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REPORT

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Contents

Adoption of the agenda (C.D. (90) 1 rev.)	3
Appointment of the First and Second Vice-Presidents (C.D. (90) 1 rev.)	4
Reports	4
(a) Annual Report 2010 (C.D. (90) 2)	4
(b) Report on the Uniform Law Foundation	5
(c) Report of the Finance Committee	6
Principles of International Commercial Contracts: Adoption of the 3 rd edition ("UNIDROIT Principles 2010" and its promotion (C.D. (90) 3))	7
International Interests in Mobile Equipment	11
(a) Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol (C.D. (90) 4(a))	11
(b) Preliminary Draft Protocol on Matters specific to Space Assets to the Cape Town Convention (C.D. (90) 4(b))	13
(c) Preparation of other Protocols to the Cape Town Convention, in particular on matters specific to agricultural, mining and construction equipment (C.D. (90) 4(c))	16
Transactions on transnational and connected capital markets	17
(a) UNIDROIT Convention on Substantive Rules regarding Intermediated Securities: follow-up work and promotion (C.D. (90) 5(a))	17
(b) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (90) 5(b))	18
Third Party Liability for Global Navigation Satellite Systems (GNSS) Services (C.D. (90) 6 rev.)	20
Model Law on Leasing: Follow-up and promotion (C.D. (90) 7)	22

International Protection of Cultural Property (C.D. (90) 8)	22
Private Law and Development (C.D. (90) 9)	24
(a) Private law aspects of agricultural financing	24
(b) Guidelines for a legal framework for social enterprises (or for a certain type of social enterprise)	24
Legal Co-operation Programme (C.D. (90) 10)	26
Correspondents (and C.D. (90) 11)	27
The Library (C.D. (90) 12)	27
Uniform Law Review / Revue de droit uniforme and other publications (C.D. (90) 13)	29
The UNIDROIT Web Site and Depository Libraries or UNIDROIT documentation (C.D. (90) 14)	31
The Uniform Law Data Base (C.D. (90) 15)	32
Strategic Plan – Methods of work of the Governing Council (C.D. (90) 16)	35
(a) General considerations	35
(b) Working methods of the Governing Council	36
Preparation of the draft budget for the 2012 financial year (C.D. (90) 17) and Procedure for the selection and appointment of a Deputy Secretary-General	38
Date and venue of the 91 st session of the Governing Council (C.D. (90) 1 rev.)	42
Appendix I List of participants	43
Appendix II Agenda	47
Appendix III Resolution	49
Appendix IV Report on the meeting of the Report Scholarships Sub-Committee of the Governing Council	50
Appendix V Regulation on Expatriation Allowances	52
Appendix VI Revised staffing table	53

REPORT

1. The President opened the session, welcoming all those present. Apologies had been received from Messrs Cachapuz de Medeiros, Deleanu, Govey, Sen and Voulgaris. Ms Jametti-Greiner was represented by Mr Michael Schoell, while Mr Terada was represented by Mr Kunio Koide.

2. After paying tribute to his predecessor, Professor Berardino Libonati, and inviting the Council members to join him in a minute's silence in memory of the late President, the *President*, in this, his maiden speech to the Council, saw it as an auspicious coincidence that the main point in the agenda was the consideration of proposals for updating or redefining UNIDROIT's strategic objectives, first prepared by the Secretariat in 2003. The Council had, at its 2010 session, briefly discussed the contents of a memorandum containing the suggestions of the Secretary-General to update or redefine the Organisation's strategic objectives, in response to a specific request by the Council, and agreed to establish an informal working group to examine the various matters and options outlined in the Secretariat's memorandum. He expressed the hope that the Council would now be in a position to agree on the essential elements for the development of a concrete statement of a strategic policy for UNIDROIT, which the Secretariat could be asked to formulate in a revised Strategic Plan document, and on which member States should be given the opportunity to formulate comments, before the submission of a final document for approval by the General Assembly. While the current climate of financial and economic instability and the unremitting need for drastic retrenchments might appear to augur ill for the adoption of a long-term Strategic Plan, it did on the other hand give UNIDROIT an opportunity to show its ability to adjust and to redefine its role in a fast-changing world. Political circumspection, professionalism and a keen sense of the need to use its resources to be the best possible effect were the keywords in persuading member States' to continue to invest in the Institute. His own country, Italy, was determined to do so, financial constraints notwithstanding.

Before giving the floor to the Secretary-General to outline the major achievements of the Institute in 2010, the *President* singled out two agenda topics of particular significance. One was the formal approval of the 2010 edition of the UNIDROIT Principles, thus crowning six years of hard work. Since their first edition, the UNIDROIT Principles had immensely contributed to the prestige and visibility of the Institute, and he expressed his gratitude to all the outstanding scholars that had served in the Working Group. The second topic was the preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets, another important addition to a highly successful series of instruments in the area of mobile equipment financing inaugurated with the adoption of the Cape Town Convention, one of the most imaginative and groundbreaking instruments ever conceived in the area of private law harmonisation. While there were still some outstanding issues to be resolved, these were all capable of resolution either before or at a diplomatic Conference, and the Council were being invited to authorise the transmission of the revised preliminary draft Protocol to such a Conference, for adoption. Again, the completion of this project would not have been possible without the goodwill and dedication shown by delegates, industry representatives and outside experts.

Item 1 on the agenda: Adoption of the agenda (C.D. (90) 1 rev.)

3. *The Council adopted the agenda as proposed in document C.D. (90) 1 rev.*

Item 2 on the agenda: Appointment of the First and Second Vice-Presidents (C.D. (90) 1 rev.)

4. The Council renewed Professor Arthur Hartkamp's appointment as First Vice-President of the Governing Council and Professor Lyou Byung-Hwa's appointment as Second Vice-President, in both cases as from the end of the 90th session to the end of the 91st session of the Council.

Item 3 on the agenda: Reports

(a) Annual Report 2010 (C.D. (90) 2)

5. The Secretary-General, in introducing this item, referred to document C.D. 90(2) for detail, and to the President's remarks as to the salient points for this year's Governing Council session. In highlighting some of the Institute's main legislative achievements in the previous year, he focused first on the "old" topics on the Institute's Work Programme, beginning with the completion of the third edition of the UNIDROIT Principles, for which a promotional strategy had been set in place which would also rely on the support of members of the Governing Council. Turning to the timetable for completion of the preliminary draft Space Protocol, he indicated that negotiations had got underway with several potential host countries for a diplomatic Conference, which would have to be held before the next Governing Council session. It would be crucial to make use of the political momentum created by the significant progress made in the negotiations after three years of stalemate and to leave detractors no time and opportunity to rally the opposition again.

6. Moving to the capital markets project, he stated that the Official Commentary on the Geneva Securities Convention was all but complete at the end of a highly structured process, and was on track to be published later this year. The Committee on Emerging Markets established by the diplomatic Conference to monitor progress towards implementation of the Geneva Convention and to identify the scope for a possible follow-up in the form of a legislative guide on trading in securities in emerging markets had met in September 2010, with another session due later in the year or better still, in early 2012, possibly in Brazil.

7. Among the new *legislative* topics on the Work Programme, that of netting of financial instruments had been awarded the highest level of priority by both the Governing Council and the General Assembly, and preparations for the first meeting of a study group had been put in hand without delay. The composition of the 15-member study group had been most carefully considered. It had met for a very fruitful first session in Rome from 18-21 April 2011, with Professor Soltysinski in the chair. A second meeting might be held later in 2011, and depending on the nature of the work which the Governing Council might invite it do address, three further meetings could be scheduled for 2012 with a view to completing the project as expeditiously as possible, in 2013 or at the latest 2014. An extra-statutory contribution from the German Banking Federation had been obtained through the good offices of the German Ministry of Justice, to which he expressed the Institute's gratitude. Those funds would make it possible to recruit a person specifically for that project and be of assistance in financing other project-related expenditure.

8. As to the next topics, some of these had been included only for purposes of consultation, others were already some on-going projects. Of the latter, the first was the project undertaken with UNESCO on the preparation of model legislative provisions to facilitate the application of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. This was a well-defined area of work with a narrow scope and the working group had drafted a number of model provisions for possible completion in 2011. With regard to projects included on the agenda for consultation purposes, these included the project on liability for GNSS services, regarding which a first round of informal consultations had been held in October 2010, back-to-back with the intersessional informal

consultations on the preliminary draft Space Protocol. The level of interest continued to vary, and a special strategy was being devised to assess exactly which circles and which extra-European States might be interested in such a project and to be able to report more concrete results to the Governing Council in 2012. Similarly, no clear signals had been received from potentially interested circles as regards a possible fourth Cape Town Protocol on agricultural, mining and construction equipment. No feedback had been received either from the FAO and the International Fund for Agricultural Development (IFAD) as to the suitability of including such work in their own work programmes.

9. Turning to the issue of private law and development, this covered two topics with a lower level of priority under the Work Programme. The first was that dealing with private law aspects of agricultural financing, the other the preparation of guidelines for a legal framework for social enterprises. As to the latter, this had first been proposed by IDLO two years previously, but had been placed on the backburner for the time being, IDLO having not been able to raise the necessary funds, for internal reasons. The research already carried had not however been wasted, the material collected and the insights gained proving useful in discussions with Rome-based Organisations on the possibility of undertaking a joint line of work on other aspects. A second point discussed with these Rome-based Organisations, for example IFAD, was the possibility of their taking into consideration the work done by UNIDROIT and its sister Organisations in particular on secured transactions, in ranking the agri-business climate in the countries where they operate and assessing the risk for the loans and grants they make there. This would of course be a very good way of promoting the work of UNIDROIT and other Organisations such as UNCITRAL on secured transactions. Discussions with FAO on the other hand had focused on a different angle, that of so-called land-grabbing (large-scale investments in land).

10. On the *non-legislative* front, the Secretary-General mentioned the work done on the Uniform Law Review, the Uniform Law Data base, the Scholarships Programme and the Library Catalogue, all of which had continued apace despite large income cuts (chiefly due to reductions in member States' contributions). € 67,000 had been saved in 2010 by cutting expenditure, and promotion of instruments had been the main victim of this economy drive. He stressed that without the assistance of the Uniform Law Foundation and the Aviation Working Group nothing at all could have been done. In conclusion, he invited the Governing Council, in remembrance of the late President, Professor Berardino Libonati, to make a special contribution to the Scholarships Fund.

11. *The Council took note of the Secretary-General's report on the activity of the Institute during 2010.*

(b) *Report on the Uniform Law Foundation*

12. Sir Roy Goode, member *ad honorem* of the Governing Council and President of the Uniform Law Foundation, indicated that the 12th session of the Board of Governors of the Uniform Law Foundation had been held on 7 May 2011. The Uniform Law Foundation and its sister foundations, the UK Foundation for International Uniform Law and the American Foundation for International Uniform Law, had in 2010 contributed some €60,000 to UNIDROIT for the data base, scholarships, the Library and the salary of an officer to assist the Deputy Secretary-General with his work on the draft Space Protocol.

13. Two factors had inhibited the Foundation's fund-raising activities to date. One was the tax position of the Foundations and its donors in the Netherlands and Italy, where the question of tax deductibility would have to be pursued; the other was the dearth or lack, until relatively recently, of take-up of UNIDROIT instruments which would engage the interest of potential donors. That latter position had, however, now improved significantly. This was largely due, first, to the considerable number of ratifications of the 2011 Cape Town Convention and its Aircraft Protocol, which had boosted the sales of the Official Commentary on these instruments and generated interest at fee-

paying conferences, and second, to the wide interest that had been attracted by the 2009 Geneva Convention, which was likely to expand yet further once ratifications started coming in. The 1995 Cultural Property Convention and the 2008 UNIDROIT Model Law on Leasing had likewise produced a upsurge in interest. On the whole, the financial position of the three Foundations was reasonably healthy. Most of its income had been derived from fee-paying conferences (€200,000-€250,000 over the years) and sales of the Official Commentary on the Cape Town Convention (€75,000). The really serious money would have to come from donations by the corporate sector, by trusts and foundations and by individuals with an interest in the Institute's work, and the Foundation would be focusing on this aspect in the future. It had however to be said that the promotion of uniform law as such was not seen as particularly attractive by potential donors. The latter would typically fall into one of two main groups: organisations with an interest in uniform law as a means of removing barriers to international trade, and those interested in providing support for work that benefitted mankind. Methods of generating funds had been discussed with UNIDROIT's new President and hopes of engaging the interest and support of selection of major law firms and perhaps the corporate sector were high. Sir Roy also intended to write to individual Council members in the short term asking for assistance in identifying potential donors, expressions of interest in local conferences, and the like.

14. The *President* expressed his gratitude to the President of the Uniform Law Foundation, welcoming in particular his comments on fundraising. He pledged personally to devote time and effort to seek friends for the Foundation and for UNIDROIT in general.

15. *The Council took note of the report by the President of the Uniform Law Foundation, expressing its gratitude to him for his tireless efforts over the previous year to relieve pressure on the Institute's budget, and to the American Foundation for International Uniform Law and the U.K. International Uniform Law Foundation for their invaluable support in providing extra-budgetary funding for a number of the Institute's activities.*

(c) *Report of the Finance Committee*

16. The Chairman of the Finance Committee reported on the Committee's latest session, held on 8 May, noting that the present governance architecture had been found to be working well, the Committee having steered clear of issues of micromanagement. The Secretary-General's call for a budget increase primarily through the re-classification of some member States in the Institute's contributions chart had been well received. Some issues had however been beyond the technical scope of the Finance Committee and it was accordingly seeking the guidance of the Governing Council and the General Assembly on two fictions in terms of member States' contributions. The first was in relation to non-active member States which had neither paid their contributions nor participated in the Institute's work for several years. The question was whether such States should continue to be considered as active members when preparing the budget. The second was the matter of the status of the host country's contribution, the amount of which was entered as an annual estimate in the budget. There was a widely-held view that once that estimate had been approved by the General Assembly, it should be regarded as definite, on pains of upsetting the budgetary balance if it were not. The Committee had also addressed itself to the issue of creating new categories of contributions at the upper and lower tiers of the contributions scale. Since the move from Category II to Category I involved a significant contribution increase, there had been suggestions to create an intermediate level to soften the impact. Likewise, at the lower tier, in order better to reflect the assessment scale operated by the United Nations, room should be made in particular for States from developing areas that might be interested in joining the Institute but could not afford to under the present arrangements.

17. The *President* indicated that he would, in his capacity as President of the Institute, seek to convey the urgency of finding a solution to the timing problem with the host country contribution. He

invited the Governing Council to mandate him formally to do so, as this would strengthen his position with the competent authorities and increase his chances of being persuasive.

18. Ms *Sabo* congratulated the Secretariat on the quality of its work and the wealth of information provided in the documents submitted to the Council, which was all the more commendable given its straitened circumstances. It behoved the Council to seek ways of getting the Institute onto a stable funding basis at a higher level than hitherto, the continuing impact of the economic recession notwithstanding. The positive news that had come from the President of the Uniform Law Foundation might be grounds for hope in this area as well. As to the report of the Finance Committee, she appreciated the clarity with which the Committee had identified the issues that clearly required support from the Governing Council. On the issue of non-paying member States, she urged the Council and the General Assembly to take a more realistic stand and stop taking long-term defaulting member States into account for budgetary purposes. With respect to the host country contribution, she argued that good planning relied on a budget that, once approved, reflected a firm financial commitment on the part of contributing parties. She supported the President's call for a strong negotiating mandate in this connection. As to the contribution categories, her own country, Canada, would be affected by the re-classification exercise, but in view of the need to create more resources for the Organisation, she as her Government's representative in the UNIDROIT General Assembly was recommending that Canada accept the increase. Some countries might however need a greater measure of flexibility and she was pleased to note that the Finance Committee was addressing this issue.

19. Mr *van Loon* (Secretary-General of the Hague Conference on Private International Law) stated that the co-operation between his Organisation and UNIDROIT continued excellent, with work underway on several projects, in particular in the area of commercial contract principles, where the UNIDROIT Principles had proved a major source inspiration. Work on the netting project was still at too early a stage to predict what the Hague Conference's actual input would be. Generally, the two Organisations sought to co-ordinate their work and at a recent meeting between the Secretaries-General of UNIDROIT, UNCITRAL and the Hague Conference in Vienna common interest had been expressed in pursuing work on assistance to mostly developing countries that looked for guidance on the implementation of uniform law instruments.

20. The *Secretary-General* seconded Mr *van Loon*'s comments on the Vienna meeting which he felt had effected a small breakthrough in that the largest of the three sister Organisations, UNCITRAL, had signalled a decided interest in developing joint projects. It had for the first time issued a document presenting the work of the three Organisations on secured transactions that would eventually be issued and distributed as a joint publication of the three Organisations. The meeting had also touched upon the possibility of combining technical assistance and training events on one instrument with events on other, related instruments (back-to-back events). Various packages were possible in this sphere. He invited those members of the Governing Council who were involved in the work of the other Organisations to promote this kind of co-operation with the respective governing bodies.

