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### **Report on the Session**

(prepared by the Secretariat)

#### ***Item No. 1 on the agenda: Adoption of the agenda (C.D. (88) 1 rev.)***

1. The *President* opened the session, first calling upon participants to observe one minute's silence as a mark of respect to the victims of the recent earthquake in L'Aquila, Italy.
2. The President then welcomed the members of the Governing Council. Chief Michael Kaase Aondoakaa had been unable to attend. He extended a particularly warm welcome to the twelve newly-elected members who were attending their first Council session as well as to Mr Renaud Sorieul, Director of the International Trade Law Division, United Nations Office of Legal Affairs and Secretary of UNCITRAL, who was present as an observer (see the list of participants reproduced in Appendix I of this document).
3. He pointed out that the new Governing Council was starting its mandate at a time of great economic, financial and potentially social turmoil which would require those representing UNIDROIT, like all other international organisations, to display the greatest possible political sensitivity, keen professional consciousness and a very high level of efficiency and diligence in the use and management of the resources which the international community placed at UNIDROIT's disposal. The quality of co-ordination and dialogue between the Council and the other organs of the Institute and with the Governments would be essential in securing the support the Institute needed to respond to the challenges facing it in these difficult times. At the same time, however, he stressed that this time of crisis and uncertainty was also an opportunity for UNIDROIT to show that it could adapt to new circumstances and re-define its own role in a changing world.
4. The importance of the topics which the Council was about to select for the Institute's Triennial Work Programme (2009-2011), the relative priority it gave them, the quality of the work of the Secretariat staff, the resources which Governments and the private sector made available and the judicious use made of these resources by the Secretary-General were all key elements in the subtle equation that guaranteed the usefulness of the instruments prepared by the Institute, the visibility of its work, its authority and the confidence it inspired in its member Governments.
5. Finally, the President recalled that the election of a new Governing Council had coincided with the appointment of a new Secretary-General who he was certain would be able to count on the support of the Governing Council and the Secretariat.
6. *The draft agenda was adopted as proposed (see Appendix II).*

**Item No. 4 on the agenda: Appointments (C.D. (88) 1 rev.)***(a) First and Second Vice-Presidents of the Governing Council*

7. The Council renewed Mr Arthur Hartkamp's appointment as First Vice-President of the Governing Council and appointed Mr Biswanath Sen Second Vice-President, in both cases from the end of the 88<sup>th</sup> session of the Council.

*(b) Members ad honorem of the Governing Council*

8. The Council appointed the following former members as members *ad honorem* of the Governing Council: Mr Martin Adensame, Mr Tuğrul Arat, Mr Antonio Boggiano, Mr Gerard Hogan, Mr Nabil Elaraby, Mr Kiyoshi Hosokawa, Mr Anthony Inglese, Mr Alexander Komarov, Mr Bruno Sturlese, Ms Anne-Marie Trahan, Mr Evelio Verdera y Tuells, Mr Pierre Widmer and Mr Zhang Yuqing.

*(c) Members of the Permanent Committee*

9. The Governing Council re-appointed the doyen of the Council, Mr Arthur Hartkamp, as a member of the Permanent Committee and appointed the following new members: Mr Jorge Sánchez Cordero, Mr Hans-Georg Bollweg, Mr Ian Govey and Ms Rachel Sandby Thomas.

*(d) Members of the Scholarships Sub-committee*

10. The Governing Council appointed the following members as members of the Scholarships Sub-committee: Ms Nuria Bouza Vidal, Ms Monique Jametti Greiner, Mr Lyou Byung-Hwa, Mr Didier Opertti Badán and Mr Mo John Sijian.

**Item No. 3 on the agenda: Report on the Uniform Law Foundation**

1. *Sir Roy Goode*, member *ad honorem* of the Council and President of the Uniform Law Foundation, gave a brief description of the Uniform Law Foundation and its sister foundations, the UK Foundation for International Uniform Law and the American Foundation for International Uniform Law, for the benefit of the new members of the Governing Council. He stressed that their role was to supplement the resources provided by Governments, not to substitute for them. Their main source of income continued to be derived from conferences and publications. Over the past three years, two *conferences* had been held in New York (hosted by Fordham University) on the Cape Town Convention and Aircraft Protocol, three in London (hosted by *Freshfields Bruckhaus Deringer*) on the same subject and one in Amsterdam (hosted by *NautaDutilh*) on the draft Convention on intermediated securities, all of these events producing a healthy surplus. At least two more conferences were planned for the following year, one on cultural property, in Rome, the other on the Cape Town system, in Budapest. The main proceeds of *publications* had come from Sir Roy's own Official Commentary on the Cape Town Convention and Aircraft Protocol (revised version, 2008), and two further publications dealing with contract practices and legal opinions under the Cape Town Convention and the Aircraft Protocol and produced by the Legal Advisory Panel of the Aviation Working Group. Sales of the second Official Commentary dealing with the Convention and the Luxembourg Rail Protocol, which was not yet in force and for which no International Registry had as yet been established, had been slow.

2. The *Uniform Law Foundation* had in 2007 provided a grant of € 27,500 for the UNILAW database; in 2008, it provided a further € 48,200 for similar purposes, including € 10,000 for the UNIDROIT Library. The *UK Foundation* for its part had for the past three years provided a scholarship of

£ 5,000 p.a. to support a scholar designated by the UNIDROIT Scholarships Committee. It had also donated £ 10,000 to the UNIDROIT Library plus a total of over £ 32,000 to cover the salary of a research assistant in connection with work on the Space Protocol. The *American Foundation* had in 2007 donated \$ 30,000 to support the OHADA Conference on a draft Uniform Contract Law, and a further \$ 20,000 to support UNIDROIT's depositary function.

3. For the future, Sir Roy announced that the three Foundations would be stepping up their already very creditable fund-raising efforts with a view to supporting posts and activities which, though falling within the Institute's Strategic Plan, could not be expected to be adequately covered by the statutory budget (*e.g.*, an international competition to appoint research fellows for periods of 1 to 3 years; support for the UNILAW database and the Library; enhancement of UNIDROIT scholarships; support for legislative assistance to developing countries in areas within the Institute's sphere of expertise; support for the promotion of UNIDROIT projects and implementation of its Conventions and model laws).

4. In conclusion, Sir Roy pointed to an area of major concern, namely the fact that the Foundation had increasingly had to provide core funding for primary activities or facilities (quoting the zero-growth in nominal terms budget item for the Library and the completion of the Space Protocol); this exceeded the Foundations' role as providers of supplementary funding and might be seen as subsidising Governments. He called upon the Governing Council to do its utmost to provide proper support for core functions by maintaining budget lines in real terms and/or by providing supplementary funding for designated purposes.

5. *The Council took note, with appreciation, of the report on the Uniform Law Foundation and expressed its recognition and gratitude to the Uniform Law Foundation, and in particular to Sir Roy Goode, for their generous contributions and continued efforts to support the Institute's work.*

#### ***Item No. 2 on the agenda: Annual Report 2008 (C.D. (88) 2)***

6. The *Secretary-General*, in introducing this item, referred to the detailed reports on individual topics provided by the Secretariat, and himself focused on the Institute's main achievements in 2008, credit for which he stressed had to go entirely to his predecessor, Mr Kronke and the Secretariat staff. Starting with the draft Convention regarding Substantive Rules on Intermediated Securities, great progress had been made and many outstanding issues had been successfully settled at the first session of the diplomatic Conference to adopt the draft, held in Geneva through the generosity of the Swiss Government in October 2008. A second session would be held from 5 to 9 October 2009 in Geneva, again thanks to the Swiss Government. The Secretariat was now co-ordinating the work of a Steering Committee set up at the first session to draft an Official Commentary to the Convention, with one chapter being contributed by the Secretariat staff member responsible for the project, and was on target to circulate the draft to Governments at least three months ahead of the second session of the diplomatic Conference. The Secretariat was confident that the final session would be a successful one. The Secretary-General also expressed his appreciation of the way in which UNCITRAL had co-operated with UNIDROIT in this and other projects.

7. The second main achievement had been the adoption of the Model Law on Leasing at a joint session of the UNIDROIT General Assembly and the Committee of Governmental experts in November 2008. This was a very down-to-earth instrument in a rather complex area that would be useful for developing countries preparing legislation to enable financial leasing in their jurisdictions.

8. The preparation of additional chapters to the UNIDROIT Principles of International Commercial Contracts was on target for completion in 2010.

9. Sir Roy Goode had already highlighted the importance of appropriate promotion of UNIDROIT instruments in his report on the activities of the Uniform Law Foundation. Ultimately, the penalty for not so promoting these instruments was that the Government resources poured into their preparation might prove wasted. The Secretary-General invited the Governing Council to bear in mind the need to allocate sufficient resources to the promotion of instruments in the budget and to consider ways of developing a proper promotion programme when discussing the Strategic Plan later during the meeting. The Secretariat was also aiming at developing joint promotion programmes in co-ordination with the Institute's sister organisations (UNCITRAL, the Hague Conference of Private International Law). The Secretary-General noted that while the Cape Town instruments showed continuous results in terms of ratification (31 Contracting States to the Convention proper and 28 to the Aircraft Protocol) and the Cultural Property Convention was also proving successful, this was in part due to the interest, in the former case, of a particular industry in promoting it and, in the latter case, to the promotional efforts of UNESCO. Other instruments enjoyed no such external support but could benefit from a more sustained effort (*e.g.*, the ALI/UNIDROIT Principles of Transnational Civil Procedure).

10. Other areas that suffered from a lack of resources were the UNIDROIT Scholarships Programme and, also in connection with that Programme, the UNIDROIT Library. Work was also continuing on the development of the UNIDROIT Internet website and the UNILAW database.

11. Ms Sabo, Mr Sánchez Cordero, Mr Hartkamp and Mr Tricot applauded this comprehensive report which gave clear guidance as to the problem areas on which the Governing Council would have to focus in the discussion of individual agenda items later in the session. Mr Sánchez Cordero recalled the Uniform Law Conference organised by the Mexican Uniform Law Centre in 2008, in which three members of the Governing Council as well as Mr Kronke had taken part.

*12. The Governing Council took note, with great appreciation, of the exhaustive overview of the Institute's activities provided in this Annual Report and of the work done by the Secretariat in the course of the year 2008.*

***Item No. 9 on the agenda: Triennial Work Programme (2009-2011) (C.D. (88) 7)***

13. In introducing this item, the *Secretary-General* pointed out that, contrary to previous occasions, this agenda item had been scheduled to be taken *before* the debate on the Strategic Plan so as to enable the in-depth discussion of topics proposed for inclusion in the Work Programme to be taken into account when considering a possible revision of the now five-year old Strategic Plan. Another procedural element concerned the recommendations made by the Governing Council to give priority in the Work Programme to finalising the additional chapters of the UNIDROIT Principles, finalising the Space Protocol and taking up work on an instrument on netting in financial services or on principles and rules capable of enhancing trade in securities in emerging markets or possibly of rules facilitating convergence of national investor classification schemes, and then to make tentative recommendations concerning possible future work in the longer term. These recommendations were made at a time when the intermediated securities Convention was expected to have been finalised in 2008. That not having been the case, the Secretary-General had recommended to the General Assembly that it firmly include in the Work Programme only the finalisation of the three outstanding legislative topics and defer any discussion of other items to its 2009 meeting after the Council had had an opportunity to consider the matter.

14. The *Secretary-General* had, since taking office, approached the institutions and individuals particularly interested in one or the other topic proposed for future work by the Institute to provide a detailed explanation of the scope of these proposed projects, bearing in mind also the vastly changed

financial and economic climate. These reports were included in the documentation placed before the Council. The Secretariat had also this time round presented the specific budget projects in (to some extent tentative) tabular form, showing costing estimates.

15. The Secretary-General expressed the hope that the new presentation of the document under discussion, including as it did an assessment of the anticipated financial implications of new projects, would help to buttress any requests for private funding or extra-budgetary funding that the Institute might have to make in the future, and indicated that any suggestions that the Governing Council might have as to how further to improve this presentation would be warmly welcomed. He asked the Council to bear in mind, however, that the main resource for any project was the staff that worked on it and that it was not always easy, depending on the level of expertise required by a particular project, to shift projects from one person to another.

16. Ms *Sandby-Thomas* expressed great appreciation of the new presentation and the costing estimates, as did Ms *Sabo* who suggested that the discussion on which the Council was now to embark might either focus on the individual topics on their merit, regardless of the budgetary implications, from a two-year perspective, or take a longer-term view, identifying projects on which some funds might be spent in the next year or two, for further development at a later stage (4-5 years). Mr *Sen* also added his congratulations to the Secretary-General, and suggested that the discussion should focus on three aspects, taken together: the method of work, the Work Programme, and the finances relating to it.

(a) *Proposal for a Convention on the Netting of Financial Instruments* (C.D. (88) 7 Add. 1)

17. The *Secretary-General*, in introducing this item, recalled that this topic was not new to the Governing Council, having in fact been mentioned as an area for future work by UNIDROIT for a number of years now and having been the object of a very firm recommendation by the Governing Council the previous year. Upon taking office as Secretary-General, he had contacted the International Swaps and Derivatives Association (ISDA), asking them to resubmit their original proposal in the light of the dramatically altered economic framework. ISDA took the view that the fundamental assumption of this project had not only not been affected but indeed had made more evident the need of an instrument of this type, the main purpose of close-out netting arrangements and master agreements of this type being to limit the systemic risk arising from default and insolvency in financial markets. The inability to measure and assess the exposure of other market participants was one of the main reasons for a crisis of confidence in a situation of emergency in financial markets, rendering participants unwilling to extend credit or to continue their transactions.

18. As to the form of the proposed instrument, although ISDA favoured a Convention – the main purposes of the instrument being to recognise and make enforceable close-out netting procedures (even in the case of insolvency proceedings), it might be premature for the Governing Council to take a definitive stand on this at this stage. More groundwork needed to be done in identifying the differences in the various legal systems and in defining the scope of the instrument.

19. Opening the discussion, Mr *Gabriel* asked the Secretariat to indicate which member States had expressed interest in pursuing this subject and whether, given that this would be a substantial project, having a staff member working on it 30% of the time would be sufficient and whether it might not be more expedient to bring in a full-time outsider.

20. Mr *Soltysinski* wondered whether it might not be better to await the evaluation of the role that many forms of exotic derivatives had played in the recent turbulences on international financial markets. Noting that the list of derivatives setting out the transactions that would fall within the

scope of the proposed netting convention was extremely broad in scope, he expressed the view that this project had been suggested well before the financial crisis broke and that it might be wise to await developments in evaluating what were now considered toxic derivatives. He pointed out that several questions would need to be looked into before going ahead with this highly interesting topic, not least Governments' positions, as well as the scope of the project which, judging by the ISDA document, was truly vast. He recalled that, while self-regulation in financial institutions had seemed a sound idea many years before, recent developments had shown that matters were much more complicated and the Institute should think carefully before beginning this battle. He agreed that it would be wise to assess the Governments' interest in such a project, since difficult policy considerations were involved and he had doubts whether Governments would really be prepared to sacrifice domestic laws protecting creditors. The conflict between insolvency laws and such types of project was a real one.

21. Mr *Voulgaris* felt that the Institute should forge ahead with this project, which tied in with other subjects in the capital markets family. There was certainly a great variety of netting arrangements, and some preliminary weeding would be in order. The form of the instrument should be decided at a later stage; first, a more detailed study needed to be carried out.

22. Mr *Elmer* expressed scepticism in that it did not seem clear exactly what ISDA wanted and what it wanted the Institute to do. He felt that ISDA had already practically formulated a model law on its own and might not need outside help at all. He wondered what the advantages to the member States would be and, even more importantly, what the public response might be to such legislation at this time of crisis.

23. Mr *Mo* shared the concerns expressed by the previous speakers and also had misgivings as to how national Governments might implement such a convention, since the domestic configuration and regulation of the financial market differed widely in different countries. He also warned of the risk in connection with insolvency. Generally, he warned that while netting arrangements might be readily regulated in domestic markets, any attempt at cross-border control would be fraught with risk. Finally, it would be best at this stage to aim at a model law rather than a convention.

24. Mr *Govey* took the view that while UNIDROIT certainly had the expertise for such a project, a lot more work was needed before a decision could be taken to take it on as a full-blown project, let alone to decide on the form of the instrument. This would be a vast project, even if the scope was narrowed down.

