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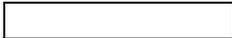
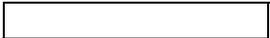
UNIDROIT 2008
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Item No. 15 on the agenda : Legal Co-operation Programme

(prepared by the Secretariat)

<i>Summary</i>	<i>Information on</i> • <i>the Research Scholarships Programme</i> • <i>Action in support of legislative work</i> • <i>Co-operation with OHADA in drafting a Uniform Act on contracts</i>
<i>Related Documents</i>	<i>Implementation of the Strategic Plan (C.D. (87) 6, p. 8.);</i> <i>Study LXV – Scholarships Impl. 19</i>

PRINCIPAL PARAMETERS FOR DISCUSSION PROPOSED BY THE SECRETARIAT

Priority			
	high	medium	low

I. Strategic Plan

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

II. Work Programme 2006-2008

Yes

III. Current Assessment

On time			
	yes	slightly delayed	no

Objectives	To propose a dynamic Legal Co-operation Programme within the confines of the Secretariat's limited financial and human resources
Staffing Implications	One principal research officer (part-time) One assistant (part-time) to deal with the logistics of the Scholarships Programme
Budgetary Implications	Research Scholarships Programme: UNIDROIT Budget Chap. 11 : € 10,000 (in 2007 and in 2008); Voluntary contributions (paid in 2007, spent in 2007/2008): € 10,926 + € 5,051 (balance from the Ouagadougou Colloquium) Preparation of a draft OHADA Uniform Act on contract law: extra-budgetary grant from the Swiss Government in September 2003 (CHF 190,000 – approx. € 120,000) Voluntary contributions for the holding of the Colloquium "The Harmonisation of OHADA Contract Law", Ouagadougou, 15-17 November 2007 : Contributions from the Governments of Switzerland* and Luxembourg : € 42,673.63 ; private donations: € 25,000
Recommendations/ Guidance sought/	To take note of the information provided by the Secretariat ; to support the Secretariat's efforts to secure funding

Introduction

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

2. The *Legal Co-operation Programme*² can take many forms. However, the Secretariat has consistently sought to focus its efforts on those activities with the highest cost/benefit ratio to make the best of the very modest, indeed marginal, resources at its disposal. The emphasis has accordingly been on • the research scholarships programme for lawyers from developing countries and countries in economic transition • support in the shape of publicity for the Institute's legislative work in member and non member countries (organisation of seminars, promotion of institutional and personal contacts, dissemination of information through its publications and via the Internet, etc.) to enable the legal community in these countries to become more closely involved with UNIDROIT's work and to take full advantage of the corresponding

* The amount of the Swiss funding for the Ouagadougou Colloquium corresponds to the balance of the global allocation of 190,000 FCH for the preparation of the project.

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

² As regards the objectives of and means available to the Legal Cooperation Programme, *cf.* the detailed report prepared by the Secretariat for the General Assembly at its 2002 session (*cf.* A.G. (56)2).

benefits • *ad hoc* technical support, a particularly telling example being the preparation of a draft OHADA Uniform Act on contract law. Details of these various activities are set out below.

I. – THE RESEARCH SCHOLARSHIPS PROGRAMME 1993-2008

3. Reference is made to the document prepared for the 83rd session (2004) of the Governing Council (cf. G.C. (83) 14). As to the annual implementation report for 2007 : see Study LXV - Scholarships: Impl. 19.

(a) Objectives

4. In brief:

- **185 researchers** have been hosted by UNIDROIT to date, funded in full or in part by UNIDROIT or by external donors, for stays of two months' average duration, to conduct research connected with UNIDROIT instruments – or on uniform law in general. These top-level researchers generally derive maximum benefit from the documentary resources of the UNIDROIT Library;
- the scholars' **countries of origin also benefit**, in respect of the modernisation of law, the implementation of uniform law instruments, training and information (through articles, advice to Governments, updating of university curriculae, etc.);
- **considerable spin-off for UNIDROIT**: former scholars constitute a network of experts in more than 50 countries who help to reinforce member States' part in the life of the Institute and to forge academic or institutional links with non member States and with other international organisations, all of which elements play a key role in promoting and propagating UNIDROIT'S work.³

(b) Resources

5. The Programme's resources are unfortunately extremely modest, and there is evidence of a considerable drop compared to 2006 and 2007.

