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**Item No. 6 on the Agenda: Implementation of the Strategic Plan**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Full review of progress and delays regarding the implementation of the Strategic Objectives agreed on in 2004, including staffing and funding implications. The General Assembly has reviewed the document at its 61<sup>st</sup> session. The priority grade accorded to the items on the Work Programme is indicated.</i>
<i>Action to be taken</i>	<i>The Governing Council, at its 87<sup>th</sup> session, will be called upon to review the document and to take note of member Governments' views in particular regarding priorities accorded to individual items.</i>
<i>Related documents</i>	<ul style="list-style-type: none"><li>• <i>Strategic Plan – Horizon 2016, UNIDROIT 2004 C.D. (83) 6</i></li><li>• <i>UNIDROIT 2008 C.D. (87) 7</i></li><li>• <i>UNIDROIT 2002 IBS Doc. 1 and 2</i></li></ul>

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## **I. Implementation in 2007 and Outlook for 2008**

### **1. The Context: An Unusual Year Ahead**

- 2008 will be an unusual year due to a unique coincidence of institutional dates: the Governing Council will hold its last session before the General Assembly will be called upon to elect, at its 62<sup>nd</sup> session, a new Governing Council. The Governing Council will consider and the General Assembly will be invited to adopt, at its 62<sup>nd</sup> session, to be held in late 2008, the new triennial work programme (2009-2011). Finally, the Governing Council will appoint a new Secretary-General who will take up office in the last quarter of 2008 or, at the latest, on 1 January 2009.

- In carrying out the General Assembly's and the Council's decisions concerning both legislative and non-legislative activities regard will have to be had in particular to the fact that, by end of March 2008, Governments, other intergovernmental Organisations, correspondents, industry, professional associations and other stakeholders will have submitted proposals for the future work programme and the implications for the Institute's efforts to complete as much outstanding work as feasible by the end of the year.

## 2. Legislative Activities including Implementation and Promotion of Instruments

- *Strategic Objective N°1*: the preparation and implementation of international instruments (conventions, model laws, statement of principles, etc.) of the highest possible quality by applying strict criteria of scientific rigour and commercial viability and having regard to the legal implications of regional integration processes in the context of global law-making.
- *Strategic Objective N°6*: increased sensitivity to the potential of both industry and the legal profession to contribute criteria for selection, priorities, evaluation of working methods, procedures and results with a view to securing their support for the adoption and implementation of UNIDROIT instruments.
- *Strategic Objective N°11*: the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the Institute's auspices.

### A. Work in Progress

#### *Principles of International Commercial Contracts*

- Following wide consultations with practitioners, the academic community, industry and arbitral institutions and the decisions taken by the Governing Council and the General Assembly a new Working Group was set up and tasked with preparing new chapters on unwinding of failed contracts, plurality of debtors and creditors, illegality, conditions and termination of long-term contracts for cause.
- The Working Group held its second session from 4 to 8 June 2007. The reporters on the five new chapters submitted and the group discussed four draft reports and one discussion paper. The reporters held a one-week drafting session in March 2008.
- At its 40<sup>th</sup> session held in Vienna from 25 June to 12 July 2007 UNCITRAL formally endorsed the UNIDROIT Principles 2004 recommending their use by the international business and legal communities.
- In addition to the English, French, Spanish and Italian versions of the UNIDROIT Principles 2004, integral versions are available in Chinese, Farsi, Korean, Romanian, Russian, and Vietnamese. The black letter rules are available in German, Japanese, Portuguese, Serbian and Turkish.
- In 2007, the UPICC were presented by members of the Secretariat and discussed at seminars and conferences in Austria, Chile, China, Germany, Japan and Turkey.

<b>Assessment of progress</b>	Good, on time. To be finalised in 2009/10.
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<b>Benefits/ Beneficiaries</b>	Reform legislators, contract drafters, arbitrators.
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<b>Staffing</b>	1.0 consultant, 0.5 officer (the remaining 50% of whose time is devoted to the website, one publication, and the depository libraries).		
<b>Funding</b>	Regular budget: ❖ staff: (Exp. Ch. 2; Ch. 3); ❖ meeting: € 40,000 (Exp. Ch. 1 § 5).		
<b>Priority acc. by General Assembly</b>	 high	 medium	 low

### ***International Interests in Mobile Equipment***

#### **(a) Cape Town Convention/Aircraft Protocol**

- The Convention is in force in 20 States: Afghanistan, Albania, Angola, Cape Verde, Colombia, Ethiopia, Indonesia, Ireland, Kenya, Malaysia, Mexico, Mongolia, Nigeria, Oman, Pakistan, Panama, Senegal, South Africa, Syrian Arab Republic, United States of America. The Aircraft Protocol is in force in eighteen States, i.e. the same as aforementioned except the Syrian Arab Republic. India and Saudi Arabia have deposited their instruments of accession on 31 March 2008. Following resolution of the Gibraltar dispute, the European Community and EU member States will be able to ratify the Cape Town Convention and the relevant authorities have agreed on an action plan with a view to implementing the decisions as early as practicable.

- Assistance was provided for the ongoing implementation process in another nine States in Africa, Asia, the Middle East and the Americas. For the depositary functions, cf. *infra* B.

- The Cape Town Convention and the equipment specific protocols were presented by members of the Secretariat or on its behalf at seminars, conferences and workshops in Belgium, Brazil, Chile, China, France, Germany, Indonesia, Italy, Japan and Turkey.

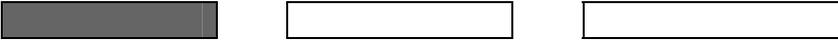
#### **(b) Rail Protocol**

- The Protocol on Matters Specific to Railway Rolling Stock was adopted by a Diplomatic Conference, held in Luxembourg, on 23 February 2007. In accordance with Resolution 1, adopted by the Conference, a Preparatory Commission tasked with the process of selecting the operator for the international registry and to act as provisional Supervisory Authority was set up. The Commission held its first meeting in Berne (Switzerland) on 16 and 17 July 2007. Two bidders submitted proposals for setting up the international registry and the Preparatory Commission will hold its second meeting from 8 to 10 April 2008 in Rome. At that session, evaluation of the bids will be finalised and the Registrar will be appointed.

- Assistance was provided for initiating the implementation in two States.

#### **(c) Preliminary draft Space Protocol**

- Due to lack of resources the Secretariat's activities regarding this project were seriously curtailed. Following the high-level industry meeting in London, another high-level meeting of Government representatives and private sector experts was held in New York on 19 and 20 June 2007; the objective was to renew industry pledges to support the project and to draw up a plan, including time lines, for its completion. The General Assembly authorised the setting up of a Steering Committee which will meet from 7 to 9 May 2008 in Berlin. The UK Foundation for International Uniform Law provided generous funding for hiring an Associate Research Officer who is assisting the Deputy Secretary-General in his efforts to complete work on the draft.