25. Mr *Sen*, referring to his own experience as Chairman of the Study Group on Intermediated Securities set up a decade ago, recalled that despite the tremendous interest shown on the part of the industry in that project and its desire for an early conclusion, it had taken two years for the preliminary study to be completed. He urged the Secretariat to make a more realistic assessment of the financial and human resources that would be required to bring a project of this scale to fruition.

26. Ms *Sabo* expressed interest in the subject but also had concerns about its projected scope, which was very broad and not sufficiently clearly defined. The form of the instrument was also an issue, since it might be difficult to get support for a binding instrument. Given the paucity of resources, she suggested as a first step that a staff member, with a very small group of experts, sound out Governments and collect more information, possibly in the form of a questionnaire, and that the results be submitted to the Governing Council at its next meeting.

27. Mr *Bollweg* expressed his gratitude to the Secretariat for the excellent working papers and helpful cost estimates. While he agreed that it would be expedient for the Institute to focus on its three ongoing projects, nevertheless the global situation had changed dramatically over the previous

six months and it might be a good idea for UNIDROIT to send out a signal that it was an up-to-date organisation and was re-assessing its Work Programme against the current market conditions. The German Government took the view that a model law might give much-needed legal certainty to financial markets. The question was: how to start work on this important project without funding? Might the Council not decide to commence work but only after work on the intermediated securities had been successfully completed; or else could it not decide to take on the project now, subject to the availability of outside funding?

28. Ms *Broka* endorsed the previous speaker's views, pointing out that the reality in the European Union was that all laws relating to insolvency, bankruptcy proceedings, capital markets, State intervention and so on were now subject to change. In Latvia, the existing rules on insolvency and legal protection for companies were not working properly, and she felt this was the time for UNIDROIT to take the lead and undertake work on preferably a binding instrument, *i.e.* a convention.

29. Turning to the question of Government interest raised by Ms Sabo and Mr Gabriel, the *Secretary-General* pointed out that this was not the first time the topic had been placed on the Council's agenda and the relevant consultations that had taken place previously had yielded various expressions of support. It had been the Secretary-General's understanding that the topic as such had in principle already been approved by the Council as a worthwhile topic for UNIDROIT to develop. However, the Secretariat would be happy to prepare a questionnaire to submit to member States.

30. Mr *Sen* indicated he could go along with the Secretary-General's proposal that the Council decide in principle that this was a good subject but he expressed some concern about the level of staffing that would be needed.

31. Mr *Gabriel* recalled that the Council had made a commitment many years before to develop a series of instruments broadly within the capital markets area and that this remained important now as before and should not be deviated from. He felt that UNIDROIT was uniquely well-equipped to tackle such a project and that it was an opportunity for it to become *the* expert among its sister institutions. He agreed that the scope would need to be refined and the matter of resources carefully addressed. He expressed himself strongly in favour of having this as the next topic in that area.

32. Ms *Bouza Vidal* broadly agreed with previous speakers and voiced her Government's view that UNIDROIT should go ahead in this field, although in view of the current economic circumstances it should proceed with caution. It would be opportune to take further soundings with Governments. Work could start, for example by making a study of the different legal systems in place.

33. Mr *Hartkamp*, while recognising that the Council had endorsed the topic in principle at the previous year's session, noted that the world had in the meantime changed and it might be wise to re-assess that decision in that light. He agreed with previous speakers who had advocated caution and expressed himself in favour of another round of consultations with Governments. UNIDROIT might for example consider tackling another subject within the capital markets area first.

34. Ms *Jametti Greiner* agreed with the approach outlined by the Secretary-General, *i.e.* to take an interim decision to go ahead subject to a re-assessment of the topic at the following year's meeting. She felt that while it was a good idea to sound out Governments' views again, she did not think this should be in the form of a detailed questionnaire but rather that the Secretariat should approach Governments personally. As to the issue of priority, this should be addressed after all the other topics on the agenda had been addressed, at the end of the meeting.

35. Mr *Elmer* and Ms *Sandby-Thomas* endorsed the views expressed by Mr *Hartkamp* and Ms *Jametti Greiner*. Ms *Sandby-Thomas* also agreed with Mr *Gabriel* as to the importance of UNIDROIT's firmly establishing its expertise in the capital markets area, but that a decision as to exactly which options within that niche should be tackled should be taken with the current worldwide situation in mind, and that Governments should be consulted as to whether they still felt the subject was as relevant now as it was then.

36. Mr *Opertti Badán* also urged caution and stressed that a formal proposal would not be useful unless a careful re-assessment was made in light of the recent market changes.

37. Stating that while he could make no declaration concerning the position of Hungary on this issue, Mr *Harmathy* nevertheless felt the topic had great relevance. The first step was for the Governing Council to decide whether this topic was of interest and only if so, to decide how to tackle it. Rather than a detailed questionnaire to Governments, he felt that a feasibility study could provide clarity as to the questions that would need to be addressed.

38. Ms *Sabo*, working on the assumption that the project would go through, focused on the twin questions of how to proceed and what resources could be freed for it. The options were either to put together a study group now to prepare a feasibility study, or to collect some more information first by speaking with member States. In practical terms, and without resorting to a detailed questionnaire, she felt the most resource-effective way of proceeding would be to use the June meeting of the "pre" General Assembly to signal to member States that they needed to provide some information as to whether they thought the topic was still relevant and as to the possible scope and form of such an instrument.

39. *The Governing Council agreed that a great many questions remained as to the potential scope and form of an instrument on the netting of financial instruments and that a realistic assessment would need to be made of the human and financial resources that would be required. It agreed to maintain this topic for inclusion in the UNIDROIT Work Programme but mandated the Secretariat to consult with member States' Governments to ascertain the level of potential interest and to gauge the volume of work and resources required in this area prior to launching a concrete feasibility study in time for the next session of the Council.*

(b) *Study for an International Legislative Project on (Contractual) Counterparty Classification* (C.D. (88) 7 Add. 2)

40. In introducing this item, the *Secretary-General* recalled that again, this topic had already been endorsed in principle by the Governing Council in 2008. Originally proposed by the Financial Markets Law Committee of the Bank of England, it had at that time enjoyed the endorsement of the Government of the United Kingdom for inclusion in the UNIDROIT Work Programme. The paper which the Secretary-General had requested the proponent to submit went beyond that prepared for netting in that it provided the text of possible drafts (appendices (a) and (b)) as an illustration of what such an instrument would deal with and what its scope would be. The rationale was to establish a common language – a common set of definitions of contractual counterparties in financial markets so as to facilitate the operation of these financial institutions, bearing in mind also the different categories of investor (such as a market participant actively providing financial services and/or financial products; an investor purchasing financial services; an issuer, issuing instruments negotiated in financial markets; or a financial intermediary, *i.e.* a participant entering into contracts with issuer and investors). Depending on the quality attached to each person, a number of consequences would follow as regards disclosure obligations, filing of information and the extent of communications that must be provided to the persons concerned.



41. In the Secretary-General's personal view, this topic was of great interest in that there was no doubt about the need for common standards particularly for international transactions in this area. At the same time, the consultations he had since had with the Governments of some member States indicated concerns about the risk of involving UNIDROIT in the field of financial markets regulation. Besides the regulatory aspect, another concern of some Governments related to political difficulty of reaching a common understanding of who was a consumer of a financial service and who was not.

42. Mr *Hartkamp* shared the concerns to which the Secretary-General had referred, in particular as regards the difficulty of defining the concept of consumer. Moreover, he saw no reason for drawing up general criteria for protecting one consumer rather than another, which he felt was a matter that courts or complaints boards often needed to decide on a case-by-case basis. He accordingly took the view that it would not be a reasonable topic for UNIDROIT to undertake.

43. Ms *Sabo* stated that the interested circles in Canada took much the same stand, acknowledging a need but expressing concern precisely with reference to the consumer issue. She saw little hope of the Institute being able to bring such a project to a successful conclusion. Mr *Gabriel* agreed.

44. The *Secretary-General* suggested that, if this project was not as such acceptable to the Governing Council, there might still be a way of looking at the subject within the scope of the next topic on the agenda, *i.e.* the proposal for a Legislative Guide Capable of Enhancing Trading in Securities in Emerging Markets.

45. *The Governing Council agreed on the importance of the subject, in view of the legal uncertainty experienced by market participants as a result of diverging counterparty classification schemes. However, the Council was concerned about the regulatory implications of the proposed project to the extent that issuers, financial intermediaries and other financial market participants would have varying degrees of obligations in respect of disclosure of information, notices and filing of documents depending on whether a counterparty would be classified as professional or non-professional investor. The Council was mindful of the political sensitivity of consumer protection and similar rules that had informed the development of regulatory frameworks for financial markets in several jurisdiction and was not persuaded of the feasibility of developing widely acceptable uniform definitions.*

*The Council therefore decided that it would not be opportune to include this project as such in the Institute's Work Programme at this time. Nevertheless, the Council agreed that the matter of counterparty classification could be usefully addressed in a project of a different nature, such as a possible legislative guide that UNIDROIT might prepare with a view to enhancing trading in securities in emerging markets.*

(c) *Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets*  
(C.D. (88) 7 Add. 3)

46. Again, the *Secretary-General* noted that not only had this topic already been before the Council for some time, but it had actually enjoyed the highest priority level ever attached to any project in this field. Unlike UNCITRAL, UNIDROIT had not ventured into the preparation of legislative guides before, although such guides could be very useful for dealing with subjects not capable of harmonisation. They formulated broad recommendations and presented various options and discussed how these could be achieved given the diversity of legal systems and traditions, and then set out, in a careful and balanced manner, the possible advantages and disadvantages of one or the other approach. In the area under consideration, a legislative guide would encompass a very wide range of issues, and indeed it was here that some discussion of the issue of investor classification

might find a place. This kind of regulation was an integral part of any legislative framework for a financial market, and the concern raised by the prospect of an agreed set of firm definitions might be set aside if the matter were discussed in a narrative and balanced form within the context of a legislative guide. As such, the topic would acquire a different dimension and might become politically more acceptable.

47. A related matter of immediate relevance was the preparation of a Guide to Enactment, or an Accession Kit, to the Intermediated Securities Convention. Such a Guide to Enactment might be part of the broad legislative guide or it might be a separate product of UNIDROIT. It would provide some advice for countries that ratified the Intermediated Securities Convention on how best to incorporate that Convention and integrate it into the domestic legal system. It was a fact that the Convention made numerous references to the non-convention law, *i.e.* the law that was otherwise applicable outside the Convention itself. It would be useful to have a UNIDROIT document explaining how to address those issues which the Convention itself refrained from addressing and how to fill these gaps.

48. Mr *Sen* strongly urged that the Governing Council take up this item, since some work had already been done on it in the framework of the Intermediated Securities Convention. Likewise Ms *Sandby-Thomas* called for a feasibility study for this item, seconded in this by Ms *Sabo*, who felt such a study, while not cheap, would be worthwhile.

49. *The Governing Council decided to recommend to the General Assembly that work on such a Legislative Guide should be included in the Institute's Work Programme and mandated the Secretariat to start a feasibility study for this project for submission to the Governing Council at the following year's session.*

(d) *Possible Future Work on Civil Liability for Satellite-based Services (C.D. (88) 7 Add.4)*

50. In introducing this agenda item, Ms *Zanobetti*, Deputy Secretary-General, recalled that this project had first been submitted to the Governing Council in 2006 on the proposal of the President, who suggested that the Institute might consider including in the Work Programme a project dealing with the liability system for damage caused by satellite-based services, in particular those offered by satellite navigation systems such as the United States GSP, the Russian Glonass or the European Galileo system, which latter at the time had only reached a preliminary stage of preparation.

51. At its 86<sup>th</sup> session in 2007, the Secretariat had submitted a brief memorandum to the Council accompanying the feasibility study prepared by Mr *Carbone* entitled: "The civil liability and compensation for damage resulting from the performing of European GNSS Services". This study, which focused primarily on the problems that might arise from the use of the European Galileo navigation system but which also gave an overview of potential repercussions for all satellite navigation systems, stressed that the technology involved was highly sophisticated and that accordingly there would be very few countries capable of installing it, but all countries would be able to use it since the systems in principle spanned the entire planet. Such use might concern several sectors such as telecommunications, transport (aircraft, ships, lorries, etc.), agriculture, fisheries, maintaining law and order, customs operations, insurance and other sectors that might develop in the years to come. In 2007, the Council had expressed great interest in the project and formulated the following conclusions: "the Governing Council took note, with great interest, of the reports on recent meetings submitted by Mr *Carbone* as well as communications from the Italian Government received by the President. The Council agreed that, in view of that interest on the one hand and concerns regarding the wide-ranging implications on the other hand, informal discussions with all potentially interested Governments should be held with a view to commission, should those consultations have a positive outcome, a broad comparative feasibility study."

52. The Secretary-General had then asked Mr Ulrich Magnus to prepare a study on the subject, which had been submitted to the Governing Council at its 87<sup>th</sup> session in 2008; Mr Bollweg for his part had likewise submitted a broad-ranging study. Ms Zanobetti recalled that both studies had been published in issue 2008-4 of the Uniform Law Review. The Council had reiterated its interest in the project but agreed that further information was needed; the Secretary-General had suggested that Messrs Bollweg, Carbone and Gabriel form the nucleus of a study group that would report back to the Council as soon as possible and the Council, in its conclusions in respect of the Work Programme 2009-2011, had decided that “[a]s regards work on an instrument on civil liability for malfunctions in satellite-based services, definite decisions will be taken on the basis of further consultations carried out by an *ad hoc* Committee set up by the Council.”

53. The *ad hoc* Committee had met on 11 November 2008, Mr Carbone having sent apologies. The issues that were discussed were reproduced in the report on the session, which also summarised the positions taken by the Committee members in an exchange of correspondence. The Committee stressed that while the project was no doubt of great interest, two different schools of thought had emerged. On the one hand, there was the position defended by Mr Bollweg, who had participated in ICAO’s work on the subject and who concluded that this was an essentially European matter and that there was little scope for UNIDROIT at this stage. On the other hand, Mr Carbone took the view that Galileo services were going to be available to users worldwide, not just in Europe, and that the interoperability of the different systems should be contemplated. In view of this difference of opinion, the Committee concluded that, at this stage at any rate, even to set up a study group would be premature. Mr Carbone then presented another study, entitled: “The Rationale for an International Convention on Civil Liability for Satellite Navigation”, which had been submitted to the Governing Council at its present session and which was scheduled to be published in the Uniform Law Review.

54. Mr *Hartkamp* recalled that, at its 88<sup>th</sup> session in 2008, the Council had expressed the concern that it would not be wise to embark on this project if the Governments concerned were not willing to co-operate, and that the Council had asked the Secretariat to enquire whether the Governments were interested in this project.

55. In reply, Ms *Zanobetti* indicated that the *ad hoc* Committee set up to explore the question had not felt it opportune at this stage to involve Governments.

56. Mr *Carbone* strongly supported the project, the current regime for satellite signals being quite inadequate and not capable of being addressed through private means such as contractual agreements or contractual frameworks alone. He recalled the concerns raised by the subject and the importance of securing political favour, stressing in particular the importance of the work done by ICAO in terms of possible future developments. This subject had been studied and developed and the need for an international convention envisaged, even if for the time being a contractual framework and framework agreements were considered sufficient. He pointed out that the paper he had submitted covered both past and possible future developments. He advocated further study, contacting ICAO and potentially interested Governments to gauge the real level of interest in this project as a subject for the Institute’s triennial Work Programme, and proposed that the Secretariat should be specifically mandated to do so.

57. Mr *Bollweg* reiterated the serious concerns, both political and legal, that he had expressed in the paper submitted to the Council the previous year and published in the Uniform Law Review. His political concern was based on the fact that two of the systems, GPS and Glonass, were military systems that were also used for private purposes because the Governments of the two States that provided them allowed them to be so used, and that he could not imagine States operating military systems accepting a liability regime under an international convention. As for the European GNSS, Galileo, which was due to start operations in 2013, he took the view that an international convention

covering a single system would be most unusual; Galileo was a European project and any liability questions were to be solved by the European Community itself. It was true that other countries would be affected, but the scope of the European regime could be extended to other States by way of bilateral agreements. Any liability questions still open must be answered by the European institutions, not by an international organisation such as UNIDROIT. Such had also been the result of the negotiations conducted by ICAO, which had started in the 1990s and had been wound up in 2007 when the Legal Commission of the ICAO General Assembly decided to hand the task back to the ECAC on the grounds that this was not a worldwide issue but a European one. In Mr Bollweg's opinion, it would not be prudent to pick up a project that had already failed in another international organisation. He also recalled that the European Commission intended to submit a draft proposal for a regulation dealing with the liability problems raised by Galileo, and that this would have to be solved very soon given that the system would start functioning in 2013. This was also the reason why an international convention would not be a workable solution, time being too short.