21. *The Council took note of the report by the Chairman of the Finance Committee, and agreed to invite the President of UNIDROIT to consult the authorities of the host country regarding the status of its contribution to UNIDROIT.*

Item 4 on the agenda: Principles of International Commercial Contracts: Adoption of the 3rd edition ("UNIDROIT Principles 2010") and its promotion (C.D. (90) 3)

22. Referring to Doc. C.D. (90) 3) for detail, Mr *Bonell* (UNIDROIT Secretariat) confined himself to briefly recalling the principal landmarks in the preparation of this third edition of the UNIDROIT

Principles. The Council had at its previous session examined the new draft chapters (on Restitution, Illegality, Plurality of Obligors and Obligees and on Conditions), together with the Revised Comments to Article 1.4, and approved the black letter rules and, in substance, also the Comments. A week later in Rome, the Working Group had proceeded to a final reading of the Drafts with special attention to the Comments and Illustrations, and discussed a Secretariat memorandum concerning the placement of the new draft chapters. The Secretariat had then proceeded to the incorporation of the new Chapters in the present version of the Principles and, under the supervision of Henry Gabriel, Chairman of the Editorial Committee, to the final editing of the new edition and the harmonisation of style and language throughout the volume. In parallel, under the supervision of Marcel Fontaine, Chairman of the Editorial Committee for the French language version, the Secretariat had also proceeded to the editing of the French language version of the new edition of the Principles.

23. The draft 2010 edition of the UNIDROIT Principles now before the Council consisted of 211 Articles (as opposed to the 120 Articles of the first edition and the 185 Articles of the 2004 edition) divided into 11 chapters, in addition to a new Foreword and a new Introduction, and – a novelty compared to the previous editions – a Table of correspondence of the articles of the three editions of the Principles.

24. As to the all-important issue of *promotion*, the Secretariat planned, if instructed to publish and distribute the new edition, to give it the widest possible publicity. A publicity flyer would be posted on the website and circulated by e-mail to as many prospective customers as possible, world-wide. The Secretariat would greatly appreciate any input from Council members on that score. Further promotional initiatives included a special issue of the Uniform Law Review devoted to the UNIDROIT Principles 2010, including the black letter rules in English and in French and a number of articles dealing with the new chapters and the impact of the Principles on international contract and arbitration practice; and an international symposium in October 2011 to present the new edition at Georgetown University (Washington, D.C.) with the participation of a number of eminent experts from North and South America as well as from Europe. Similar events were envisaged at the International Court of Arbitration of the International Court of Commerce (Paris) and in Italy. Furthermore, the UNIDROIT Principles 2010 would be presented to a group of Russian lawyers at UNIDROIT later in May 2011; at a Symposium in Brussels organised by the Belgian Centre for Mediation and Arbitration; and in Australia at the 2011 Trade Law Symposium. The Secretary-General had already contacted the members of the Council and received several encouraging responses as to the possibility of organising additional events to promote the new edition of the Principles worldwide.

25. A key means of promoting the Principles was their availability in as many language versions as possible. The Italian version was almost complete and a Spanish version was under preparation. Translations of the integral version or at least the black letter rules into Chinese, Dutch, German, Japanese, Persian, Portuguese and Russian were forthcoming – the black letter rules in Portuguese and Russian were already available.

26. As in the past, the Secretariat would continue to monitor the use in practice of the UNIDROIT Principles through UNILEX. This presently included some 260 arbitral awards and court decisions referring in one way or another to the Principles. The Governing Council might wish to consider how to increase information from international arbitration centres on arbitral awards concerning the UNIDROIT Principles.

27. Last but not least, a significant contribution to the promotion of the 2004 edition of the UNIDROIT Principles had been its formal endorsement by the United Nations Commission on International Trade Law (UNCITRAL) in 2007. The Governing Council might wish to instruct the Secretariat to contact UNCITRAL with a view to obtaining endorsement also of the 2010 edition of the UNIDROIT Principles.

28. Opening the discussion, in the course of which satisfaction with what was unanimously regarded as an impressive achievement was repeatedly expressed, the *President* noted that while making arbitral awards public remained somewhat problematic, there seemed now to be a trend to modify the tradition of absolute confidentiality in arbitration. Given this more relaxed mood, members of the Governing Council might be able to assist in promoting more openness particularly in terms of arbitral jurisprudence. In this connection, Mr *Tricot* had found in his own arbitral practice, both national and international, that the parties generally were increasingly loath to include a confidentiality clause so that it was now often simply not mentioned. This made it difficult to obtain formal agreement on publishing references. Awards were enforced either on a voluntary basis or under an *ex aequo* procedure involving a public body. In the latter case, there was perhaps room for some arrangement to ensure that awards be made public. Mr *Schoell*, interjecting a note of caution as to the visibility of the UNIDROIT Principles, warned that lawyers still generally found it difficult to advise clients to refer to the UNIDROIT Principles in the applicable law clause of their contracts. Nevertheless, things were moving in the right direction, with a growing body of, in particular, arbitral awards including a reference to the UNIDROIT Principles. Ms *Sabo* for her part suggested that international arbitration centres might be approached as to the possibility of including as standard operating procedure a request to the parties to release any decisions referring in some way to the UNIDROIT Principles.

29. As to ways of enhancing the role played by the UNIDROIT Principles in international arbitration, Mr *Soltysinski* suggested that one new avenue he felt might be explored was the growing importance of bilateral investment treaties (BITs). The European Union EU had already let it be known that it was contemplating entering into investment protection agreements with third countries, and this might provide an opening for the UNIDROIT Principles as one of the sources of law relevant to the solution of disputes within this sphere. Such treaties often *required* decisions to be published. The *President* welcomed the idea of promoting the use of the UNIDROIT Principles by the European Union as a source of law, which he deemed might to some extent facilitate co-operation between the EU and UNIDROIT in an area where there was potential competition. The universal character of the UNIDROIT Principles made them eminently suitable for Europe's external relationships.

30. Mr *Sánchez Cordero* recalled that Mexico had published a Spanish version of the UNIDROIT Principles 2004, and advocated an early update of that version. Mr *Opertti Badán* announced that Uruguay had introduced the UNIDROIT Principles in its legislative drafting, and that the UNIDROIT Principles were now referred to more frequently than hitherto in contract formation. Mr *Koide* indicated that the UNIDROIT Principles were now often referred to in amending the Japanese Code. Ms *Bouza Vidal* recalled that courts in Spain frequently applied the UNIDROIT Principles, perhaps more than in other countries. This was borne out by the fact that UNILEX contained no fewer than 14 Spanish decisions, 8 of which handed down by the Spanish Supreme Court. Spain was therefore very interested in the third edition of the Principles. Mr *Hartkamp* indicated that the Netherlands were even now working on an updated version of the full text in Dutch which they hoped to complete by the end of 2011. He added that UNIDROIT had made a noteworthy contribution to the *lex mercatoria* and boosted its own reputation in the process. Mr *Soltysinski* reported that the UNIDROIT Principles had proved a very important source of inspiration for the new Polish Civil Code now being drafted.

31. Mr *Tricot* announced that the *Association française des docteurs en droit* would be organising a conference in the autumn to (re-)promote the UNIDROIT Principles in France and that they fully intended to maintain the momentum. Ms *Bouza Vidal* stated that she had been in touch with various bodies in Spain to organise a two-day promotion seminar on the UNIDROIT Principles the following year.

32. Mr *Carbone* stressed the importance during the promotional phase of defusing the oft-voiced criticism that the UNIDROIT Principles tended too much towards party autonomy, particularly in

determining the law applicable to the contract. On the contrary, the UNIDROIT Principles were essentially state-law-oriented and in favour of mandatory rules. A second important point to publicise was that the UNIDROIT Principles were not a motley collection of rules of the *lex mercatoria* but rather a complete, consistent, and exhaustive system of law capable of resolving all problems relating to contracts. The *President* fully shared these views, in particular the need to dispel any ambiguity with respect to the first point.

33. Several speakers, notably Ms *Sabo*, Mr *Hartkamp* and Mr *Gabriel*, stressed that endorsement of the UNIDROIT Principles by UNCITRAL should be sought without delay, a view shared by Mr *Hartkamp* and Mr *Gabriel*.

34. The *Secretary-General* reiterated that promotion of the UNIDROIT Principles remained one of core activities of UNIDROIT, in recognition of the tremendous contribution they had been to the future prestige of the Institute.

35. Mr *Bonell* indicated that several of the very interesting suggestions made to promote the UNIDROIT Principles had already been undertaken in respect of the previous editions. UNILEX already contained six decisions of the IXIT arbitral tribunal, which only confirmed the role the UNIDROIT Principles already played in field of both state contracts and bilateral trade agreements. Much time and energy had been expended in collecting what were now over 200 arbitral awards rendered worldwide. Much, of course, remained to be done. It was not so much a matter of a general resistance to making awards publicly available, but rather, the most important arbitral tribunal, that of the ICC, had simply stopped providing any information whatsoever, where in the past they co-operated. On a brighter note, however, UNILEX maintained excellent relations with the international arbitration court of the Russian Federation and was able to collect virtually all awards rendered there that referred to the UNIDROIT Principles.

36. As to universities, these had always been foremost in the Secretariat's mind when it came to promoting the Principles. Meanwhile, dozens of universities worldwide offered, if not courses, teaching materials that included the UNIDROIT Principles.

37. Last but not least, a new perspective had been opened up by a very promising project sponsored by the Hague Conference on Private International Law to draft choice-of-law principles in international contracts. This could be a great opportunity for the UNIDROIT Principles and a very clear signal to the world at large.

38. Mr *van Loon* (Secretary-General, Hague Conference on Private International Law) confirmed that the UNIDROIT Principles were a source of great inspiration for the Hague Conference's work on principles for the law applicable to commercial contracts. But while the Principles themselves were important, and promotion was important, what was most important was good documentation on the actual use of UNIDROIT Principles. Whether the prospective Hague Principles would effectively incorporate the notion that the parties may also designate non-state law as the applicable law to their contract could not be taken for granted, it was an issue that would doubtlessly be discussed over and over, and the case had not yet been won. Good documentation showing in great detail how the UNIDROIT Principles were used in different circles and different fora worldwide was key to strengthening the case for that position.

39. Returning to the issue of involvement by *universities*, Mr *Harmathy* pointed out that there was a network of law schools that had courses on transnational commercial law based on Professor Sir Roy Goode's volume. Members of that network, including the USA and European States, shared their experiences yearly – not only on the UNIDROIT Principles but on different documents released by UNIDROIT. It might be a good idea for UNIDROIT itself to have some role in the network. As to the of arbitral awards, he indicated that the ICC Court of Arbitration was scheduling a meeting in September

on its amended rules of procedure that might provide an opportunity to explore whether it might eventually agree to amend its position as to the information they gave out about their awards.

40. Mr *Bollweg* felt that completion of such an important project was the time to start reflecting about the future. Although a pause was needed, that break should be used to consider topics not yet addressed in the third edition. The *Secretary-General* replied that possible topics for any future editions would be looked into on an ongoing basis, since this was a long-term line of work, but that it was early days yet for another working group to be convened.

41. *The Council adopted, by acclamation, the third edition of the Principles (to be known as "UNIDROIT Principles 2010") and authorised its publication and promotion world-wide. It also mandated the Secretariat to take the necessary steps to secure the formal endorsement of the UNIDROIT Principles 2010 by the United Nations Commission on International Trade Law (UNCITRAL).*

Item 5 on the agenda: International Interests in Mobile Equipment

(a) *Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol (C.D. (90) 4(a))*

42. Mr *Atwood* (UNIDROIT Secretariat) referred the members of the Council to the document before them for detail, before going on to highlight some of previous year's events. In respect of the *Aircraft Protocol*, eight new accessions had been recorded, three of which concerned European Union member States. The Russian Federation had deposited its instrument of accession in March 2011, a highly significant development in view of the profile of the Russian Federation as a large aviation market and manufacturer, and because it would set a precedent for other former Soviet States in the region. The instrument of accession of Cameroon had been deposited after the report on the previous year's achievements had been finalised.

43. While it was not always easy to match efforts to results in promotional work, the bygone year had been very productive in that respect. First, after the European Union acceded to the Convention and the Aircraft Protocol, UNIDROIT convened a technical seminar for EU Member States to discuss the particular issues regarding accession by those States, including, most particularly, the possible scope of declarations on insolvency and jurisdiction issues. One of the major outcomes of that special seminar was an agreement on the part of European Union Member States that the UNIDROIT depositary would provide a space on its website for those States to provide information describing how the Cape Town Convention is implemented in their domestic jurisdictions. Two EU States – Malta and the Netherlands – had now taken advantage of this. Secondly, assistance to potential Contracting States in understanding the Convention, their choices in relation to declarations, and the deposit process had now resulted in Latvia and the Russian Federation depositing their instruments of accession. Thirdly, the Secretariat was working on the problem of the disparity between the number of Contracting States to the Convention and the Aircraft Protocol, which arose where States deposited instruments of ratification to the Convention which complied with all of the formal requirements but their instrument of ratification to the Protocol did not – usually due to failure to include the mandatory declaration relating to non-judicial remedies. Six Contracting States were in this category: Gabon, Kazakhstan, Syria, Togo, Tanzania and Zimbabwe. Progress in rectifying this had been made in respect of two of these States and the situation was expected to be resolved very soon. Lastly, very good working relations continued with I.C.A.O. and the International Registry, and especially with the Aviation Working Group.

44. Finally, the Cape Town Convention would be ten years old in November 2011. That anniversary might provide a good opportunity to reflect on the work that had gone into the Cape Town project, and the success achieved by this, the most successful international treaty sponsored by UNIDROIT.

While the continuing tight budgetary situation did not permit of any specific celebrations, the Secretariat would be exploring any opportunities to use the anniversary to promote the Cape Town system, ranging from ensuring that any promotion activities were labelled as 10th anniversary celebrations, another promotion forum in conjunction with the Aviation Working Group, to a special edition of the Uniform Law Review.

45. Moving on to the *Luxembourg Rail Protocol*, Mr Atwood reported no accessions in 2010. Nevertheless, great efforts had been made to get the project back on track following past ups and downs – most particularly, the failure of the first tender process for the Registrar of the International Registry – and significant progress had been made. A revised RFP ("Request for Proposals") / tender document had been issued in June 2010, following an information session in February 2010 to promote the RFP and forestall a repeat of the 2009 scenario when only one bid had been received. This time round, the RFP process had attracted four proposals, two of which very strong. Ultimately, the Preparatory Commission selected the bid made by SITA, a subsidiary of the SITA NV group of companies, which was not only the major global supplier of IT infrastructure to the aviation industry but, even more significantly, the majority shareholder in the company operating the Aviation Registry under the Aircraft Protocol. This could create additional potential for the Rail Registry to draw upon the experience and expertise that was involved in the successful establishment of the Aviation Registry. A first, positive, meeting with SITA representatives had taken place in May 2011. As to the timetable, it was unlikely that the contract would be signed before the end of July 2011, as anticipated in the document before the Council, but rather in the late summer. With the problem of the appointment of the Registrar hopefully resolved, more time could now be developing a ratification and promotion strategy for the Rail Protocol, in close collaboration with OTIF and the Rail Working Group.

46. In the discussion that followed, first, in respect of the *Aircraft Protocol*, a general feeling emerged that it would be appropriate to mark the 10th anniversary of the Cape Town Convention in some way commensurate with budgetary imperatives. Ms Sabo mooted the possibility of Council members exploring whether their contacts might allow for something being organised on a regional basis, or whether any member States might be willing to make a one-off contribution to cover the cost of a conference in Rome. This suggestion was taken up by the President, who announced that the Secretariat would prepare an official letter to the member States to this effect. Ms Bouza Vidal – after announcing that Spain intended to accede to Cape Town and was preparing a report thereto, dealing also with declarations – welcomed the idea of a special issue of the Uniform Law Review on the Cape Town system, a view shared by the President, resources permitting.

47. The Secretary-General announced that the Brazilian Congress had finalised Brazil's ratification process. As to Cape Town's tenth anniversary, he confirmed that there was no budget line for any special conference but believed that some form of celebration might be incorporated in other ways. A special issue of the Uniform Law Review might be considered in 2012, even though several special issues were already planned for 2011.

48. As regards the *Rail Protocol*, Ms Sabo particularly noted the fact that the lessons learned with the Aircraft Protocol were being successfully applied also for this Protocol and that the Secretariat was clearly developing tremendous expertise in this area.

49. Sir Roy Goode agreed that there seemed to be great potential for this Protocol but warned it would be vital for support of the kind provided by the Aviation Working Group to be canvassed also for the Rail Protocol. He suggested that the OTIF Secretariat should be closely involved in this. Finally, in establishing a registry system, security was a key point that had been somewhat neglected in the Rail Protocol initially. Free search facilities should be provided, but access should be tightly controlled.