<b>Assessment of Progress</b>	Convention and Aircraft Protocol good. Rail Protocol good. Preliminary draft Space Protocol still unsatisfactory yet back on track.
<b>Benefits/ Beneficiaries</b>	<ul style="list-style-type: none"> <li>• Rail Protocol: rail operators in particular in Central and Eastern Europe, Africa, Central Asia and Central America; manufacturers' and financiers of railway rolling stock.</li> <li>• Space Protocol: in particular Governments in developing countries, start-up satellite operators, manufacturers and financiers of satellites.</li> </ul>
<b>Staffing</b>	1.25 officer, regular budget ; 1 officer (also in charge of the depositary function) funded by extra-budgetary contributions till August 2007, thereafter regular budget ; clerical support, regular budget (Exp. Ch. 2). Since February 2008, 1 associate officer funded by UK Foundation.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ <b>Cape Town Convention and Aircraft Protocol:</b> <ul style="list-style-type: none"> <li>– official journeys: regular budget (Exp. Ch. 1);</li> <li>– conferences and seminars: funded by organizing institutions.</li> </ul> </li> <li>❖ <b>Rail Protocol:</b> <ul style="list-style-type: none"> <li>– Diplomatic Conference: host Government (Luxembourg);</li> <li>– official journeys: regular budget (Exp. Ch. 1).</li> </ul> </li> <li>❖ <b>Preliminary Draft Space Protocol:</b> <ul style="list-style-type: none"> <li>– meetings and official journeys funded by the private sector.</li> </ul> </li> </ul>
<b>Priority acc. by General Assembly</b>	 <div style="display: flex; justify-content: space-around; width: 100%;"> <span>high</span> <span>medium</span> <span>low</span> </div>

### *Transactions on Transnational and Connected Capital Markets*

#### **(a) Draft Convention on Intermediated Securities**

- A fourth session of a Committee of governmental experts was held from 21 to 25 May 2007. The sessions were attended by a total of 39 delegations from member States, two non-member States and 9 observers representing intergovernmental and non-governmental Organisations. At the conclusion of the fourth session, the Committee approved the draft as being sufficiently mature to be laid before a Diplomatic Conference, for adoption. On request by the President, the Council also approved, and the draft Convention as well as the Explanatory Report were transmitted to the Governments of all UN member States which have been invited by the Government of Switzerland to attend the Diplomatic Conference (1-13 September 2008) in Geneva.

- *Ad-hoc* working groups on specific problem areas worked between the sessions, and officers of the Committee, members of the Committee's Drafting Committee and members of the Secretariat participated in workshops and presentations in Santiago (Chile), Beijing (PRC) and Amsterdam (The Netherlands).

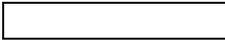
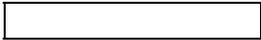
#### **(b) General aspects of transactions on transnational capital markets and emerging markets project**

- The Secretariat deferred further activities until such time as conclusion of one of the other projects will make resources available.

<b>Assessment of Progress</b>	Good, on time.		
<b>Benefits/ Beneficiaries</b>	Increasing legal certainty in global custody, clearing and settlement; reducing systemic risk.		
<b>Staffing</b>	1.25 officer (including translation); clerical support.		
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: 1 officer funded partly by private sector; 0.25 officer (translation) and clerical support regular budget (Exp. Ch. 2, Ch. 3);</li> <li>❖ meeting: 4<sup>th</sup> session CGE, regular budget: <ul style="list-style-type: none"> <li>– € 13,000: meeting facilities (Exp. Ch. 1 § 5);</li> <li>– € 6,000 interpreters (Exp. Ch. 6 § 5);</li> </ul> </li> <li>❖ official journeys: regular budget (Exp. Ch. 1 § 6).</li> </ul>		
<b>Priority acc. by General Assembly</b>	 high	 medium	 low

### *Model Law on Leasing*

- A first session of a Committee of governmental experts conference was held from 7 to 10 May in Johannesburg (South Africa). Representatives of the Governments of the following States participated in the first session: Angola, Australia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Chile, the People's Republic of China, Gambia, Germany, India, Ireland, Japan, Latvia, Oman, Poland, Portugal, Qatar, Rwanda, South Africa, Sudan, Tanzania and the United States of America. Mr J.H. de Lange, Deputy Minister of Justice and Constitutional Development of South Africa, made the opening address at the Johannesburg seminar on 7 May 2007. Ms R. Freeman (Deputy General Manager and Sector Operations Manager, Financial Markets, Private Enterprise Partnership Africa, International Finance Corporation) and the Deputy Secretary-General, Mr Martin Stanford, gave addresses on the practical need for, and the potential uses of the proposed model law. A second session will be held in Muscat (Sultanate of Oman) from 6 to 9 April 2008. The results achieved at that session will, hopefully, lead to the text's approval by the Council and transmission to the General Assembly for adoption in 2008.

<b>Assessment of progress</b>	Good, slightly delayed.		
<b>Benefits/ Beneficiaries</b>	Primarily African, Asian and Latin American countries in need of leasing legislation.		
<b>Staffing</b>	0.70 officer; clerical support.		
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: 0.70 officer (supervising and translation) and clerical support regular budget (Exp. Ch. 2, Ch. 3);</li> <li>❖ 1<sup>st</sup> session CGE in Johannesburg : external funding;</li> <li>❖ official journeys: regular budget (Exp. Ch. 1).</li> </ul>		
<b>Priority acc. by General Assembly</b>	 high	 medium	 low

## B. Follow-up of adopted UNIDROIT Instruments: Promotion, Implementation, Monitoring

### *Depositary Functions under the Cape Town Convention*

- Review of draft ratification and accession instruments; advice on implementation legislation; co-ordination with Supervisory Authority (ICAO Council) and International Registry (Aviareto); co-ordination with OTIF and the Preparatory Commission set up by the Luxembourg Diplomatic Conference; administration of online "Cape Town update"; in-house co-ordination of work for Official Commentary, 2<sup>nd</sup> edition, and Official Commentary on Luxembourg Protocol.

<b>Assessment of quality and effectiveness</b>	Good.
<b>Staffing</b>	1 officer.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: extra-budgetary funding by member States ran out 31 August 2007; follow-up funding under regular budgets 2007 and 2008 as well as draft budget 2009 (Exp. Ch. 2) (see also <i>infra</i>, II 1 b).</li> <li>❖ 2<sup>nd</sup> edition Official Commentary and Official Commentary on Luxembourg Protocol: partly funded by Aviareto (€ 5,000)</li> </ul>
<b>Priority acc. by General Assembly</b>	 <div style="display: flex; justify-content: space-around; width: 100%;"> <span>high</span> <span>medium</span> <span>low</span> </div>

### *Promotion through Outreach Resources*

- UNIDROIT's principal means of promoting its *own* instruments and raising awareness of *transnational private law in general* are its research and outreach resources. For details, cf. *infra*, I 2 B.

### *International Protection of Cultural Property*

- The Secretariat monitored and advised on implementation as well as co-organised and/or participated in seminars and conferences aimed at raising awareness of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects in Austria, Bosnia-Herzegovina, Greece, Italy, Jordan, Lebanon, Lithuania and Poland as well as at UNESCO's Intergovernmental Committee for the Promotion of the Return of Cultural Property to its Countries of Origin.

- As of 31 March 2008, the Convention had twenty-nine Contracting States.

<b>Assessment of quality and effectiveness</b>	Good.
<b>Staffing</b>	0.20 officer.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: regular budget (Exp. Ch. 2, Ch. 3);</li> <li>❖ participation in conferences: unfortunately limited to cases where expenses can be reimbursed by organisers.</li> </ul>

### ***Principles of Transnational Civil Procedure***

- In addition to the English and French versions of the ALI/UNIDROIT Principles, which have been published with Cambridge University Press, the black letter rules are now available in German and Turkish. Japanese, Spanish and Russian versions are under preparation.
- In 2007, the PTCP were presented by the Secretary-General and experts from member States at seminars, conferences and workshops in Chile, Germany, Japan and Latvia.