58. As for his legal concerns, Mr Bollweg recalled that the project was aimed at regulating third party liability, and that the area most likely to be affected by damages connected with the GNSS was transport since this was where such systems were mostly used. There were international conventions covering third party liability in almost every transport sector that made no distinction as to whether these problems were caused by satellite navigation or otherwise. There might be small gaps in these instruments, but most of these areas were already covered by international regimes. He concluded that although it was true that the subject raised legal questions, for the reasons stated he did not consider that these had to be dealt with by UNIDROIT.

59. Mr *Gabriel* agreed with Mr Bollweg, as indeed was indicated in the report of the *ad hoc* Committee, that the subject was primarily a European one, dealing with Galileo, and therefore not one that UNIDROIT should address. On the other hand, having read Mr Carbone's paper, he expressed the view that although, as Mr Bollweg had pointed out, there was a whole body of conventions that covered the different transport sectors, there might be gaps in those regulations that might create problems. He suggested that the Secretariat might study that particular aspect and see if there were areas in which the pre-existing regimes did not cover satellite liability; the Secretariat could then submit this study to the *ad hoc* Committee, which might want to revisit its report to the Council.

60. Expanding on his earlier intervention, Mr *Carbone* noted that the subject was not confined to Galileo alone since other GNSS raised the same problems insofar as they were used for peaceful purposes in civil areas, which implied the possible existence of third party liability. In his view, the military origin of these technologies would not in itself justify the granting of State immunity. In any case, Galileo had a scope of application that far exceeded the European market and since this meant that the problem of liability could be raised in many different legal systems there was need of a uniform regime to this specific extent. As far as the ICAO studies and the present ECAC studies were concerned, he admitted that ICAO had decided after long debate that a framework agreement and a contractual agreement with uniform standard terms and conditions was for the time being the most suitable solution, but that both those organisations recognised the importance of further study of the issue of an international uniform liability regime because they clearly understood that it was impossible to solve the problem radically from a contractual and voluntary point of view. He expressed the opinion that to that extent a fruitful collaboration might be established with ICAO, and that it was important to ascertain the interest of Governments to regulate, on a universal basis, a question which in his view was not solely European.

61. Mr *Lyou* felt that the terminology used seemed too vague and general, and that a more precise terminology would better focus the scope of the project. Mr *Mo* agreed. Admittedly the topic was of great interest and he generally endorsed the idea, but a very fundamental study was needed to define the scope of the project, its benefits, and its practical prospects.

62. Having read the respective opinions of Messrs Bollweg, Carbone and Gabriel, Mr *Deleanu* saw two dangers in the project: firstly, the risk that an international convention would not be ratified by the countries using satellite systems, thus rendering it useless and, secondly, the risk of overlap with the work of the European Union. He urged the Council to give further thought to this before going ahead. Ms *Sandby-Thomas* endorsed this point of view, stressing that this subject was already being dealt with by other bodies and there seemed no point including it in the Institute's Work Programme.

63. The *Secretary-General* noted a wide gap between the two positions expressed, with both offering interesting arguments in favour and against. There might be a common ground however in the possibility raised by Mr Bollweg of addressing gaps in the different regimes governing liability in various contexts, such as civil aviation, shipping, etc., while this issue was also closely related to the question of insurance. Irrespective of whether UNIDROIT were to prepare an instrument on the subject, and without prejudice to what other organisations would be doing, the international community might benefit from a more detailed study of the matter that could explore the possible damage scenarios resulting from malfunction of navigation systems in the various conventional systems. There was scope here for consultation with ICAO, IMO, the *Comité maritime international*, the United Nations Economic Commission for Europe and other organisations. This would be a very difficult study and it would need to be very comprehensive, but it could help the Governing Council to take its decision, even if it decided that UNIDROIT should not include this project in its Work Programme. Anyone else subsequently dealing with the question might benefit by the fact that UNIDROIT had done such a survey. This seemed to him to constitute the middle ground between the different views expressed by the members of the *ad hoc* Committee, and he suggested that the Council, on the invitation of Mr Gabriel and, to some extent, Messrs Hartkamp and Carbone, mandate the Secretariat to prepare this study so that it would be in a better position to consider it further at its next session.

64. The *President* concluded that the Council agreed to the Secretary-General's proposal.

65. *The Governing Council mandated the Secretariat to prepare a detailed feasibility study focusing in particular on gaps in liability resulting from malfunction of satellite-based navigation systems under existing conventions on carriage of goods and passengers by air, rail, road and sea, as well as conventions governing liability for environmental damage and third party liability by those modes of transport, including related insurance and reinsurance arrangements. The Secretariat was requested to submit its study to the ad hoc committee for review prior to finalising the study for consideration by the Council at its 89<sup>th</sup> session in 2010.*

(e) *Proposal for a Model Law on the Protection of Cultural Property* (C.D. (88) 7 Add. 5)

66. Ms *Schneider* (UNIDROIT Secretariat) recalled that this proposal had first been put forward at the extraordinary session of UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, held in Seoul in November 2008 to commemorate that body's 30<sup>th</sup> anniversary. At stake was the preparation of a law or articles for a model law to protect cultural property against illicit trafficking in which the principle of State ownership of cultural property – in particular archaeological objects – would be clearly stated. UNIDROIT had been generally perceived as the most appropriate forum to draft such an instrument. It was to be perfectly clear that in undertaking such work, there was to be no question of re-assessing the principles laid down by the 1970 UNESCO Convention or the 1995 UNIDROIT Convention, but rather to facilitate their application. Ms *Schneider* invited the Governing Council to give thought to this matter, taking account also of the official letter from UNESCO's Assistant Director-General for Culture, Ms *Françoise Rivière*, inviting UNIDROIT to work with it on this matter in a way to be determined upon consultation with the UNESCO Member States at the 15<sup>th</sup> session of the Intergovernmental Committee in May 2009.

67. Mr *Sánchez Cordero*, who had been one of the sponsors of the Seoul proposal, together with Mr Patrick O’Keefe, recalled that UNIDROIT had worked closely on major projects with other organisations in the past, such as ICAO, OTIF, and UNESCO itself. The 1995 Convention had proved a great success: not only had there already been 29 ratifications but it regularly formed the subject of studies, critical articles, debates, congresses and the like. Turning to the proposal for a model law, he had conducted a small informal survey among major international players in this field which had revealed a very high level of interest, not least of all in Latin America as well as within UNESCO; hence there should be no difficulty finding the resources to fund such a project. As to methodology, UNIDROIT had all its experience with the 1995 Convention to draw upon. The finished product would constitute a very important step for the international art market in creating legal certainty, transparency and accountability in its transactions.

68. Ms *Sabo* noted that the Canadian Ministry for the cultural heritage had some questions as to the scope of the proposal and as to timing, in view of the fact that the UNESCO Intergovernmental Committee still had to discuss and decide on the matter. Co-operation between UNIDROIT and UNESCO was certainly very important, but she felt it might be somewhat premature for the Governing Council to go ahead with this topic at this point. She understood the reaction to Mr O’Keefe’s proposal to have some sort of survey as to what the courts had been doing with regard to title and ownership to have been well received and it might be best to wait for this study before going ahead. She also wondered whether the model law would only address the issue of title or ownership or whether it would deal primarily with the implementation of the 1995 Convention. Finally, she enquired of the Secretariat as to the thrust of the Commonwealth Scheme produced in the mid-1990s.

69. Ms *Jametti Greiner* recalled that when Switzerland first started work on its cultural property protection laws after the adoption of the 1995 UNIDROIT Convention, the idea had been to present a package containing both the UNESCO and UNIDROIT Conventions. The ensuing political discussion had revealed that the time was not ripe for the UNIDROIT Convention and only the UNESCO Convention was ultimately ratified to coincide with the adoption of a domestic law dealing with issues such as the transfer of cultural property and its return in case of illicit appropriation. She joined Ms Sabo in enquiring whether the real purpose of a model law would be to promote the UNIDROIT Convention and facilitate its ratification, or was it intended as a complement to that Convention? She also agreed with Ms Sabo that it might perhaps be over-hasty to contemplate this topic at this point in time.

70. In reply, Mr *Sánchez Cordero* confirmed that the idea was to facilitate ratification of the UNIDROIT Convention. It was just a small step towards the ultimate goal of providing comprehensive protection of the cultural heritage. As to scope, there could be no question of re-opening the discussion of points addressed in the Convention. With regard to working methods, UNESCO and UNIDROIT each had their own and for UNIDROIT, this meant setting up a study group and asking UNESCO – as had been done in the past with the 1995 Convention – to join UNIDROIT in this effort.

71. Mr *Operti Badán* stressed the need to strike a balance between the interests of Governments (countries of origin and countries of destination alike) and good faith private purchasers of cultural objects. This was an area fraught with difficulties, a point well illustrated by the problems that arose in his country in settling cases involving shipwrecks. Under some of the treaties signed at the time of independence, Governments were the owners of such wrecks found within their jurisdiction, yet the claims of private individuals had to be taken into account. It would be opportune to give further thought to this aspect of the matter, looking at it both from a cultural and a legal viewpoint.

72. Mr *Mo* advocated further research, looking at the issue from two different angles, *i.e.* (1) events that took place after the adoption of the two Conventions, where he felt a presumption should be made in favour of Governments’ genuine claims with regard to unique objects and (2) events that

had occurred before the two Conventions were adopted, where there might have to be different rules depending on how long ago an object had left the country of origin.

73. Mr *Govey* stated that his country was now reviewing its cultural heritage law and indications were that none of the stakeholders had any objection to adopting the 1995 UNIDROIT Convention. It was simply a matter of priorities. As to the proposed model law, he suggested that the Governing Council might agree in principle, subject to a favourable decision by UNESCO Governments, to take on this topic and agree to go forward on a co-operative basis with them.

74. Mr *Elmer* confessed to feeling both tempted by and frightened of this subject. It was true that many Governments had difficulty dealing with these problems, but the question remained as to whether many of them would readily follow any proposals that UNIDROIT might come up with. Deciding on the content of such a model law might be tricky. As he understood it, it would not take the view that the State was always the owner of such cultural objects but would define under which circumstances and what conditions a State would have ownership of certain cultural objects and define which objects were subject to such ownership. Much would depend on the age of the objects in question. He argued that any committee that was set up would have to be issued with some directives as to the direction to be taken on these aspects. As to the appropriate forum for this work, when dealing with ownership under civil law this must be UNIDROIT.

75. In her reply, Ms *Schneider* turned first to Ms *Sabo's* question in respect of the Commonwealth Scheme for the Protection of Cultural Heritage which governed the return of cultural objects within the Commonwealth and was intended to be complementary to the 1995 UNIDROIT Convention. Since the decision taken in 1999 by the Commonwealth Law Ministers to adopt a Draft Model Bill as a guide for countries to use in enacting the necessary legislation to implement the Commonwealth Scheme, the UNIDROIT Secretariat had no information as to how it worked. As to the proposed UNIDROIT model law, she had noted general concern among members of the Governing Council regarding the scope of the proposal and stressed that there could be no question of re-opening the discussion of the principles of the UNIDROIT Convention that had been adopted with such great difficulty in 1995. For the time being, the Council might confine itself to signalling to UNESCO that UNIDROIT would be ready to consider co-operating with them on an instrument to facilitate the application of the UNIDROIT Convention.

76. *The Governing Council expressed its gratitude to UNESCO for its proposal and – subject to the decision that was to be taken by the UNESCO Member States at the 15<sup>th</sup> session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in Paris next May, on the basis of a detailed proposal to that Committee – agreed in principle to collaborate with UNESCO – in a manner the details of which still had to be decided – in preparing an instrument to facilitate both the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention and their ratification by as many States as possible.*

(f) *Possible Future Work in the Area of Private Law and Development (C.D. (88) 7 Add. 6)*

77. In introducing this topic, the *Secretary-General* recalled that the Governing Council and the General Assembly had on several occasions expressed the wish for UNIDROIT to have constantly on its Work Programme at least one topic of particular interest to developing countries. The Secretariat was now asking the Council whether it would wish the Secretariat to explore further possible synergies between private law and economic and social development, and to what extent UNIDROIT could make a contribution in that area. In its report to the United Nations General Assembly, the high-level Commission on the Legal Empowerment of the Poor had identified four pillars of the law that were

crucial for promoting social inclusion: *access to justice and rule of law, property rights, labour rights and business rights*, and formulated policy recommendations which it called upon the broad multilateral system to mainstream into their programmes and projects.

78. *Access to justice and the rule of law* was one area that might be looked at from the perspective of the ALI/UNIDROIT Principles, re-examining that product from the point of view of what in particular developing countries needed to do to reform their civil and commercial procedure, including case management, so as to enhance legal certainty, reduce litigation and render their domestic markets more attractive to both foreign and domestic investment. While this might be a fairly ambitious area of work and not one that would lend itself to harmonisation and unification, a soft law type of instrument such as a legislative guide building upon the Institute's experience with the UNIDROIT/ALI Principles might be considered as a possible line of work for the Institute in the future. Such a project would, from a purely private law perspective, provide advice and recommendations and present options on how different countries and different legal systems had solved and addressed certain problems. The Secretariat would be happy to prepare a more concrete study for the next session, clearly identifying the scope and what kind of product would be envisaged, what methodology would be involved, and so on.

79. Turning to the issue of *property rights*, the Secretary-General saw this in connection with private law and food security. The Food and Agriculture Organization (FAO) defined food security quite bluntly as there being sufficient food for meeting the needs of the world's population, and one might wonder as to the relationship between private law and that notion. Authorities and organisations such as the World Bank submitted that an inadequate private law framework could cause obstacles to or render agricultural production more cumbersome, or make investment in agricultural production less attractive, thereby affecting the potential output of agricultural activities. While this regarded land tenure, typically an FAO line of work, there was still the question of the often centuries-old private law rules that governed the use of land for agricultural production and to what extent they were commensurate with today's needs both in terms of (surface) property and, in particular, water rights and connected issues. There might be scope for a possible co-operation between the FAO and UNIDROIT, again, possibly, producing something like a legislative guide. Such an instrument would also be helpful in terms of the FAO's own lines of work, supplementing the policy guidance that they offered to their member States.

80. Another area worth exploring was the *private law aspects and implications* of a number of instruments adopted by the FAO mainly concerning agricultural regulation, even such seemingly (from the UNIDROIT point of view) exotic matters as pesticides or genetically modified seeds and their use in agricultural production. There were private law implications in most of these matters, mainly from a liability point of view, which the FAO's legislative advice to their member States in implementing the proper regulatory regime for food safety and other aspects did not deal with (such as, *e.g.*, the liability implications of contamination caused by pesticides in ground water and adjacent property). If UNIDROIT were to explore this area further, the advice it formulated could be plugged in to the general legislative advice provided by the FAO. This would probably open up quite a promising prospect of co-operation with the FAO.

81. The Secretary-General further informed the Council that he had been approached by the Director-General of the International Law Development Organization (IDLO), who had invited UNIDROIT to consider the preparation of a model law to facilitate social business.

82. In a final comment, the Secretary-General stressed that no other Organisation had a mandate as broad as that of UNIDROIT in the area of private law, and much of that mandate would be left unexplored by focusing only on its purely commercial aspect. There was much in the broad area of private law that the Institute could also contribute to, and the Governing Council might envisage



an ideal balance of general work that might consist of one broad area, *e.g.* in commercial international contractual practice – of which the UNIDROIT Principles were a very good example; a second broad area covering fairly technical, commercial matters for which UNIDROIT's relatively small scale and flexible structure provided an efficient working environment, *e.g.* in the capital markets area; and a third area that would fall under the unexplored part of UNIDROIT's mandate, involving private, but not purely commercial, law that would combine with a potential interest and benefit to the developing countries. The Secretariat would be happy to prepare a further study on this for the next Governing Council's session.