50. Mr Mo stated that the Rail Protocol might prove useful to China in due course, as its involvement in the high-speed rail sector grew, both at home and abroad. For the moment, awareness of the potentialities of such a Protocol was minimal.

51. The *Secretary-General* added to Sir Roy's note of caution, stating that much work would be needed to promote the Rail Protocol and to ensure successful operation of the Registry. Apart from not having the services of a special lawyer to promote it, as had been the case with the Aircraft Protocol, the railway sector was quite a different industry. He noted that in the case of the Aircraft Protocol, ratification by the United States of America had been a significant boost. Probably the largest markets outside Europe would be in India and China, whereas others would wait and see what Europe did, first. Hence an appropriate ratification strategy for important European countries would be essential for the success of this Protocol.

52. *The Council noted the progress made in the implementation of the Depositary functions under the Convention and its Protocols, and mandated the Secretariat to draft an official letter to the Member States with regard to the options for organising a special event to commemorate the tenth anniversary of the adoption of the Convention.*

(b) *Preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets (C.D. (90) 4(b))*

53. In introducing this item, Mr Stanford (Deputy Secretary-General, UNIDROIT), indicated that the fifth session of governmental experts had, subject to a last-minute hiccup on one issue, been a complete success, notably on the key outstanding issues left over from the fourth session. Consensus had been reached on a new definition of the term "space asset", and, on the issue of physically linked assets, the Committee, if not achieving consensus on a single rule, did achieve consensus on the idea of putting three alternatives to the diplomatic Conference for a decision. The minor mishap referred to had occurred in the closing moments of the session with respect to the appropriate wording of a special provision on revenue salvage. At the very last moment, when a solution had appeared to be within the Committee's grasp, the representative of the space insurance community indicated that it would after all prefer to see the provision withdrawn. The relevant provisions were accordingly placed in a series of square brackets, designed in particular to indicate what seemed to be the obvious solution. Such a solution now seemed to be taking shape. Consultations were continuing on a number of other points, essentially matters raised for the first time at the last session and matters eminently capable of being resolved at the diplomatic Conference.

54. Accordingly, the Chairman of the Committee of governmental experts, speaking on behalf of the entire Committee, had felt able to recommend that the Governing Council authorise the transmission of the new version of the preliminary draft Protocol, as established by the Committee, to a diplomatic Conference, at as early a date as possible in order not to dissipate the momentum built up over the preceding three years.

55. The Secretariat also believed that it was extremely important, if not vital, for the key potential beneficiaries of the proposed Protocol to get to know it better in advance of the planned Conference. The leading players in the space sector currently needed the future Protocol no more than, at the time of the preparation and adoption of the Aircraft Protocol, the large airlines needed that Protocol, but the need of the essential beneficiaries of the future Space Protocol, which were expected to be members of the NewSpace Community, whether start-up companies or small regional operators, was real indeed. The Secretariat had been active in propagating information on the momentous changes occurring in the range of players more than most active in outer space, changes which affected the Asia-Pacific region and any promotional event, to be meaningful, ought probably to be organised in that part of the world. Such activities were still essentially organised by Governments in those countries and such an event would, therefore, provide an invaluable opportunity to explain the

benefits of the future Protocol to them in advance of the diplomatic Conference. The Government of Indonesia had in fact asked the Secretariat to organise a workshop on the preliminary draft Protocol which might be organised back-to-back with the seminar on the Model Law on Leasing that the Government of Indonesia had also asked the Secretariat to organise, possibly towards the end of the year.

56. Another important factor to be taken into consideration in planning the dates of the diplomatic Conference was to allow the necessary time for a potential Supervisory Authority to obtain at least the most basic authority from its competent Organs in time for the diplomatic Conference, should it judge it appropriate, to invite such an Organisation to assume the functions of Supervisory Authority. In this context, the Secretariat had had discussions with the International Telecommunication Union in Geneva on the possibility of its acting as Supervisory Authority, and a preliminary discussion of this issue was now likely to be on the agenda of the next session of the International Telecommunications Union (I.T.U.) Council, to be held in October.

57. In the light of these considerations, the Secretariat proposed that the diplomatic Conference be held in the first quarter of 2012, ideally in the latter half of March 2012, and that to allow sufficient time to resolve all issues at the Conference, it should last a full two weeks. As to the venue, the Secretariat was consulting certain member Governments with a view to determining their willingness to host, subject to the decision to be taken by the Governing Council on the convening of a Conference, such a Conference but, should these possibilities not materialise, the Conference might be held in Rome, on the premises of the Food and Agriculture Organization (F.A.O.).

58. The fact that years of hectic activity had resulted in a draft believed capable of achieving consensus at a diplomatic Conference had been very much thanks to the munificence of the American Foundation for International Uniform Law, the German Space Agency and the U.K. Foundation for International Uniform Law in funding the invaluable work done by Mr Daniel Porras. Should the Council decide to authorise the convening of a diplomatic Conference, his contribution would continue to be essential. Another key member of the team had been *Crédit Agricole S.A.*, through its agreement with UNIDROIT, under the terms of which Ms Martine Leimbach had contributed her invaluable insights as an experienced space financier.

59. This remarkable pooling of resources had, however, permitted the Secretariat to see the absolutely crucial importance of already giving thought to the means of ensuring that, once the Protocol was in place, the necessary resources would be available to bring the Protocol and the inevitable future Space Registry into operation within a reasonable period of time. The latest information from Montreal, indicating that the Council of the International Civil Aviation Organization (I.C.A.O.) had authorised the involvement of Aviareto, the Registrar of the Aircraft Registry, in the setting up of the future Rail Registry, was extremely encouraging also for the setting up of the future Space Registry. Aviareto had been extremely helpful already in the finalisation of the preliminary draft Protocol. The chances of Aviareto and the system underlying the Aircraft and Rail Registries benefitting the establishment of the Space Registry were extremely good and would undoubtedly assist in keeping costs down.

60. Other support would, however, be essential. The outstanding contribution of Mr Jeffrey Wool in promoting the Aircraft Protocol had been crucial in ensuring that Protocol's resounding success and, while UNIDROIT would no doubt have an important role to play in the promotion of the future Protocol, the model for generating support among the commercial and financial communities provided by Mr Wool was something that the Institute was not well fitted to replicate, and thought would have to be given in due course to the best means of filling that gap in the promotion of the future Space Protocol.

61. Mr *Marchisio* (Chairman of the Committee of governmental experts), retraced the steps that had led to the draft text now before the Council. The negotiations had repeatedly run into what at the time might have seemed insuperable difficulties, but had each time re-surfaced. The Secretary-General of the Institute had acted as a facilitator on two particularly thorny issues, public service limitation of remedies and default remedies in relation to components. Industry involvement had likewise had its ups and downs. While it was true that the original objective of the preliminary draft Protocol, as a tool for the protection of investment in outer space, had metamorphosed over the years into a draft that also addressed the needs of new players in the field (small companies, new ventures), it nevertheless also took into consideration the important needs of all space actors – financiers, insurers and manufacturers. The principal objective of the preliminary draft Protocol was still to facilitate the financing of, and the protection of investments in, outer space activities. Some difficult issues, in particular that of default remedies for high value components, had not in fact been resolved even at the final stage of the negotiation process, but there was room for solution during the diplomatic Conference if some further consultations could be held prior to the Conference itself. The other outstanding issue was that of salvage insurance, where there were however still good prospects for a solution that would accommodate the concerns of certain members of the space community. A particularly satisfactory result had been the sound compromise solution reached on the definition of "space assets". The future Space Protocol, once adopted, would be the first legal instrument that went beyond the definition of "space asset" given by the relevant United Nations treaties. Other very important achievements were the limitations of provisions on remedies in respect of public service and the identification criteria for space assets for the future registration system. Several minor outstanding points were capable of being solved before or at the diplomatic Conference proper. Mr Marchisio wound up by expressing his gratitude to the governmental experts that had participated in five difficult meetings stretching over a long period of time, and to all Governments that had supported the project. This included the Italian Government which had backed the project from the outset and had declared itself ready to play any further role that might be necessary.

62. In the debate that followed, support was voiced around the table for the convening of a diplomatic Conference at an early date. Mr *Gabriel*, Ms *Broka*, Mr *Sánchez Cordero*, Mr *Bollweg* and Ms *Sandby-Thomas* urged an early conclusion and trusted that the outstanding issues would be resolved prior to or at the Conference, particularly if it lasted a full two weeks and if some more advance work was done on outstanding issues. Ms *Sabo* agreed but stated that Canada still had some concerns about certain points in the text. She also confessed to some slight concern as to cost if UNIDROIT were required to host the diplomatic Conference itself.

63. Sir *Roy Goode* referred to what he believed to have been the first major piece of litigation on competing interests in satellites where a United States court had found that there was actually no law, either national or international, that dealt with assets in outer space as such. A compromise solution had been found, but he felt that this only underlined the importance of bringing this project to a successful conclusion, soon.

64. In reply to the cost issue raised by Ms *Sabo*, the *Secretary-General* indicated that talks were underway with one candidate in particular for hosting the diplomatic Conference away from Rome. Some difficulty remained in securing the appropriate level of political commitment by the prospective host country to justify the expenditure that would arise. More clarity on this was expected shortly. Plan B was however in hand, and gratitude was due to the Government of Italy for its willingness to step in as the convening State, if necessary, so as not to lose precious momentum. The additional outlay for UNIDROIT would be comparable to double the cost of one week's full meeting of the Committee of governmental experts.

65. Mr *Henri* (observer, International Telecommunications Union) underlined his Organisation's keen interest in taking on the duties of Supervisory Authority under the prospective Space Protocol. The executive organs of the I.T.U., in particular the I.T.U. Council, were already preparing, in close

collaboration with UNIDROIT, the information needed to present this topic to the next meeting of the I.T.U. Council in October 2011, where he hoped it would be possible to send a representative to provide background.

66. *The Council agreed to authorise the Secretariat to transmit the text of the revised preliminary draft Protocol established at the fifth session of the Committee, as a draft Protocol, to a diplomatic Conference (lasting a full two weeks) for adoption, in the first quarter of 2012, at a venue to be settled subsequently.*

(c) *Preparation of other Protocols to the Cape Town Convention, in particular on matters specific to agricultural, mining and construction equipment (C.D. (90) 4(c))*

67. Mr *Atwood* (UNIDROIT Secretariat) referred to the comments provided by the Secretary-General on this subject in his opening remarks. In summary, no great strides had been made in terms of specific outcomes. The Secretariat had reviewed old ground – most particularly, the questionnaire prepared several years previously, with a view to identifying potential issues for attention in future consultations. It had been felt that the next most appropriate step would be to convene a forum of government and industry experts to enable a focused and specialised discussion and to consider the need for, and viability of, a possible future protocol on agriculture construction and mining equipment. Such a forum might, for reasons of cost, be held back-to-back with the proposed consultations on private law aspects of agriculture finance law, probably not before the second half of 2011.

68. The discussion that followed exuded a general sense of cautious approval. As far as an agricultural protocol was concerned, Ms *Sabo* pointed out that care would need to be taken in assessing the perceived level of interest on the part of the agricultural business community. What was needed was sound information as to financing practice and the like. Sir *Roy Goode* cautioned that whatever type of equipment fell within this ambit must be uniquely identifiable. Likewise, the equipment covered by previous protocols concerned items moving across national borders or in space, but most agricultural equipment would never move across national borders. Yet, unless an exemption was negotiated for internal transactions, there would still have to be a register.

69. Mr *Gabriel* echoed the Secretary-General's earlier comment that it was vital for the existing three protocols to be successfully launched before assessing how far the Cape Town Convention could be extended and still remain useful. He was gratified to see that this Protocol would be on the agenda for discussion in the framework of the broader discussion on food security and agricultural finance proposed for the autumn of 2011, since this was an area in which UNIDROIT had much expertise. Mr *Harmathy* agreed that it would be wise to continue work and hold a forum on feasibility. Mr *Bollweg* likewise welcomed the prospect of a forum with key industries and States in the second half 2011. He took the view that this fourth prospective protocol would prove highly attractive for a wide range of industry, not least the German Association of Manufacturing Equipment, which was keenly aware of a need for internationally acknowledged interests in this type of equipment and were seeking the support of the German Government for such an initiative.

70. Ms *Broka* stated that her Government harboured no strong objections, yet she shared some of the reservations voiced by other Council members. Domestic operators would naturally be interested in such a project, but what would the wider economic benefit be? More statistical backup of a technical nature was as yet lacking for this project. Ms *Sandby-Thomas* agreed, adding that in her view, the issue of the position of assets that did not move internationally was one that needed to be looked into as a priority. This point was taken up by Ms *Sabo*, who pointed out that if a domestic security system for equipment that did not move across borders was adequate, there seemed little point in interfering. Mr *Gabriel* concurred, and suggested it might be more opportune to focus on domestic security rights in those jurisdictions that did not have adequate protection – and there were

many such jurisdictions. The *President* submitted that internationality applied also where there was foreign financing for equipment that stayed put – there was a real need to mobilise capital movements in this sector, and there would be problems in jurisdictions with insufficient security for foreign investments.

71. Mr *Carbone* noted that some deep sea mining equipment might be assimilated to ships, which were not covered by the Cape Town Convention. This fact should be borne in mind in the consultations to be conducted by the Secretariat.

72. In reply to the various interventions from the floor, the *Secretary-General* indicated that the information from the questionnaire was vital in structuring a strategy for the future and that it was also very useful in other areas and directions. While economic impact assessment was doubtlessly very important, it was good to bear in mind the particular context in which the Aircraft Protocol and the relevant economic impact assessment had been developed. In the case of agricultural and mining equipment, there was a decidedly more complex spectrum of industry players, types of equipment, types of transaction, risk exposure, and so forth. It was very unlikely that the same homogeneous picture as had quickly emerged in the case of aircraft would be repeated in the sector under consideration. The economic impact assessment for the Aircraft Protocol had been structured around two pillars. The first concerned the potential cost reduction effort of simplifying the process of enforcement of security interests or of shielding creditors from insolvency proceedings. This had been a relatively simple operation, data being available internationally. The second important element had been the terms of the OECD Understanding of Export Credit Agencies on the discount given in export credit transactions involving export of aircraft to destinations that had ratified the Cape Town Convention, which had been highly instrumental in persuading especially developing countries to accede to the Convention. No such mechanism existed in the agricultural and mining area. To the extent that some parts of the industry had stated that they faced difficulty in enforcing security interests, the Secretariat would do well in organising events to approach these players and invite their participation in a forum. This would also help to shed some light on which type of equipment should be covered. As to the possible inclusion of ships, this was a multidimensional issue. Already, one outstanding question was to what extent all equipment falling under the broad notion of agriculture/mining/construction was suitable for inclusion in one and the same protocol.

73. *The Council noted the Secretariat's proposal to hold a forum on how to move forward on this Protocol, to be held immediately before or after other consultations in the second half of 2011.*

Item 6 on the agenda: Transactions on transnational and connected capital markets

(a) *UNIDROIT Convention on Substantive Rules regarding Intermediated Securities: follow-up work and promotion (C.D. (90) 5(a))*

74. Ms *Schneider* (UNIDROIT Secretariat) outlined the procedure for drafting the Official Commentary to the Geneva Convention, first set in place by Resolution No. 2 of the Final Act of the diplomatic Conference that had adopted the Convention. The latest revised draft was still circulating within the Drafting Committee and would be sent to a Steering Committee before being finalised and published in the summer of 2011. A preliminary draft Declarations Memorandum had been drafted by the Secretariat to assist prospective acceding or ratifying States in making their declarations in the approved manner. The final text of this Memorandum would be available by the summer.

75. The *Secretary-General* focused on the promotion of the Convention as such. The Secretariat had in 2010 participated in a colloquium organised by the University of Luxembourg on the Geneva Convention and the proposed EU Directive on securities law. The reception of the Geneva Convention had been one of the topics discussed at the first of what would be periodic meetings of the

Committee on Emerging Markets set up by the diplomatic Conference in Geneva to discuss in particular issues regarding with the Convention referred to non-Convention law. At that first meeting of the Emerging Markets Committee, which had resulted in a special issue of the Uniform Law Review, the Secretariat had submitted a document in two parts. The first part was the Declarations Memorandum referred to by Ms Schneider, the second focused on issues not directly dealt with the Convention. It had been suggested at that meeting that it would be useful to publish the Declarations Memorandum as soon as possible as a Secretariat document, whereas the second part should become a separate document possibly providing the seed of a prospective legislative guide on principles and rules for enhancing trading in securities in emerging markets.

76. Ms *Bouza Vidal* stressed that the Declarations Memorandum would be important not only in guiding prospective Contracting States through the declarations mechanism. She suggested that this particular type of methodological exercise might be explored further as an important practical tool.

77. Mr *Schoell* picked up on the idea mooted in Doc. 90(5)(b) on exploring ways of developing co-operation between UNIDROIT and the UNCITRAL working group on securities. The Geneva Convention left sometimes highly complex detail to non-Convention law, and a gap-filling guide might be more than useful in particular for emerging markets.