## **3. Non-legislative Activities**

- *Strategic Objective N°2*: the further elaboration of the UNIDROIT research and information facilities as the world's leading source of knowledge and capability-building in the field of transnational private law.
- *Strategic Objective N°3*: the gradual and systematic conversion of hitherto stationary know-how, skills, research and legislative capabilities into pro-actively employed outreach resources.
- *Strategic Objective N°7*: a systematic and sustained effort to broaden the Organisation's representation in Africa, the Middle East and Asia, to fill gaps and revitalise dormant membership, and to guarantee a more regular presence and focused participation in other international fora.

## **A. Programme of Legal Co-operation**

### ***Research Scholarship Programme***

- In 2007, 12 researchers from Chile, People's Republic of China, Egypt, Indonesia, Mozambique, Nigeria, Pakistan, Paraguay, Serbia, Uruguay and the Southern African Development Community (SADC) with different professional backgrounds (government officials, judges, attorneys, financial institutions, universities) carried out research on transnational private law and international economic law in the UNIDROIT Library.

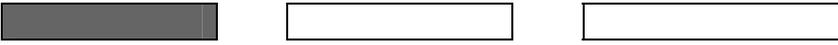
### ***Technical Assistance***

- The Secretariat transmitted an amended version of a preliminary draft OHADA Uniform Act on contract law to the OHADA Permanent Secretariat. This draft as well as a draft on consumer contracts are awaiting vetting by national committees and adoption by the Council of Ministers. A high-level colloquium, organised by UNIDROIT, the University of Ouagadougou and OHADA was held from 15 to 17 November 2007 in Ouagadougou (Burkina Faso). The conference with speakers from Benin, Burkina Faso, Cameroon, the Democratic Republic of Congo, Ghana, Ivory Coast, Mali and Senegal, OHADA, the African Development Bank, UNCITRAL, the ICC International Court of Arbitration as well as Belgium, Canada, China, Luxembourg and Switzerland was aimed at engaging the West African legal and academic communities as well as Governments and intergovernmental Organisations involved in law reform in Africa. It was funded by the Governments of Switzerland and Luxembourg as well as private donors.
- For assistance given with respect to the implementation of the Cape Town Convention and protocols, cf. *supra* I 1 A and B.
- For assistance given with respect to the implementation of the Cultural Property Convention, cf. *supra* I 1 B.

**Co-operation with Partner Organisations**

- The Secretariat maintains close institutional co-operation links with a large number of Organisations. For details, cf. *infra* I B 3.

- In particular, UNIDROIT is a partner in a programme launched by the International Trade Centre (WTO/UNCTAD) aimed at assisting developing countries and transition economies in becoming familiar with instruments on transnational commercial law.

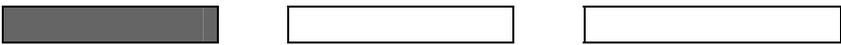
<b>Assessment of quality and effectiveness</b>	Good.
<b>Benefits/Beneficiaries</b>	Effective dissemination of knowledge about UNIDROIT instruments and, generally, transnational private and commercial law. Networking, in particular with Governments and academic institutions in developing countries.
<b>Staffing</b>	0.80 officer (the remaining 20% of whose time is devoted to her remit UNIDROIT publications); 0.30 secretary.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: regular budget (Exp. Ch. 2; Ch. 3);</li> <li>❖ scholarships, in 2007:             <ul style="list-style-type: none"> <li>– € 10,000 regular budget (AG(60)6, Exp. Ch. 11);</li> <li>– € 3,450 extra-budgetary (private donations);</li> </ul> </li> <li>❖ technical assistance:             <ul style="list-style-type: none"> <li>– € 6,000 regular budget;</li> <li>– € 42,700 extra-budgetary contributions (Luxembourg; Switzerland);</li> <li>– € 25,000 private donations.</li> </ul> </li> </ul>
<b>Priority acc. by General Assembly</b>	 <div style="display: flex; justify-content: space-around; width: 100%;"> <span>high</span> <span>medium</span> <span>low</span> </div>

**B. Research and Outreach Resources****UNIDROIT Library**

- The transfer of the catalogue entries to an on-line data base and the integration with data bases of other leading libraries is now almost complete;

- The Library's holdings increased by close to 2,000 titles. Significant donations from the Max Planck Institute (Hamburg) and a private donor are included in that figure. Acquisitions funded under the regular budget are increasingly rare – reasons: stagnant budgetary provision, skyrocketing prices.

- In addition to UNIDROIT scholarship recipients (cf. *supra*, 2 A), more than 2,400 users from 22 countries (Argentina, Australia, Austria, Belgium, Brazil, Chile, China, Finland, France, Germany, Hungary, Italy, Japan, Korea, Mexico, Nigeria, Portugal, the Russian Federation, Spain, Turkey, United Kingdom, United States of America) carried out research in the Library.

<b>Assessment of quality and effectiveness</b>	Good.
<b>Benefits/Beneficiaries</b>	Visiting users, in particular recipients of research scholarships. The Catalogue being available on-line, Governments, researchers and other remote users.
<b>Staffing</b>	1.0 law librarian, 0.5 assistant (the remaining 50% of whose time is devoted of his remit IT assistance), 1.0 assistant librarian, 0.8 assistant librarian (the remaining 20% of whose time is devoted to usher's tasks), 0.2 secretary.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ purchase of books and other costs: € 113,500, regular budget (Exp. Ch. 9);</li> <li>❖ donations: worth € 60,000;</li> <li>❖ staff: regular budget (Exp. Ch. 2; Ch. 3);</li> <li>❖ assistance by 3 volunteers from ELSA (European Law Student Association).</li> </ul>
<b>Priority acc. by General Assembly</b>	 <div style="display: flex; justify-content: space-around; width: 100%;"> <span>high</span> <span>medium</span> <span>low</span> </div>

### ***Publications***

- The flagship, *Uniform Law Review/Revue de droit uniforme* is the only specialised journal covering transnational private law worldwide. It contains the following sections: Articles, International Activities, Texts and Implementation of Uniform Law Instruments, Bibliographical Information. Apart from sister Organisations and Regional Organisations, UNIDROIT's own activities are extensively covered, thereby turning it into an essential tool for ensuring the dissemination of information on its work. In addition to subscriptions, the *Review* is distributed free of charge to a vast number of institutions and individuals (including depository libraries in member States). Exchange arrangements with other law journals help maintain the Library's stocks. In deference to demands by the Institute's financial organs the format was slightly modified and the *Review* is produced at lower cost.
- Other publications include the second edition of the UNIDROIT Guide to International Master Franchise Arrangements.

<b>Assessment of quality and effectiveness</b>	Good.
<b>Benefits/Beneficiaries</b>	Cf. <i>supra</i> , introductory text.
<b>Staffing</b>	0.20 officer; 1.0 editorial secretary; occasional contributions from other officers.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ <b>expenditure in 2007:</b> <ul style="list-style-type: none"> <li>- printing: € 31,500 (Exp. Ch. 5);</li> <li>- postage: € 13,000 (Exp. Ch. 6 § 3);</li> </ul> </li> <li>❖ <b>receipts in 2007:</b> € 40,000 (Receipts Ch. 2 § 3);</li> <li>❖ <b>staff:</b> regular budget.</li> </ul>



**Web site and Depository Libraries**

- The UNIDROIT Internet website continues to be an extremely effective means of promoting the Organisation’s activities and its instruments. The content of the site has been substantially enlarged and new features facilitating searches were added. The layout is currently being revised. Due to lack of funding, however, it has necessarily continued to be a low-cost site so that other features common to most modern commercial as well as governmental websites are not available.

- To date 47 libraries have been designated by member States to serve as depositories for UNIDROIT documentation and publications.