83. Mr *Terada* spoke in favour of taking this project further, as did Mr *Sánchez Cordero* and Mr *Tricot*, who commended the Secretary-General's focused approach which targeted the recognition and operation of property rights, which could be a very useful way for UNIDROIT to make a contribution to legal security in the developing world. Mr *Harmathy* agreed unreservedly, stressing also that the Council should think not only in terms of a three-year programme but look ahead and contemplate perspectives in the longer run, and this project was a perfect example. Issues would need to be targeted very carefully, bearing in mind also the growing importance of the human rights component of property rights development.

84. Mr *Lyou* for his part warned that UNIDROIT had neither the monetary nor the human resources available to the United Nations and that anyway a legal instrument was not necessarily what the poorer countries needed. A less ambitious way for UNIDROIT to make a contribution in this area might be to step up its Research Scholarships Programme. Ms *Sabo* agreed that UNIDROIT was not the United Nations, but stressed that it was unique in its expertise and subject-matter and that next to its specific commercial law projects, there was scope for work with the developing world in mind. The leasing project was an example. While land tenure and property rights were probably the most vast private law subject imaginable and hence rather daunting, there was a clear need in that area for an organisation such as UNIDROIT. She suggested that the Secretariat explore this subject further without spending a great deal of money on it initially.

85. Mr *Gabriel* also enthusiastically welcomed this proposal. As he understood it, it was a rallying call to the Governing Council to re-evaluate the Institute's overall scope and mandate, and that the request was for the Secretariat to come back, given this broader mandate, and target specific projects that would be viable.

86. Mr *Bollweg* joined the call for co-operation with other international organisations, such as the FAO, but confessed to some doubt as to the private law aspects of some of the areas listed in the document under discussion, such as water rights or food security. Actually, UNIDROIT had already taken some tentative steps in the direction of the developing world, *e.g.* the joint venture with OHADA on contract law or the proposed fourth Protocol to the Cape Town Convention on agricultural equipment and improved financing of agricultural equipment, which might be an interesting step forward in the broad sense. Ms *Sandby-Thomas* was similarly cautious, applauding the idea of working with other organisations, but suggesting that perhaps the Institute ought to concentrate on creating its own unique space, thereby avoiding any potential conflict or inconsistencies. Likewise, while in favour of variety and widening the scope of the Institute's mandate beyond commercial issues, there was a danger of its stretching itself too thin, also in terms of resources.

87. Mr *Elmer* noted that UNIDROIT no doubt possessed certain knowledge as an organisation that might be useful to developing countries, *e.g.* in the area of property law, and suggested that it could offer some assistance in building up property law systems which would make it easier to finance the private sector.

88. *The Governing Council recalled the repeated appeals that had been made in recent years that UNIDROIT should give adequate consideration to the needs of developing countries when formulating recommendations for the Work Programme of UNIDROIT to the General Assembly. The Council agreed that the broad mandate of UNIDROIT in the area of private law offered a wide range of opportunities for the Institute to contribute to the achievement of development goals agreed upon by the international community. Opening a line of work specifically devoted to the interplay between private law and economic and social development, in particular in the area of agricultural production and regulation, but also in the area of legal aspects of social businesses might also permit to better explore synergies with other inter-Governmental organisations and to develop joint projects in co-operation with selected organisations.*

**Item No. 7 on the agenda: Principles of International Commercial Contracts  
(C.D. (88) 5)**

89. In introducing this item, Mr *Bonell* drew attention, first, to two significant events that had taken place since the previous session of the Governing Council. One was the annual session of the Working Group for the preparation of a third edition of the Principles in Rome at the end of May 2008, when it examined the revised draft Chapters on Unwinding of failed contracts, Illegality, Plurality of obligors and obligees, Conditional obligations and Termination of long term contracts for just cause. The other was the meeting of the Drafting Committee in Hamburg in early March 2009, generously hosted by the *Max-Planck-Institute für ausländisches und internationales Privatrecht*, which served to co-ordinate work among the Rapporteurs in view of the Working Group's forthcoming session to be held in Rome from 25 to 29 May 2009. Significant developments had also taken place with respect to the promotion of the current edition of the UNIDROIT Principles. To begin with, there had been Mr Bonell's visit to Australia the previous summer at the invitation and with the generous financial support of the Attorney General's Department, the Law Council and the Federal Court of Australia. Mr Bonell had taken this opportunity to express his deepest appreciation to Mr Govey and his colleagues for their extraordinary hospitality and excellent organisation of an impressive series of symposia, seminars and meetings with representatives of the Australian legal community.

90. Two further events that deserved to be mentioned were, first, the meeting, in January 2009 and involving practically the entire Swiss academic community, of the Advisory Board of the Study Group on "Swiss Law of Obligations and European Contract Law" set up by Messrs Huguenin and Hilty of the University of Zurich, which had provided an opportunity to propose the UNIDROIT Principles as a possible source of inspiration for this important reform project, wherever appropriate, and, second, the International Seminar on private international and uniform law held in Madrid in February 2009 at the prestigious Universidad Complutense which had been attended by a large number of academics and practitioners from Europe and Latin-America and where Mr Bonell had presented a paper entitled "From the Vienna Convention to the UNIDROIT Principles: Towards a global law of international commercial contracts?".

91. In conclusion, Mr Bonell noted that the collection of the growing body of court decisions and arbitral awards relating to the UNIDROIT Principles was proceeding apace, and that the total number of decisions rendered worldwide and reported in the UNILEX database now stood at 183.

92. In the ensuing discussion, several members noted the role of the UNIDROIT Principles in drafting domestic legislation in their countries. Mr *Operti Badán* informed the Council that a bill had been submitted to the Uruguayan Congress that made express mention of the UNIDROIT Principles as a private law source; Mr *Sanchez Cordero* noted that the UNIDROIT Principles had been one of the main sources in drafting the Mexican model Contract Code and that this would be explicitly mentioned in the introductory explanation; Mr *Harmathy* referred to the bill concerning a new Civil

Code that was now before the Hungarian Parliament, the contractual part of which used the Principles as its main source. Ms *Bouza Vidal* referred to Spanish jurisprudence and to several Supreme Court rulings which mentioned the UNIDROIT Principles.

93. Mr *Govey* confirmed that Mr Bonell's visit to Australia had generated additional interest in the Principles among a wide variety of people in Australia, but most particularly people from the legal profession and the courts.

94. Ms *Sabo* suggested that there might be some scope for collaboration with the Hague Conference of Private International Law which had decided at its April policy session to prepare something along the lines of principles dealing with choice of law in international contracts. In reply, Mr *Bernasconi* (Hague Conference) endorsed Ms Sabo's remark, stating that the Hague Conference was very keen on co-operating with UNIDROIT and learning from its experience in dealing with non-binding instruments, since this was the first time that the Hague Conference had ventured into the preparation of non-binding instruments.

95. *The Governing Council expressed its gratitude to Mr Bonell for his invaluable contribution to the ongoing work on and the promotion of the UNIDROIT Principles and took note with satisfaction that the new Chapters of the Principles were set to be finalised by the end of the following year.*

***Item No. 8 on the agenda: Model Law on Leasing (C.D. (88) 6)***

96. Mr *Stanford* (Deputy Secretary-General), commenting on the adoption of the UNIDROIT Model Law on Leasing in Rome on 13 November 2008, stressed that the Institute could be extremely proud of having reached out to the developing world and economies in transition in a quite unprecedented way and at having completed the work in record time. He believed that this project and its successful completion had enabled the Institute to respond in a resounding way to the criticism levelled at it by the representatives of African member States for not having their interests and concerns reflected in its previous Work Programmes. Moreover, since the formal adoption of the international instruments promoted by the Institute usually only represented a sort of half-way mark on the way to their effective implementation, it was particularly satisfying to be able, through this project, to implement the prescriptions for making uniform law a means of technical assistance for developing countries and team-work amongst international Organisations that came out of the V<sup>th</sup> Meeting of the Organisations concerned with the unification of law held in Rome in the 1970's and, equally importantly, to see the benefits of their implementation. The International Finance Corporation had provided considerable impetus for the project in the context of its work in developing countries and economies in transition to use leasing as a means of developing the private sector. Jordan, Tanzania and Yemen had already all adopted leasing legislation incorporating portions of what was at the time either the preliminary draft or the draft Model Law and the IFC had put forward legislation in Afghanistan and the West Bank based in its entirety on the Model Law. Generally, the IFC would be recommending use of the Model Law in its countries of operation as a best practice reference and incorporating all the key principles of the Model Law in its new edition of Leasing Guidelines. The Commonwealth Secretariat too was planning, following the authorisation secured at the previous year's Commonwealth Ministers of Justice Conference, to work with UNIDROIT on implementing the Model Law in Commonwealth jurisdictions. Implementation for once, therefore, did not look as though it would raise problems nor call for the injection of huge resources.

97. The Official Commentary was eagerly awaited, not least in those jurisdictions which had already implemented the Model Law or were in the process of doing so. Also, the question of the Model Law's relationship with the UNCITRAL Legislative Guide on Secured Transactions should be the subject of an authoritative interpretation. The Secretariat had, therefore, been vigilant in ensuring

that the process for finalisation of the Official Commentary be completed at the earliest possible opportunity. Comments were already being received from those invited to work closely with the Secretariat in finalising the Official Commentary, for example, from the Chairman of the Committee of Governmental experts and the Government of the United States of America, as a member of the Drafting Committee. A meeting of all those invited to participate in the finalisation of the Official Commentary was to be held in Rome on 23 and 24 June 2009, upon which occasion the intention was for the Official Commentary to be finalised in both working languages of the Institute and circulated amongst all member States as well as all those non-member States that participated in the negotiation of the Model Law.

98. Mr Stanford noted the tremendous contribution made to this effort by a number of devoted UNIDROIT correspondents, none more so than Mr R.M. DeKoven, a longstanding correspondent whose past career included drafting what had become Article 2A of the Uniform Commercial Code of the United States of America. He had also prepared a first draft of the Official Commentary on the Model Law, the preparation of which had been decided upon by the Joint Session at which it was adopted. The Secretariat believed that it would be appropriate to honour Mr DeKoven's signal contribution to this achievement through the passing of a Resolution, a proposal for which was appended to the Memorandum now before the Council.

99. In terms of promotion, the Secretariat was making arrangements for unofficial versions of the Model Law to be prepared in Arabic, Chinese, Russian and Spanish, as it had been requested to do by a number of member Governments during the Joint Brainstorming Sessions of the Governing Council and the General Assembly, not least Ms Sabo, on behalf of the Government of Canada. However, the Secretariat would propose that, notwithstanding all the requests that it had received for the organisation of seminars on the Model Law in different parts of the world, it hold off on responding to these invitations for the time being, pending the completion of these unofficial versions, not least because of the pressure on the Secretariat's limited manpower resources that would be involved in the organisation of such seminars.

100. Ms Sabo expressed satisfaction at the speed with which this work had been accomplished. Since UNCITRAL was working on a Legislative Guide on Secured Transactions and since there were some fairly fundamental divergences that could be resolved by way of interpretation, a guide to the UNIDROIT Model Law would be a key document, and having several language versions would make it even more widely accessible. Failure to resolve these differences in approach or in definition would mean that there would be two texts in competition with each other. It was crucial to collaborate so that both the UNCITRAL and UNIDROIT texts could be used with confidence and work together.

101. Ms Broka informed the Council that the Model Law on Leasing had been incorporated into the chapter on commercial transactions of the Latvian Commercial Code adopted by the Latvian Parliament in 2008. The new regulation was to come into force in 2010.

*102. The Governing Council took note with satisfaction of the procedure put in place for the preparation of the Official Commentary and for the preparation of unofficial Arabic, Chinese, Russian and Spanish versions of the Model Law; it confirmed the view that it was best to hold off from organising promotional seminars for the time being, and passed a Resolution recognising the extraordinary contribution to the timeous completion of the Model Law made by UNIDROIT correspondents and by Mr R.M. DeKoven in particular.*

***Item No. 6 on the agenda: Draft Convention on Substantive Rules regarding Intermediated Securities (C.D. (88) 4)***

103. Mr Keijser (UNIDROIT Secretariat) provided an overview of progress made since the Governing Council's session in 2008. Three post-session informal Working Groups established during the fourth session of the Committee of Governmental Experts in May 2007 had presented their reports on: (1) innocent acquisition of intermediated securities; (2) issues relating to securities clearing and settlement systems and Central Securities Depositories; and (3) insolvency-related issues. These reports had been taken into consideration during the first session of the diplomatic Conference to adopt the draft Convention held in Geneva from 1 to 12 September 2008, during which the outstanding issues had been successfully resolved.

104. The diplomatic Conference had also conducted two full readings of the text of the draft Convention, taking into account comments by States and observers, and added a Preamble, a transitional provision and Final Provisions to the draft Convention. Although this had resulted in a complete Convention text, it had been decided that a second and final session of the diplomatic Conference would be held in 2009. In the interim period, a draft Official Commentary on the draft Convention would be prepared and published. A full report of the first session of the diplomatic Conference was reproduced in the Annual Report 2008.

105. Following the first session of the diplomatic Conference, the Secretariat had issued the text of the draft Convention and the Final Act adopted by the Conference upon a 30-day revision period (see CONF. 11 – Docs. 47 Rev. and 48 Rev.). In addition, it had completed the transcripts of the first session of the diplomatic Conference, which were being used as informal working documents in preparing the draft Official Commentary.

106. Mr Keijser went on to set out the drafting procedure for the Official Commentary. First, a draft text for one or more articles of the draft Convention was prepared by one of the five "primary authors" or one of the eight "additional initial authors". This text was then considered and revised as necessary by the five primary authors, and the text circulated to a "Steering Committee" set up by Resolution No. 2 of the diplomatic Conference.

107. The draft Official Commentary had to be finalised by the end of June, to ensure its publication three months in advance of the final session of the diplomatic Conference.

108. Mr Keijser noted that Ms Schneider, of the UNIDROIT Secretariat, had started the practical preparations for final session of the diplomatic Conference in close co-operation with the Government of Switzerland, which would be hosting the event. The Secretariat would also be co-ordinating both the work of a "Filtering Committee", which was to consider requests for revision of the text of the draft Convention before the final session, and the work in respect of comments submitted by States and observers in relation to the draft Official Commentary before the final session (See Resolutions No. 1 and No. 2 of the Final Act). After the final session of the diplomatic Conference, the main task would be finalising the Official Commentary. In addition, the Governing Council was invited to consider whether publication of the Acts and Proceedings of the diplomatic Conference would be useful and necessary.

109. Mr Keijser underscored the point made by the Secretary-General in the discussion on the item "Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets" concerning the importance of providing model guidelines for structuring the non-Convention law where this notion was used in the draft Convention (see also C.D. (88) 7 Add. 3, in particular section 4). He noted that, among other things, the organisation of a seminar on the draft Convention in

Nigeria had made him aware of a clear need for information and guidance in structuring the securities markets in emerging markets.

110. The *Secretary-General* expressed his deep gratitude to the Governments of the Netherlands and Switzerland for providing extra-statutory funding to extend the contract of the officer in charge of this project.

111. The *Secretary-General* raised two further points. One was the question of whether or not to produce the Official Acts and Proceedings of the Conference. This was an important element for the interpretation of the text but it was an expensive exercise for which currently there was no budget line. The second concerned the depositary function for the Convention. The draft Convention contemplated appointing UNIDROIT as Depositary, as for the Cape Town Convention, and this obviously had budgetary implications. He invited the Governing Council to reiterate for recommendation to the General Assembly that the post of the officer handling the depositary function be permanently absorbed in the budget.

112. Upon Mr *Soltysinski* having enquired as to the main outstanding substantive points, Mr *Keijser* indicated that the main changes focused on the insolvency provisions of the draft Convention during the Conference as well as on innocent acquisition to take account of the relevant European developments. Changes relating to the rules on Central Securities Depositories had been very minor since CSDs were considered difficult to define. There had been some minor technical changes relating to that issue and to the rules of clearing and settlement systems. The transitional rule had also given rise to quite some debate but here a compromise had been reached. Generally, most issues had been solved during the Conference. No comments has as yet been received and there had been no real signals relating to the content of the draft Convention.

