International Civil Aviation Organization (ICAO) and certain bodies of the European Union. The content of those decisions suggested that there were significant and complex policy issues to be considered before embarking on that work. *Mr Carbone* and *Mr Gabriel* echoed *Mr Bollweg's* remarks and recommended that a cautious approach be adopted and informal consultations with all stakeholders be carried out with a view to fathoming the depth of the policy issues one would encounter on the way forward if that were to be the final decision.

85. The Council took note, with great interest, of the reports on recent meetings submitted by Professor *Carbone* as well as communications from the Italian Government received by the *President*. The Council agreed that, in view of that interest on the one hand and concerns regarding the wide-ranging implications on the other hand, informal discussions with all potentially interested Governments should be held with a view to commissioning, should those consultations have a positive outcome, a broad comparative feasibility study.

Item No. 21 on the agenda: Date and venue of the 87th session of the Governing Council

86. The Council agreed that its 87th session will be held from 21 to 23 April 2008 in Rome.

**APPENDIX I
ANNEXE I****LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS**

(Rome, 16 – 18 April 2007 / Rome, 16 – 18 avril 2007)

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Assistant librarian / *Assistante bibliothécaire*

APPENDIX II**AGENDA**

1. Adoption of the agenda (C.D. (86) 1)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (86) 3)
3. Annual Report 2006 by the Secretary-General (C.D. (86) 2) and report by the President of the Uniform Law Foundation
4. Implementation of the Strategic Plan (C.D. (86) 4)
5. Preparation of the draft budget for the 2008 financial year (C.D. (86) 5)
6. Report on the work of the *ad hoc* Committee on the Regulations regarding the Organisation of the Institute – Financial Administration – Staff (C.D. (86) 6)
7. Procedure and timetable for the selection of a successor to the Secretary-General
8. International Interests in mobile equipment
 - (a) Luxembourg Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (C.D. (86) 8(a))
 - (b) Implementation and status of the Cape Town Convention and Aircraft Protocol (C.D. (86) 8(b))
 - (c) Preliminary draft Protocol on Matters specific to Space Assets (C.D. (86) 8(c))
 - (d) Preparation of an additional Protocol on Matters specific to agricultural, mining and construction equipment (C.D. (86) 8(d))
9. Transactions on transnational and connected capital markets
 - (a) Preliminary draft Convention on substantive rules regarding intermediated securities (C.D. (86) 9(a))
 - (b) Principles and rules capable of enhancing trading in securities on emerging markets (C.D. (86) 9(b))
10. Principles of International Commercial Contracts (C.D. (86) 10)
11. Model law on leasing (C.D. (86) 11)
12. Implementation and promotion of UNIDROIT instruments other than Cape Town instruments (C.D. (86) 12)
13. Legal co-operation programme (C.D. (86) 13)
14. Situation of the Library (C.D. (86) 14)

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15. Uniform Law Review/ *Revue de droit uniforme* and other publications (C.D. (86) 15)
 16. Report on the situation regarding correspondents (C.D. (86) 16)
 17. Proposals for the appointment of correspondents (C.D. (86) 17)
 18. The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (86) 18)
 19. The Uniform Law Data Base (C.D. (86) 19)
 20. Liability for satellites based services (C.D. (86) 20)
 21. Date and venue of the 87th session of the Governing Council (C.D. (86) 21)
 22. Any other business.

APPENDIX III

Report of the meeting of the Sub-committee on the possible accession of the European Commission to the UNIDROIT Statute

Discussion of item No. 4 on the Agenda : Implementation and Adjustment of the Strategic Plan
(relations with the European Community)

Monday 16 April 2007, 3 p.m.

Participants: Mr Boggiano, Mr Bollweg, Mr Elmer, Ms Moss, Mr Opertti, Mr Jorge Sanchez Cordero, Mr Widmer (Chairman); **Observers:** Mr Wallace, Mr Van Loon, Mr Sekolec; **UNIDROIT Secretariat:** Ms Mestre

With regard to procedure, the sub-committee noted that the discussion it was having was of an informal and wholly preliminary nature and concerned a possible consultation procedure within the General Assembly in the event of a formal request for membership, or a request to open negotiations for such, being made by the European Community.