<b>Assessment of quality and effectiveness</b>	Good.						
<b>Benefits/ Beneficiaries</b>	Governments, researchers and other remote users wishing to access UNIDROIT documents and other resources.						
<b>Staffing</b>	0.50 officer (the remaining 60% of whose time is devoted to the Principles of International Commercial Contracts, <i>supra</i> , I 1 a); assistance by another officer with translation into French.						
<b>Funding</b>	❖ staff: regular budget (Exp. Ch. 2; Ch. 3); ❖ technical support, software: regular budget (Exp. Ch. 2§2; Ch. 7§5).						
<b>Priority acc. by Governing Council</b>	<table border="1"> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td>high</td> <td>medium</td> <td>low</td> </tr> </table>				high	medium	low
							
high	medium	low					

**UNILAW Database**

- The number of cases on the 1956 Convention on Contracts for the International Carriage of Goods by Road (CMR) fully treated and visible to the public increased by 25% over the last year but are still few (369). More than 1,400 are awaiting processing.

- The texts of the 2001 Cape Town Convention, the Aircraft and Rail Protocols, the 1929 Warsaw Convention on Carriage by air and its successor, the 1999 Montreal Convention, the 1924 Brussels Convention on Bills of Lading and the Brussels Protocol, the 1952 Brussels Convention on the Arrest of Sea-Going Ships as well as the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, have been inserted. Preparations for inserting case law (some 980 cases have been collected) and bibliography are underway.

<b>Assessment of quality and effectiveness</b>	Intrinsic quality good; progress unsatisfactory; effectiveness impossible to assess.
<b>Benefits/ Beneficiaries</b>	Courts and arbitrators called upon to interpret and apply international uniform law; counsel representing parties in litigation and arbitration; researchers; Governments and legislators working with international uniform law, in particular in drafting implementation legislation.

<b>Staffing</b>	0.50 officer; part-time assistant for document processing; the officer had assistance from four interns for a total of 15 months.		
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ staff: <ul style="list-style-type: none"> <li>– officer regular budget (Exp. Ch. 2; Ch. 3);</li> <li>– part-time assistant and interns extra-budgetary funding (Uniform Law Foundation);</li> </ul> </li> <li>❖ website: € 1,000 extra-budgetary funding (Uniform Law Foundation);</li> <li>❖ receipts: € 5,000 (reimbursement by the Uniform Law Foundation for services rendered by officer).</li> </ul>		
<b>Priority acc. by General Assembly</b>	 high	 medium	 low

#### 4. Membership – Relations with Governments – Institutional Co-operation - Visibility

- *Strategic Objective N°7*: a systematic and sustained effort to broaden the Organisation's representation in Africa, the Middle East and Asia, to fill gaps and re-vitalise dormant membership, and to guarantee a more regular presence and focused participation in other international fora.
- The Secretary-General continued discussions with South East-Asian Governments. Following a seminar and high-level meetings in Jakarta, an inter-ministerial committee recommended that Indonesia accede to the UNIDROIT Statute. A high-level delegation announced, on the occasion of its depositing the instruments of accession of the Cape Town Convention and the Aircraft Protocol that the Parliament will be seized shortly of the matter.
- Exploratory contacts were established with the Embassy of the United Arab Emirates and the Embassy of the Kingdom of Saudi Arabia in Italy. In this connection, an unofficial Arabic version of the UNIDROIT Statute was provided by Professors Omaia Elwan (Heidelberg/Cairo) and Hossam Loutfi (Cairo). It is accessible on the UNIDROIT website.
- Intensive efforts to re-establish communication with Bolivia continued and received the pro-active support of the President of the General Assembly for 2006/2007, Ambassador Gabriel Valdés Subercaseaux (Chile).
- Following an invitation by the Government of Germany, the Secretary-General participated in high-level meetings of legal experts from lusophone countries and made presentations on UNIDROIT work designed to strengthen participation from those countries in the Institute's activities. Representatives from Angola, Brazil, Cape Verde, East Timor, Mozambique and Portugal attended. The Secretary-General has accepted an invitation extended by the Speaker of the Parliament and the Minister of Justice of Cape Verde for the first half of 2008.
- In 2007, the Secretary-General and members of the Secretariat made official visits to, lectured or participated in seminars in: Austria, Bosnia-Herzegovina, Burkina Faso, Canada, Chile, China, France, Germany, Italy, Japan, Jordan, Panama, Poland, South Africa, Turkey, United Kingdom, United States of America.
- During the past 12 months, UNIDROIT welcomed official visitors, officials and interns on secondment from the following countries: Congo, France, Germany, Indonesia, Latvia, New Zealand, Nigeria, Republic of Korea, Vietnam.

- In 2007, the Secretariat paid visits to or participated in meetings of the following governmental and non-governmental international Organisations: African Union, Council of Europe, European Union, Hague Conference on Private International Law, International Chamber of Commerce, ICPO-Interpol, International Finance Corporation, International Trade Centre (WTO/UNCTAD), UNCITRAL, UNESCO, United Nations Committee on the Peaceful Uses of Outer Space, World Bank, Xiamen Academy of International Law.

- Of particular importance is the now well-established **tri-partite co-operation with the other private-law formulating Organisations**, i.e. the Hague Conference and UNCITRAL. It is based on four pillars: (1) annual co-ordination meetings; (2) “speaking with one voice” with other Organisations such as WTO, the World Bank and IMF; (3) actively participating in each others work; (4) exploring ways to co-sponsor seminars and co-author publications on the use of instruments of the three Organisations for domestic purposes, in particular in developing countries; a Guide to Instruments on the Law of Secured Transactions is under preparation and is expected to be finalised before the end of 2008.

## 5. Governance and Administration

- *Strategic Objective N°4*: designing communication, decision-making and resourcing processes capable of ensuring a comprehensive assessment of potential interests, costs and benefits of a State’s participation in any given project, on the one hand, and the predictable and sustained provision of adequate resources, on the other hand.
- *Strategic Objective N°8*: to establish up-to-date and unified procedures of electronic document management and record-keeping.
- *Strategic Objective N°10*: to achieve autonomy with respect to the provision and maintenance of information technology by retaining in-house IT-expertise.
- *Strategic Objective N°12*: the development of communication techniques that will facilitate the constant flow of all relevant information as well as reliable and prompt response.

- Substantial progress in reforming techniques and enhancing efficiency of administrative routine is predicated primarily on the **presence** of a skilled **chief administrator** in the position of **Deputy Secretary-General**. Encouraged by the UK’s extra-ordinary contribution of £ 50,000 for the third year running, the Permanent Committee at its 108<sup>th</sup> session, recommended that the Governing Council appoint Professor Alessandra Zanobetti as Deputy Secretary-General for the remainder of the statutory five-year period, i.e. until 31 December 2010. This recommendation, if acted upon by the Council at its 87<sup>th</sup> session, will place the Secretariat in a position to fully implement its action plan. In the meantime, the UK Government has pledged another £ 50,000 for 2009.

- The Secretariat is in the process of drawing up plans for a new IT-based system of office document management and archive. The Secretariat has consulted with other international Organisations and will in all likelihood opt for a low-cost solution employing off-the-shelve software.

- Notwithstanding the fact that available resources are limited, the IT-infrastructure has been up-graded and implementation of the project-related work programme is underway.

## II. Planning for 2008/2009 and mid-term

### 1. Legislative Activities including Implementation and Promotion of Instruments

#### A. Work in Progress

##### *Principles of International Commercial Contracts*

- A third session of the Working Group will be held from 26 to 30 May 2008. The Reporters for the five chapters have met for a drafting session held, at the invitation of the Max Planck Institute, from 3 to 6 March 2008 in Hamburg (Germany).