- **Allocation of Chapter 11 of the Budget**: following the decision of the General Assembly at its 60th session on 1 December 2006 to reduce the € 15,000 allocation granted in 2006 to € 10,000 in 2007, a figure that was maintained for 2008, this now stands at 0.58% of member States' contributions other than those of Italy, well below the 1% target set when this budget item was first created (and which, if applied, would have meant a total allocation of € 17,220 in 2008). Although the budget allocation covers the Legal Co-operation Programme in general, most of the funds go towards financing the research scholarships.
- **Voluntary contributions by external donors**: The Secretariat particularly regrets the withdrawal of one of the Programme's long-standing donors (for internal procedural

³ Some former UNIDROIT scholars now occupy key posts in their respective Governments and have become spokesmen for UNIDROIT within their respective departments. Several of them have been appointed UNIDROIT correspondents, and one other has become a correspondent of the Review; no few of them have participated (also as representatives of their Governments) in meetings and seminars organised by UNIDROIT; negotiations in view of the accession of new member States are now underway thanks to the efforts of former UNIDROIT scholars; - institutional links have been established with other international organisations, among which OHADA and SADC; - there are innumerable examples of ex-scholars translating UNIDROIT instruments and promoting them in their countries of origin, which in some cases has led to their ratification by these countries.

reasons). On the other hand, it is pleased to note the renewal of the sponsorship of the *UK Foundation for International Uniform Law* (1 four-month scholarship) and expresses its satisfaction at the support of the members of the UNIDROIT Governing Council (1 scholarship) and the Secretary-General of UNIDROIT (1 scholarship). Finally, the balance of the voluntary contributions made towards the holding of the Ouagadougou Colloquium was used (with the donors' consent) to finance two scholarships under the Programme.

6. The Secretariat is actively seeking other sources of funding for the Programme. In general terms, it encourages applicants to identify financial sources of their own, and seeks to make optimum use of the resources available. Finally, the Secretariat takes this opportunity to emphasise the importance, in this context, of maintaining adequate documentary resources in the Library, which forms one of the main pillars upon which the Research Programme rests.

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

7. This activity is intended to promote understanding of how UNIDROIT legislative instruments work and how they can be applied at the national level, particularly with the developing countries and countries in economic transition in mind. In this context, the Secretariat seeks to ensure efficiency in its co-operation with Governments and other international organisations in order to rationalise the use of resources and improve the quality of its work. Seminars are excellent vehicles in this respect.

8. Examples include the Secretariat's proposal to organise an event involving the member States of ASEAN with the aim of improving the ability of national administrations in that area to implement uniform law instruments (this proposal was ratified by the Council at its 85th session, subject to available funds). Likewise, the Secretariat's involvement with the information and promotion scheme for existing international instruments run by the International Trade Centre (ITC – WTO/UNCTAD) (in particular in the field of trade and investment): following a number of workshops organised in Vietnam and Romania in 2006, the ITC organised a seminar in Madagascar in November 2007 at which the UNIDROIT instruments were presented.

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

8. The draft OHADA Uniform Act on contract law prepared by UNIDROIT, drawing on the *UNIDROIT Principles of International Commercial Contracts*, at the request of the OHADA Council of Ministers (and drafted, together with an Explanatory Note, by Professor Marcel FONTAINE, Belgian member of the working group on the UNIDROIT Principles, with financial support from the Swiss Government (Development and Co-operation Department) was submitted for scrutiny by the National Committees of the OHADA member States in 2005.

9. With a view to stimulating the consultation process and promoting an exchange of views on the draft Uniform Act, UNIDROIT conceived the idea of organising a Colloquium in Africa. Preparations were set in motion to draft a programme, to identify experts and partner institutions, and to raise funds, and the project eventually came to fruition with the holding in Ouagadougou (Burkina Faso) from 15 au 17 November of the "Colloquium on the Harmonisation of Contract Law within OHADA", organised together with the Training and Research Unit (UFR) for Legal and Political Science of the University of Ouagadougou, and in association with the Organisation for the Harmonisation of Contract Law in Africa – OHADA, under the chairmanship of Professor M. Filiga Michel SAWADOGO, Professor at the UFR for Legal and Political Science of the University of

Ouagadougou. The conclusions of the Colloquium are set out in an annexe to this document, and an in-depth report was published in *Uniform Law Review* 2007-4.

10. The Secretariat, which fully endorses the feelings expressed by the participants in the Colloquium, wishes to underline the excellent scholarly level of the event, and its likely impact on scholarly thinking as to the modernisation of contract law in the OHADA member States and beyond. The Acts of the Colloquium will be published shortly, and are likewise expected to make a significant contribution in this sense, in particular within the OHADA national committees. The legislative process is of course now in the hands of OHADA, and the UNIDROIT Secretariat is closely monitoring developments and decisions taken by that Organisation in this connection.