78. Mr *van Loon* applauded the Secretariat's efforts to promote the Geneva Convention in emerging markets. He reiterated the Hague Conference's on-going interest in co-operating with UNIDROIT in matters of promotion, and referred to the possibility of a joint conference on intermediated securities and other issues with UNIDROIT and UNCITRAL in the autumn of 2011.

79. *The Council took note of the progress made in the revision of the draft Official Commentary to the Geneva Securities Convention and of the activities to promote the Convention.*

(b) *Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (90) 5(b))*

80. The *Secretary-General* indicated that although the project had not yet got off the ground for lack of resources, some member States were in favour of seeing work on this started as soon as possible. Once the Official Commentary to the Convention had been finalised, the Secretariat would consult with a broad spectrum of experts in the securities market to sound them out on the topics that would have to be addressed. As to the question of co-operation with UNCITRAL, it was not yet clear how this would evolve. The fact that UNCITRAL's work on non-intermediated securities were not really close to the subject matter of the Geneva Convention should not prove an obstacle to taking advantage of such an opportunity to work together.

81. Mr *Gabriel* cautioned that this, again, was an area in which UNIDROIT had great technical expertise and that it would not make sense for it to relinquish that leading position to other Organisations. The *President* agreed generally, but in terms of a Legislative Guide, felt that there was scope for co-operation and internal discussion between the sister Organisations. He saw room for convergence rather than potential conflict, as had been pointed out by Ms *Sabo* who had argued that the key in this area was compatibility, and making sure there was no competition in terms of the resulting instruments.

82. *The Council took note, with great interest, of the first steps and procedure envisaged by the Secretariat with a view to developing a future legislative guide on principles and rules capable of enhancing trading in emerging financial markets.*

(c) *Principles and Rules on the Netting of Financial Instruments (C.D. (90)5(c))*

83. The *Secretary-General* recalled that the Governing Council had given this topic the highest level of priority the previous year, a decision later confirmed by the General Assembly. The Secretariat had taken steps to organise a first study group, the composition of which had been a matter of some delicacy. While netting was widely recognised by regulators and industry as a fundamental tool in controlling systemic risk, reducing risk exposure and fostering the stability of financial systems around the world, the banking and financial markets sector had come round to the view that netting might at times pose obstacles to the exercise of resolution powers. The study group accordingly had to be sufficiently representative of these various views and interests involved. No sooner had their working paper been posted on the UNIDROIT website than several Member States had contacted the Secretariat in a bid to be involved from the outset, denoting a high level of interest in this topic. Clearly, it was important to keep numbers fairly small at this stage, but the process would have to be opened up eventually. Representatives of the larger emerging markets would be invited for the next meeting.

84. Mr *Soltysinski*, co-chair of the study group, congratulated the Secretariat on having brought together a well-balanced group representing men and women of all seasons. He himself had come round to the view that netting was very important, and that the lack of uniformisation of rules in transnational arrangements was a problem from the netting perspective, further complicated by differences in legal treatment. He was also persuaded that some additional guarantees and protections should be offered. The problem, however, was to determine how far it was possible to go. Financial institutions argued that the institution of netting was so effective that not only should they be offered more protection in the event of insolvency, but also that the prudential institutions should be prevented from meddling with netting arrangements. On the other end of the scale, some fervent critics of the institution regarded netting as an unnecessarily and risky subsidy. UNIDROIT must obtain convincing answers to counter such assertions, and display some fine political skill in the process.

85. Mr *Hartkamp* expressed great interest in Mr *Soltysinski*'s argument, but exhorted his fellow Council members not to take fright. They had known from the outset that this topic would be a sensitive one. He had every confidence in the ability of the study group as it had been put together to take care of these problems and to find a balanced solution.

86. In deference to the fact that this was a high-priority topic, the *Secretary-General* gave details of the second part of the meeting, which had produced a very tentative draft of principles on netting. The sensitivity of the topic meant that it was one that could bring enormous visibility, and make international financial institutions aware of UNIDROIT. Some evidence of the latter had already been apparent. Risks had been taken in the past and the Institute had more often than not come out on top. Referring to the working document before the Council, he stated that the topics discussed at the group's first meeting had included conflict of laws, enforceability of netting agreements in countries without relevant legislation, set-off, which contracts and which parties would be eligible for coverage, the interplay between netting and bank resolution, if and how to separate netting arrangements, the issue of moratoria, and last but not least, whether the instrument should be a set of principles or something harder. More clarity on these issues was expected to emerge by the next meeting in September 2011. As for the future, it might be a good idea to have three meetings of the study group in 2012, so as to achieve some concrete results by 2013/2014 at the latest.

87. Mr *Tricot* came out in support of the *Secretary-General*'s remarks on netting in general. Anything that contributed to greater transparency, or even unification of banking practices should be encouraged and developed. Despite sometimes wide differences, there was a pressing need to move forward in this area in the shorter term (maximum five years). Even if UNIDROIT were unable to complete the work by the time the next financial crisis hit, any headway made in the meantime would be a plus.

88. Mr *Bollweg*, reputedly one of the project's strongest supporters, expressed gratitude to the Secretariat for picking up this very important item so promptly, for composing the study group so wisely, and for having such an ambitious timetable.

89. The *President* agreed with previous speakers that while caution was of the essence, given the many facets involved, not just technical but including some of a philosophical and moral nature, there was also the institutional task to create transparency of practice. It would not do to shy away from the topic simply because there were so many problems that went beyond mere technical regulation of netting.

90. *The Council took note, with satisfaction, of the progress recorded by the Secretariat in connection with the preparation of principles and rules on the netting of financial instruments.*

Item 7 on the agenda: Third Party Liability for Global Navigation Satellite Systems (GNSS) Services (C.D. (90) 6 rev.)

91. Ms *Peters* (UNIDROIT Secretariat) introduced this item, referring for detail to Doc. C.D. (90) 6 rev. This document summarised the findings so far, tracing the consultations that had taken place in the past year – first, on 22 October 2010 the *Informal consultation meeting on "Third Party Liability For Global Navigation Satellite Systems (GNSS) Services*, then in February 2011 an informal information meeting for participants in the Fifth Session of the Committee of Governmental Experts on the Space Protocol. After that meeting, all participants had been contacted asking for comments on the presentations there made. Participants had also been asked for an indication of whom should be contacted in their countries. Fewer than hoped had responded, but clearly those that had would be contacted.

92. Since that time, contacts had been written to in India and China, to ascertain the interest of those countries for the project. The Indian contact, of the Indian Space Research Organisation, had been positive and expressed his personal interest in the UNIDROIT project. The Secretariat would explore this further with the Indian authorities.

93. Ms *Peters* would be participating in a workshop on *Galileo and Liability* in Brussels from 26-27 May 2011, where she would illustrate the proposed new project, the status of the debate within the Organisation and the preliminary work that had been conducted so far by the Secretariat. She would also be seeing representatives of the European Commission in an attempt to elicit further information on the European project. The impression gained was that as regarded questions of liability, the Commission was still at the very early stages.

94. The Secretariat hoped to organise another informal consultation meeting with representatives of interested Governments, international Organisations, industry and other stakeholders in the second half of 2011, with a view to defining the possible scope of a future project and clarifying its essential features. The results of the continued research and the contacts made and meetings held would be presented to the Council at its next session in 2012.

95. Mr *Carbone* expressed satisfaction at the work done during the informal meetings, where the project had clearly elicited general interest. The crux was the need to ascertain whether there was truly a need for an international convention. European industry contacts had so far been positive, and – as seemed almost unavoidable in view of the interoperability of the different systems – if the Secretariat's contacts with relevant non-European States pointed that way, the project should be taken forward whatever the preliminary problems that needed to be settled. He confirmed the strong support of the Italian government for the project.

96. Ms *Broka* also stressed the importance of this project, which she believed had a very close synergy with the Space Protocol. There were many issues involved in space and satellite navigation besides issues of insurance, and all these would from now on regularly appear on the agendas of worldwide and regional organisations such as ICAO and the European Union. UNIDROIT had already accumulated precious experience and a network of experts to fall back on, so there was really no excuse for it not to become involved as a leading institute well able to do the job.

97. Mr *Gabriel*, a keen supporter of pursuing consultations on the feasibility of the project, stated that in his view, two issues needed to be clarified without delay. One was the level of interest of non-EU Member States, the other was the need to delineate the scope of the project, whether it should be broad or narrow. It would be useful to address this question at the next meeting of the informal group.

98. A detractor of the project from the outset, Mr *Bollweg* held out against UNIDROIT undertaking this work, arguing that there would shortly be only one entity that would be liable Europe-wide: the entity running GALILEO. This was a European project, and the European Commission was working to render Galileo operative by 2013/2014. There was simply no time for UNIDROIT to become usefully involved at this stage. He had understood the Secretariat to be canvassing opinions on feasibility, but the document at hand seemed simply to describe what the instrument would look like, rather than whether it was to be done at all. It would be useful to know what the European Community's position had been at the meetings, and prudent to find out why ICAO gave up its own project after it had worked on it for more than ten years. Ms *Sandby-Thomas* agreed, both because the EU were already working on this and because resources were tight. Ms *Sabo* likewise strongly supported both Mr *Bollweg*'s and Ms *Sandby-Thomas*' comments. The focus should be on feasibility, need, and interest, and the scope and key policy issues needed to be more fleshed out before the Governing Council could make an informed decision.

99. Mr *Koide* stated that his Government was very reluctant to see this project go ahead. GNSS was still at the growing stage and Japan feared a deterrent effect of any new liability rules on its development. GNSS services had been operating satisfactorily without international third party liability rules and no serious legal problems had arisen so far. He therefore wished to correct the document at hand in that its paragraph 14 gave the impression that Japan took a positive view of this topic. This was not the case.

100. Mr *Elmer* approved the cautious stand taken in the Secretariat proposal. It suggested the Institute should maintain interest whilst trying to gain knowledge before it went ahead to the drafting of an instrument. The European Union was after all a regional body, so at some point, some global organisation would anyway take up the challenge. The *President* concurred that the Institute should not abandon its position even though, resources being tight, there could be no question of high priority being awarded to the work. Mr *Tricot* agreed the Secretariat had taken a very wise approach although the focus on liability was too specific. The UNIDROIT initiative had come at the right moment, since systems failure could have quite dramatic consequences in the GNSS-dependent Western economies. Co-ordination between the five existing systems was vitally important, and "unification of language" in private law was right up UNIDROIT's street.

101. In reply, the *Secretary-General* indicated that the ICAO and EU Commission representatives had been evasive at the informal meetings as to the timeframe, content of work, etc. The Secretariat would be pursuing informal contacts to find out more. Generally, he pointed out that it was not easy to gauge feasibility without indicating what a project was intended to be about. The Secretariat was fully aware of the level of priority assigned to this project and would abide by it. There had been no added cost to UNIDROIT so far through the mechanism of back-to-back meetings.

102. *The Council took note of reiterated expressions of interest in the project and encouraged the Secretariat to continue its consultations with representatives of interested Governments, international Organisations, industry and other stakeholders, with a view to ascertaining the level of potential support for the project, defining its possible scope and clarifying its essential features.*

Item 8 on the agenda: Model Law on Leasing: Follow-up and promotion (C.D. (90) 7)

103. The *Deputy Secretary-General* recalled the Council's decision, at its previous session, to authorise publication of the Official Commentary on the Model Law and the holding of promotional seminars in principal target regions, in particular developing countries, subject to the availability of supplementary funding. Referring to Doc. C.D. (90) 7 for further detail, also on the panel of speakers, he announced that the first such promotional seminar was to be held in Beijing the following week, co-hosted by the China Leasing Business Association and the Financial Leasing Committee of the China Banking Association. This first seminar was particularly important in that the People's Republic of China was probably the most significant of all the countries still without a leasing law. The Government of Indonesia had meanwhile evinced interest in hosting a second promotional seminar, which the Secretariat proposed should be held back-to-back with the workshop on the proposed Space Protocol. The Indonesian Government would be arranging the venue and on-the-spot transportation, as well as accommodation for four or five experts. Travel expenses for these experts would probably be met from the munificent financial support pledged the previous October by the Swiss Secretariat for Economic Affairs, as would the cost of the planned third promotional seminar at some time in the second half of 2012. The Secretariat believed this should be held in Africa, always the primary focus of the Model Law, possibly on the occasion of the annual meeting of the COMESA Ministers of Justice and Attorneys-General. However, the Secretariat was also conscious of the suggestion made at the previous Council session by Mr Tricot that it seek to promote the Model Law in both the French- and English-speaking member States of OHADA. The Secretariat was also in touch with the person responsible for the International Finance Corporation's leasing project in sub-Saharan Africa with a view to exploring synergies in the organisation of the African seminar.

104. Finally, the Model Law continued to attract interest in countries all over the world and both the International Finance Corporation and USAID were promoting it as part of their efforts to promote leasing. Georgia and Iraq were the latest countries where such leasing laws were being prepared, reportedly on the basis of the Model Law.

105. Mr *Gabriel* and Ms *Sabo* both voiced their appreciation of the plans for promotional seminars, Ms *Sabo* adding that it might be worthwhile to look into ways of promoting jointly with UNCITRAL in this area.

106. *The Council took note of the progress recorded by the Secretariat over the past year in the implementation both of the UNIDROIT Model Law on Leasing and the programme of seminars for promotion of the Model Law approved by the Council at its 89th session.*

Item No. 9 on the agenda: International Protection of Cultural Property (C.D. (90) 8)

- (a) *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – Implementation, status and promotion*
- (b) *Preparation of Model Legislative Provisions on the Protection of Cultural Property*

107. In introducing point (a) of this item, Ms *Schneider* (UNIDROIT Secretariat) indicated that Denmark had become the 31st State to accede to the Convention since the previous Governing

Council session, and that Sweden was about to complete its parliamentary accession procedure. Accession procedures were also well in hand in several other countries. As to promotion, Ms Schneider paid tribute on behalf of the Institute to UNESCO, with which Organisation UNIDROIT maintained the closest of ties. She noted that the question of the restitution of cultural objects had for some months now featured on the agendas of several fora, particularly in Latin America where frustration at the perceived failure to win through in foreign courts was casting doubt on the usefulness of existing instruments. The Secretariat took the view that UNIDROIT should be involved in these reflections and suggested that the President use the powers conferred upon him by Article 20 of the 1995 Convention to convene the special committee set up to monitor the practical application of the Convention.

108. Concerning point (b) of this item, Ms Schneider (UNIDROIT Secretariat) recalled that this topic had been included in the 2011-2013 Work Programme and that the work was being carried out together with UNESCO. The Committee of Experts set up the previous year had met twice since the last Governing Council session and had drafted model rules defining State ownership of undiscovered cultural objects which were now before the Council and which would come together with explanatory guidelines. The committee was also due to report on its work at the next session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation at the end of June 2011. Ms Schneider also recalled that this Committee was responsible for facilitating the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, and that the meeting of the follow-up committee referred to in Article 20 of the 1995 Convention which the Secretariat was suggesting be convened would also provide an opportunity to identify other areas of work for the Committee of Experts. Finally, she invited the Governing Council to take note of the progress made on this project, to renew its support and to take a stand on the resources that should be placed at its disposal, at the express request of UNESCO.

109. In the discussion that followed, Mr Sánchez Cordero indicated that excellent progress had been made at the March 2011 meeting of the informal working group and that the project was now entering its final phase. Mexico would be hosting the cultural heritage committee of the International Law Association in October 2011 and the model provisions would also be discussed there. As far as the 1995 Convention was concerned, it was important for the Council to signal support for the convening of the follow-up committee provided for in the UNIDROIT Convention, for which there were precedents in the Cape Town Rail and Air Protocols. On another matter, Mexico was to organise a congress in 2013 on globalisation in the protection of cultural heritage, under the patronage of the Director General of UNESCO and UNIDROIT should join that effort. Lastly, the University of Geneva was seeking support for its initiative to create a Chair for the protection of the cultural heritage. Again, UNIDROIT should become involved in this.

110. Satisfaction with the progress made on this project was expressed round the table and support was expressed for the convening of a follow-up committee by Mr Mo, Ms Sabo and Mr Tricot. Mr Mo raised a number of issues of definition, principally of the notion of "State ownership" of "undiscovered cultural objects", and "unlawful excavation". Ms Sabo supported the idea of a special committee, but feared a funding problem. As to the committee of experts on the State's property, she enquired whether the fact of its being a joint committee meant that UNESCO and its Member States would be able to give their views on the model provisions. Mr Tricot felt that the membership of the committee should be discussed without delay.

111. The Secretary-General, turning first to the budgetary and procedural aspects of convening a follow-up committee, indicated that if the Council mandated the President to convene the committee, it might be possible for it to meet before the next Governing Council session or shortly thereafter. The budgetary implications should not be too significant, since the meeting would probably be only one day, or maximum two, and some outside sponsorship might be sought. That would be the object

of the President's report to the Governing Council at a later stage. As to the issue of State ownership raised by Mr Mo, there were currently two conflicting approaches, one under existing domestic laws favouring a flat approach ("the State owns undiscovered cultural objects"), the other allowing people to own what they discovered in their sub-soil. The purpose of the model provision was to bridge the gap between the two, providing something in the nature of "the State claims ownership unless someone else has title". As to the definition of "undiscovered cultural objects", this was likely to be set out in an Explanatory Statement. The "lawfulness" of excavations was to be assessed in the light of the relevant laws of the country of origin.