During the discussion, several points were made:

- The conditions for membership of the Community to the Hague Conference were no doubt an important point of reference, but different spheres of activity might require different solutions; in particular, the overlap of competences in the field of substantive law was perhaps less obvious than that in the area of private international law, where the Treaty of Amsterdam conferred exclusive competence in many areas; however, there were already a number of issues where such overlap existed, and it would be appropriate to look at this issues in more detail, also bearing in mind the potential impact of Community legislation in non member States of the Union ("external" effects);
- it was noted that the implications (and possible advantages) of the European Community becoming a member of UNIDROIT would need to be analysed from different viewpoints: those of UNIDROIT (and the Community), but also those of the member States of the Union (in particular as concerned decision-making and voting procedures) and – of course – those of non member States of the Union, bearing in mind the shift in balance which Community membership would produce (given that the European region was already over-represented within UNIDROIT).
- As to the principle of the accession of regional organisations to universal organisations, the question was raised as to whether it was appropriate to take the European Union for a model, given the specific role played by each integration organisation and the particular methods employed in pursuit of legal harmonisation (for example, the *rapprochement* of legal rules within uniform law organisations vs the transfer of competences by the member States). The diversity of legal cultures and the importance of avoiding any risk of discrimination would seem to militate in favour – in due course – of other regional organisations in the consultation procedure.
- The question as to whether European Community membership of UNIDROIT might render the latter's drafting processes – particularly within the study groups – less flexible and generally, change its way of working, should be addressed.

- The UNIDROIT Secretariat and the European Commission already collaborated in many areas, and appropriate procedures to deal with matters of overlap of competences had been worked out on a case-by-case basis when specific instruments were being drafted. The question was, therefore, whether full institutional membership of the European Community was necessary. The possibility of Community participation as an observer was mooted.

The sub-committee concluded that, with a view to the forthcoming session of the Governing Council, the UNIDROIT Secretariat, in co-operation with the European Commission and the member States currently holding the Union presidency, as well as the Chairman of the General Assembly, might make up a list of areas or subjects concerning which problems of competence might arise between UNIDROIT and the European Union.

APPENDIX IV**Report of the meeting of the *Scholarships Sub-Committee* of the Governing Council**

Tuesday 17 April 2007, 5 p.m.

The Scholarships Sub-committee was made up of Messrs Gabriel, Komarov, Lyou, Sen, Verdery Tuells and Widmer as well as Mr Kronke and Ms Mestre of the Secretariat. The meeting was chaired by Mr Widmer.

The following documents were submitted to the sub-committee in addition to Council document (C.D. (86) 13):

- The Report on the Implementation of the Programme in 2006: Study LXV – Scholarships exec. 18 Rev.;
- An updated table setting out funding details for 2006 and 2007;
- The work, conclusions and research reports of the beneficiaries of the programme in the period January 2006 – April 2007 (for consultation)
- Applications received by the Secretariat for the year 2007-2008 (for consultation)

As always, the Sub-committee recalled the important role played by the scholarships programme not only in the context of legal co-operation but also as a tool to promote UNIDROIT and its work.

As to funding, the Sub-committee expressed its satisfaction at the increase in the programme's financial resources in 2007, noting with particular gratitude the renewed support extended by the Government of the Republic of Korea, and expressed its especial gratitude to the Government of Spain, whose first-time contribution to the programme in 2006 had paid for four scholarships. It also noted that the generous support of the Secretary-General, which provided for one scholarship, as well as the contribution made by the members of the Governing Council at its meeting in 2006 (which also covered the cost of one scholarship, awarded to Mr He Yi of the University of Wuhan) had somewhat offset the reduction in the general budget allocation (under Chapter XI) to the programme which had dropped to € 10,000 in 2007 (i.e., a share of 0.55% instead of the 1% share promised when this budget post was first created). Finally, it expressed its gratitude to the *UK Foundation for Uniform Law*, which had also made a generous contribution to fund one four-month scholarship.

The sub-committee recommends that the members of the Governing Council consider renewing their personal contribution of € 150 per person so as to enable a Governing Council Scholarship to be awarded in 2007.

As to the applications received by the Secretariat for the coming year, the sub-committee took note of the large number of applications (33, from 22 countries), some of which had already been partly funded. It agreed to mandate the Secretary-General to establish an order of precedence in accordance with the usual selection criteria (i.e., the conditions stipulated by donors, the general guidelines laid down by the Scholarships Sub-Committee in April 1999 – see below –, the "strategic" objective of forging closer links with certain member States or with potential new member States). The sub-committee in particular approved the proposals of the Secretariat with regard to the allocation of two special scholarships, i.e., the Governing Council scholarship and the UK Foundation for Uniform Law scholarship.

[General criteria established by the Scholarships Sub-committee in April 1999 :

- (a) preference to be given to applicants conducting research on topics relevant to the activities of UNIDROIT (past achievements, items on the current work programme, private law in the broadest sense);
- (b) preference to be given to graduate or post-graduate level applicants;
- (c) the widest possible geographical variety to be sought as to applicants' countries of origin;
- (d) preference to be given to applicants with research projects likely to have maximum practical impact;
- (e) preference to be given to applicants possessing sufficient linguistic ability to use the bibliographical materials to best advantage.]