- Finalisation of the translation into Arabic, Portuguese, Slovak, Thai and Turkish is expected for 2008.

<b>Funding</b>
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- ❖ translation into Arabic: € 11,000, subsidised from the regular budget (amortized with the sale of 160/200 copies) (Exp. Ch. 2.2; Ch. 5);
- ❖ meetings in 2008: € 40,000 regular budget (Exp. Ch 1 § 5).
- ❖ official journeys: € 5,000 regular budget (Exp. Ch 1 § 6).

##### *International Interests in Mobile Equipment*

Following the special joint Government/industry meeting, held in New York on 19 and 20 June 2007, and a meeting of a newly formed Steering Committee to be held, at the invitation of the Government of Germany and the German Space Agency, from 7 to 9 May 2008 in Berlin the Secretariat will be working towards a third session of the Committee of governmental experts in the fourth quarter of 2008 or early 2009.

##### *Draft Convention on Intermediated Securities*

- A fourth session of the Committee of governmental experts was held from 21 to 25 May 2007. The Governing Council has approved the current text, and the draft Convention will be laid before a Diplomatic Conference to be held, at the invitation of the Government of Switzerland, from 1 to 13 September 2008 in Geneva.

- The Council's attention is drawn to the fact that the officer hired for the completion of the project will not be at the Secretariat's disposal for any subsequent work regarding the instrument's implementation after 1 October 2008.

<b>Staffing / Funding</b>
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- ❖ Funding of the officer who joined the Secretariat as of May 2007, acted as the Committee's secretary at its fourth session and who will continue to administer the project until completion: only partly secured from private donations (€ 20,000 in 2007).

#### B. Follow-up of adopted UNIDROIT Instruments: Promotion, Implementation, Monitoring

##### *Depositary Functions*

- Following the example of the 2001 Diplomatic Conference in Cape Town, the Diplomatic Conference for the Rail Protocol mandated UNIDROIT to assume the depositary functions under that treaty as well. In all likelihood the draft Space Protocol and any further protocol will make provision to the same effect (cf. also Articles 47-62 of the Convention). As will be recalled, in 2001 the Governments of Italy and South Africa urged UNIDROIT to assume the depositary functions. The Secretary-General of the UN is not available as depositary required to perform

consultative, administrative and monitoring and reporting functions as mandated by the Cape Town Convention and protocols.

- The Secretariat's experience with those Governments that are acting as depositaries for recent conventions adopted under the Institute's auspices would appear to confirm that Governments are not entirely happy with having shouldered that burden and that they would, generally and in cases where the United Nations are not in a position to attend to the depositary functions, prefer intergovernmental Organisations to act as depositaries for treaties elaborated under their auspices.

- In accordance with paragraph 69 of the Strategic Plan (C.D. (83) 6) provision might therefore be made for UNIDROIT to assume the depositary functions under all future UNIDROIT Conventions. On the other hand, both the Council, at its 86<sup>th</sup> session, and some Governments recommended caution in this regard.

<b>Staffing / Funding</b>	<ul style="list-style-type: none"> <li>❖ Officer in charge of the depositary function:           <ul style="list-style-type: none"> <li>– extra-budgetary funding ran out in August 2007;</li> <li>– in 2008, regular budget and in part private donation (€ 20,000 from UK Foundation);</li> <li>– in 2009, proposed to be funded under regular budget, but still <i>hors cadre</i> and not yet categorized according to applicable Category A scale.</li> </ul> </li> </ul>
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## 2. Non-legislative Activities

- With respect to the research and outreach resources in general, reference is made to the respective project-related documents prepared for the 87<sup>th</sup> session of the Governing Council C.D. (87) 15, 17, 20 and 21.

- With respect to the Uniform Law Review / *Revue de droit uniforme*, analysis of the impact of offering the Review – free of charge and/or against payment – on-line might have on content, costs, revenue, political mission, side effects for the UNIDROIT Library, etc. should be finalised before the Governing Council's 88<sup>th</sup> session (2009) and necessary decisions should be taken at that session.

- With respect to the UNILAW Database, the Secretariat submits the following for consideration: (1) The point of departure for the decision to develop the database was the governing bodies' desire to create a state-of-the-art infrastructure for the dissemination, implementation, interpretation and application, as well as the study of important uniform law instruments, notably instruments based on UNIDROIT's legislative activities and starting with its most successful product, the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR). (2) Notwithstanding the facts that (a) the officer in charge has, in the course of the years and on average, devoted 50% of her time in the most diligent and conscientious way to the project, (b) private donors have generously contributed significant amounts enabling the project to recruit a part-time assistant, (c) enthusiastic interns and professional collaborators from a number of countries have contributed much appreciated assistance, the UNILAW database's – like any database's – core function, i.e. to provide complete and fully analysed and key-worded case law and bibliography, has so far not been fulfilled. Moreover, it is making only incremental progress, in particular as regards case law: not quite 400 analysed cases on an instrument which, in some Contracting States, generates thousands of court decisions each year, are not an encouraging bottom line. (3) The reasons for the unsatisfactory stage of affairs are: (a) too ambitious, complex, work-intensive objectives and procedures (two languages, involvement of both in-house and external expertise); (b) in view of the foregoing (as well as the masses of material) clearly inadequate staff and financial reasons; (c) policy changes as

regards the selection of material *en route*. (4) The assumption that the database would before long be entirely funded from extra-budgetary sources and become auto-sufficient (UNIDROIT 2004 C.D. (83) 6, para 109) was wrong. (5) Over the past two years, both the Governing Council and the General Assembly have accorded the priority-grade 'low' to the project. The Secretariat would therefore submit that, unless significant additional resources are committed either by member Governments or private donors, the Institute, conscious of its responsibility towards member States' Governments, cannot continue to support this project. Given the significant amounts donated by close friends of the Institute, including the Uniform Law Foundation, a decision to discontinue the project would be painful. In its sections regarding the need to prioritise the Institute's Strategic Plan (UNIDROIT 2004 C.D. (83) 6, paragraphs 88-96), as adopted by the Council and the Assembly, accepted the notion that not all valuable and desirable activities could be funded under the budget. Paragraph 93 states: "Judicious use of resources may from time to time call for hard and unpopular decisions. If, for instance, a project turns out to be manifestly over-ambitious, wrongly tailored or unlikely for any other reason to be brought to fruition, to abandon it may be the only responsible action unless special stakeholders provide (extra-budgetary) support for its completion". Significant extra-budgetary and budgetary means have been invested in the database, but in the Secretary-General's considered opinion and measured against the objectives as originally formulated it will never be completed without radical changes of methods employed and without – at least – tripling the human and financial resources available. Short of abandoning the project and in view of its intrinsic qualities, the Institute may succeed in finding a partner for a joint venture, where UNIDROIT contributes the database in its current state as an asset and where the partner would commit to covering future costs for further development and running of the project. Again, without radical changes regarding both methods and substantive focus (choice of instruments) chances would appear to be slim. The Secretariat requests that the Council give its advice and make appropriate decisions.

- With respect to a proposed initiative which would meet the criteria of a technical assistance project, reference is made to the item "membership – relations with Governments", *infra* II 3 A.

### **3. Membership – Relationship with Governments – Institutional Co-operation – Visibility**

#### **A. Broadening the Institute's Membership**

- In line with efforts made in the past and indications of interest received, the key target areas for broadening the Institute's membership will continue to be, firstly, Southeast Asia and the Pacific and, secondly, the Middle East and selected African countries. As regards Latin America, efforts to re-vitalise dormant memberships will continue.