112. Replying to Ms Sabo's query as to procedure, Ms Schneider stated that the committee was a joint initiative by UNIDROIT and UNESCO. Within UNESCO, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation dealt with the subject, and the committee would report to that body at its next session scheduled for the end of June. The draft would be submitted to the Member States of the Intergovernmental Committee. For the time being, UNESCO was not thinking in terms of a strict adoption procedure, with the model provisions being agreed by the Intergovernmental Committee and placed at the disposal of interested States for incorporation into their domestic laws, rather than being formally adopted by its General Council. UNIDROIT for its part would follow UNESCO's lead in this, but at all events the Governing Council would be asked for its approval of the model provisions at its next session, together with the explanatory comments.

113. *The Council took note of the efforts of the Secretariat to promote the Convention. It further requested the President of UNIDROIT to proceed with convening a follow-up committee in accordance with Article 20 of the 1995 Convention and mandated the Secretariat to look for extra-budgetary contributions to supplement the financing necessary to convene the committee.*

114. *The Council took note of the state of advancement of the work on drafting model legislative provisions on the protection of cultural property and reiterated its support for the project. The provisions on State ownership of undiscovered cultural objects with explanatory guidelines were expected to be completed in 2011.*

115. *The Council also took note of the suggestion that UNIDROIT should extend its patronage to, and participate in the 2013 Congress on globalisation in the protection of cultural heritage.*

Item 10 on the agenda: Private Law and Development (C.D. (90) 9)

- (a) *Private law aspects of agricultural financing*
- (b) *Guidelines for a legal framework for social enterprises (or for a certain type of social enterprise)*

116. The Secretary-General recalled that this was the only topic on the Work Programme that had been included as a result of a suggestion of the Secretariat rather than a proposal by the Governing Council or the member States, and that it had accordingly been assigned the lowest priority. The rationale of the project had been that it seemed logical to identify a line of work that could foster co-operation with other Rome-based Organisations. At the time, in 2008, concerns about food security had become widespread and appeared high on the agendas of these Organisations.

117. Ms Mestre (UNIDROIT Secretariat) took up the subject at this point, taking the Council members through the various points dealt with extensively in document C.D. (90) 9), which covered both private law aspects of agricultural financing and the preparation of an international proposal for a legal framework for social enterprises. Referring to the work done on this topic since it was first

included in the Work Programme, she focused in particular on a Symposium organised by FAO and a Round Table convened by IFAD. UNIDROIT was actively exploring avenues for co-operation with these two Rome-based Organisations whereby the Institute could make a useful contribution through its particular mandate and expertise in the formulation of uniform rules in the area of private law, and the comparative law method it applied in its work. Preliminary agreement had been reached at the FAO Symposium to explore ways of preparing a document on the legal aspects of long-term investment contracts in agricultural production, drawing on UNIDROIT's expertise in contractual law. The IFAD Round Table had provided an opportunity for UNIDROIT to consider the possibility of preparing a document that would bring together information on the numerous existing instruments dealing with secured finance in the agricultural area.

118. Even though the work on a legal framework for social businesses had not made much progress, IDLO not having been in a position to secure the necessary funding, the issue remained highly topical and the project had accordingly merely been put on hold. The Secretariat proposed to continue consultations with IDLO, but also with other organisations that might be interested in co-operating with UNIDROIT in this field, while bearing in mind the possible links between the issue of forms of social enterprise and those relating to agricultural enterprises, in the context of the first item of the subject, *i.e.* the private law aspects for agricultural finance. The work already carried out could serve as a basis for reflexion for the work on agricultural enterprises.

119. Finally, the Secretariat was proposing to organise a three-day Colloquium on Private Law and Agriculture, an indicative programme for which was annexed to the document before the Council, in the autumn of 2011.

120. Ms *Bottiglieri* (Observer, IDLO), recalled that IDLO and UNIDROIT had a consolidated history of friendship and co-operation in legal and judicial matters, especially in the strengthening of judicial and legal frameworks in developing countries. They were both Rome-based Organisations and therefore there were many opportunities to discuss areas of common interest. IDLO looked forward to continuing this fruitful co-operation on these and other matters, including particularly issues related to food security. Lack of funding had hindered activities in many development-based Organisations, including IDLO.

121. Opening the discussion, Ms *Sabo* stated that however preliminary the work done so far, this was a subject worth pursuing. She welcomed the idea of a colloquium, enquiring as to the nature of the target audience, and whether the Governing Council might be of assistance, possibly in establishing contacts with relevant organisations and institutions. In reply, the *Secretary-General* specified that rather than a colloquium, what the Secretariat had in mind was a round table discussion bringing together interested organisations with selected legal experts with expertise in this field. The topics to be discussed would be those regarded by the organisations in the field as the most topical, and to establish what a private law organization such as UNIDROIT could do to complement the work of organisations in the public law field.

122. Mr *Tricot* likewise applauded the general approach taken for this project. Referring to his own work in re-drafting the OHADA Uniform Act on general commercial law, which was now in force in all 17 OHADA member States and which included a very flexible legal framework for what had come to be referred to as "entrepreneur", a new category of small business undertakings which included smallholders, he stated that this clearly had great relevance for an agricultural investment project such as that contemplated by the Institute, and he strongly urged that UNIDROIT involve OHADA in this work.

123. Mr *Harmathy* added his voice to those that supported the project, but recommended a very cautious, step-by-step approach. He recalled that as little as two decades previously, the problem of financing agricultural enterprises and land reform had been a crucial one in Central and Eastern

Europe. At the time, IDLO had been of great assistance. The problem had numerous legal and socio-economic ramifications and different approaches might be needed depending on the part of the world that was being targeted. Mr Soltysinski concurred, confirming that even in economically upbeat Poland, the agricultural sector remained a sore point. He suggested that the advice might be sought of Polish banking circles involved in smallholder finance.

124. Ms Sandby-Thomas stated that defining social enterprises could be very tricky, but that the UK had had considerable practice in this which UNIDROIT might find helpful as the work progressed.

125. The President recalled that it was UNIDROIT's business to propose rules or principles of universal application. Although agriculture was now acquiring a commercial dimension, UNIDROIT was nevertheless venturing into a field dominated by public policy rules where it could only hope to propose rules that were instrumental in smoothing the process of co-operation among countries. In order not to betray its mandate, UNIDROIT must pinpoint selected areas where it could find principles to ensure that both domestic and international financing could be freed for agriculture. It should operate on the basis of favouring the elaboration of equitable principles at the level of the contract, not at that of public policy, but on the private law side, which was a powerful incentive for capital to become accessible to agriculture.

126. *The Council took note with appreciation of the preliminary research conducted by the Secretariat and confirmed its interest for the general subject of "Private Law and Development". The Council encouraged the Secretariat, in particular, to continue its consultations with the interested international organisations in identifying areas in which UNIDROIT could make a meaningful contribution to improving the legal framework for agricultural investment and production.*

Item 11 on the agenda: Legal Co-operation Programme (C.D. (90) 10)

127. Ms Mestre (UNIDROIT Secretariat) introduced this agenda item, which was to be discussed more in-depth in the context of the Strategic Plan. Accordingly she confined herself to highlighting some of the points raised in document C.D. (90) 10, particularly where it referred to the achievements of and the resources available to the UNIDROIT Scholarships Programme. She reported on the meeting of the Scholarships Sub-Committee, held on 9 May 9, and attended by Ms Bouza Vidal and Messrs. Lyou, Opertti Badán, Schoell and Mo, the latter taking the chair. Details of that meeting would be annexed to the report of the 2011 Governing Council Session. The committee had reiterated the importance of the Scholarships Programme for the promotion of UNIDROIT's work, and taken note of its implementation in 2010, the scholars' reports and the financial statement. It had also confirmed the main criterion for participation in the Programme, which was that the prospective scholars' work should be in relation to the UNIDROIT Work Programme – past, present and future. It had vetted current applications and mandated the Secretariat to proceed with the allocation of available funding. It also renewed its invitation to the members of the Governing Council to contribute to the Governing Council Scholarship.

128. Turning to other activities in the field of legal co-operation, Ms Mestre indicated that the Secretariat set great store by these despite the paucity of available funds. Important for wide dissemination in developing countries and countries not otherwise likely to be actively involved in the Institute's work. One such activity was the Secretariat's assistance in the implementation of UNIDROIT instruments, as had been mentioned by previous speakers. She noted that the Secretariat had been represented at the first conference on international commercial law in Africa held in Douala in January 2011. This had been a good example of the synergy that was possible between intergovernmental institutions and further evidence of the close co-operation links existing between the Institute and OHADA. It had also been useful to the Institute in affirming its presence in Africa. Finally, she reiterated the importance of translating UNIDROIT instruments, and in this connection

welcomed the completion of the Russian and Spanish translations of the ALI-UNIDROIT Principles of Transnational Procedure, noting in passing that the Spanish version had been prepared by a former UNIDROIT scholar.

129. *The Council took note of the information supplied by the Secretariat, in particular in respect of the research scholarships programme, and expressed its gratitude to the scheme's donors. Members of the Council and the Secretary-General decided to renew their personal contribution to the programme with a view to funding one research grant in 2012.*

Item 12 on the agenda: Correspondents (C.D. (90) 11)

130. Ms Schneider (UNIDROIT Secretariat) introduced this item, briefly recalling that the Governing Council had agreed to defer the discussion on the functions of UNIDROIT correspondents, the duration of their mandate, their geographical distribution and ways to breathe new life into the existing network to the broader framework of the debate of the Working Group on the Strategic Plan established by the Council at its previous session. She indicated that most of the current correspondents had come to the end of their mandates and that the Secretariat was proposing that the a discussion of the renewal procedure and any proposals as to the method of appointing correspondents be deferred for another year. The Secretariat had nevertheless given thought to the matter and, with a view to fuelling the discussion that was to take place in the context of the Strategic Plan debate, Ms Schneider suggested several possible topics for reflection, such as dividing the Institute's correspondents into those appointed in recognition of their services and those appointed with a view to active collaboration, and the creation of a special correspondents' discussion forum on the Institute's Internet website.

131. *The Governing Council noted the need for pursuing its discussion on the functions of correspondents, the length of their mandate, their geographical distribution and ways to breathe new life into the existing network.*

Item 13 on the agenda: The Library (C.D. (90) 12)

132. Ms Maxion (UNIDROIT Secretariat) introduced this item, referring to document C.D. (90) 12, and taking the members of the Council through the various items one by one. 2010 had been a difficult year both from a logistics point of view, with major refurbishments temporarily reducing Library space, and financially, the Library's acquisition policy having been affected by major increases in the cost of publications and further budget restrictions, but the Library had nevertheless remained fully operative.

133. In 2010, as in previous years, the Library had been grateful to receive donations in kind from the Max-Planck-Institute of Foreign Private and Private International Law in Hamburg, from the Library of the Department of Trade and Industry of Her Britannic Majesty's Government, by the Library of the Law Faculty of Lucerne University, and from the *Deutsche Forschungsgemeinschaft* (DFG), as well as a generous cash donation from the US Law Foundation. As to attendance, despite restrictions due to the renovation work, the Library had recorded 1086 visitors in 2010, including 51 foreign guests from 31 countries.

134. In reply to a question by Mr Gabriel, Ms Maxion stated that of the 1,000 non-foreign visitors most were from university institutions and lawyers from Government institutions, and that their prime subject was international commercial contracts. Mr Soltysinski wondered whether the Library, like other top libraries, had been approached by Google and what the Institute's response to that would be. Ms Maxion replied that she had been in touch with the Max Planck Institute in Hamburg for

information and that the general feeling was one of peril, given Google's massive commercial interests. The question was, who was the owner of a digital collection?

135. The *Secretary-General* expressed satisfaction that the Library was making strides in establishing collaboration/co-operation links and rationalising its procedures, despite having only € 80,000 to spend annually. Important Institute schemes such as the Scholarships Programme relied on the Library.

136. *The Council took note of the progress made by the Secretariat, in particular the steps taken to enhance co-operation with other institutions in an effort to optimise available resources.*

137. In the framework of the discussion on the Strategic Plan and the exchange of views relevant to the Library, Mr *Gabriel* stated that the Strategic Plan report should include a general admonition to look for public and private funding to improve the Library as far as reasonable. The *President* concurred, but stressed that such funding should above all be stable. Mr *Elmer* went one step further, suggesting that unless sufficient funds could be found to keep the Library up to date, its allocation would be better used elsewhere. He also recalled that the Library already concentrated on those areas of the law that concerned UNIDROIT as such and did not spend money on other areas – constitutional law, labour law, etc. – that were not within the focus of the Institute's work. Finally, he mooted the idea of a merger with other libraries to optimise resources. The *President* recalled that UNIDROIT had a statutory obligation to keep up the Library (Article 9 of the Statute).

138. Mr *Gabriel* turned to the suggestion in the report that the Institute develop a specific acquisition policy, which he felt needed to be fleshed out somewhat. He saw two areas, one narrow, one broad, on which to concentrate: the Institute's own projects, as well as comparative law and international commercial law in the areas of the Institute's expertise. Beyond that, given the extremely limited budget, there could be no major acquisition policy. The *President* pointed out that the Institute stood poised to launch into topics outside its traditional area of interest such as private law and agriculture – although there the FAO Library, for example, might be of assistance –, and would therefore have to adopt a specific acquisition policy each time such a new project was launched. It was difficult to foresee the areas in which the Institute would have projects in the future and hence, to develop a target acquisition policy in advance. Mr *Gabriel* specified that of course, care would have to be taken not to duplicate materials already available in other Rome libraries or accessible on the internet. There was a need for flexibility, but also for the basic materials for major projects.

139. Ms *Bouza Vidal* suggested the possibility of inter-university loans. The *President* noted that such a system already existed in the Library in theory, even though its practical implementation was lagging behind somewhat.

140. Taking up Mr *Elmer*'s point about the focus of the Library, Ms *Sabo* advocated articulating its precise goals, re-defining its scope, before putting anything into the Strategic Plan. Mr *Opertti Badán* saw as a first priority the identification of which volumes now in the Library dealt with subjects related to the Institute's work. The *President* agreed that the Library could not continue to be as broad as before in its interests, and that the competition of the different formats in which knowledge was now stored should also be borne in mind. Ms *Sandby-Thomas* argued in favour of an outside expert to assist in defining a Library strategy, updating its methods, looking at practical issues such as the space available, and doing some costings. Any potential outside donor would expect such information to be at hand. She indicated her Government would be prepared to contribute to paying somebody to do this. Mr *Elmer* applauded her suggestion, and proposed that a working group be set up to study the matter and to seek guidance from outside experts to look at it with a fresh mind. Mr *Schoell* likewise welcomed the idea of an independent expert who might also be asked to look into the question of the archive, the digitalisation of current stocks, and other related matters. It was also

important that any acquisition strategy take due account of the issue of available space in the longer term. Mr *Tricot* felt it might be useful to call on the services of three outside librarians to report to the next Governing Council and to make concrete proposals. Ms *Broka* fully supported the idea of an independent expert but had some concern about the likely cost. A compromise solution might be to canvass the ideas of the Library staff before asking other librarians to come up with more detailed acquisition criteria.

141. The *Secretary-General* saw broad agreement around the table on the essential issues: the Library should support the Institute's research activities; it should cover areas that complemented the Institute's work but not areas that were extraneous to it; an effort should be made to extend exchanges with other libraries and to avoid duplication; an acquisition policy must be developed and available websites and databases canvassed. He expressed gratitude to Ms *Sandby-Thomas* for her willingness to contribute to funding an expert study. The profile of the expert that would be called in would have to be determined, as would the scope and limits of their inquiry.

142. Mr *Carbone* applauded this conclusion as well as Mr *Gabriel*'s practical suggestion that in order to be concrete and efficient, the Library should specialise in two fields. Ms *Sabo* added that some consideration should be given also to the preservation of materials and issues that arose from the physical space available.

143. *The Governing Council reaffirmed the importance of the Library to support the scientific, research and technical cooperation programmes of the Secretariat and agreed on the need to develop a specific plan for enhancing its acquisition and collection strategy. The Council took note, with appreciation, of the offer of one member State to fund a study for that purpose.*

Item 14 on the agenda: Uniform Law Review / Revue de droit uniforme and other publications (C.D. (90) 13)

144. Introducing this item, Ms *Peters* (UNIDROIT Secretariat) briefly demonstrated the website of the Uniform Law Review, referring to document C.D.(90) 14 for information on its distribution. Hein-online had just disclosed that royalties due the Institute for 2010 amounted to € 2,274.42, slightly less than in 2009. Financial returns on publications were limited, but the circulation of the Review and other publications was clearly a way to publicise the activities of the Institute and its products.