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CONCLUSIONS OF THE COLLOQUIUM

The **Colloquium on the Harmonisation of OHADA contract law**, organised by UNIDROIT and the Training and Research Department (UFR) for Legal and Political Science of the University of Ouagadougou, in association with the Organisation for the Harmonisation of Business Law in Africa – OHADA, was held in Ouagadougou from 15 to 17 November 2007 under the chairmanship of Professor M. Filiga Michel SAWADOGO, Professor at the UFR for Legal and Political Science of the University of Ouagadougou.

His Excellency the Minister for Secondary and Higher Education and Scientific Research was called to the Presidency of the Colloquium, which was placed under the patronage of Their Excellencies the Minister of Justice and the Minister for the Promotion of Human Rights of Burkina Faso.

The Colloquium was held with the support of the Swiss Agency for Development and Cooperation SDC (Swiss Confederation), the Directorate for Development Co-operation (Grand-Duchy of Luxembourg) and the *AISBL Fonds Scientifique Jean Bastin*, and in partnership with the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the Swiss Institute of Comparative Law, the University of Geneva (Switzerland), the *Facultés universitaires Notre-Dame de la Paix* of Namur and the *Commission Universitaire pour le Développement* (Belgium) as well as McGill University and the University of Montreal (Canada).

Following the Welcome Addresses of Professor Filiga Michel Sawadogo, speaking as President of the Colloquium and on behalf of the Organising Committee, Professor Herbert Kronke, on behalf of UNIDROIT, Professor Koléka Boutora-Takpa, on behalf of OHADA, and Mrs Chrystel Ferret, on behalf of the Swiss Directorate of Development and Co-operation, Mr Zakalia KOTE, Minister of Justice, declared the Colloquium opened.

The following **reports** were presented *:

- Current problems raised by the harmonisation process within OHADA” – Mr Jean Yado Toé, Professor at the Training and Research Department (UFR) for Legal and Political Science of the University of Ouagadougou (Burkina Faso)
- The harmonisation of contract law within OHADA: what is at stake? – Mr Idrissa Kéré, Director of Legal Affairs and Institutional Relations, OHADA Permanent Secretariat
- Harmonising the law in a multilingual environment with different legal systems: a Canadian point of view – Mr Robert Leckey, Professor in the Faculty of Law of McGill University (Canada)
- Harmonising the law in a multilingual environment with different legal systems: the harmonisation of business law in Africa – Mr Aboubacar Fall, Principal Legal Counsel, African Development Bank (ADB)
- New trends in the law of obligations: which law applies? – Prof. Eleanor Cashin Ritaine, Director, Swiss Institute of Comparative Law, Lausanne (Switzerland)
- The impact of international uniform law: the Vienna Convention, the role of UNCITRAL – Mr Luca G. Castellani, Legal Officer, Secretariat of the United Nations Commission on International Trade Law (UNCITRAL)
- The impact of the UNIDROIT Principles on contract practice and arbitration – Mr Emmanuel Jolivet, General Counsel, International Court of Arbitration of the International Chamber of Commerce (ICC)

* For an abstract of the reports, please access the Internet website at : <http://www.unidroit.org/english/legalcooperation/ouagadougou-e.pdf>

- The impact of the UNIDROIT Principles on the reform of the law of obligations in China – Mr Zhang Shaohui, Associate Professor, South China University of Technology, Guangzhou, Canton (People’s Republic of China), barrister at the Luxembourg Bar
- The UNIDROIT Principles and French contract law – Mr Jean-Michel Jacquet, Professor at the *Institut universitaire de hautes études internationales*, Geneva (Switzerland)
- The OHADA preliminary draft Uniform Act on Contract Law: a general introduction – Mr Marcel Fontaine, Emeritus Professor, former Director of the *Centre de droit des obligations*, Faculty of Law, Catholic University of Louvain (Belgium); UNIDROIT Expert responsible for the drafting of the preliminary draft OHADA Uniform Act on contract law
- The OHADA preliminary draft Uniform Act on Contract Law as seen by a Common Law lawyer – Hon. Justice S.K. Date-Bah, Justice of the Supreme Court of Ghana

Two Round Tables were held. The *first*, on **SUBSTANTIVE SOLUTIONS IN THE PRELIMINARY DRAFT : SOME SPECIFIC ISSUES**, was chaired by Professor Mbikayi Kalongo, Professor at the Faculty of Law of the University of Kinshasa; Advocate of the Supreme Court of Justice; Chairman of the Permanent Committee for Congolese Law Reform (Democratic Republic of Congo). It focused on four main themes :