- Following up on unofficial soundings from the Government of Vietnam and an official request submitted by the Government of Indonesia, in 2006 and again in 2007, the Secretariat recommended and the Council approved, in principle, that a special programme "**ASEAN Initiative**" be launched and carried out in parallel with the triennial Work Programme. In light of the far advanced discussions with the Government of Indonesia (cf. *supra*, I 3) it was decided that implementation of that project might best be achieved in a two-step approach:

- First, organisation of a two day capacity-building workshop to be held in Indonesia. The principal target group would be Indonesian Government officials tasked with implementing transnational private-law instruments domestically as well as judges seised of transnational commercial litigation. As suggested by the Government, a few delegates from neighbouring countries could be invited to that workshop and Indonesia, UNIDROIT and "UNIDROIT member States with special interests in Indonesia and the Asia-Pacific region" might join forces to act as

facilitators of an ever broader involvement of those countries in UNIDROIT activities. The Government mentioned explicitly Australia, China, India, Japan, Korea and the Netherlands.

- Second, resuming and more systematically building on previous high-level contacts between the Secretariat and the Governments of Malaysia, Singapore, Thailand, and Vietnam with a medium-term target of organising a seminar on transnational commercial law and its role for good governance and economic development in member States of the *Association of South-East-Asian-Nations (ASEAN)*\*.

<b>Staffing</b>	Presenters and instructors for proposed seminar and workshop partly UNIDROIT officers, partly experts from supporting member States, partly from host and other target States.
<b>Funding</b>	<ul style="list-style-type: none"> <li>❖ Indonesia workshop: while host State would provide local hospitality, travel expenses for 3-5 UNIDROIT and outside experts would need to be covered by extra-budgetary contributions (estimate: not in excess of € 15,000).</li> <li>❖ Further steps in "ASEAN Initiative": to be assessed.</li> </ul>

- The Government of the Netherlands has pledged funding of the participation of two experts in the capacity-building workshop. Justice James Allsop of the Federal Court of Australia has indicated his preparedness to participate as instructor in the workshop. The Government of Korea indicated that best efforts would be made to make an extra-budgetary contribution towards the costs for the organisation of the seminar. Mr Hosokawa (member of the Governing Council) indicated that an as yet to be identified Japanese expert would be made available for the workshop. The Government of the People's Republic of China indicated that an application for funding in 2008 would be considered favourably. In May 2007, the Government of Indonesia advised that, for practical reasons, the capacity-building had to be postponed and that it would revert to the UNIDROIT Secretariat at a later point in time with a view to identifying a mutually convenient date and format.

- Informal remarks made by Indonesian officials, who visited the Institute, suggest that currently accession of that Government to the UNIDROIT Statute enjoys priority. According to information obtained by the Government of Australia in February 2008 for that to materialise "only" the President's signature is needed which, however, might "take some more time".

- As regards Africa, reference is made, firstly, to the Secretariat's activities in connection with developing a uniform act on contract law for the member States of OHADA (*supra* I 2A and document C.D. (87) 15). Secondly, the Secretariat wishes to draw the Council's attention to the German Government's initiative targeting lusophone (African) countries (*supra* I 4) and involving the Institute. Thirdly, a visit of the Institute by the Attorney-General and Minister of Justice of the Federal Republic of Nigeria, Chief Michael Kaase Aondoakaa, and the announcement of his candidature for this year's election of the new Governing Council ought to be noted as a sign of renewed opportunities in and for Africa.

- As regards the Middle East, reference is made to the forthcoming session of a Committee of governmental experts for the preparation of a Model Law on Commercial Leasing, to be held in Muscat (Oman) as well as the activities mentioned *supra* I 4. It is submitted that these are seeds from which new memberships may grow shortly.

- As regards Latin America, reference is made to the Secretariat's as well as the Chilean Presidency's efforts with respect to the Government of Bolivia. It is anticipated that the

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\* Member States: Brunei Darussalam, Cambodia, Indonesia, Lao People's Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

Secretariat's efforts to open new channels of communication with the Governments of Cuba and Paraguay will be continued by the new Secretary-General. A co-operation agreement between UNIDROIT and the American Association of Private International Law (Annex I to this document) will in all likelihood contribute to more intense exchange with the region.

#### **B. Relationship with Governments – Institutional and Project-related Co-operation – Secondments – Outsourcing – Visibility**

- Full achievement of Strategic Objectives Nos. 1, 3, 6 and 11 (see *supra* I 2 [at p. 3] and I 3 [at p. 8] within the time frames envisaged in 2003/2004 was predicated on the Institute's being successful in making its case for a significant increase of staff and financial resources with member States' Governments (UNIDROIT 2004 C.D. (83) 6, paras 103 and 104) and in attracting additional extra-budgetary and private-sector support. The latter proved feasible and materialised even beyond expectations. The former failed in the course of four budget planning cycles (cfr. *infra* II 4), and the targets set for 2010/2012 (cfr. UNIDROIT 2004 C.D. (83) 6, paras 79, 80) would now appear to be unrealistic.

- In keeping with UNIDROIT tradition, scarcity of resources (Pierre Widmer at the 1<sup>st</sup> Brainstorming Session in 2002 famously coined the formula "always too little to really live and too much to definitely die") has not been a reason to resign ourselves to limiting our action to what is covered by regular budgetary means. Some of the means employed with a view to overcoming those restraints are instruments to be found in our sister Organisations' tool boxes as well, others are – or may become – typical UNIDROIT special-purpose vehicles.

- Apart from the *volontaire international*, a young researcher placed traditionally at the Secretariat's disposal by the Government of France (the last one left in May 2007), and the *secondment* of a senior official by the Government of the United Kingdom (2004-2006) the Secretariat's efforts to secure regular secondments from member State Governments were so far unsuccessful. The Government of Turkey is currently looking into the possibility of making a secondment.

- The Institute's work on a Model Law on Commercial Leasing is commissioned and partly funded by the International Finance Corporation (World Bank Group). The lion's share was shouldered by the law firm Jenner & Block LLP, a corporate correspondent of the Institute, which seconded one of its best associates for a period of nine months to the Secretariat and who continues to assist during the sessions of the Committee of governmental experts. Other law firms have likewise contributed substantially and consistently to various projects and the Secretariat proposes to make targeted use of the title of "correspondent" to that end (cfr. C.D. (87) 19).

- Assistance by a young associate research officer and a more experienced free lance collaborator for the work on the preliminary draft Space Protocol to the Cape Town Convention is being funded by the Uniform Law Foundation/*Stichting voor eenmaking van het recht* and the UK Foundation for International Uniform Law respectively.

- Future co-operation agreements with universities and research institutions in member States should be predicated on a realistic chance to receive sustained quality input for the Institute's ongoing work.

- An idea rooted in the excellent co-operation between the Government of Luxembourg and UNIDROIT during the Diplomatic Conference that adopted the 2007 Rail Protocol to the Cape Town Convention and further developed in informal discussions was approved, in principle, by the Grand Duchy's Minister of Justice and of Finance at a meeting with the Secretary-General, held on 20 March 2008: the setting up of a joint venture between UNIDROIT, the Government of Luxembourg, the international financial community and other interested parties, notably those engaged in research and post-graduate teaching in the field of financial markets and services law, the "*Centre for Transnational Financial Markets Law*" (working title). The Centre – in the

Government's words, UNIDROIT's antenna and transmitter – would serve as a source of expertise assisting the Institute with its work on relevant projects, be it at the stage of feasibility studies, be it at the stage of Study Groups and thereafter, by means of involving leading international scholars and young researchers as well as practitioners in the Organisation's scientific work. The Faculty of Law, Economics and Finance of the University of Luxembourg would provide the most basic infrastructure for the organisation and administration of the joint venture, the stage for conferences and seminars and the institutional home for related academic qualifications (doctorate, post-doc degrees). It is envisaged that the initial phase will be extremely low-cost (no financial commitments beyond travel expenses, to be borne by the person participating in the relevant activity or the Organisation represented by that person). Working methods are to be tested pragmatically in the course of co-operating on relevant projects, as adopted for the new triennial Work Programme (2009-2011). The legal form of the Centre could be a Non-profit Association/*Association sans but lucratif*. It is planned that the joint venture, its objectives, articles of incorporation and administration will be the subject of a Memorandum of Understanding between the participants. The President and the Secretary-General will request the Governing Council to support this proposal for innovative project-related co-operation between the Institute and a member Government.