145. Document C.D.(90) 16 on the Strategic Plan set out three proposed options to reduce the cost of the Review: (a) to revert to the six-monthly format; (b) to become an online journal; or (c) to have a single yearbook issue every year. As to the first of these options, the pre-1996 Review had been more a collection of documents with the occasional article, than the more scientific publication it was today, and reverting to that format might not please subscribers who could turn to the Internet for that sort of information. As to option (b), it should be borne in mind that the Uniform Law Review was used as an exchange vehicle to obtain periodicals for the Library, for a value of around € 14,000 euro. It might not be possible to use an electronic journal for such exchanges. A site for the Review already existed, but it was as yet unclear whether access to it should come with the subscription, whether it should be accessible if the subscriber to the paper version paid a little extra, or if it should be possible to subscribe to it separately. Option (c) in her view should be excluded. In this electronic day and age, when all documents were on websites, it made no sense to produce a yearbook.

146. As to the promotion of the Uniform Law Review and other publications, Ms *Peters* recalled her earlier suggestion that this be coordinated with the publicising of the uniform law data base. Finally, she the most recent publications of UNIDROIT work included the translations of the franchising Guide into Korean, Croatian and Serbian and the translation of the ALI/UNIDROIT Principles of Transnational Civil Procedure into Spanish and Russian.

147. In the framework of the general discussion on the Strategic Plan, the discussion on the Uniform Law Review essentially centred on three issues: its periodicity, its format, and its focus. Mr *Gabriel* voiced concerns as to cost, particularly that of postage, and had doubts about the wisdom of publishing, for example, the full text of instruments which was now readily accessible on the internet. Leaving aside the issue of whether this was an essential non-legislative function of the Institute, he made a strong case for keeping the journal as a premier law review dealing with uniform and harmonised law and reverting to a once-or twice-a-year publication rhythm. Mr *Tricot* suggested following what was now increasingly international practice and putting the Review on line, with an annual paper print run of selected articles.

148. Mr *Schoell* enquired as to the rejection rate in terms of contributions submitted to the Review in recent years, a statistic which the *Secretary-General* indicated could be easily obtained. As to the cost of maintaining the Review, he contended that notwithstanding what seemed high postage outlay, the real cost was staff time, which would not change substantially if the Review were to be placed online. The Review was today more academically oriented than previously and appeared on a quarterly basis. The suggestion to return to yearbook format seemed redundant: it was paper-based, whereas the trend now appeared to be in favour of the electronic format. An important point to bear in mind was that the Review was an asset in terms of exchanges for the Library. While reducing the number of issues to two a year would mean considerable cuts in staff time, printing cost and postage, the paper-based format was what kept the Library in paper-based journals. There was little information as to the options in terms of exchanges for electronic formats.

149. Ms *Broka* endorsed the suggestion in paragraph 43 of the Strategic Plan report to revert to two issues a year and remain paper-based, or at the very least to make the change-over gradually, since internet access was not self-evident in many areas of the world.

150. Ms *Sandby-Thomas* took a very clear stand, set out in four points. First, to eliminate both printing and postage costs, the Review should become web-based. Second, it should not contain anything that was accessible on the internet. Third, the issue should be separated from the Library problem. Fourth, the money would be better spent on improving on research capabilities. Mr *Bollweg* agreed, recalling that the Council had had a similar discussion seven or eight years previously, when it had been informed that the Review was the Institute's only money-spinner. Mr *Hartkamp* concurred, but stated that he preferred to reserve his own decision until he had more concrete information as to cost, including the Review's value as an exchange journal for the Library.

151. Striking a practical note, Mr *Mo* argued the case for maintaining the Review by placing it online. The problem as he saw it was purely one of quality and cost. Quality attracted quality in contributions, and as to cost, many editors would work freelance and part-time and fast into the bargain, which would help to keep costs down.

152. Mr *Tricot* pointed out that a simple calculation indicated that the Review was running at a loss of at least € 10,000 a year, not counting the gross production cost. Yet it was UNIDROIT's own, unique, specific message to the world, and if it was too costly, the Organisation should fear for its continued existence. He urged that the Review be maintained whether online or otherwise, at whatever periodicity, so that UNIDROIT could continue to broadcast its message to the world. The *President* endorsed this, stressing that what was really at stake was the question of quality. He took the view that what was needed was a genuine editorial board and an editor to attract high-quality contributions. Mr *Opertti Badán* agreed as to the Review's value for the Institute's prestige and existence and it should remain one of its priorities.

153. Mr *Elmer* sketched the development of the Review over the years, culminating in quarterly publication since 1996, but he was sadly aware of being one of very few readers. If the Review was

the Institute's only means of publicising itself as a brand name, it would simply have to go online. Here again, perhaps an expert opinion might be called in.

154. The *President* called attention to what he saw as a crucial point that had not been broached, which was that the responsibility for the Review fell mainly on the shoulders of an officer at UNIDROIT. The question arose as to whether it was not time to appoint an editor to assess the scientific quality of the contributions. He suggested that Mr Bonell, whose contract had been renewed by the Permanent Committee, should be asked to ensure the scientific supervision of the Review.

155. *The Council took note of the progress made in respect of the Uniform Law Review and other publications. The Council agreed on the usefulness of the Uniform Law Review as a tool for promoting the work of UNIDROIT and raising awareness about its achievements.*

156. *The Council requested the Secretariat to develop a strategy to ensure that the Uniform Law Review maintained the highest scientific standards, while being produced and distributed at a cost that was commensurate with the publicity to the Institute and the intangible benefit to the academic and professional world.*

Item 15 on the agenda: The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (90) 14)

157. Ms *Howarth* (UNIDROIT Secretariat) referred to document C.D. (90) 13 for details and statistics relating to the activity of the UNIDROIT website in 2010, confining herself to a brief outline of its content. She stated that there were now over 3,700 files of text on the website, including all UNIDROIT documents since 1997 as well as all the documents issued in connection with 23 UNIDROIT studies, about half of all documents issued in the UNIDROIT studies series. These texts were publicly accessible. Governing Council and General Assembly documents since 2005 were on the website with access by password restricted to members of the Governing Council and Governments of member States, respectively.

158. An updated cd-rom containing UNIDROIT Proceedings and Papers 1997-2010 had been prepared for distribution free of charge to depository libraries for UNIDROIT publications. There were no 51 such depository libraries in 45 member States. 18 member States had still not designated depository libraries but interest had not waned.

159. In reply to questions from Ms *Sabo* and Ms *Sandby-Thomas*, Ms *Howarth* indicated that monthly traffic on the home page of the website as tracked by Google Analytics in the period 8 March – 7 April 2011 had been 9,509 visits and 12,942 page views from 134 countries; average time spent on the site had been 1.28 hours. Most of the visitors had been from Europe, mostly Italy, and the USA and Canada. There were no data as to visitors' areas of interest. Mr *Gabriel* having submitted that it might make sense to keep track of the users of the website and their areas of interest, the *Secretary-General* agreed in principle, providing this could be done at no extra cost. However, there had to be a natural limit to the amount of tracking as statistics that the Secretariat could reasonably cope with without it becoming burdensome. In reply to a further question from Mr *Gabriel*, Ms *Howarth* confirmed that the cost of producing the cd-roms was not very high, covering principally the cost of materials. The staff time involved was minimal since new material was simply added each year to the old material already recorded. Only a small number of copies was made. As to content, everything on the cd-rom was on the website and more, since the website included the UNIDROIT Studies series. The *Secretary-General* added that the Institute now had its own entry on Wikipedia.

160. *The Council took note of the progress made in expanding the web site and confirmed its importance as a valuable means of disseminating and promoting UNIDROIT's activities.*

Item 16 on the agenda: The Uniform Law Data Base (C.D. (90) 15)

161. Ms Peters (UNIDROIT Secretariat) introduced this item, first making a visual presentation of its different parts. She stated that in her view, the best way to monitor the utilisation of instruments was by means of an online data base. When the Council had in 1996 decided to set up a data base, this was because the Council had wanted UNIDROIT to become a “centre of excellence” for all uniform law.

162. Turning to the *profile* of the data base, she pointed out that, since a number of countries did not have official reporting systems, all information had to come from individuals and accordingly, the cases contained in the data base would always be a selection. A conscious decision had been taken not to have a full-text search facility, since the full texts were in different languages. Preparing the summaries involved standardising the words used in all the summaries, even if the authors came from different countries.

163. As to the *users* of the data base, these would be largely external. This tied in with the purpose of international organisations which existed to service the international community. Also, a data base was typically suited to be of assistance to developing countries, one of the Institute’s goals.

164. In respect of the *promotion* of the data base, she indicated that the recommendation of the Informal Working Group that the data base be publicised would be put into operation as soon as possible. For cost reasons, the publicity had to be electronic, and it might be coordinated with publicity for the Review and other publications. She proposed two-monthly mailings to university libraries, specialised university institutes, law firms, professional associations (IBA, franchising associations, leasing associations, etc.), chambers of commerce, and so on. Once retrieved, the e-mail addresses could be used repeatedly.

165. Turning to the *Institut de droit international des transports (IDIT)* that Professor Sir Roy Goode had referred to in his report on the Uniform Law Foundation, the Board of the Foundation had asked Professor Putzeys to explore the possibilities for co-operation with that Institute. She suggested, however, that in addition to the two options of either continuing to do everything in-house, or presenting the IDIT with a gift of 700-odd cases that had cost time, effort and money, a third option was to provide them with a username and password so that they could insert the material themselves, directly onto the UNIDROIT data base. That would have the advantage of keeping the data base within the Organisation and the IDIT would not have the expense of the software. It would also fit perfectly with the original plan of concluding co-operation agreements with specialised institutes to cover the different subjects, while keeping the data base as a UNIDROIT data base. That plan had had to be abandoned because of problems with funding the software.

166. Ms Sandby-Thomas enquired why, if the Institute were trying to open up the information on the data base to as many people as possible, Ms Peters felt it would be a shame to hand over the 700 CMR cases to collaborators to manage themselves. In reply, Ms Peters reminded the Council of the tremendous amount of effort, time, and other resources had gone into building this section of the data base, which after all dealt with an instrument that had originated with UNIDROIT. Also, the proposed partners would have to devote considerable resources to acquiring the necessary software.

167. Mr Elmer pointed out that many of the judgments referred to in the CMR section were written by judges and as such were of particular interest to those very judges. He wondered whether the case summaries might be made accessible to them. He also enquired how the data base might be expanded to contain judgments from more countries than those already covered. Ms Peters replied that the data base was accessible over the internet and through the UNIDROIT website. As to expanding the catchment area, this was solely a matter of language: judgments in languages not spoken in the Institute would have to be summarised in English or French, in the originating countries. Ms Bouza Vidal suggested there might be a role here for the UNIDROIT correspondents.

168. Ms *Bouza Vidal* having enquired about the option for co-operation between different data bases, the *Secretary-General* replied that this point had been discussed at the HCCH/UNCITRAL/UNIDROIT tripartite meeting in Vienna that he had mentioned earlier on. UNCITRAL was having difficulty compiling case law and lacked the resources to update its software. There was also some duplication between its data base and that of UNIDROIT, but the sources were not identical. The HCCH data base was not very compatible with the other two, as it covered a very specialised field.

169. In the framework of that part of the general discussion of the Strategic Plan devoted to the Uniform Law Data Base, the *President* recalled that much of the support given to the Institute by the Uniform Law Foundation went to the database. The Foundation itself had now indicated that it would make sense for its continued support to change direction. He invited the Council to take a serious look at the present functionality of the database, and to determine whether the cost and effort that had gone into it over the years were still justified in light of developments.

170. In the discussion that followed, there was overwhelming support for the view that the database as it stood was no longer viable in light of the technological revolution that had taken place in the fifteen years since its inception. The discussion largely centred on whether the database should therefore be shut down or whether an alternative solution might be found that would either limit it to manageable dimensions or enable its contents to be put to use in some other way, so as to optimise the investment that had been made in financial and human terms.

171. Mr *Gabriel* pointed out that the report's recommendation that the database should be restricted solely to UNIDROIT instruments was largely redundant, since to a large extent it was already so restricted. It was not current, it did not cover a great deal, it had doubtful continued validity, and the Institute should cut its losses and stop allocating resources to this project.

172. Mr *Elmer* felt that the CMR database, specifically, could be quite useful if judges and practising lawyers knew about it, but they did not. However, it only contained judgments from a very few jurisdictions and was not at all complete. He wondered whether it might be possible to sell the content of the database to private law firms which might be interested in expanding it to cover all CMR member States.

173. One of the few dissenting voices, Mr *Tricot* stressed that like the Library, the UNILAW database formed part of the UNIDROIT heritage. He intended to promote the database on his home patch, as suggested in the report. The *President* pointed out however that this was a heritage confined to the CMR Convention which although it had originated with UNIDROIT, had come to fruition in another forum.

174. Ms *Sandby-Thomas* took the view that although when the database was first conceived, it enhanced UNIDROIT's reputation because it was then ahead of its time, this was no longer the case fifteen years on. Also, in terms of resources, its upkeep was not the proper job of a senior officer – it needed a very technically minded and technologically up to date person to take care of it.

175. The *Secretary-General* stated that he had been deeply impressed by the elaborate structure of the database and its well-thought-out research features, when he first consulted it several years ago. Ever since becoming responsible for the management of the Institute's resources, however, he had gradually developed serious doubts about the feasibility of the original, ambitious objectives in the light of the Institute's limited means. He recalled that Council had agreed at its previous session that the database should deal mainly with the Institute's own instruments – those adopted by UNIDROIT and those that resulted from its work- and this included the CMR – with full treatment, i.e., providing a bibliography, status, full text, search engine and case law. As Mr Elmer had pointed out, much work had been done on the CMR but it had not yet been widely publicised. From the outset, there had been an issue as to how to prioritise the information to be included in the database, and there had

been substantial discussion about this in the Uniform Law Foundation Board. As to resources, the database was only partially funded by the Uniform Law Foundation, since the Secretariat was not reimbursed for the time spent by the senior officer in charge. Mr Putzeys, a member *ad honorem* of the Governing Council, who had himself invested his own money in the database and who had procured significant financial support for the database through the Uniform Law Foundation from Eurocontrol, was himself concerned about the pace of progress and the fact that the Institute's resources could not ensure completeness and further develop the database. He had mooted other possibilities, including that an outside institution would take over the task of compiling cases and producing the summaries, or indeed that the entire database might be transferred to such an institution.

176. Mr *Hartkamp* called for a plain stop to the database. In his view, there was nothing to do for it outside the CMR. Ms *Broka* agreed, since there was neither long-term, stable and predictable finance, nor the input of a fulltime employee, nor a firm strategy in the Work Programme, nor a state-of-the-art software that reduced the time spent on the treatment of cases to a level commensurate with the resources available. Mr *Bollweg* for his part wished to concentrate staff resources and finance on the very important projects. Ms *Sabo* agreed and feared the Institute did not have the resources for this project to even reach the threshold of being useful and the money allocated to it should be deployed elsewhere. Mr *Tricot* felt it would be premature to put a stop to the database outright, because it might quickly lose any value it now had if it was not updated. Other solutions should be explored, but if these came to nothing, he would have no qualms about stopping the project. Mr *Elmer* agreed. He suggested the Secretary-General might be asked to find the right way to shut down the project and perhaps sell the content of the database at the best possible price, in consultation with Mr *Putzeys*. Mr *Gabriel* objected that the practical value of the database was quite small given that it was not current.

177. The *Secretary-General* stated that the crux of the matter had always been the CMR, on which there was a considerable body of case law. He suggested that if the UNIDROIT website were to be re-engineered, this would be a way of abandoning the illusion that the Institute had a database on the ambitious scale originally intended and yet provide much-needed information. He also invited the Council to await the outcome of the consultations that Mr *Putzeys* was conducting in regard to the CMR. If these were successful, the UNIDROIT website would include a link to the CMR and the acquiring institute. He cited the UNILEX database as an example, which was a database run by La Sapienza University dealing with the UNIDROIT Principles, and to which there was a link from the UNIDROIT website, but the Institute was not responsible for its upkeep.

178. Mr *Hartkamp* endorsed the Secretary-General's proposal to merge the Institute's website facilities into one single website provided no further mention were made of the word "database". Mr *Gabriel* agreed but held out for a timed mandate. Mr *Tricot* endorsed that suggestion, as did Mr *Mo* who urged speedy follow-up to this matter.

179. *The Council took note, with appreciation, of the efforts made by the Secretariat to re-dimension the objectives of the Uniform Law Data Base. The Council confirmed the decision it had taken, at its 89th session, that UNIDROIT should provide text search, case law and bibliographical information on instruments prepared by the Institute, while treatment of instruments prepared by other organisations should be limited to the provision of links to websites that published their texts and status of implementation.*

180. *The Council also agreed that the level of information to be provided on instruments adopted by other organisations on the basis of work carried out by UNIDROIT (such as the Convention on the Contract for the International Carriage of Goods by Road-CMR) needed to be reconsidered and that, in view of its limited resources, UNIDROIT should no longer maintain the case law section in respect of the CMR.*

Item 17 on the agenda: Strategic Plan – Methods of work of the Governing Council (C.D. (90) 16)(a) *General considerations*

181. The *Secretary-General* introduced this item, referring to document C.D. (90) 16 for background. He gave a brief historical overview of how the Strategic Plan had come about. It had originally been developed in 2003 in an attempt to replicate at UNIDROIT what had been a relatively successful experiment at the Hague Conference. The 2008 crisis having intervened, it would be illusory to believe that the Strategic Plan as conceived in 2003 could be used as it had at the Hague Conference, *i.e.* to increase resources and expand activities. The current objective was much more modest. It was to invite member States to do what they could to ensure the long-term survival of the Organisation. The budget figures had clearly demonstrated that the Organisation risked not being around 20 years hence if it did not start to rationalise the use of its resources, re-define its priorities and think about what it could reasonably expect to expand. In order to do all that, the Secretariat had first prepared a document for the Governing Council exploring whether the original 2003 objectives were still applicable. A second document had been submitted to the Governing Council in 2010, on the basis of which the Governing Council had decided to establish an informal working group, which had now submitted its report.

182. The chairperson of the informal working group, Ms *Broka*, outlined the main areas on which the Council might like to concentrate its discussion. The Group had not attempted to draft a new Strategic Plan but had drawn up some key questions to facilitate the discussion within the Council, on the basis of the memorandum presented to the Council in 2011 and on the Horizon 2016 document issued by the Secretariat in 2003. Its first finding had been that in general, several, if not all the Horizon 2016 objectives were still topical and reflected the Institute's ideals. It accordingly set out to define a detailed technical programme for the Secretariat in the light of budgetary constraints and the competitive climate worldwide that would nevertheless do justice to the Institute's objectives. It had generally been felt that it was important for the Institute to preserve its independence. This required tight budgeting and prioritising. The Group had set out to define the key performance areas and to provide indicators to measure results, focusing on (1) legislative activities, (2) research, documentation and publications, and (3) legal co-operation.

183. *The Governing Council took note, with appreciation, of the report of the informal working group established by the Council, at its 89th session (Rome, 10-12 May 2010) to review the findings and suggestions for updating or redefining the Organisation's strategic objectives that were contained in a memorandum of the Secretary-General. The Council requested the Secretariat to prepare a revised version of the Strategic Plan, taking into account the Council's deliberations.*

184. *The Governing Council stressed the invaluable role played by UNIDROIT as an independent intergovernmental Organisation with a uniquely broad mandate in the area of private law harmonisation, while recalling at the same time the importance of cooperation and coordination with other international organisations.*

185. *The Governing Council agreed that UNIDROIT should affirm and strengthen its role as a forum for the development of high-quality uniform rules, norms and principles on the basis of a carefully defined and sharply focused Work Programme that took into account its relative advantages and the expertise of the organisation, and that avoided both unnecessary duplication of efforts underway elsewhere and inefficient dispersion of its scarce resources.*

(b) *Working methods of the Governing Council*

186. The discussion on this item was based on a memorandum submitted by the United States State Department and focused on two issues: whether the Institute should send out its Council documents to member States that were not represented on the Governing Council, and whether those same States should be invited to attend the Council meetings as observers.

187. The *Secretary-General* pointed out that Article 16 of the UNIDROIT Regulations already provided for the possibility of inviting representatives of member States not represented on the Governing Council, although that authority had seldom been wielded in the past. If the Council were to decide to invite these member States in the future, a practical arrangement might to have a place setting with Council members' names, as before, and a row of observer seats indicating the names of the member States. It would be logical for observers to receive the Council documents in advance. The question of whether the reports of the session should henceforth be drafted in a way that preserved anonymity would also have to be settled.

188. Mr *Gabriel* made the case for the idea of inviting member States not represented on the Governing Council to the Council sessions and making the documents available to them. Not to do so was an anomaly that sent the wrong message to potential new member States. Observer status would give all member States a real sense of representation to which they were entitled as full members of the Organisation. He was seconded in this by Ms *Sabo*, who recalled that it had been the Canadian Government which, during the informal brainstorming sessions in 2002 and 2003, had put forward the position that member States should be attending as observers and receive the documents. The Council should keep an open mind about the question of anonymity in the reports. Ms *Broka* welcomed the idea of bringing in member States as observers, in the interests of transparency and inclusiveness. The *President* suggested also inviting observer States to submit proposals to be presented to the Governing Council, thus reinforcing their sense of being active participants in the Institute's work and not simply purveyors of funds. In reply to a query by Mr *Schoell*, the *Secretary-General* stated that not much thought had been given to whether opening up the sessions to member State observers implied that the section of the UNIDROIT website reserved for Governing Council members would be opened up. It seemed logical to do so by simply transferring all its content to the section reserved for member States. Ms *Sabo* voiced support for that idea.

189. Rather than engage in a wide-ranging discussion of the full range of issues and taking firm decisions, the Governing Council opted for an exchange of views on just a few aspects of the Strategic Plan. Ms *Sabo* suggested that before completing the internal review of the Strategic Plan undertaken by the Secretary-General it behoved the Council to await developments in connection with the proposed reclassification of member States in the Institute's contributions chart. To encourage new accessions to the Organisation, Mr *Gabriel* called for an informal policy of geographical distribution of Council members so as to ensure that one area of the world was not disproportionately represented. He also suggested extending the length of the General Assembly meetings so as to provide more opportunity for in-depth discussion instead of remaining essentially information as at present. Ms *Sabo* expressed surprise at this matter being broached at all since a new formula for regional representation had only just been inaugurated at the election of the present Council. She supported the idea of turning the General Assembly meeting into something more substantial, but this was something that needed to be gradually introduced.

190. Mr *Opertti Badán* saw the Strategic Plan as basically posing two types of question: questions linked to the budget and questions that were not. It also highlighted the role of UNIDROIT in the world and as part of the community of international organisations, with which it should not compete but co-operate. The *President* cautioned, however, that the Organisation stood to lose if it waived competences in favour of someone else's. No institution could be expected to do that.

191. Mr *Tricot* broached the matter of the composition of the various working, study and expert groups, whose appointment was at the President's discretion. He suggested a change in methodology in deciding membership of such groups so as to improve transparency. The Strategic Plan report referred to the need to identify and avoid "any risk of pressure group influence". A first step in that direction would be for every member of such a group to be required to present a detailed curriculum vitae justifying membership of the group, which would be published on the UNIDROIT website. Finally, he wondered whether there should not be a limit set on participation of Governing Council members in such groups so as not to create a paradox between the "workers" and the "supervisors".

192. The *Secretary-General* drew the members' attention to the statutory and regulatory framework set in place by the member States and the General Assembly on these issues. As to the participation of Governing Council members in study groups, he referred to Article 13 of the UNIDROIT Statute, which provided that the Governing Council may refer the study of particular questions to commissions of jurists who had specialised knowledge of those questions. The second paragraph of that Article provided that the commissions should, as far as possible, be presided over by members of the Governing Council. The committees of governmental experts were another matter that was not settled as such by the Statute. The Governing Council might wish to discuss whether a Council member could be a member of such a committee as a delegate of his or her State. He pointed out, however, that a distinction should be drawn between the composition of government delegations to sessions of committees of governmental experts, the work of which was subject to the directives that the Governing Council might wish to give, and the composition of delegations to diplomatic Conferences authorised to be convened by the Governing Council. As an immediate manifestation of member States' negotiating powers under public international law, diplomatic Conferences held sovereign power over their decisions, including as to the composition of national delegations, and were not subjected to the guiding authority of the Governing Council.

193. As to the idea of extending the General Assembly meetings to allow for more in-depth discussion, it was important to bear in mind the statutory roles of the General Assembly and the Governing Council. Article 5 of the Statute provided that the General Assembly approved the annual accounts of income and expenditure and the budget, as well as the work programme every three years. These were the key functions of the General Assembly, besides electing the members of the Governing Council. It would not be a bad idea to open up the Governing Council's work to the General Assembly, but it was important to bear in mind the respective remits of the two bodies. An amendment of the Statute was a major operation and did not take effect until ratified by two thirds of the UNIDROIT member States. The question might not even arise again when, as of the following year, the General Assembly would be involved in the Governing Council meetings in a more or less joint session.

194. Finally, as to the geographical distribution of the Governing Council, Article 7 of the Regulations provided that, when "the Assembly is called upon to proceed simultaneously to several appointments to the Governing Council under identical conditions, the first four appointments shall be reserved for the candidates having secured the highest number of votes from each region and the remaining appointments shall be filled by those of the other candidates having secured an absolute majority of votes." A member State belonged to one of four regions in accordance with a decision taken by the General Assembly in 2005 and as Ms *Sabo* had pointed out, it was perhaps premature to start reviewing the system now.

195. *The Governing Council generally agreed on the desirability of involving all member States in the assessment of the progress made in the implementation of the Work Programme.*

196. *The Council decided to make systematic use of the authority given to it by article 16 of the UNIDROIT Regulations to request representatives of member Governments that had no nationals sitting on the Council to attend its meetings in a consultative capacity.*

197. *The Governing Council requested the Secretariat to make the documentation for sessions of the Governing Council available to all member States prior to the relevant session.*

Items 18 and 19 on the agenda: Preparation of the draft budget for the 2012 financial year (C.D. (90) 17) and Procedure for the selection and appointment of a Deputy Secretary-General

198. The *Secretary-General* referred to document C.D. (90) 17 for detail. He prefaced his introduction with a brief run-through of the current financial situation of the Institute under the existing budget before explaining the situation for 2012, using a spread-sheet presentation throughout. The shortfall in receipts for 2010 had forced the Secretariat to cut expenditure in nearly all chapters of the budget for 2011. Further savings would have to be made in 2012 – exactly how much would depend on the income from publications which might be boosted by the new edition of the UNIDROIT Principles and the Official Commentary to the Geneva Securities Convention. He recalled that 75% of UNIDROIT's budget, like that of many other international Organisations, was taken up by salaries and social security contributions, which were virtually fixed costs on which no savings could be made – although there was to be a negative adjustment of the OECD salary scale in 2011 and there would be some savings under the social security heading following the retirement of a senior staff member. A further 5% of expenditure was to fund the Library, which was an activity mandated by the Statute that must be provided for. The remaining 20% had to cover administrative expenses (such as postage, telephone, fax, stationery, etc.) but also all meetings and project-related costs. The *Secretary-General* concluded that the Institute's long-term sustainability might be at risk unless it could get itself onto a sounder financial footing. It ran the risk of having excessively high fixed costs and a bureaucratic organisation and no funds at all for doing what it was there for, namely the development of uniform law.

199. The draft budget for 2012 contemplated an increase of some 13.16%, which might be met by the re-classification of a number of member States in the UNIDROIT contribution chart. That chart had not been revised since 2004, even though the Statute provided for revision every three years. The contribution chart was related to the contribution chart of the United Nations, although the two were not identical. The United Nations had adopted a new contribution scale in 2009 and if that scale were to be applied to UNIDROIT, the result would be that a certain number of States would move to a different category.

200. The main increases by expenditure would result from the filling of two open positions in the Secretariat, i.e. the *appointment of a deputy Secretary-General* and the *appointment of a young officer at A1 level*. Putting aside the question of how much money would be available at the end of the day, the issue that the Governing Council was invited to consider was whether the post of deputy *Secretary-General* would necessarily be remunerated at the highest level currently contemplated under the last staffing table approved by the General Assembly (A6). Much would depend on where the candidate was recruited (internally vs externally, locally vs internationally) and the actual job description. A related proposal was the possibility of reducing the cost of a new expatriate appointment by establishing a sunset clause for expatriation allowances. Another important aspect was timing.

201. As regards the re-classification of member States, the Finance Committee had taken note of the recent changes in the UN contributions scale, of the fact that the current system of contributions in UNIDROIT provided for a relationship between the two, and that this implied the re-classification

referred to earlier. The Committee was contemplating a system that was neither strictly the application of the Statute – which provided for a very harsh and radical regime – nor one based on voluntary reclassification. States, when informed of their new classification, would be able to request a temporary suspension or make a counter-proposal which would be examined in an informal process before being officially submitted to the Finance Committee. No increase in contributions would be requested from member States that would not anyway be affected by the re-classification. The Secretary-General concluded that the Institute's long-term sustainability might be at risk unless it could get itself onto a sounder financial footing. It ran the risk of having excessively high fixed costs and a bureaucratic organisation and no funds at all for doing what it was there for, namely the development of uniform law.

202. In reply to a question by Ms *Sabo*, the *Secretary-General* confirmed that the host country contribution had been included in the budget on the basis of what the Institute actually expected it to contribute in 2010 – recalling that the Italian financial law was triennial – , and that the contributions of the other member States already projected the re-classification in an ideal scenario, which might of course have to be adjusted in accordance with member States' reactions. If when the budget was adopted it turned out there was less in the kitty than predicted, the open staff positions would either not be filled or only one would be filled.

203. Ms *Sandby-Thomas* had no quarrel with the proposed budget as it stood, even though she felt it featured instances of over- and under-spending, such as high postage costs and the lack of provision for training. She called for a fundamental re-examination of the budget to vet existing budget headings and allow staff restructuring. The *Secretary-General* agreed that the lack of money for training was regrettable but inevitable in the current straitened financial situation. He had been able to spend a small sum on training a staff member to go on a server administrator course, which had resulted in dramatically improving the Secretariat's electronic archive system. He was hoping now to be able to send that same largely self-trained technician on a webmaster course. Similarly, it would be useful to encourage staff to acquire language skills. As to the matter of scientific research, he noted that this issue was intimately linked to the profile of the Deputy Secretary-General-to-be, who would essentially have to be someone capable of combining scholarly research with good organisational skills. Generally speaking, it might also be worth exploring the possibility of inviting member States, universities and other institutions such as cultural foundations to second scholars, preferably young determined scholars but also eminent academics, to UNIDROIT on leave of absence for one or two years. Such collaborators could work partly on their own research and partly on research on UNIDROIT projects, and be instrumental for re-creating a community of scholars. This would considerably alleviate the problem of channelling the intellectual strengths of the UNIDROIT staff into research and converting them to activities in line with the Institute's scientific objectives. He invited the members of the Council to express their views on this.

204. The *President* suggested that the budget might be approved as though the conditions for its implementation had yet to be met. This meant either formalising a budget plan B, in the event that the expected re-classification did not materialise, or expressing conditional approval. The *Secretary-General* clarified that the increases requested for personnel costs were due to the fact that the Statute provided for two deputy Secretaries-General, and the draft budget merely re-created a position that had been effectively lost in the budget since the retirement of Mr Walter Rodinò. It did not create a new staff position.

205. Mr *Elmer* recalled that the Institute had for several years now operated quite satisfactorily with only one of the two deputy Secretaries-General foreseen by the Statute, and that what was needed might be a chief financial or administrative officer, or a chief scientific officer, neither of which required an A6 appointment. In Mr *Tricot*'s view, the question of the new deputy Secretary-General was key to the discussion. He noted that a fair proportion of the Secretariat's small staff would be retiring in the not too distant future, so that the Secretary-General's call for the re-creation of a

community of scholars came at a particularly opportune time. The *President* concurred, suggesting that the recruitment procedure should be as flexible as possible to give the Institute the best chances of finding replacements of the same calibre as it had today. The *Secretary-General* recalled that at stake were succession in the long term, and replacements in the immediate term, with three staff members due to leave UNIDROIT in the immediate future. He again stressed the importance of impressing on member States the fact that the proposed budget provided funding for positions that had always existed and that had for some time been financed either through extra-statutory contributions or because people retired but were retained in service, at less cost to the Institute. Another matter was whether the full increase in contributions would effectively be allocated to these posts and at what level, something that depended largely on the outcome of the selection process for the deputy Secretary-General.

206. Mr *Bollweg* expressed satisfaction with the budget proposed by the Secretary-General. As this was only a first estimate, the Council need not at this point approve it either conditionally or with a plan B. He agreed with Mr *Elmer*'s remarks as to the profile of the future deputy Secretary-General, as did Mr *Hartkamp*, Ms *Broka* and Ms *Sabo*, who felt it was important to canvas the Secretary-General's own views in the matter. Ms *Broka* and Ms *Sabo* both recommended that the Council give the budget its conditional approval, the former suggesting that some extra effort might be made to set aside some more money for the Library, the latter stating that in her view, it was the Council's job not to approve the budget, but to make sure that it was in accordance with the Work Programme and that the Institute's activity was supported by adequate appropriations. Mr *Lyou* stated that the Korean Government was about to inform the Secretariat that it agreed with the Secretariat's budget proposal.

207. Mr *Gabriel* urged the Council members not to lose sight of the fact that the proposed budget sent forth a very clear message: that of very limited resources. As to the deputy Secretary-General, he advocated flexibility in the recruitment process and keeping an open mind as to the level at which the appointment was made, since the Institute needed a research officer of the highest caliber, who could come in and move forward in the way suggested by the Secretary-General. Mr *Soltysinski* agreed, adding however that the formal title of the position was important in that it conferred authority.

208. Ms *Sandby-Thomas* agreed on the need for flexibility in appointing a deputy Secretary-General provided there was provision for a probation period. In reply, the *Secretary-General* quoted the Statute which indicated that the appointment should not exceed five years but set no minimum, so the person might be appointed for a period of one year or two, renewable. As to the importance of the title that went with the position, there was a procedural issue. If the person were to bear the title of deputy Secretary-General, the appointment had to be made by the Governing Council. Turning to the profile and nature of the position and the financial management aspect, he pointed out that a small organisation such as the Institute had no need of a full-time financial administrator. Budgeting for such an organisation was fairly simple and straightforward, both at the income and the expenditure level.

209. Mr *Tricot* agreed with the *President* on the need for flexibility of salary treatment for the post of deputy Secretary-General, as opposed to the rigidity that as a practical matter had characterised the conduct of the house in years past, but insisted on the need to specify the profile of the position – which it would appear from the emergent consensus should essentially be a research profile – and to address the question of timing. In reply, the *Secretary-General* noted that the Permanent Committee proposed that the Council appoint a deputy Secretary-General essentially to strengthen the research capacity of the Secretariat and to look at ways of enhancing co-operation between UNIDROIT and the academic and professional world and the international organisations. As to timing, and assuming the Council did not make the appointment in a formal session, the procedure proposed by the Permanent Committee was akin to that adopted on the previous occasion when a deputy Secretary-General's

position had been advertised. If the Council were to retain its prerogative of making the appointment at a formal session, the decision could only be taken at its meeting the following year.

210. *The Council generally approved the draft budget for the 2012 financial year and commended the Finance Committee and the Secretariat for having launched the process of revising the contributions chart of UNIDROIT. The Council appealed to its members to assist the Secretariat in that process.*

211. *The Council agreed that, subject to the outcome of the ongoing reclassification process, the Secretariat should take the necessary steps to organise, later in the year, an open international competition for the selection of a Deputy Secretary-General under the guidance and responsibility of a Sub-committee of the Permanent Committee that would report back to the Council for final approval.*

212. Moving on to the subject of *expatriation allowances*, the *Secretary-General* indicated that over the years, a patchwork of not very consistent provisions had evolved. The Institute staff was classified into Categories A, B, and C. Category A salaries were aligned with the OECD salary scale and professional staff recruited internationally also received the OECD expatriation allowance. Nationals of Italy were liable for income tax under the Headquarters Agreement. These differences had resulted in a level of unequal treatment which, although resulting from objective legal rules, was not conducive to a healthy working atmosphere. While there was nothing the Institute could do about the Italian/foreigners divide since that was a matter of Italian tax jurisdiction over its own nationals, the expatriation allowance was another matter. Such allowances had in other organisations been abolished as discriminatory and lacking rationale in the long term and had generally been replaced by a rental subsidy for newly appointed staff. The proposal was to provide an expatriation allowance for new staff appointees for four years, after which it would gradually be phased out over the next four years.

213. Mr *Gabriel* supported the proposal, reserving his position on acquired rights. Ms *Broka* agreed, adding that there might be room for the new rule to be made to apply to existing contracts in some way. The *President* urged circumspection as to the latter. Ms *Sabo* also agreed, recalling however that since those now receiving the allowances were few in number and would eventually retire, it might be wise to avoid controversy and let the problem resolve itself.

214. The *Secretary-General* announced that the proposal would be annexed to the report of the session and submitted to the General Assembly in December for incorporation into an appropriate place in the Regulations. He pointed to another peculiarity of the patchwork of salary entitlements which was that there was no provision in the Regulations indicating that staff were due an expatriation allowance. It had simply always been paid from 1972 onwards. As to why the administration had decided to pay these, but not other allowances was unclear. It might make sense for the new provision to state clearly that there was no entitlement to any allowances under the OECD scheme that were not expressly provided in the Regulations.

215. The *President* proposed to refer to usage in paying the allowances. Mr *Elmer* was concerned that abolishing any allowances, expatriation or other, might make the Institute less appealing at a time when it was seeking to attract top-level candidates for important staff positions. In reply, the *Secretary-General* repeated that expatriation allowances were not universally accepted and most international Organisations with more mobile staff had abolished them and replaced them with more objective, needs-based allowances, such as the rental subsidy system which replaced the expatriation allowance in the United Nations system.

216. *The Council agreed to submit to the General Assembly a proposal for a set of new regulations introducing progressive reductions in the amount of expatriation allowance payable to staff members that may be appointed after 1 January 2012.*

Item 20 on the agenda: Date and venue of the 91st session of the Governing Council (C.D. (90) 1 rev.)

217. *The Governing Council agreed that its 91st session would be held from 7 to 9 May 2012 in Rome.*

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

(Rome, 9 – 11 May 2011 / Rome, 9 – 11 mai 2011

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

Mr Alberto MAZZONI

President of UNIDROIT / *Président d'UNIDROIT*

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 Justice
Lecturer
Riga (Latvia)

Mr Sergio CARBONE

Professor of Law at the University of Genoa
Studio Carbone
Genova (Italy)

Mr Michael B. ELMER

Judge, Vice-President
Danish Maritime and Commercial Court
Copenhagen (Denmark)

Mr Henry D. GABRIEL

Visiting Professor of Law
School of Law
Elon University
Greensboro, North Carolina
(United States of America)

Mr Attila HARMATHY	Former Judge, Constitutional Court Emeritus Professor of Law Faculty of Law Budapest (Hungary)
Mr Arthur Severijn HARTKAMP	former Procureur-Général at the Supreme Court of The Netherlands; Professor of European Private Law Radboud University, Nijmegen Den Haag (The Netherlands)
Mr Kunio KOIDE	Director of the Civil Affairs Second Division Civil Affairs Bureau Ministry of Justice Tokyo (Japan) <i>Representing Mr Itsuro Terada</i>
Mr Ricardo Luis LORENZETTI	Chief Justice Supreme Court of Justice Buenos Aires (Argentina)
Mr Byung-Hwa LYOUNG	President and Professor of Law TLBU Graduate School of Law 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; former Minister of Foreign Affairs; Legal Adviser; Professor of International Law Montevideo (Uruguay)
Ms Kathryn SABO	General Counsel / <i>Avocate générale</i> International Private Law Section / <i>Section du droit privé international</i> Department of Justice Canada / <i>Ministère de la Justice</i> 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, Innovation and Skills
London (United Kingdom)

M. Michael SCHÖLL

Directeur
Unité Droit international privé
Office fédéral de la Justice
Berne (Suisse)
Representing Ms Monique Jametti Greiner

Mr Stanislaw SOLTYSINSKI

Professor of Law
A. Mickiewicz University, Poznan;
Soltysinski Kawecki & Szlezak
Warsaw (Poland)

Monsieur Daniel TRICOT

Professeur affilié à l'European School of Management;
Arbitre et médiateur en affaires
Soc. DTAM
Paris (France)

OBSERVERS / OBSERVATEURS:

Ms Ilaria BOTTIGLIERO

Senior Researcher
International Development Law Organization (IDLO)
Rome (Italy)

Sir Roy GOODE

Emeritus Professor of Law
University of Oxford
Honorary member of the Council and
President of the Uniform Law Foundation /
Membre honoraire du Conseil et Président de la
Fondation de droit uniforme
Oxford (United Kingdom)

Mr Yvon HENRI

Chief of the Space Services Department
Radiocommunication Bureau
International Telecommunication Union
Geneva (Switzerland)

Mr Marc JÜRGENS

Counsellor
Embassy of South Africa in Italy
Rome (Italy)

Mr Sergio MARCHISIO	Professor of Law; Director Institute of International Legal Studies University of Rome I Rome (Italy)
Mr Attila MATAS	Head of Space Publication and Registration Division Radiocommunication Bureau International Telecommunication Union Geneva
H.E. Ms Thenjiwe MTINTSO	Ambassador of South Africa in Italy Embassy of South Africa in Italy Chairperson of the General Assembly / <i>Présidente de l'Assemblée Générale</i> Rome (Italy)
Mr Diego SIMANCAS	Second Secretary Embassy of Mexico in Italy Chairman of the Finance Committee / <i>Président de la Commission des Finances</i> Rome (Italy)
Mr Hans VAN LOON	Secretary-General Hague Conference on Private International Law The Hague (The Netherlands)

UNIDROIT

Mr José Angelo ESTRELLA FARIA	Secretary-General / <i>Secrétaire Général</i>
Mr Martin STANFORD	Deputy Secretary-General / <i>Secrétaire Général Adjoint</i>
Mr Michael Joachim BONELL	Consultant
Ms Frédérique MESTRE	Senior Officer / <i>Fonctionnaire principale</i>
Ms Lena PETERS	Senior Officer / <i>Fonctionnaire principale</i>
Ms Marina SCHNEIDER	Senior Officer / <i>Fonctionnaire principale</i>
Ms Paula HOWARTH	Senior-drafter / <i>Traductrice-rédactrice</i>
Mr John ATWOOD	Senior Officer / <i>Fonctionnaire principal</i>
Ms Bettina MAXION	Librarian / <i>Bibliothécaire</i>

APPENDIX II**AGENDA**

1. Adoption of the annotated draft agenda (C.D. (90) 1)
2. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (90) 1)
3. Reports
 - (a) Annual Report 2010 by the Secretary-General (C.D. (90) 2)
 - (b) Report on the Uniform Law Foundation
4. Principles of International Commercial Contracts: adoption of the 3rd edition ("UNIDROIT Principles 2010") and its promotion (C.D. (90) 3)
5. International Interests in Mobile Equipment
 - (a) Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol (C.D. (90) 4(a))
 - (b) Preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets (C.D. (90) 4(b))
 - (c) Preparation of other Protocols to the Cape Town Convention, in particular on matters specific to agricultural, mining and construction equipment (C.D. (90) 4(c))
6. Transactions on transnational and connected capital markets
 - (a) UNIDROIT Convention on Substantive Rules for Intermediated Securities: Follow-up work and promotion (C.D. (90) 5(a))
 - (b) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets (C.D. (90) 5(b))
 - (c) Principles and Rules on the Netting of Financial Instruments (C.D. (90) 5 (c))
7. Third Party Liability for Global Navigation Satellite System (GNSS) Services (C.D. (90) 6)
8. UNIDROIT Model Law on Leasing – Follow-up and promotion (C.D. (90) 7)
9. International Protection of Cultural Property (C.D. (90) 8)
 - (a) UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – implementation, status and promotion
 - (b) Preparation of Model Legislative Provisions on the Protection of Cultural Property
10. Private Law and Development (C.D. (90) 9)
 - (a) Private law aspects of agricultural financing
 - (b) Guidelines for a legal framework for social enterprises (or for a certain type of social enterprise)

11. Legal Co-operation Programme (C.D. (90) 10)
12. Correspondents (C.D. (90) 11)
13. Library (C.D. (90) 12)
14. Uniform Law Review/ *Revue de droit uniforme* and other publications (C.D. (90) 13)
15. The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (90) 14)
16. The Uniform Law Data Base (C.D. (90) 15)
17. Strategic Plan (C.D. (90) 16)
18. Preparation of the draft budget for the 2012 financial year (C.D. (90) 17)
19. Procedure for the selection and appointment of a Deputy Secretary General
20. Date and venue of the 91st session of the Governing Council (C.D. (90) 1)
21. Any other business

APPENDIX III**RESOLUTION**

adopted by the Governing Council at its 90th Session on 11 May 2011

THE GOVERNING COUNCIL,

RECOGNISING the constant and active support of Italy in the promotion of UNIDROIT and its activities;

EXPRESSING its gratitude to the Government of Italy for the generous contributions, financially and in kind, provided throughout the years;

NOTING that the current financial downturn and its impact on public finances have led the Government of Italy, in the years 2009 and 2010, to reduce its statutory contribution;

INVITES

the President to explore with the Government of Italy the possibility of restoring its contribution to the level at which it was set in the year 2008, of expressing such contribution as a percentage of the total ordinary expenditure of the Institute or as a number of units of contribution to the UNIDROIT budget and of including this expenditure among the obligatory expenses of the budget of the Italian State.

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

Monday 9 May 2011, 6.00 p.m.

The Scholarships Sub-Committee was made up of Ms Bouza Vidal, Mr Lyou, Mr Mo, Mr Opertti and Mr Schöll, as well as Ms Mestre from the Secretariat. Mr Mo chaired the meeting.

The following documents were submitted to the Sub-Committee in addition to Council document (C.D. (90) 10 ("Legal Co-operation Programme"), which included as an Annex the Report on the Implementation of the Programme in 2010 : *Study LXV – Scholarships Impl. 22 rev.*:

- * An updated table setting out funding details for 2011;
- * The work, conclusions and research reports of the beneficiaries of the programme in the period January 2010 – April 2011 (available for reference only);
- * Applications received by the Secretariat for 2011-2012 (available for reference only).

The Sub-Committee reiterated the important role played by the Scholarships Programme not only in the context of legal co-operation but also as an efficient tool to promote UNIDROIT and its work, building a network of knowledge in a large number of countries. Consequently, the Sub-Committee recommended that while appearing as a low level of priority for the purpose of time allocation within the Secretariat, the Programme should stand as a high priority item of the Work Programme.

The Sub-Committee took note with satisfaction of the implementation of the Programme by the Secretariat in 2010 as well as of the research reports submitted by the beneficiaries of the Programme during this period.

As to the financial resources available for 2011, 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 2010 – in particular the *US Foundation for International Uniform Law* which had provided funding for two scholarships on an *ad hoc* basis, the UK Foundation for International Uniform Law and the Government of the Republic of Korea for their renewed support –, as well as to the members of the Governing Council who had contributed on a personal basis to funding the "Governing Council members scholarship 2010".

The Sub-committee formulated the wish that the Programme be further developed on the basis of a strategic approach, inviting the Governing Council members to seek support from their Governments and funding institutions in their home countries with a view to strengthening the Programme resources, and also to encourage applications from valuable candidates.

The Sub-Committee noted that the Secretariat had received 25 applications for the year 2011-2012. As regards the selection criteria, it reviewed the guidelines laid down by the Scholarships Sub-Committee in April 1999¹ and suggested a slight amendment to the formulation under a) so as to

¹ See : Cf. Study LXV – Scholarships Impl. 22 rev., note 2.

- "(a) preference is 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 is 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;

require that the research topic be “relevant to the activities of UNIDROIT, *i.e. items on, or connected with, the current work programme, past achievements and possible future areas of work*”.

The Sub-Committee wished to invite the Governing Council members to renew their personal contribution to the Programme in 2011, and as for the past years, agreed to give the Secretary-General a broad mandate to implement the Programme in 2011.

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- (d) preference is to be given to applicants whose research project is likely to have the greatest practical impact;
 - (e) preference is to be given to applicants with sufficient linguistic ability to use the Library resources to best advantage.”

APPENDIX V**Draft Regulation on Expatriation Allowances****Article 44 bis**

1. Staff members in the Category A that are neither nationals of Italy nor have been continuously resident in Italy for at least three years at the date of appointment, shall be entitled to the payment of an expatriation allowance in accordance with the rates laid down in respect of the Coordinated Organisations by the OECD.
2. The amount of expatriation allowance paid to UNIDROIT staff members shall be subject to monthly deductions beginning in the first month of the fourth year of receipt of the allowance at the rates and under the conditions specified below:

<i>Year of payment of the allowance</i>	<i>Monthly deduction rates (percentage)</i>
Fourth year	20
Fifth year	40
Sixth year	60
Seventh year	80

3. The entitlement to expatriation allowance of staff members shall cease after the end of the seventh year of service with the Institute.

Article 44 ter

Staff members of UNIDROIT are not entitled to any allowance, benefit, subsidy or other form of supplementary payment not expressly provided for in these regulations.

Article 67 bis

The provisions of article 44bis (2) and (3) apply only from 1 January 2012 to staff members appointed after 1 January 2008 in accordance with article 40(1).

APPENDIX VI**REVISED STAFFING TABLE TO BE SUBMITTED TO THE GENERAL ASSEMBLY OF UNIDROIT AT ITS 69TH SESSION
(ROME, DECEMBER 2011)****Category A**

Secretary-General	A6-A7
Deputy Secretary-General	A4-A5-A6
Principal Officer	A3-A4
Senior Officer	A2-A3
Senior Officer	A2-A3
Senior Officer	A2-A3
Legal Officer	A1-A2
Legal Officer	A1-A2

Category B

Librarian
Cashier/Treasurer
Secretary
Secretary
Secretary
Assistant Librarian
Translation and Publications Assistant
Information Technology Assistant
Meetings and Logistics Assistant

Category C

Administrative Assistant
Administrative Assistant
Administrative Assistant