113. Mr *Bollweg* wondered whether the brevity of the final session that was being planned was an indication that no major problems were expected to arise, despite the persistence of difficulties among the member States of the European Community and of the economic crisis which had broken weeks after the Conference.

114. Ms *Jametti Greiner*, while congratulating Mr *Keijser* on his smooth handling of this project, also admitted to some misgivings as to the final session of the diplomatic Conference. The decision to split the Conference into two parts had been taken in a spirit of compromise to give all delegations an opportunity to assess this highly complex matter once more in the light of a draft Official Commentary. It had at the time been clearly understood that this final session would merely be a straightforward third reading. Any requests to re-open the discussion on any point would have to be well-grounded and vetted by the Steering Committee. If this compromise was strictly observed, three days would be sufficient. However, the changes in the economic climate dictated a need for some flexibility, which was why the official invitations sent out by the Swiss Government clearly informed delegates that a two-day extension might be necessary.

115. Mr *Gabriel* stressed that since the Intermediated Securities Convention was probably destined to be the first part of a larger global set of projects in the field of capital markets, it was important, subject to finding the necessary resources, to have the Conference Acts and Proceedings available to provide guidance and explanation. As to the depositary function of UNIDROIT, it should be recommended to the Finance Committee and the General Assembly that the staff member who had been handling this project should be brought into the regular budget. Finally, it seemed a sensible proposition to compile a guide for future work.

116. Ms *Sabo* agreed that the Acts and Proceedings would be important to have, but she stressed that the cost of a paper version as opposed to an electronic version would have to be carefully

assessed. As to the depositary function, the staff member responsible should undoubtedly be brought into the budget on a long-term basis. Finally, a Guide to Declarations referring exclusively to this instrument would in her view be very helpful.

117. Ms *Jametti Greiner* was in favour of publication of the Acts and Proceedings of the diplomatic Conference but only in electronic form.

118. The *President* then gave the floor to Mr *Bernasconi* (Hague Conference), who recalled that UNIDROIT's work on intermediary securities was of great and interest importance also to his Organisation. The main reason for his intervention was that it had been brought to his Organisation's attention both formally and informally that a number of States, in particular emerging market States, tended to look at the UNIDROIT Convention and The Hague Convention together. This made sense in that they dealt with the same general subject model although they handle different questions, so there appeared to be merit in exploring ways of working in close co-operation, again with particular emphasis on emerging markets.

119. *The Governing Council took note with satisfaction of the steady progress made in the run-up to the final session of the diplomatic Conference to adopt the Convention in October 2009. It recommended that, resources permitting, the Acts and Proceedings of the Conference should be made available in electronic form, and expressed the view that the preparation of a Guide to Declarations offering guidance on the formulation and submission of declarations made in respect of the future Convention was desirable, in principle.*

#### ***Item No. 5 on the agenda: International Interests in Mobile Equipment***

(a) *Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (C.D. (88) 3(a))*

120. Mr *Atwood* (UNIDROIT Secretariat) introduced this item, taking as a first issue the *status* of the Convention. Important new accessions since the last Governing Council's session included those of India, which had a very large and developing air market, Singapore and the United Arab Emirates, both with large commercial fleets. Kazakhstan and Zimbabwe had lodged instruments of accession or ratification. A very significant development in early February 2009 had been the ratification by the People's Republic of China. Looking to short to medium-term *prospects*, there was cause for considerable optimism. First of all, the outstanding technical issues that had been delaying accession by the European Community to the Convention and Aircraft Protocol had now been resolved and accession was now imminent, and strong interest had been expressed by several EU Member States. The absence of the European Community had caused reservations and doubts among potential Contracting States and this latest development should help to continue the momentum of the Convention. Secondly, an important development was expected by mid-2009 in respect of the Russian Federation which should have important fall-out among the former Soviet States. Developments in Brazil, with its sizeable air market and manufacturing industry, and as a player in the South American region, likewise looked promising. With Japan and South Korea also engaged in serious consideration of possible accession, the Contracting States to the Convention and the Protocol would cover a significant proportion of the air market in terms of volume. There were signs that membership of the Cape Town Convention might become the default industry standard. This success could potentially be of assistance in developing other Protocols and attracting membership to the existing rail Protocol. This was also important in terms of promoting UNIDROIT's visibility generally, and it might be no coincidence that the Institute's two new member States were also members of the Cape Town Convention.

121. Good relations had been established with the International Registry and the Supervisory Authority. The Secretariat had assisted the Registry in solving some difficulties in establishing procedures with the authorities in certain member States. As to the Institute's depositary function, after some delay the annual Depositary Report for the first two years had now been published on the UNIDROIT website. ICAO had indicated that it would be providing its Supervisory Authority reports every two years instead of annually, and since this report was a key ingredient of the Depositary Report the latter would henceforth in principle also be published on a two-yearly basis.

122. As to promotion and publicity, the Institute remained at the disposal of all potential Contracting States to provide whatever assistance was needed. Efforts were also being made to make the relevant entry on the UNIDROIT website more user-friendly. In terms of publications, the revised edition of the Official Commentary on the Convention and the Aircraft Protocol as well as the Official Commentary on the Luxembourg Rail Protocol had been published in June 2008. Sales of the former stood at 390 copies and of the latter at 57 copies, the lower figure perhaps because the Rail Protocol had not yet entered into force. The author of both commentaries, Sir Roy Goode, had very kindly agreed that all proceeds from the sale of the Official Commentaries be donated to the Uniform Law Foundation.

123. Turning to developments in relation to the Luxembourg Rail Protocol, the situation was less certain. The Preparatory Commission established by the Luxembourg diplomatic Conference to deal with the policy and administrative decisions needed to prepare for the entry into force of the Protocol had at its previous year's meeting identified and selected a successful bidder for the function of Registrar of the International Registry under the Protocol, a company called CHAMP S.r.l. Contract negotiations had been entered into and a series of problem areas cleared out of the way, but ultimately three issues had remained unresolved and in October CHAMP had indicated that it was withdrawing its bid and was suspending the negotiations. The Luxembourg Government had now announced that it would be working with CHAMP to attempt to reformulate the bid but the situation remained unclear, several possible scenarios presenting themselves. Meanwhile, even in the current deteriorated economic circumstances, it was important to maintain momentum and keep all options open. No changes in the status of the signatures or ratifications to the Protocol had occurred in more than two years since its adoption, so some constructive and positive developments in the development of the infrastructure under the Protocol would serve to give confidence to those States considering joining the Protocol.

124. In the discussion that followed, Mr *Bollweg* informed the Council that an EU Commission proposal had been submitted to the Council of Ministers some weeks before relating to signature of the Rail Protocol. He expressed confidence in a positive outcome of the discussions in the weeks ahead. In reply to a query by Mr *Elmer* as to whether the EU would be signing the Protocol as a single body, Mr *Bollweg* stated that the same situation prevailed as with the Cape Town Convention and the Aircraft Protocol. Some points fell within the competence of the EU, while others fell to that of the individual member States. Signature would therefore refer only to those parts referring to matters falling within the EU sphere of competence.

125. The *Secretary-General* indicated that the Secretary-General of OTIF and himself had approached the Luxembourg Government to offer their good offices in resolving the conundrum with regard to the Rail Protocol. The business case for the Rail Registry was unclear. There was concern that the Preparatory Commission should strike a proper balance between what it considered to be its role in getting the best possible deal for Contracting States and what was commercially feasible, and weigh this against the likelihood of there being many possible candidates. Representatives of the rail industry had indicated that they had not bid at the time because there did not seem any commercial viability without some form of Government guarantee.



126. *The Governing Council took note of the progress made in implementing the Depositary functions under the Convention and the Protocols.*

(b) *Preliminary draft Protocol on Matters specific to Space Assets (C.D. (88) 3(b))*

127. While referring to Secretariat memorandum for the detail of the individual issues that had arisen over the past year, Mr *Stanford* (Deputy Secretary-General) stressed that the Cape Town Convention had attracted a level of ratifications unheard of in UNIDROIT experience. While its area of concern, asset-based financing, was nothing new in the area of aircraft financing, it was something new in the field of commercial space financing. There could be no doubt as to the enormous potential benefits of the future Space Protocol for the international community, in particular those parts of the world with least access to the international capital markets. It was true that a number of difficulties had arisen, but this was hardly surprising in a field where asset-based financing was still more an aspiration than an everyday occurrence.

128. Governments of whichever hue had participated enthusiastically in the work ever since its inception and it had been evident at the most recent session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space that they were eagerly awaiting completion of the intended Protocol. Industry had probably never played a greater part in the shaping of a UNIDROIT instrument. Ensuring that the Institute's instruments were, first and foremost, commercially viable had always been a matter of primary concern to UNIDROIT but never more so in an area of such technical complexity and constant innovation.

129. The Committee of governmental experts had thrown up a number of fundamental policy issues, which it was decided should be referred to intersessional work. These issues ranged from the question as to how best to deal in an asset-based system with assets that were not susceptible to physical repossession to that as to how to identify assets that, while costing enormous amounts of money, would often be without the classic manufacturer's serial number typical of aircraft. The fact that the intersessional work had taken place with representatives of the key space-faring Governments and the commercial space and financial communities participating on an equal footing was a reflection of the commitment of UNIDROIT to achieving a balanced and commercially viable end-product.

130. The problems that had fallen to be resolved had thus presented an opportunity to invent new mechanisms to bring forward solutions. Over the previous eleven months, pursuant to the decision taken by the UNIDROIT General Assembly in November 2007, a Steering Committee had been hard at work seeking workable solutions to these outstanding problems. It had benefited enormously from the commitment of both the Governments of the key space-faring nations and key representatives of the commercial space and financial communities. The Government of Germany, through the kind offices of Mr *Bollweg*, had hosted the launch meeting of the Steering Committee in Berlin in May 2008. *Commerzbank*, through the kind offices of Mr *Arlettaz*, a leading member of the commercial space financing community, had hosted the meeting of a Sub-committee invited by the Steering Committee to look into the matter of default remedies in relation to components, held in Berlin in late October and early November 2008. One of the big issues to be addressed, namely the question of public service, already the subject of a most helpful proposal tabled by Mr *Carbone* in 2008, was to be discussed at the meeting of the Sub-committee on public service, to be hosted in Paris in May 2009 by *Crédit Agricole S.A.*

131. In the light of all the progress made over this time, the Steering Committee itself was to meet in May 2009 in Paris too, at the Headquarters of the European Space Agency, at the kind invitation of Mr *Marchisio*, the Chairman of both the Committee of governmental experts and the Steering Committee. The Committee would be taking stock of the progress made in resolving the key

outstanding issues, in particular as seen through an alternative version of the preliminary draft Protocol which had emerged from the last session of Governmental experts. This alternative version had been prepared by the representatives of Canada and the United Kingdom on the Steering Committee, in recognition of those Governments' co-chairmanship of the Drafting Committee of the Committee of governmental experts. The Steering Committee had been extremely fortunate in being able thus to call upon the expertise of two of the leading figures in the development of the Cape Town Convention itself, namely Mr J.M. Deschamps and Sir Roy Goode. The intention was to lay the alternative version before the Committee of Governmental experts, once reconvened, alongside the existing text of the preliminary draft Protocol.

132. The level of progress achieved by the Steering Committee was cause for cautious optimism that the Committee of governmental experts might be reconvened in Rome, in the wake of the forthcoming Steering Committee meeting, for a one-week session, running from 30 November to 4 December 2009, preceded by a two-day meeting of the Sub-committee of the Committee of governmental experts to consider certain aspects of the international registration system to underpin the future Protocol, set up at the last session of governmental experts. The intention would then be to hold a final session of governmental experts in early Spring 2010 with a view to the holding of a diplomatic Conference for adoption of the resultant draft Protocol later that year.

133. Completion of this time-table should be facilitated by the fact that the company running so successfully the International Registry for aircraft objects had officially expressed its interest in running the future International Registry for space assets and the announcement made by the representative of the Government of the Russian Federation to the UNIDROIT General Assembly in November 2006 that, provided that the work of the Committee of governmental experts was successful, his Government would consider hosting the diplomatic Conference. While much remained to be done, these signs looked like good auguries for the future. In particular, the idea of space assets being subsumed under the existing International Registry for aircraft objects would permit important economies of scale, a factor which was not negligible in an industry where the likely number of registrations at the beginning at least was likely to be far short of the number recorded in respect of aircraft objects. Moreover, it would seem to hold within it the germs of a solution for the problem of the Supervisory Authority of the future International Registry for space assets: clearly, it was too soon for any decision to be contemplated in this connection, but Mr Stanford indicated he had already been in touch with the Legal Bureau of the International Civil Aviation Organization (ICAO) to discuss the possibility of that Organisation considering, in a parallel development, its assumption of the functions of Supervisory Authority in respect of the future International Registry for space assets too.

134. The President then gave the floor to Mr *Marchisio*, who briefly outlined the state of the art in the process of elaboration and negotiation of the preliminary draft Protocol on Matters specific to Space Assets. Substantial progress had been made in 2008, and if the Committee of governmental experts had not been able to meet again after its first two sessions this was because, first, UNIDROIT had given priority to the aircraft and railway rolling stock protocols and, secondly, building consensus on some key issues had proved an arduous exercise. In the course of the intersessional work, the principal objective pursued in preparing an alternative version of the draft to be presented to the Committee of governmental experts once reconvened had been to narrow down the sphere of application of the preliminary draft Protocol. The year 2008 had brought promising news, not least the road map agreed upon by the General Assembly of UNIDROIT which should lead to the reconvening of the third session of the Committee of governmental experts. The situation was now characterised by fruitful discussion and emerging consensus on some key outstanding issues, such as the sphere of application of the draft Protocol, the definition of space assets and the extension of the Cape Convention as applied to space assets to cover debtor's rights and related rights. Two Sub-committees of the Steering Committee had been working respectively on the default remedies

regimen in relation to components and the issue of public services. The former stood poised to submit its text to the following meeting of the Steering Committee in May; the public services issue was still under discussion. Mr Marchisio expressed his gratitude to the Governments that had actively participated in all this work as well as to the commercial space and financial communities, and to the UNIDROIT Secretariat for participating in the work of the Legal Subcommittee of the U.N. Committee on the Peaceful Uses of Outer Space which had been following the elaboration of this Protocol with great interest. It would be decided following the forthcoming Steering Committee meeting whether to reconvene the third session of the Committee of governmental experts, taking into account the positive results that had been achieved.

135. In the ensuing discussion, Mr *Bollweg* expressed great satisfaction at the spectacular progress made over the previous year on this very ambitious project. There was both a technical challenge to find default remedies exercised in an asset located in orbit and a political challenge since the project concerned mostly public services and conflict might arise in exercising default remedies. He was confident that the remaining problems would be solved in the near future.

136. The *Secretary-General* raised the question of whether the focus was on remedies that would be enforceable against the assets or on remedies that would be enforceable as to the proceeds of those assets. In other words, was this a pure asset-financing or a project-financing type of arrangement? In his own experience, he had found that asset-based security arrangements were sought rather to prevent anyone else from accessing the physical infrastructure but the main concern was the proceeds and cash flow generated by the project. He wondered whether this was something also encountered in the work on this project. He recalled that there were also treaties that dealt with security arrangements in such situations, *e.g.* the Channel Tunnel Treaty which made arrangements under public international law for both step-in rights by lenders and for public services.

137. In reply, Sir Roy *Goode* agreed that the physical asset as collateral had tended to be of relatively reduced importance until fairly recently when it had become possible to shift orbits or change the purpose for which the satellite was being used. Technology had now moved on, which might make satellites significant as collateral, although the main reliance remained on the receivables flow from the leasing of the satellite. As to the public service exemption, of course Governments had an interest in continuative services that could be prevented by either creditors switching something off or by terminating access. The idea was to strike a balance between competing interests.