#### 4. Governance and Administration

##### *Secretariat*

- Following the assessment of the current situation and with some delay (cf. *supra* I 5), a plan is being drawn up for the gradual upgrade of electronic *document management, keeping of records and archives* and other *administrative procedures* (cf. Strategic Objectives No. 8 and 9).
- With respect to staff, the situation which in 2003 by common consent was characterised as severe understaffing in categories A (professional/ university degree) and B (administrative/ secondary or higher education) has slightly improved in terms of *units* of category A and category B staff even if the projections made in 2003 did not materialise. Conversely, the projected decrease of category C (other support) units was achieved.

	2003	2006 proj.	2007 eff.
Category A	8 (+ 1 cons.)	9 (+ 1 cons.)	9 (+ 1 cons.)
Category B	7	10.5	9
Category C	5	4	3

It must be emphasised, however, that three out of nine category A staff are *hors cadre*, i.e. not integrated in the Institute's organisational chart: one of the Deputy Secretaries-General; secondly, the officer tasked with depositary functions under the Cape Town Convention and its protocols and, thirdly, the officer in charge of the draft Convention on Intermediated Securities. All three are partly funded by extra-statutory contributions or private donations. In light of the foregoing it would appear difficult to assume that the projections made for 2010/2012 (UNIDROIT 2004, C.D. (83)6 para. 80 et seq.) are realistic.

- A *staff development plan* will be needed to establish how to achieve the objectives set forth in paragraphs 75-87 of the Strategic Plan, consistent selection and hiring procedures, and up-to-date personnel management generally. For this to materialise and to bear fruit over time, the primary objective must be the full integration of the Deputy Secretary-General (Chief Administrator) in the organisational structure of the Institute and the resumption of permanent

funding under the regular budget. Generous extra-statutory contributions of four times £ 50,000 (= € 74,000) for 2006/2007/2008/2009 made by the UK Government must be matched by the collectivity of member States by contributing their share.

- Similarly, the commitment by member States, placed on record, to integrate the officer tasked with the depositary functions under the adopted and future Cape Town instruments and to fund that position under the regular budget must be honoured.

<b>Funding</b>
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- ❖ Both positions under regular budget in 2008 and draft budget for 2009 (with extra-statutory contribution of £ 50,000 from UK Government for the post of Deputy Secretary-General);
- ❖ Categorisation (A 6 and A 2.4 respectively) to be envisaged for as early as practical.

- The Secretariat wishes to draw the Council's attention to another issue of general importance. In 2003, member Governments and the Council agreed that routine inhouse translation of all documents (particularly from English into French) was a high price to be paid for the Organisation's independence (cfr. UNIDROIT 2004 C.D. (83) 6, paras 55-57. This burden has increased significantly over the years and commensurate with the scientific out-put. As a consequence, the French native-speakers among the professional staff are increasingly absorbed by this task.

#### ***General Assembly***

- Following the pattern of the Assembly's sessions since 2002, the highest organ of the Institute will in the future regularly be apprised of the nature and the state of work on one of the legislative projects. The Secretariat would submit, however, that the plan to seise the General Assembly of discussing and adopting the Model Law on leasing at an extra-ordinary session in late 2008 may not remain exceptional. In appropriate cases greater and deeper involvement of member States' Governments in the substance of the Institute's work may be beneficial and enhance expeditiousness of work. As will be recalled, Governments and members of the Council discussed the potential of such enhanced participation at the Brainstorming Sessions (cf. UNIDROIT 2002 IBS – Doc. 1 paragraphs 37-43, UNIDROIT 2003 IBS – Doc. 2 paragraphs 5, 6).

### **5. Advance Planning for Work Programme 2009-2011**

- Governments will continue to demand that priorities be established and respected over the three-year-period, both as regards work to be rolled over from the 2009-2011 period and new items. The process of analysing new proposals must, therefore, be highly selective.

- As regards new work, only projects that UNIDROIT can carry out better than other Organisations ought to be selected. On criteria, cf. the Secretary-General's reflections in Unif. L. Rev. 2006, 135-141.

- The Secretariat has approached Governments, international Organisations, industry and the legal professions, the Institutes' Correspondents and other stakeholders in February 2008 with a view to collecting their indications and proposals. The most encouraging responses received are more analytically presented in UNIDROIT C.D. (87) 12.

- The Work Programme will have to be commensurate to the budgetary and extra-budgetary means and the staff resources Governments, the foundations and other "friends of UNIDROIT" as well as the private sector are envisaging to place at the Organisation's disposal over the next triennium.

### III. Summary

1. With respect to the elaboration of uniform law instruments, the objectives set forth in the Strategic Plan (Nos. 1, 6 and 11) have been achieved both as regards quality and the observance of timelines. This general assessment does not apply to the preliminary draft Space Protocol to the Cape Town Convention. Significant delay in advancing the latter is to be attributed mainly to the responsible officer's assuming administrative tasks as Deputy Secretary-General *ad interim*. This has been remedied by appropriate organisational measures which are currently being implemented.
2. As regards the priority grade accorded by the General Assembly, the Secretariat wishes to draw the Council's attention to the fact that certain projects, while included by the Assembly in the current triennial Work Programme, are either on hold (e.g. emerging securities markets) or not yet shown in this update of the Strategic Plan.
3. The unconditionally positive assessment applies equally to the pursuit of the Strategic Objectives Nos. 2, 3 and 7 targeted by the Institute's non-legislative activities. As regards broadening the Institute's membership in the Asia Pacific region, a detailed proposal is submitted and requires action as soon as the Government that had previously expressed its desire to work as facilitator indicates its readiness to proceed. As regards membership in the Middle East, encouraging signals have been received from the Kingdom of Saudi Arabia, the United Arab Emirates and the Sultanate of Oman. With respect to Africa, the colloquium for the presentation of the draft OHADA uniform act on contracts has prepared the ground for effective follow-up action.
4. Drawing on the Institute's experience in de-centralising and outsourcing substantive scientific work and making judicious use of its good-will with Governments, international Organisations and the private sector will enable the Organisation to complete the current Work Programme in a timely fashion and to embark, notwithstanding continuing budgetary restraints, on carefully selected and challenging new projects during the triennium 2009-2011.
5. With respect to the review of internal administrative processes and infrastructure, the long-time absence of an experienced and dedicated administrator permitted only minimal progress. It is hoped that this transition period has drawn to a close and that the now re-completed organisational structure of the Secretariat will allow to focus on the Strategic Objectives Nos. 4, 8, 9 and 12 and to take appropriate action.
6. In a similar vein, more fully achieving Strategic Objective No. 11 (diligent carrying out depositary functions, promotion, assisting implementation, and monitoring the use of adopted instruments) is predicated upon staff resources. Stabilising and integrating the post of the office in charge of UNIDROIT's treaty obligations with respect to the Cape Town Convention into the Institute's organisational chart is, in the Secretariat's considered opinion, top priority.
7. Conversely, achieving Strategic Objective No. 10 (autonomy with respect to the provision and maintenance of information technology) requires additional capital investment as well as staff. In this respect, the Governing Council and the Secretariat might usefully explore the possibility of establishing project – or problem-related trust funds and canvass member Government's willingness to contribute towards those investments.