- Upholding of the principles of good faith and fair dealing – Mr Mbikayi Kalongo
- Protection of the contract : conclusion, performance and remedies for non-performance – Mr Sibidi Emmanuel Darankoum, Professor at the Faculty of Law of the University of Montreal, Canada
- ‘Cause’ and consideration: why they were left out – Mrs Christine Chappuis, Professor at the Faculty of Law of the University of Geneva, Switzerland
- Electronic commerce: adequateness of rules? – Mr Etienne Montero, Professor, *Facultés universitaires Notre-Dame de la Paix* of Namur, Belgium

The *second Round Table*, dealing with the **SCOPE OF APPLICATION OF THE PRELIMINARY DRAFT**, was chaired by Professor Jacqueline Lohoues Oble, *Agrégée* of the Law Faculties, Legal Adviser to the Regional Commission for Insurance Supervision (*Commission Régionale de Contrôle des Assurances* (CRCA), former Minister of Justice (Côte d’Ivoire) and focused on three main themes:

- Autonomy of the parties / non-mandatory character of the provisions of the future Act – Prof. Jacqueline Lohoues Oble
- Contracts in general / commercial contracts / consumer contracts – Prof. Dorothé Sossa, Dean of the Faculty of Law and Political Science of the University of Abomey-Calavi, Cotonou (Benin)
- Form and evidence in contractual obligations – Dr Félix Onana Etoundi, Magistrate, Juriste Référendaire at the OHADA Common Court of Justice and Arbitration

The Colloquium then went on to a report on the Coordination of the OHADA preliminary draft Uniform Act on Contract Law with other Uniform Acts – Dr Gaston Kenfack Douajni, Vice-Director of Civil, Commercial, Social and Traditional Legislation at the Ministry of Justice (Cameroon) and concluded with the **General Report** presented by Mr Pierre Meyer, Professor at the Training and Research Department (UFR) for Legal and Political Science of the University of Ouagadougou (Burkina Faso) followed by the Conclusions set out by Professor Filiga Michel Sawadogo, Chairman of the Colloquium.

150 people attended the Colloquium and took part in the many debates that followed the presentation of the reports. The **participants** hailed from widely diverse backgrounds: – Government representatives, academics, judges, attorneys, business lawyers, and so on from 12 member countries (Burkina Faso, Benin, Cameroon, Chad, Republic of the Congo, Côte d’Ivoire, Guinea, Equatorial Guinea, Mali, Niger, Senegal and Togo) and 11 non member countries of OHADA (Belgium, Canada, Democratic Republic of the Congo, Egypt, France, Ghana, Luxembourg, Nigeria, South Africa, Switzerland and the United Kingdom), as well as representatives of 15 international organisations.

Mrs Salamata SAWADOGO, Minister for the Promotion of Human Rights, closed the proceedings and the following **motion of thanks** was adopted by the participants at the close of the Colloquium:

Considering the holding of the Symposium on "*The Harmonisation of Contract Law within OHADA*" in Ouagadougou from 15 to 17 November 2007 at the *Hôtel Mercure Silmandé*;

Considering the diversity, the profile and the number of the participants, as well as the relevance and the quality of the reports and the excellence of the discussions;

Considering the attendance of the State and Government Authorities of Burkina Faso, in particular during the opening and closing ceremonies, the participants in the aforementioned Symposium express their profound gratitude to:

- the originators and organisers of the Symposium, i.e. UNIDROIT, the Training and Research Department (UFR) for Legal and Political Science of the University of Ouagadougou and the OHADA Permanent Secretariat;
- the financial partners who made the event possible, i.e. the Swiss Agency for Development and Cooperation (SDC), the Directorate for Development and Cooperation of the Grand Duchy of Luxembourg and the AISBL Fonds Scientifique Jean Bastin;
- the State and Government Authorities of Burkina Faso for their active involvement in the Symposium.

Ouagadougou, 17 November 2007
Signed, The participants in the Colloquium

The **Acts** of the Colloquium will be published by UNIDROIT in the course of 2008.

UNIDROIT expresses its satisfaction at the success of the Ouagadougou Colloquium and at its important contribution to scholarly thinking on the harmonisation of contract law within OHADA and in the wider interregional and international setting. UNIDROIT expresses its warm gratitude to all its institutional partners and all those who helped to make the Colloquium possible.

As the technical partners of OHADA, UNIDROIT is aware of the complexity of and the challenges posed by the process that is now underway, and reiterates its determination to place its full know-how at OHADA's disposal, in accordance with the choices made by that Organisation, in drafting a harmonised contract law for Africa.

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