138. *The Governing Council took note with satisfaction that work on this project was well back on track and authorised the Secretariat, subject to the success of the meetings of the UNIDROIT Steering Committee and of its Sub-committee on public service in May 2009, and in consultation with the Chairman of the Committee of Governmental experts and the Steering Committee, to reconvene the Committee of Governmental experts in late 2009.*

(c) *Preparation of a Protocol on Matters specific to Agricultural, Mining and Construction Equipment (C.D. (88) 3(c))*

139. Mr *Atwood* (UNIDROIT Secretariat) recalled that in addition to the three categories specifically mentioned in the Cape Town Convention that might be covered by protocols (aircraft objects, railway rolling stock and space assets), it had always envisaged that the economic rationale for the Convention had potential application in other sectors in relation to other categories of mobile equipment. The Governing Council had identified large, high-value agricultural, mining and construction equipment as suitable for possible development of a fourth such protocol, even though it did not travel from one legal jurisdiction to the next in the normal course of its use but would remain *in situ* for long periods at a time. The Governing Council had mandated the Secretariat in 2006 to undertake some preliminary research including a questionnaire to be circulated to obtain some basic

information about the need for the protocol, which had resulted in mainly statistical information. The Governing Council had then authorised the circulation of a draft tentative text in October 2008 to illustrate what the overall structure of a future protocol might be. The comments received from member States were set out in the annexe to the document now before the Council. In a nutshell, there had been no opposition to further work being undertaken and some support was expressed for the project. Several potential problems were underlined, one being that the subject matter was relatively undefined, another the possibility of some overlap between the three sectors of agriculture, mining and construction which might create problems when dealing with issues such as the development of registration criteria. The final product needed to be responsive to the problems experienced by industry, and it was felt that further work could focus on the need for, and support of, the development of the Protocol from the relevant industries – not just agriculture, mining and construction industries, but also manufacturers and financiers. The Secretariat could perhaps do some work towards identifying industry sectors and organisations with a view to engaging their interest in the project.

140. From a technical point of view, the development of such Protocol was unlikely to be unduly lengthy and could even be relatively brief. Some technical issues, such as defining the scope, describing the categories of equipment, were quite difficult but were all capable of being resolved. The development of registration criteria could be problematic, since none existed across all categories, but a Protocol could be finalised with that issue being resolved in the regulations.

141. The Secretariat was looking for a flexible mandate from the Governing Council to conduct further work, with a sharp focus on assessing the real potential need and benefits, to conduct further consultations with Governments and private-sector participants, and possibly to form a study or working group for the purpose of assessing the outcome and developing recommendations as to whether, and if so how, to take the project forward.

142. Mr *Gabriel* strongly defended the case for continuing work on this Protocol. He had been advised that there was strong interest and that there was a market, both in the United States and elsewhere. Flexibility would no doubt be called for but it was important to engage in a dialogue with the major industry players. Mr *Sen*, too, recalled that there had been support for this topic, particularly as regards the mining component, when it had first been discussed in 2006. Ms *Sabo* concurred, but more information was needed about prospective interest, for example in Africa with its vast mining and agricultural potential, among the equipment manufacturers rather than Governments. The time had not yet come for any actual drafting, but the Secretariat could move forward cautiously with the longer term in mind. Mr *Govey* seconded this, although the question remained how exactly to proceed. Ms *Sandby-Thomas* took the view that the very first step was to ascertain member States' interest in this project before taking it any further.

143. Mr *Elmer* admitted to some scepticism. The scope of this Protocol was much wider than that of the previous Protocols and should be narrowed down. Denmark for one had its own national financing system and other countries very likely had, as well. A better idea might be for UNIDROIT to work on facilitating the operation of these national systems.

144. Sir Roy *Goode* raised the point that some, but not all, the equipment involved actually crosses borders. The effect of the Cape Town Convention was that if one did not file an international interest, there was a risk of being subordinated to someone else who had, the implication being that even if one had a large amount of equipment that was not going to move from one country to another, it would nevertheless be necessary to file such an international interest. Ms *Sabo* felt that this indeed led to the crux of the matter, *i.e.* the question of whether the cost of establishing a Registry could justify such a Protocol, which went back to the mobility of the equipment and the

location of the financing, and the satisfactory or unsatisfactory nature of the domestic provisions in force.

145. Mr *Bollweg* agreed with Mr Gabriel in that there had been strong interest shown by the industry in such a protocol for agricultural equipment, and to a lesser degree for mining equipment. But he also concurred that there was no urgency, and that industry representatives might first be approached for more information. He also pointed out that this was typically an area where the ideas earlier expounded by the Secretary-General and the FAO representative (see below, paras. 236-238) on co-operation between the FAO and UNIDROIT came into their own.

146. The *Secretary-General* underscored the importance of the comments made by Sir Roy Goode and Mr Elmer. Although this concern might possibly be slightly premature, care should be taken not to aim at an instrument that might pervert the nature of the Cape Town Convention by bringing purely domestic transactions under the Cape Town umbrella. It was true that some agricultural or mining equipment did cross borders in some parts of the world, but not in others. In conclusion, the fact that the scope of such assets was not global did not in itself prevent them from being brought within the Cape Town system, but some international aspects would have to be involved.

147. The *First Vice-President*, who was chairing the meeting, proposed that the Council might wish to follow the prudent course suggested by Ms Sabo to continue with this study at a leisurely pace, consulting Governments and seeking ways of narrowing down the scope of the project, and then to come back to the issue the following year.

148. *The Governing Council took note of the results of the consultations on the tentative draft text for a Protocol on high-value agricultural, mining and construction equipment and mandated the Secretariat to continue sounding out Governments and private actors and to seek ways of narrowing down the scope of the proposed instrument, and to lay the results before the Governing Council at its 89<sup>th</sup> session in 2010.*

***Item No. 12 on the agenda: Implementation and promotion of UNIDROIT instruments other than Cape Town instruments (C.D. (88) 10)***

149. Ms *Schneider* (UNIDROIT Secretariat) introduced this item, recalling that it covered instruments under preparation as well as the implementation of existing UNIDROIT instruments and their ratification/accession/denunciation, details of which were to be found on the UNIDROIT website. As to resources, she recalled that the UNIDROIT budget for this item made no distinction between instruments already adopted and those under preparation. The amount involved was extremely modest and had remained unchanged since 2005 despite growing calls upon it in the wake of the adoption of new UNIDROIT instruments of which UNIDROIT is the Depositary. The most pressing problems related to instruments already adopted, the promotion of which remained essentially demand-driven rather than pro-active, and for which a proper promotional strategy was overdue. The role played by the translation of instruments into the various languages had already been stressed in the discussion on the promotion of these instruments, as had that of the UNIDROIT website. Ms Schneider then outlined the various activities to promote, in particular, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, interest in which was now intense. Despite straitened circumstances, but thanks to the active support of UNESCO, the Secretariat was regularly invited to participate in national, regional or international training sessions, and it was also approached by Governments in need of technical assistance with a view to ratifying or acceding to the Convention. The promotion of this instrument also relied on co-operation agreements with other organisations such as INTERPOL, the *Carabinieri Tutela Patrimonio Culturale* or the European Euromed Heritage IV and TAIEX programmes.

150. Mr *Opertti Badán* wondered whether some of the time pressure involved in promoting the Institute's instruments might be eased by sending texts (both adopted and drafts) to specialised private law and commercial journals. Mr *Sánchez Cordero* agreed, recalling that the Institute had numerous contacts among specialised fora that could be harnessed to the cause. He pointed out, however, that one of the main obstacles to promotion was the lack of translation of instruments into the different languages. In Mexico, for example, the immediate availability of the official Spanish translation of the Cape Town Convention and the Aircraft Protocol had opened the way to immediate ratification.

151. Mr *Mo* having pointed out that the number of Contracting States to the 1964 Convention relating to a Uniform Law on the International Sale of Goods and the 1964 Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods had now fallen below the minimum required for the instruments to enter into force, the *Secretary-General* recalled that under the Vienna Convention on the Law of Treaties, a treaty, once in force, did not automatically cease to be so if denounced by enough States for it to fall below the minimum in question. It was up to the current Contracting States to those Conventions to decide whether to maintain them or collectively to denounce them and up to the Depositary to invite them to do so. However, it seemed anachronistic to list a convention as if there were any prospect for it to gain further ratifications in the future when exactly the opposite was true.

152. Ms *Jametti Greiner* urged UNIDROIT to do less but to do it better. It should confine itself to its "fashionable" instruments in force or about to come into force and leave aside obsolescent instruments. There was a need for rationalising the international treaty framework, the responsibility for which lay with States, with UNIDROIT itself, and with academics.

153. The *Secretary-General* pointed out however that it was not up to the Secretariat to choose which Conventions to promote, unless the policy-making body of the Organisation directed it to do so.

154. *The Governing Council took note of calls for a more pro-active promotion strategy and of the need to allocate the necessary resources particularly for the promotion of instruments already adopted.*

***Item No. 13 on the agenda: Legal Co-operation Programme (C.D. (88) 11)***

155. Ms *Mestre* (UNIDROIT Secretariat) recalled the three cornerstones of the Institute's legal co-operation programme, *i.e.* the Research Scholarships Programme; initiatives designed to enhance the participation and involvement in and information on UNIDROIT's work directed at individuals and institutions, particularly in the developing countries (member and non-member States of UNIDROIT alike), and to ensure that the Institute's activities dovetailed with those of other like-minded organisations at the regional or global level; participation in *ad hoc* technical assistance, a particularly telling example having been the preparation of a preliminary draft OHADA Uniform Act on contract law, which had formed the subject of a colloquium in Ouagadougou in November 2007 and the Acts of which had been published in the *Uniform Law Review* in 2008, in a bid for maximum publicity.

156. The *President* noted that the Council was unanimous in wishing to renew for 2009 the scholarship it had collectively funded in previous years and suggested that as of 2010, members wishing to contribute might have the relevant amount deducted from their travel allowance.

157. Mr *Gabriel* stressed that the Governing Council scholarship was an important and much-appreciated statement on the part of the Institute's leading body. As new members, Mr *Mo*, Ms *Broka* and Mr *Tricot* expressed their warm support for its continuation.

158. Ms *Sabo* and Ms *Sandby-Thomas* both pointed out that closer collaboration with UNCITRAL and the Hague Conference on technical assistance and on promotion would be very sensible with a view to making economies of scale and rendering their activities more visible to Governments.

159. Mr *Operti Badán*, President of the Scholarships Sub-committee, presented the report of the meeting of that committee (reproduced in Appendix of this document).

160. *The Governing Council took note of the information supplied by the Secretariat and supported the action taken by the Secretariat to secure funding for the Research Scholarships Programme. The Council expressed its gratitude to the donor Governments, to the United Kingdom Foundation and to the American Foundation for International Uniform Law for their support, and to the Secretary-General for his personal contribution which funded one research grant. The members of the Council moreover decided to make a collective contribution with a view to funding a two-month grant.*

**Item No. 14 on the agenda: Correspondents (C.D. (88) 12)**

161. Ms *Schneider* (UNIDROIT Secretariat) introduced this item, which set out the origins and development of the UNIDROIT network of correspondents. She recalled that after having for many years given thought to the correspondents' mandate and ways of stimulating their output, the Governing Council had taken two decisions in 2006. Correspondents were henceforth to be appointed for a period of three years and a new category had been created, that of corporate correspondents. Moreover, the Secretariat had been requested to contact inactive correspondents one further time and then to draw up a definitive list reflecting the results of that operation. As of 15 March 2009, the Institute's network of correspondents consisted of 102 members (for the period 1 May 2008 to 30 April 2011) and two corporate members. The Secretariat asked the Governing Council to advise it on how to deal with the renewal of correspondents and to correct the current imbalance in the distribution between member and non-member States. A proposal for the appointment of a new correspondent, Mr Brian Hauck, had been put forward in view of his contribution to the project on leasing.

162. Mr *Gabriel* had been under the impression that the Governing Council had already decided on a previous occasion that correspondents would be appointed for a set period of three years renewable only if the incumbents specifically agreed. He wholeheartedly endorsed the appointment of Mr Hauck. Mr *Govey* concurred, but felt that correspondents should not be automatically struck off the list for a failure to respond in the affirmative. Some follow-up system was needed.

163. In reply to a question by Ms Bouza Vidal, Ms *Schneider* specified that correspondents were selected upon the proposal of the members of the Governing Council, the President, the Secretary-General or the deputy Secretaries-General. Usually correspondents hailed from the countries represented on the Governing Council, and most were appointed in recognition of services rendered, or to boost relations with certain countries.

164. The *Secretary-General* stated that the crux of the matter was to decide what the correspondents network actually stood for and how pro-active the Secretariat should be in handling it. Appointments were not only an honour, and as such dictated the utmost restraint on the part of the Governing Council in proposing new appointments, but they also entailed duties. However, rather than expecting correspondents to fulfil a generic list of tasks, it might be better for the Secretariat to

devise a programme identifying areas of work and on that basis actively to approach individual correspondents to make a specific contribution. Another issue was the category of corporate correspondents, to which it might be opportune to consider appointing academic institutions or domestic research centres to work on specific projects, such as the Uniform Law Database, which might even extend to a network of institutions.

165. Mr *Elmer* supported the Secretary-General in calling for a proper description of correspondents' mandate and ensuring that correspondents were aware of what was expected of them individually. He saw them essentially as goodwill ambassadors for the Institute.

166. Ms *Sabo* called for a balance of the different interests involved in these appointments, which were recognition of a special contribution to the Institute, a role as goodwill ambassador; the importance of the symbolic currency value of these appointments, and the need for correspondents to offer something meaningful in return. Numbers might be kept down to a target figure of 150, but flexibility would be needed. The focus should be on non-member States.

167. Mr *Bollweg* agreed that correspondents should be appointed for three years. Perhaps a way might be found to use correspondents in a more active way to forge connections with non-member States.

168. The *Secretary-General* spoke out against striking inactive members off the list if they wished to maintain their status as correspondents. Rather, the Secretariat should identify the tasks individual correspondents might perform and to obtain their engagement in the current work, and perhaps seek ways of institutionalising this. In the past, correspondents had made an invaluable contribution to some of the Institute's projects and this might be an avenue to explore further.

169. The *President* noted that there were no objections to the appointment of Mr Brian Hauck, and that the Secretariat would submit a more detailed report on the different aspects in time for the next meeting of the Governing Council.

170. *The Governing Council agreed to give thought, in particular, to the modalities for renewal as well as the content of the mandates of the correspondents and to ways of correcting the current imbalance in their number from member States as opposed to non-member States. The Council also agreed to the Secretariat's proposal to appoint Mr Brian Hauck as correspondent of the Institute in recognition of his outstanding contribution to the preparation of the Model Law on Leasing.*

***Item No. 18 on the agenda: The Uniform Law Data Base (C.D. (88) 16)***

171. Ms *Peters* (UNIDROIT Secretariat) introduced the subject, indicating that the document before the Council examined the situation of the 17 instruments currently on the UNILAW website, proceeding category by category rather than instrument by instrument. An instrument by instrument summary was reproduced in Annexe I to the document. The tables contained in the document *inter alia* compared what had been visible to the public in March 2008 with what was visible in February 2009. In this connection, Ms *Peters* expressed the gratitude of the Institute to the Uniform Law Foundation for providing the funding which permitted the project to avail itself of the contribution of a part-time collaborator.

172. Ms *Peters* pointed out that in the course of the intervening year work had continued on the structure of the data base, with the preparation of the issues and keywords of most of the instruments that were visible. This had occasioned a delay as regarded the insertion of the cases available and their summaries. The following year would permit attention to turn to them.



173. Ms Peters further informed the Council that, on the occasion of the meeting of the Board of Governors of the Uniform Law Foundation which had taken place on Saturday, 18 April, a proposal had been made by the Secretariat to add an important feature to the data base, *i.e.* to include links to a considerable number of instruments which it was not the intention to treat fully. This would go some way to achieving what had originally been envisaged as a purpose of the data base, *i.e.* that of being a focal point for information on uniform law. Even if not all the information would be treated in full, if the data base became a gateway to information on uniform law it would offer numerous users, in particular in developing countries, access to information that would otherwise be accessible to them only with difficulty. This proposal had met with the favour of the Board and the Secretariat hoped that it would also meet with the favour of the Council.

174. Mr *Gabriel* enquired whether any statistics were available on how often the data base was accessed and where from. He felt that this kind of information could be important also for the future, in justifying funding and staffing decisions.

175. In reply, Ms *Peters* indicated that a request to include this function had already been made. However, she stressed that the data base had not yet been given much publicity. Now that it was becoming very attractive, it would be publicised extensively among universities and organisations such as the IBA.

176. Mr *Elmer* pointed out that another important category to be reached was the advocates of the courts.

177. The *Secretary-General* recalled that although the possible shortcomings of the data base had been extensively discussed, both in terms of its fragmentary coverage and the fact that, much like other data bases, it was not an exhaustive data base, the Governing Council had at its previous year's session nevertheless reaffirmed its importance and awarded it top priority. The question now was, what could the Secretariat do to meet the expectations of the Council in treating it with that level of priority? The conclusion at the time had been that the main focus of the data base should be law professors, students and judges, particularly in jurisdictions with no access to commercially available legal data bases. As to the question whether the database should be made available by subscription or on a fee basis, the *Secretary-General* pointed out that in his personal opinion, it would never be in a position to compete with the kind of high-tech data bases that sophisticated private practitioners in jurisdictions like North America and Europe already had access to. The only option was to re-scale the project to a dimension more commensurate with its very limited human resources.

178. In reply to an inquiry by Ms *Sandby-Thomas* as to what was what she referred to as the "unique signpost" of this data base, Ms *Peters* pointed out that unlike other, larger databases, this database assembled information from different jurisdictions and restricted its focus to uniform law, as well as offering summaries in the two communication languages, *i.e.* English and French.

179. Mr *Tricot* felt that it would be impossible both to promote UNIDROIT and run a commercial data base. Free information to a broad public was vital, and he suggested that the Council come back to this fundamental issue at its next session. Ms *Sabo* agreed, and endorsed the *Secretary-General's* suggestion to re-focus the project and target practitioners as well as academic institutions and Governments. Mr *Hartkamp* further stressed the importance of free information and since one of the main targets was the developing world, a charge would be counter-productive.

180. Mr *Bernasconi* (Hague Conference) affirmed that his Organisation's experience confirmed these views. Its own fairly extensive data base on the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction was available free of charge, although users were free to

make a voluntary contribution. In some more commercially-oriented areas no database was available but case commentaries were included in the Convention Manual, which was now also provided free of charge.

181. *The Governing Council took note of the report on the state of play and expressed its appreciation to the Secretariat for the efforts made since the Council's 87<sup>th</sup> session to review the focus of the data base, both in terms of content and search capabilities, in view of its target users, and to substantially increase the amount of information contained in the data base, in particular case law. The Council agreed that access to the data base should continue to be provided free of charge and agreed to discuss the matter in more detail at its next session.*

***Item No. 16 on the agenda: Uniform Law Review / Revue de droit uniforme and other publications (C.D. (88) 14)***

182. Ms *Peters* (UNIDROIT Secretariat) introduced the subject, indicating that the document before the Council looked at the Review from a slightly different angle than usual, in that it examined who the readers of the Uniform Law Review were and how its distribution had changed since UNIDROIT had taken over distribution three years previously. It had always been clear that the majority of those that bought the Review were universities, as were those that exchanged their review for that of the Institute. Statistics showed that there had been a decrease in sales and an increase in exchanges. The number of Depository Libraries that received the Review had remained constant at 27.

183. The document indicated distribution by category (sales, distribution, exchanges). Not surprisingly, the category lawyer/law had decreased steadily in the period examined. This was because litigation lawyers needed periodicals that gave them practical information, and a review such as the Uniform Law Review was not conceived as a journal catering primarily for the needs of the practising lawyer. It was a journal which had a longer-term ambition and was therefore quite naturally aimed more at universities. These had limited funds, so it was not surprising that sales to universities had decreased, whereas the number of exchanges had increased. The effect of supplying the "Hein-on-line" service with an electronic (pdf) version of the Review was more difficult to assess, since it might have caused a certain downturn in the number of subscriptions, even if potentially the Review reached readers in countries where no university or other bought the Review.

184. As regarded other publications, both the Annual Report and document C.D. (88) 14 referred to translations of the Guide to International Master Franchise Arrangements having been made into Croatian, while others were under preparation (Serbian, Korean). The UNIDROIT Principles of International Commercial Contracts 2004 had been translated into Arabic and Portuguese, although the date of publication of these translations was not yet known.

185. Lastly, the ALI/UNIDROIT Principles of Transnational Civil Procedure, which had been published by Cambridge University Press in 2006 (text and comments) together with the ALI Rules (with Comments), had been translated into Persian and published in 2008. The text only of the Principles was available on the UNIDROIT website in Chinese, German, Japanese and Turkish.

186. *The Governing Council took note, with satisfaction, of the progress report.*

***Item No. 15 on the agenda: Library (C.D. 88 (13))***

187. Ms *Maxion* (UNIDROIT Secretariat) introduced this item, elaborating on aspects such as the electronic catalogue and its upgrade software, the authority database for corporate bodies, ordering

and cleaning of the premises (which was important in controlling the formation of mould), and the bibliography prepared for the Uniform Law Review, which also served as a basis for bibliographical entries in the UNILAW database. As to donations received, she expressed the Library's profound gratitude in particular to the Uniform Law Foundation and the UK Foundation, which had provided very generous donations in 2008 (Euro 10,000.00 and Euro 12,500.00, respectively), which had been used to acquire essential new English-language titles. The Library had also received numerous books from the Max-Planck-Institute of Foreign Private Law and Private International Law, from the Library of the Department of Trade and Industry of Her Britannic Majesty's Government, and from the Library of the Law Faculty in Lucerne, Switzerland.

188. In 2008, the Library had again succeeded in obtaining new materials through exchange programmes with the Uniform Law Review. Finally, the Library continued to attract numerous members of the legal profession, including academics and practitioners, but also students from all over the world.

189. Mr *Gabriel* wondered whether the Institute was part of any inter-library loan agreements, and how much it would cost to renovate the Library to keep the collection safe. In reply, Ms *Maxion* indicated that an estimate made by the Italian Ministry of Cultural Property some years previously had put the cost of renovation at € 200,000. There were no inter-library loan agreements for the time being but it would not be difficult to take an initiative in this respect.

190. The *President* pointed out that this last point could be raised during the discussion of the budget which had been re-scheduled for later that day.

191. Ms *Sabo* urged the Secretariat, in its communications with member States, to provide as much clear data and fact as possible with respect to the Library to point out the damage to the collections, the unique nature of some of the collections, the estimated cost of acquiring particular humidity-control shelving units to preserve at least parts of the collection. She had been most impressed with the work on the electronic catalogue. It was an important objective for the Institute to have as much material digitalised and preserved electronically, also in terms of a records management plan.

192. *The Governing Council took note, with satisfaction, of the report on the situation of the Library.*

***Item No. 17 on the agenda: The UNIDROIT website and Depository Libraries for UNIDROIT documentation (C.D. (88) 15)***

193. Ms *Howarth* (UNIDROIT Secretariat) introduced this item, indicating that there were now over 2350 files of text on the website, including all UNIDROIT documents issued since 1997, which were available for public access, as well as all the pre-1997 preparatory work leading up to the adoption of the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects and of the Convention on International Interests in Mobile Equipment. All Governing Council and General Assembly documents since 2005 were now on the website with access by password restricted to members of the Governing Council and Governments of member States, respectively.

194. Work had begun on a project to create site access by subject. The titles of all documents issued in connection with UNIDROIT projects since the Institute's foundation were being listed in a linked format to allow – where desirable – access to the full texts of the relative documents. Once these lists had been compiled, it would be possible to prepare a complete list of all topics dealt with by the Institute and to prepare a webpage providing access to the website by subject.

195. An updated cd-rom containing *UNIDROIT Proceedings and Papers 1997-2008* had been prepared for distribution free of charge to Depository Libraries for UNIDROIT documentation. There were now 50 such Depository Libraries in 44 member States.

196. Mr *Gabriel* felt that some statistics as to who used the UNIDROIT website would be extremely useful information at no great cost. He also advocated actually scanning the documents, lists of which were being prepared for posting on the website, to prevent future loss of what constituted the Institute's history. Finally, he wondered whether the cd-rom was all that Depository Libraries got and suggested making this material available to other libraries at cost.

197. In reply, Ms *Howarth* specified that Depository Libraries received *UNIDROIT Proceedings and Papers* on cd-rom, and were given the option to receive the complete collection of the Uniform Law Review. Other publications were also on request.

198. *The Governing Council took note, with satisfaction, of developments in respect of the UNIDROIT website and the Depository Libraries for UNIDROIT documentation.*

***Item No. 10 on the agenda: Preparation of the draft budget for the 2010 financial year and other institutional, financial and personnel matters (C.D. (88) 8)***

11. Ms *Zanobetti (Deputy Secretary-General)* highlighted the salient points of the Institute's finance and budgetary procedure, as laid down in the Statute and the Regulations, as well as the structure of the budget, for the benefit of first-time members of the Governing Council, before going on to illustrate the draft budget for the 2010 budget year as set out in the Annexe to document C.D. (88) 8. She briefly commented on the different aspects of the Institute's receipts and expenditure.

200. Ms *Jametti Greiner* enquired about the categorisation of the member States and about the budgetary impact of the post of deputy Secretary-General, which was being funded until the end of 2010 by an extra-statutory contribution of the United Kingdom, beyond that date. In general, she wondered whether a small organisation such as UNIDROIT really needed a Secretary-General and two deputies, both from a structural point of view and in budgetary terms. She also requested information on Chapter 3 (social charges). Finally, she recalled the situation that had arisen in September 2008 when the diplomatic Conference on intermediated securities had not been able to complete its work, and asked whether the draft budget made provision for a reserve in the event of such a thing happening again.

201. Mr *Elmer* recalled that the Secretary-General had indicated that an increase in Chapters 2 and 3 would have made it possible for such a reserve to be created, and asked whether the draft made provision for such an increase. He noted that the question of the two deputy posts had been discussed by the Council and that further discussion might be deferred until one of these posts fell vacant. He suggested taking this matter up again the following year.

202. Ms *Sabo* welcomed the greater clarity and detail in presenting the financial documents in recent years and while she agreed on the importance of a longer-term view on staffing and other structural matters she also endorsed the idea that the following year might be an appropriate time to undertake such a discussion, in connection with the discussion on the Strategic Plan.

203. Mr *Hartkamp* noted that the point raised by Ms *Jametti Greiner* was extremely important and her intervention most useful, but agreed with Mr *Elmer* that further discussion needed some preparation and would be better dealt with at the next session, also because the members of the

Permanent Committee, the President and the Secretary General had already exchanged some views on the entire staff structure.

204. Replying to some of the questions raised, Ms *Zanobetti* explained that, as far as the categorisation of the different member States was concerned, the criteria adopted by the General Assembly allowed for periodic adjustments and for the inclusion of new member States. The amount set aside for social charges covered both sickness and pensions, and that the overwhelming majority of the staff were registered with the Italian INPS system, although some staff members were registered with the system in their countries of origin where this was comparable to the INPS. Without going into structural details, she indicated that the two deputy Secretaries-General did not receive any special salary treatment but were remunerated on the same level as the other officers. Finally, she stressed that the concern expressed by some of the speakers as regards a contingency reserve for events such as that mentioned by Ms *Jametti Greiner* and the situation in respect of the financing of the post of research officer responsible for the intermediated securities project had prompted the Secretariat to ask the Finance Committee to include a small reserve in Chapter 2 (Salaries), to be paid for out of the United Kingdom's extra-statutory contribution and the accession of two new Member States. The Finance Committee had agreed to this.

205. The *President* indicated that the Permanent Committee shared the view that a proper study of staff structure was needed and that the Secretary-General would make proposals for some structural changes. The Committee had decided to discuss and formulate a proposal for submission to the Governing Council. While the Council was, of course, free to discuss this at the present session, he wished to inform members that the Permanent Committee was already organising such a study which would include proposals that needed to be further examined.

206. Ms *Jametti Greiner* thanked Ms *Zanobetti* for her reply. She stressed the importance of the structural issues and recalled that as regards staffing issues, some time was always needed to prepare for and adjust to change, and that she was therefore concerned to note that this structural issue had once again been postponed. This made it difficult to assess the budget. She invited the Council to make a firm commitment to tackle this issue once and for all, once it had been thoroughly prepared by the Permanent Committee. Failing this, she would have difficulty in persuading the Swiss authorities to accept the budget.

207. Mr *Elmer* stressed the importance of dealing with staff issues sensitively and appropriately, in the proper way and at the proper time. The Permanent Committee had already taken up this problem in order to deal with it appropriately and he recommended that the Council follow the path outlined by the President and not create uncertainty among the members of the staff.

208. Mr *Opertti Badán* recalled that this agenda item concerned the budget, not structure, and that he for one had not come prepared for such a discussion. However, he pointed out that there were several other international organisations with a structure similar to that of UNIDROIT, which was not unique in the matter. He stressed that the UK's special contribution had benefited the entire organisation and that it was appropriate for the Permanent Committee to deal with this matter.

209. Ms *Broka* endorsed the view expressed by other Council members that the issue of structure was very important but that it would be more appropriate to discuss this at the next session when all the members would be in possession of proper information and be better prepared to make proposals.

210. Ms *Moss*, on behalf of Ms *Sandby-Thomas*, confirmed that 2010 would be the final year in which the Government of the United Kingdom would be able to offer an extra-statutory contribution.

211. Ms *Jametti Greiner* invited the Council to make a firm commitment to discuss this issue at its next session, on the basis of a blueprint and proposals formulated by the Permanent Committee.

212. The *President* pointed out that the budget did not refer to financial problems for the year 2010, and that the Permanent Committee had undertaken to examine these questions and that there was enough time to propose solutions at the next session in time for the year 2011. He then concluded that there was general agreement on the draft budget for 2010.

213. *The Governing Council approved the draft budget for 2010, and mandated the Permanent Committee and the Secretary-General to look at ways of streamlining the Institute's staffing structure, also in light of the need to constitute a reliable budget reserve to face unforeseen expenditures required to ensure progress of the Work Programme, and to submit proposals thereto in time for discussion at the Governing Council's next session in 2010.*

***Item No. 11 on the agenda: Strategic Plan (C.D. (88) 9)***

214. The *Secretary-General* recalled that it had become customary for the Secretariat annually to report on the status of implementation of the Strategic Plan which played a central role in the way the Work Programme had been prepared. Since taking office he had reviewed some aspects of the internal functioning of the Secretariat five years from the inception of the Strategic Plan in 2003. Several areas had been identified as possibly ripe for rethinking or modernisation. Four internal working groups had reviewed individual areas and formulated recommendations for improvement on the basis of the Strategic Objectives set out in the Strategic Plan. In the course of the review it had emerged that the Strategic Objectives as they related to particular areas either seemed to have been already partly achieved or might no longer be as relevant as conceived five years ago and need re-focusing. The conclusions of that review of the Strategic Objectives were set out in the document. In the *Secretary-General* personal view, some objectives had now become such an essential component of UNIDROIT's work that they might deserve to be elevated to a different category, not necessarily as a strategic objective as such but be recognised as fundamental, constant evaluation criteria under which the quality of the Institute's work might be assessed. Other objectives would appear to be either in need of some clarification in the light of developments or deserve some reassessment by the Governing Council.

215. Mr *Lorenzetti* underscored the importance for every international organisation, in the new global context, to reconsider its role and suggested that UNIDROIT would benefit by a long-term structural plan concerning the Work Programme, staff and methodology. As to the Work Programme, he recalled the *Secretary-General*'s proposals on private law and development which were of great interest; concerning the staff, he suggested that the Institute might benefit from an injection of people coming from different legal backgrounds; as to methodology, he suggested a realistic and proactive attitude, which would include sponsorship and joint ventures with other institutions. He also felt that the correspondents could make an important contribution to the Institute's work. With respect to the issue under discussion, deferring the debate to the next session would enable the members of the Council to participate with more specific contributions.

216. Ms *Sabo* fully agreed that this was a good time to undertake some rethinking of the Strategic Plan in recognition of the need for the Institute to do some serious long-term planning and address the chronic resource shortfall. One area for such a re-think would be succession planning among the staff. As to procedure, a Secretariat draft could be discussed by the Governing Council and then possibly by the Permanent Committee, or a separate Governing Council committee might be set up to assist the *Secretary-General* before asking member States for their views.

217. Mr *Sánchez Cordero* stressed that one of UNIDROIT's main tasks was to remain universal, and it was crucially important for it to review the representation on the Governing Council of the different world regions so that voices from all over the world might be heard. Likewise, the Institute should open up its scope of work. While commercial law and soft law principles were major highlights, there were other areas such as the cultural heritage where it had been very successful. Co-operation with regional organisations was also vital in making the Institute's scientific work more widely known. He specifically mentioned the ALI/UNIDROIT Principles of Transnational Procedure, which were now being translated into Spanish, as a vehicle for such promotion in the Americas.

218. Mr *Deleanu* agreed that UNIDROIT's work deserved greater visibility and suggested that the Institute explore ways of encouraging in-depth studies on existing UNIDROIT instruments also outside the framework of the Scholarships Programme or the Uniform Law Review.

219. *The Governing Council took note, with great appreciation, of the report on progress in respect of the Strategic Objectives set out in the Strategic Plan and agreed to return to a consideration of the possible need to re-assess some of these objectives at its 89<sup>th</sup> session in 2010, in the light of a draft revised Strategic Plan, which the Secretary-General was requested to prepare. The Council encouraged its members to assist the Secretary-General in that process.*

***Item No. 19 on the agenda: Date and venue of the 89<sup>th</sup> session of the Governing Council (C.D. (88) 1 rev.)***

220. *The Governing Council agreed that its 89<sup>th</sup> session would be held from 10 to 12 May 2010 in Rome.*

***Item No. 20 on the agenda: Any other business***

*(a) Appointment of an Honorary Council member*

221. The *President* having proposed to appoint the former Secretary-General, Mr *Kronke*, as an honorary member of the Governing Council in recognition of his contribution to the Institute, Messrs *Lyou, Soltysinski, Opertti-Badán, Sen, Sánchez Cordero, Lorenzetti, Hartkamp, Gabriel, Elmer, Harmathy Govey, Carbone* and *Tricot*, together with Ms *Broka* and Ms *Sabo*, all applauded the idea as setting a new precedent. Ms *Sabo* and Mr *Opertti Badán* did seek clarification as to whether such an appointment was provided for in the Statute and whether there was a voting procedure, respectively, while Mr *Carbone* felt the General Assembly ought perhaps to be seized of a formal proposal. Ms *Sandby-Thomas* suggested that it might be more opportune to appoint Mr *Kronke*, who was still very active, a correspondent of the Institute rather than a non-working honorary member of the Council, a point picked up by Mr *Govey* who suggested broadening this to include certain honorary members in the list of correspondents.

222. In reply, the *President* indicated that the UNIDROIT Statute was silent on the matter. Honorary members had no official position, it was an amicable arrangement. It was up to the Council to decide whether it could make this appointment; there was no formal procedure available.

223. *The Council agreed, upon a proposal by the President, to appoint the former Secretary-General, Mr Herbert Kronke, as an Honorary member of the Governing Council.*

224. The *Secretary-General* expressed his satisfaction at the appointment of Mr *Kronke*, to whom he was personally greatly indebted.

(b) *Address by Mr Chiaradia-Bousquet (United Nations Food and Agriculture Organization)*

225. The representative of the Food and Agriculture Organization, Mr *Chiaradia-Bousquet* focused on the FAO's programme of assistance to Governments in drafting and implementing basic legislation on subjects and issues pertaining to the FAO mandate, *i.e.* agriculture in the broad sense, nutrition and natural resources. He saw an opening here for collaboration with UNIDROIT in respect of certain private law aspects which the Institute was more experienced to address. A second area where he saw potential for co-operation was the FAO publications programme which included comparative law legislative studies on various issues, and in respect of which the Institute might wish to participate on some specific subjects to be decided together. The current co-operation arrangement between the two Organisations was somewhat outdated and might be reviewed. The FAO appreciated the opportunity of identifying subjects for common activity, common reviewing, and perhaps a joint product to be given to the FAO member States, many of which were also member States of UNIDROIT.

226. Mr *Sen* spoke from personal experience of past co-operation with the FAO in welcoming the prospect of co-operation between the two Organisations. Ms *Sabo* concurred but had misgivings as to the cost and human resource implications for the Institute.

227. The *Secretary-General* thanked the FAO representative and the FAO Legal Office for this initiative. The Secretariat had been tasked with preparing a feasibility study and looked forward to consulting with the FAO in devising possible common areas and modalities of work. In reply to Ms *Sabo*, he stated that the cost implications would of course be addressed in the study which would be submitted to the Governing Council the following year. He was hopeful that the additional work could be absorbed by the existing resources of the Secretariat.

(c) *Draft Memorandum of Understanding in respect of a "Centre for Transnational Financial Markets Law"*

228. The *Secretary-General* made an oral report to the Council on the status of the negotiation of a Memorandum of Understanding between UNIDROIT and the Government of Luxembourg concerning the establishment of a "*Centre for Transnational Financial Markets Law*" to be hosted at the University of Luxembourg. The Council was reminded that it had been informed of that project at its 87<sup>th</sup> session, when the Council, welcoming the initiative, had agreed that a Memorandum of Understanding providing for details regarding the organisation of the Centre and its tasks should be drawn up and laid before the Governing Council, for approval (see C.D. (87) 23, paras. 35). At that time, the Council had recommended the inclusion of certain items in the area of capital markets law in the triennial Work Programme in the expectation that work on those items would be carried out with the assistance of the envisaged Centre for Transnational Financial Markets Law and industry (see C.D. (87) 23, para. 118). The *Secretary-General* pointed out that the negotiations had evolved on the basis of a draft Memorandum of Understanding that had been circulated to members of the Council shortly after the 87<sup>th</sup> session and that they had essentially focused on clarifying that the establishment and the operation of the Centre would not entail any financial investment from or liability for UNIDROIT and that the centre of gravity of UNIDROIT's work in the area of capital markets law must remain in Rome, as the Council had requested (see C.D. (87) 23, para. 34).

229. Messrs *Gabriel* and *Hartkamp* took the view that any initiative aimed at obtaining expert input to UNIDROIT projects would be worth exploring. Furthermore, they pointed out that the idea of establishing the Centre had been previously approved in principle by the Governing Council and that the draft Memorandum of Understanding addressed the questions that had been raised by the Council. Ms *Sabo* agreed and observed that the Memorandum of Understanding did not seem in any



way to impose on UNIDROIT an obligation to carry out any projects in co-operation with the Centre if UNIDROIT did not wish to.

230. Mr *Tricot* wondered whether the form of a Memorandum of Understanding between UNIDROIT and the Government of Luxembourg was the appropriate framework for the establishment of the Centre. While co-operation with academic institutions was generally welcome, he was of the view that an informal arrangement for operation of the Centre under the auspices of UNIDROIT and the Government of Luxembourg would be preferable. Mr *Mo* agreed and added that, in his opinion, the participation of UNIDROIT in an association incorporated under the laws of a member State might give rise to various questions that needed to be considered more thoroughly.

231. The *President* concluded that the questions raised at the present session of the Council would require reconsideration of some basic assumptions of the draft Memorandum of Understanding and further consultation between the Secretary-General and the Council.

232. *The Council took note of the status of the negotiation of a Memorandum of Understanding. The Council requested the Secretary-General to continue those negotiations with a view to further clarifying matters such as the sources of financing for the Centre and its legal form.*

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

(Rome, 20 – 23 April 2009 / *Rome, 20 – 23 avril 2009*)

**MEMBERS OF THE GOVERNING COUNCIL**  
**MEMBRES DU CONSEIL DE DIRECTION**

Mr Berardino LIBONATI	President of UNIDROIT / <i>Président d'UNIDROIT</i>
Mr Hans-Georg BOLLWEG	Head of Division Federal Ministry of Justice Berlin (Germany)
Ms Núria BOUZA VIDAL	Professor of Law Pompeu Fabra University School of Law Law Department Barcelona (Spain)
Ms Baiba BROKA	Legal Adviser Ministry of of Transportation Riga (Latvia)
Mr Antonio Paulo CACHAPUZ DE MEDEIROS	Professor of International Economic Law Catholic University of Brasilia; Consultor Jurídico Ministério das Relações Exteriores Brasilia, DF (Brazil)
Mr Sergio CARBONE	Professor of Law University of Genoa Studio Carbone e D'Angelo Genova (Italy)
Monsieur Sergiu DELEANU	Maître de Conférences Faculté de droit de l'Université "Babes Bolyai" Cluj-Napoca (Roumanie)
Mr Michael B. ELMER	<i>Vice-President</i> Danish Maritime and Commercial Court Copenhagen (Denmark)

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Mr Henry D. GABRIEL	Visiting Professor of Law School of Law Greensboro, North Carolina (United States of America)
Mr Ian GOVEY	Deputy-Secretary Civil Justice and Legal Services Attorney-General's Department Barton, A.C.T. (Australia)
Mr Attila HARMATHY	Former Judge of the Constitutional Court; Emeritus Professor of Law Faculty of Law Budapest (Hungary)
Mr Arthur Severijn HARTKAMP	former Procureur-Général Supreme Court of The Netherlands; Professor of Private Law Den Haag (The Netherlands)
Mme Monique JAMETTI GREINER	Vice-directrice Office fédéral de la justice Berne (Suisse)
Mr Ricardo Luis LORENZETTI	Chief Justice Supreme Court of Justice Buenos Aires (Argentina)
Mr Byung-Hwa LYOU	President and Professor of Law TLBU Graduate School of Law in Seoul Seoul (Republic of Korea)
Mr MO John Shijian	Dean Faculty of International Law China University of Political Science and Law (CUPL) Beijing (People's Republic of China)
Mr Didier OPERTTI BADAN	former Ambassador; Professor of International Law Montevideo (Uruguay)
Ms Kathryn SABO	Director and General Counsel International Private Law Section Department of Justice Canada Ottawa, Ontario (Canada)
Mr Jorge SÁNCHEZ CORDERO	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)

Ms Rachel SANDBY-THOMAS	Solicitor and Director-General Legal Services Group Department of Business, Enterprise and Regulatory Reform London (United Kingdom)
Mr Biswanath SEN	Senior Advocate Supreme Court of India New Delhi (India)
Mr Stanislaw SOLTYSINSKI	Professor of Law A. Mickiewicz University, Poznan; Soltysinski Kawecki & Szlezak Warsaw (Poland)
Mr Itsuro TERADA	Judge Saitama District Court Saitama City (Japan)
Monsieur Daniel TRICOT	Professeur affilié à l'European School of Management Arbitre et médiateur en affaires Paris (France)
M. Ioannis VOULGARIS	Professeur émérite de droit international privé et de droit comparé à l'Université "Démokritos" de Thrace, Avocat à Athènes Athènes (Grèce)

**OBSERVERS:**

Mr Peter ADAMEK	Counsel Embassy of Germany in Italy Rome (Italy) Chairman of the Finance Committee / <i>Président de la Commission des Finances</i>
Mr Christoph BERNASCONI	First Secretary Hague Conference on Private International Law The Hague (The Netherlands)
Mr Jean-Pierre CHIARADIA-BOUSQUET	Office of the Director-General Food and Agriculture Organization Rome (Italy)
Mr Jonathan J.C. MA	Research Fellow of Centre for Trade Remedies of China University of Political Science and Law Beijing (People's Republic of China)

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Regulatory Reform  
London (United Kingdom)

Mr Renaud SORIEUL  
Secretary  
UNCITRAL  
Vienna International Centre  
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Mr José Angelo ESTRELLA FARIA  
Mr Martin STANFORD  
Secretary-General / *Secrétaire Général*  
Deputy Secretary-General / *Secrétaire*  
*Général Adjoint*

Ms Alessandra ZANOBETTI  
Deputy Secretary-General / *Secrétaire*  
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Mr Michael Joachim BONELL  
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Ms Frédérique MESTRE  
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Ms Lena PETERS  
Senior Officer / *Fonctionnaire principale*

Ms Marina SCHNEIDER  
Senior Officer / *Fonctionnaire principale*

Ms Paula HOWARTH  
Senior-drafter / *Traductrice-rédactrice*

Mr John ATWOOD  
Senior Officer / *Fonctionnaire principal*

Ms Bettina MAXION  
Librarian / *Bibliothécaire*

Mr Daniel PORRAS  
Associate Officer / *Fonctionnaire associé*

## APPENDIX II

## AGENDA

1. Adoption of the agenda (C.D. (88) 1 rev.)
2. Annual Report 2008 by the Secretary-General (C.D. (88) 2)
3. Report on the Uniform Law Foundation
4. Appointments
  - (a) First and Second Vice-Presidents of the Governing Council
  - (b) Members *ad honorem* of the Governing Council
  - (c) Members of the Permanent Committee
5. International Interests in Mobile Equipment
  - (a) Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (C.D. (88) 3(a))
  - (b) Preliminary draft Protocol on Matters specific to Space Assets (C.D. (88) 3(b))
  - (c) Preparation of a Protocol on Matters specific to agricultural, mining and construction equipment (C.D. (88) 3(c))
6. Draft Convention on Substantive Rules regarding Intermediated Securities (C.D. (88) 4)
7. Principles of International Commercial Contracts (C.D. (88) 5)
8. Model law on Leasing (C.D. (88) 6)
9. Triennial Work Programme of the Organisation (2009-2011) (C.D. (88) 7)
  - (a) Proposal for a Convention on the Netting of Financial Instruments (C.D. (88) 7 Add. 1)
  - (b) Study for an International Legislative Project on (Contractual) Counterparty Classification (C.D. (88) 7 Add. 2)
  - (c) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (88) 7 Add. 3)
  - (d) Possible Future Work on Civil Liability for Satellite-based Services (C.D. (88) 7 Add. 4)
  - (e) Proposal for a Model Law on the Protection of Cultural Property (C.D. (88) 7 Add. 5)
  - (f) Possible Future Work in the Area of Private Law and Development (C.D. (88) 7 Add. 6)
10. Preparation of the draft budget for the 2010 financial year and other institutional, financial and personnel matters (C.D. (88) 8)
11. Strategic Plan (C.D. (88) 9)
12. Implementation and promotion of UNIDROIT instruments other than Cape Town instruments (C.D. (88) 10)

13. Legal co-operation programme (C.D. (88) 11)
14. Correspondents (C.D. (88) 12)
15. Library (C.D. (88) 13)
16. Uniform Law Review/ *Revue de droit uniforme* and other publications (C.D. (88) 14)
17. The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (88) 15)
18. The Uniform Law Data Base (C.D. (88) 16)
19. Date and venue of the 89<sup>th</sup> session of the Governing Council
20. Any other business

## APPENDIX III

**Report on the meeting of the *Scholarships Sub-Committee* of the Governing Council**

Wednesday 22 April 2009, 9.30 a.m.

The Scholarships Sub-Committee was made up of Ms Bouza Vidal, Ms Jametti-Greiner, Messrs Lyou, Mo, and Operti as well as Ms Mestre and Ms Zanobetti from the Secretariat. Mr Operti chaired the meeting.

The following documents were submitted to the Sub-Committee in addition to Council document (C.D. (88) 11 ("Legal Co-operation Programme")):

- The Report on the Implementation of the Programme in 2008 : Study LXV – Scholarships exec. 20 rev.;
- An updated table setting out funding details for 2009;
- The work, conclusions and research reports of the beneficiaries of the programme in the period January 2008 – March 2009 (available for reference only);
- Applications received by the Secretariat for 2009-2010 (available for reference only).

As usual, the Sub-Committee recalled the important role played by the Scholarships Programme not only in the context of legal co-operation but also as a tool to promote UNIDROIT and its work. It expressed its satisfaction with the manner in which the Programme had been implemented by the Secretariat in 2008 and took note of the research reports submitted by the beneficiaries of the Programme in 2008.

As to the financial resources available for 2009, the Sub-Committee noted the available allocation under Chapter XI of the general budget and expressed its gratitude to the donors to the Programme for the year 2009, *i.e.* the UK Foundation for Uniform Law, the Government of the Republic of Korea, the Government of the People's Republic of China, the UNIDROIT Secretary-General and the members of the Governing Council.

As regards the scholarship funded by the members of the Governing Council, the Sub-Committee would suggest that its beneficiary be Ms Yin Liu, from the People's Republic of China, Lecturer at Huaquio University, who presented a research project focussed on "Legal issues of Securities Held with an Intermediary".

The Sub-Committee noted that the Secretariat had received 31 applications for the coming year. It decided to reaffirm the usual selection criteria (*i.e.* the conditions stipulated by the donors, the general guidelines laid down by the Scholarships Sub-Committee in April 1999) and formulated a number of suggestions that the Secretariat will incorporate in a more general project which will be submitted to the Sub-Committee at its session next year. As in the past, it agreed to give the Secretary-General a broad mandate to implement the Programme in 2009.

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



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