**ANNEX I**  
**ANNEXE I**

**COOPERATION AGREEMENT**

**BETWEEN**

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**AND**

**THE AMERICAN ASSOCIATION OF PRIVATE INTERNATIONAL LAW**

The Parties to this Agreement:-----, represented by -----, domiciled at -----, and the American Association of Private International Law (ASADIP), represented by Dr. Diego Fernández Arroyo, President, and Dr. José Antonio Moreno Rodríguez, Secretary General, domiciled at Av. Perú 1044, in the city of Asunción, Paraguay;

Whereas, the-----;

Whereas, the ASADIP is an entity with the following objectives:

- a) To reaffirm the need for the obligatory teaching of Private International Law at the regular courses of the Law Schools and in-depth education at the post graduate courses;
- b) To promote studies and research on the development of the discipline, as understood in its ample meaning;
- c) To advocate the performance of joint studies with other branches of Law, in particular with Public International Law, Integration Law, and Communitarian Law;
- d) To exchange experiences on all things related to Private International Law, and specially regarding the teaching of the subjects related to it;
- e) To foment measures necessary for the exchange of information related to Private International Law in each State of the region, including the current legislation, law projects and amendment projects, jurisprudence, and doctrine;
- f) To establish a Documentation and Information Center on the subject of International Private Law;
- g) To cooperate with the Organization of American States regarding regulation projects on the matter, as well as with other instances and global, regional, sub-regional and national institutions, public and private, who endeavor in the drafting and development of International Private Law;
- h) To disseminate the works of international organizations on the subject of International Private Law.

**AGREE TO THE FOLLOWING:****Article 1  
Purpose**

The Purpose of this Agreement is to combine the efforts of the Parties hereto towards the channeling of academic, research and cooperation activities that contribute to the larger diffusion, codifying, and progressive development of the private international law / private law, in accordance with what is established in the Statute of the -----.

**Article 2  
Responsibilities of the Parties**

## 2.1 ASADIP commits to:

- a. Provide counseling to ----- on those matters that are the subject to this Agreement, as required;
- b. Disseminate among the institutions with which it relates, information about the objectives and the activities of ----- , based on information provided by ----- :
- c. Provide ----- with ASADIP publications related with common activities and joint projects developed between the Parties hereto;
- d. Present to the -----, before January 31 of each year, a report with a description of the activities performed during the previous year under this Agreement; a proposal for activities to be carried out during the current calendar year under this Agreement; and, an updated list of the ASADIP Authorities and of other affiliated entities in Paraguay or in any other -----.

## 2.2 ----- commits:

- a. To remit to ASADIP the documentation and publications of ----- that may be of interest in its areas of education and research.
- b. In accordance with the rules of procedure of the respective ----- bodies, to invite ASADIP representatives to attend the public meetings of these bodies, when they discuss matters of interest to ASADIP;
- c. To collaborate, when required by ASADIP, on matters related to the education in the ----- - Member States, according to the programs approved by -----; and
- d. To take into consideration the ASADIP observations and written remarks regarding the areas mentioned in this Article.

### **Article 3 Special Cooperation Relations**

The Parties shall consider the development of special cooperation relations in areas of common interest, through memoranda of understanding, among which consideration will be given to:

- a. The development and implementation of joint research projects;
- b. The exchange of bibliographic material and the access to databases and general information relative to joint projects;
- c. The exchange of documents and specific information related with all scheduled activities and all frameworks of interest for both institutions;
- d. The exchange of technical and professional staff between ASADIP and ----- for the strengthening of the studies and research programs; and
- e. Joint meetings to discuss matters of common interest.

### **Article 4 Budget Limitations**

The financial obligations incurred by the ----- and ASADIP emerging from this Cooperation Agreement or from supplementary agreements or the memoranda or understanding, shall be subject to the current budget-program, the norms, rules and regulations corresponding to both Parties hereto, regarding budgetary and financial aspects, and to the decisions of the respective governing bodies.

### **Article 5 Protection and Use of Results**

The confidentiality or diffusion of the results derived from the execution of projects, programs or research activities agreed, shall be mutually determined by the Parties hereto in the respective supplementary agreement or memorandum of understanding, in which the rights and title shall be defined regarding eventual scientific and/or technical results obtained during the execution by each one of the Parties.

### **Article 6 Acknowledgement of Privileges and Immunities**

ASADIP acknowledges the privileges and immunities of the ----- by virtue of the general principles of international law, the laws and agreements that are pertinent on privileges and immunities.

**Article 7**  
**Solution of Controversies**

Any controversy emerging with regard to the interpretation or compliance under this Agreement shall be resolved through direct negotiation between the Parties hereto. In case a satisfactory solution is not achieved, the parties shall submit the differences to a mutually agreed upon arbitration procedure.

**Article 8**  
**Effective Date**

This Agreement shall become effective on the date of its execution by the authorized representatives of ----- and ASADIP, and will be effective indefinitely.

**Article 9**  
**Modifications, Amendments and Termination**

10.1 This Agreement may be modified by the mutual consent of the Parties hereto.

10.2 The proposed amendments shall be presented in written to the other Party, and become effective upon three months of the expression of consent.

10.3 Any one of the Parties hereto may unilaterally terminate this Agreement at any time, by written notice to the other Party of at least six (6) months prior to the date they pretend termination. The exercise of the power of rescission according to this paragraph, will not entitle the parties to formulate indemnification claims of any kind.

10.4 In any instance of extinction of this Agreement, the Parties commit themselves to the compliance of the covenants respectively assumed, to the effects of the total completion of the work and/or activities in execution hereunder, of the supplementary agreements or memoranda of understanding executed.

**Article 10**  
**Possibilities of Agreements with the same finality**

This Agreement does not exclude those agreements that any of the Parties may celebrate with other entities, public or private, national, international or multilateral.

**Article 11**  
**Autonomy of the Parties**

In any circumstance or fact in relation with this instrument, the Parties hereto shall maintain the individually and autonomy of their respective legal, technical and administrative structures, and shall particularly assume the relative consequences and responsibilities.

**Article 12**  
**Institutional Coordination**

13.1 The ----- area responsible for the compliance of this Agreement, and for the coordination of the activities described herein, is the -----.

13.2 All communications in relation to this Agreement shall be addressed -----, by certified mail with acknowledgement of receipt addressed to the mentioned domicile, and via fax to Number -----.

13.3 The ASADIP area responsible for the compliance of this Agreement and the coordination of the activities described herein is the -----.

13.4 All communications in relation to this Agreements shall be addressed to the Secretaría General, Av. Perú 1044, Asunción – Paraguay, by certified mail with acknowledgement of receipt addressed to the mentioned domiciled, and via fax to Number 595-21-215134.

13.5 Any one of the Parties hereto may modify the designated person or area, notifying the other Party in written.

**IN TESTIMONY OF WHICH**, the representatives below of ----- and of ASADIP execute this Agreement in English, in duplicate, at the sites and dates as indicated near the signatures.

For -----

Place:  
Date:

For the American Association of Private  
International Law (ASADIP)

Diego P. Fernández Arroyo  
President

José Antonio Moreno Rodríguez  
Secretary General  
Place: Asunción, Paraguay  
Date: