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GOVERNING COUNCIL
91st Session
Rome, 7-9 May 2012

UNIDROIT 2012
C.D. (91) 12
Original: English
January 2012

Item No. 15 on the agenda: Strategic Plan

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Revised Strategic Plan reflecting the deliberations of the Governing Council at its 90th session</i>
<i>Action to be taken</i>	<i>The Governing Council, at its 91st session, will be invited to take note of the revised Strategic Plan</i>
<i>Mandate</i>	<i>Governing Council, 82nd Session (UNIDROIT 2003 – C.D. (82) 21, Report of the Session, p. 27); 88th Session (UNIDROIT 2008 – C.D. (88) 17, Report of the Session, para. 229); 89th Session (UNIDROIT 2010 – C.D. (89) 17, Report of the Session, para. 176); 90th Session (UNIDROIT 2011 – C.D. (90) 18, Report of the Session, para. 181-197)</i>
<i>Related documents</i>	<i>Strategic Plan – Horizon 2016, UNIDROIT 2004 – C.D. (83) 6; UNIDROIT 2009 – C.D. (88) 9; UNIDROIT 2010 – C.D. (89) 16; UNIDROIT 2010 – C.D. (90) 16</i>

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INTRODUCTION

1. On the occasion of the 75th anniversary of the foundation of UNIDROIT and of 81st session of the Governing Council, an informal brainstorming Session was held on 26 September 2002 attended by the representatives of 44¹ of the Organisation's 59 member States at the time. The Session was chaired by Mr Roland LOEWE (Austria, then first Vice-President of the Governing Council) and moderated by Mr Peter WINSHIP (United States of America). On the basis of written comments submitted by the Government of Canada and by Mr Pierre WIDMER, then member of the Governing Council, as well as a document submitted by the Secretariat (*cf. UNIDROIT 2002 – SIR – Doc. 1*), the discussion addressed a wide range of issues including the constitutional framework, the member States, recent achievements, working methods, working languages, non-legislative activities, the resources available to the Secretariat, the structure and development of the budget. A report on this first meeting was drafted by participants and the Secretariat (*cf. UNIDROIT 2003 – SIR – Doc. 2*).

2. A second informal brainstorming Session was held on 4 and 5 April 2003, attended by the representatives of 31 member States² and six members of the Governing Council. Mr LOEWE and Mr Jacques PUTZEYS submitted written comments and the Secretariat submitted a working document for the Session (*cf. UNIDROIT 2003 – SIR – Doc. 3*). The Session, moderated by Mr Ian GOVEY (Australia, currently a member of the Governing Council), was chiefly devoted to the budget, to the various components of the Organisation's work, to the possible accession of the European Union and to co-ordination with other intergovernmental Organisations. The Moderator and the Secretariat drafted the report of this Session (*cf. UNIDROIT 2003 – SIR – Doc. 5*). As the Session progressed, a consensus emerged that the Secretariat ought to establish a Strategic Plan that would make short, medium and long-term assessments of the tasks and objectives of the Organisation, of the priorities for each of its activities, of the resources at its disposal, of the present and future staffing levels, and that would outline options as to the structure and development of the budget. The participants moreover concluded that the then Governing Council, as well as the new Governing Council that was to be elected at the end of 2003, should be apprised of the outcome of these informal brainstorming Sessions and that the future Governing Council, in close co-operation with member States' Governments, should take the necessary measures.

3. The reports of the two informal brainstorming Sessions were submitted to the Governing Council at its 82nd Session, held in Rome from 26 to 28 May 2003 (*cf. UNIDROIT 2003 – C.D. (82) 15*). The Council expressed its satisfaction at the way in which the Sessions had been prepared and at the way they had proceeded, and, among other things,

(a) took note of the importance of establishing a strategy and of following-up its implementation on the basis of significantly improved resources, and

(b) instructed the Secretary-General to *convey its views* and deliberations to the *incoming Council* so as to secure continuing support for those conclusions (*UNIDROIT 2003 – C.D. (82) 21, Report on the Session, p. 27*).

¹ Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Croatia, Denmark, Egypt, Estonia, Germany, Greece, Finland, France, Holy See, Hungary, India, Iran, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Yugoslavia.

² Argentina, Australia, Austria, Belgium, Bulgaria, Brazil, Canada, China, Colombia, Denmark, France, Germany, Greece, Holy See, India, Ireland, Italy, Japan, Mexico, the Netherlands, Poland, Republic of Korea, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America.

4. The Secretariat subsequently drafted a Strategic Plan, which was submitted, first, to the General Assembly at its 57th Session on 28 November 2003 (UNIDROIT 2003 – A.G. (57) 3), then to the Governing Council at its 83rd Session in 2004 (UNIDROIT – *Strategic Plan Horizon 2016* (C.D. (83) 6)). The Strategic Plan aimed at covering the immediate as well as the medium-term future until 2016, the year in which the 90th anniversary of the foundation of UNIDROIT is to be commemorated – hence its name “Horizon 2016”.

5. The Secretariat noted in that document that priorities would need to be set *within* the Organisation’s three areas of activity (legislative activities, research/documentation/publications, legal co-operation) rather than *among* them. The document identified the areas where budget increases would be needed to carry out the Strategic Objectives. The Secretariat emphasised that the Strategic Objectives set out in the document, the measures to be taken to achieve them and the results thus obtained would be monitored and a report submitted to the different bodies of the Institute. Moreover, the Strategic Plan would be updated on a regular basis.

6. It should be borne in mind the Strategic Objectives set out in the Strategic Plan combined both policy options and concrete measures. Some of these fell within the remit of the Secretary-General, whereas others required the co-operation or support of other UNIDROIT bodies or of member States’ Governments. Even those measures which the Secretary-General was mandated to decide without consulting, or requesting the authorisation of, the President, the Governing Council of the General Assembly, are, in effect, subject to the availability of resources at the Secretariat’s disposal.

7. Since the Strategic Plan was first drafted, the Secretariat had each year submitted to the Governing Council and the General Assembly documents setting out the progress made by the Secretariat in implementing the Strategic Plan during the period under consideration. In these reports, the Strategic Objectives are grouped according to their relevance in terms of the Organisation’s various activities. At its 88th Session, the Governing Council took note, with great satisfaction, of the report presented by the Secretary-General on the progress made and the interim results obtained in respect of the Strategic Objectives listed in the 2003 Strategic Plan (UNIDROIT 2009, C.D. (88) 9). That document submitted that UNIDROIT had succeeded in substantially achieving a certain number of the original strategic objectives, which therefore no longer needed mentioning in the Organisation’s Strategic Plan, and could be treated as a standard criterion for the evaluation of the work of UNIDROIT. At the same time, however, the Secretariat stressed the challenges faced in achieving a few other objectives, which might, therefore, require some adjustment. The Council decided to resume its discussion on the need or otherwise to re-assess these Objectives at its 89th Session in 2010 in light of a revised draft Strategic Plan that was to be prepared by the Secretary-General (UNIDROIT 2009 – C.D. (88) 17, Report on the Session, para. 229).

8. At its 89th session (Rome, 10-12 May 2010) the Governing Council took note, with appreciation, of a memorandum containing the suggestions of the Secretary-General to update or redefine the Organisation’s strategic objectives (UNIDROIT 2010 C.D. (89) 16). The Council agreed to establish an informal working group to examine the various matters and options outlined in that document with a view to the preparation of a draft new Strategic Plan to be submitted to the Council for consideration at its 90th session, in 2011. The following members of the Council volunteered to participate in the work of the informal working group: Chief Michael Kaase Aondoaka, Ms Baiba Broka, Mr Sergio Carbone, Mr Henry D. Gabriel, Mr Didier Opertti Badán, Ms Kathryn Sabo and Mr Daniel Tricot (UNIDROIT 2010 – C.D. (89) 17, Report on the session, para. 176).

9. The Informal Working Group agreed to conduct its work mainly by electronic mail and to use the Secretariat memorandum submitted to the 89th session of the Council (document C.D.(89)16) as a basis for its work, whereas the document entitled "Strategic Plan - HORIZON 2016" issued by the Secretariat on 28 November 2003 (document C.D. (83)6) was used as an existing Strategic Plan which should be updated from time to time. The findings of the Informal working group (UNIDROIT 2010 – C.D. (89) 16) were considered by the Governing Council at its 90th session (Rome, 9 - 11 May 2011). The Governing Council took note, with appreciation, of the report of the Informal Working Group. The Council generally concurred with the findings of the Informal Working group, stressing 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 organisation" (UNIDROIT 2011 – C.D. (90) 17, Report on the Session, para. 184). The Council further underscored the need for UNIDROIT to "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" (ibid., para. 185). The Council requested the Secretariat to prepare a revised version of the Strategic Plan, taking into account the Council's deliberations.

Annex**UNIDROIT Strategic Plan**

Member States and the Governing Council mandated the Secretariat to review the Strategic Plan adopted in 2003 and draw up an adjusted plan for the Organisation's medium-term future. This document, which covers the years 2012-2018, has identified the following *Strategic Objectives*:

Strategic Objective No. 1

UNIDROIT should affirm and strengthen itself 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 takes into account its relative advantages and expertise of the organisation, and that avoids both unnecessary duplication of efforts underway elsewhere and inefficient dispersion of its scarce resources.

Strategic Objective No. 2.

Efforts to broaden membership of the Organisation should continue, focusing on the larger economies of the regions that are under-represented in the Institute's membership.

Strategic Objective No. 3

As a rule-making body, UNIDROIT should concentrate on:

- (a) areas in which its flexible structure and academic network represent an added value;
- (b) areas in which it has special expertise; and
- (c) areas of private law that are not covered by other Organisations with greater resources, in particular where synergies with other Organisations, especially those based in Rome, are possible.

Strategic Objective No. 4

UNIDROIT should aim at exploring synergies with other Organisations for the provision of technical cooperation, in particular by:

- (a) systematically integrating strategic considerations on promotion of a future instrument into the decision-making process that leads to the inclusion of a topic into the Work Programme;
- (b) devising common promotion and technical assistance programmes with other rule-making agencies having developed complementary instruments, in particular UNCITRAL and the Hague Conference;
- (c) intensifying contacts with non rule-making bodies so as to persuade them of the usefulness of incorporating the promotion of UNIDROIT instruments into their technical assistance and law reform programmes (already the case for Cape Town, could be further explored for securities).

Strategic Objective No. 5

UNIDROIT should clearly link its non-legislative activities to the Organization's mandate and the instruments it prepares. UNIDROIT should give priority to non-legislative activities that support the research projects needed to carry out the Organisation's legislative work programme, add value to the dissemination of information on UNIDROIT's work and on the promotion of UNIDROIT instruments and offer a satisfactory level of returns, in terms of visibility and recognition.

Strategic Objective No. 6

Greater investment should be made in the promotion of UNIDROIT instruments. UNIDROIT should aim at doubling the resources available for the promotion of its instruments, through efficiency gains, reallocation, voluntary contributions or otherwise, within the coming years.

Strategic Objective No. 7

The Secretariat should continue to modernise and render more efficient its administrative policies and procedures, and should aim at correcting the current imbalance between fixed costs and project-related expenditure with a view to enhancing its capability of delivering services to its member States.

Introduction

1. Devising a particular “strategy” for an international organisation entails examining the options available to it in deciding which course to steer, and the means to be deployed in achieving the Organisation’s long-term objectives. The strategy would consist in identifying those factors and activities that would be of greatest benefit to the Organisation and make optimum use of its resources in a competitive environment, so as to secure the best response to the needs of its “market” and to meet the expectations of stakeholders and beneficiaries alike.

2. The strategic objectives identified for UNIDROIT are the result of an evaluation of the following elements:

(a) what is the real position of the Organisation, its instruments, working methods, resources and results (identity). What are the values and expectations which the Organisation is called upon to fulfil (stakeholders, beneficiaries) ? (Chapter I);

(b) which are the “markets” that the Organisation wishes to target and which are the activities these imply (market); which comparative advantage does the Organisation possess and which are the activities where it is likely to enjoy the greatest competitive edge (advantage) ? (Chapter II);

(c) what resources (qualifications, funding, connections, technical know-how, equipment) will be required to maintain the organisation’s position and which external factors affect the Organisation and its ability to grow (challenges) ? (Chapter III);

(d) how does the Organisation expect to secure its competitive advantage and which are the objectives that the Organisation wishes to achieve in the long term (direction) ? (Chapter IV).

CHAPTER I. OUR IDENTITY

A. HISTORY, MANDATE

3. Founded in 1926 as an auxiliary body of the League of Nations, UNIDROIT was re-constituted, following the dissolution of the League of Nations in 1940, by virtue of a multilateral agreement deposited with the Government of Italy: the UNIDROIT Statute.

4. UNIDROIT’s founding mission is to “examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law” and to “facilitate international relations in the field of private law (Article 1 of the UNIDROIT Statute). Article 1 then goes on to list the various ways in which this mission is to be accomplished. In carrying out its mission for the benefit of the international community, UNIDROIT in effect fulfils two main roles: (1) as a think-tank and rule-making body, and 2) as a centre for the dissemination and exchange of information.

B. MEMBERSHIP, STRUCTURE, FUNDING, DECISION-MAKING PROCESS

1. Membership

5. UNIDROIT is an independent intergovernmental international organisation. Membership of UNIDROIT is restricted to States acceding to the UNIDROIT Statute. UNIDROIT's 63 member States are drawn from the five continents and represent a variety of different legal, economic and political systems as well as different cultural backgrounds. The 63 member States at present are: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Poland, Portugal, Republic of Korea, Republic of Serbia, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Venezuela.

2. Structure

6. The structure, funding and decision-making process of UNIDROIT are governed by the provisions of the UNIDROIT Statute and the UNIDROIT Regulations, which are adopted by the General Assembly. Those instruments have established a *tripartite structure* made up of the Governing Council, the General Assembly and the Secretariat.

(a) Governing Council

7. The *Governing Council* establishes the means by which the Institute's statutory objectives are to be attained and supervises the work of the Secretariat in implementing the Work Programme set by the Council. The Governing Council is made up of one *ex officio* member, the President of the Institute, who is appointed by the Italian Government, and of 25 members (typically eminent judges, academics and civil servants) elected in their personal capacity by the General Assembly for mandates of five years. Furthermore, the Assembly may appoint one other member chosen from among the judges in office of the International Court of Justice. The Governing Council is convened by the President whenever he or she considers it expedient and in any case at least once a year (Statute, article 6(8)).

8. The Governing Council may invite representatives of international institutions or organisations to take part in its meetings, in a consultative capacity, whenever the work of the Institute deals with subjects which are the concern of those institutions or organisations.

9. The *Permanent Committee* is made up of the President and five members of the Governing Council. Its task, according to Article 17 of the Regulations, is to ensure "the continuity of the Institute's operation in accordance with the instructions of the Governing Council." It is the competent authority for a wide range of decisions affecting the Institute's staff, in particular the appointment of Categories A and B officials (Article 40), the determination of officials' remuneration (Article 41), promotions and the termination of officials' and employees' contracts (Articles 42, 61, 62, 63).

(b) General Assembly

10. The *General Assembly* is the ultimate decision-making body of UNIDROIT. Member States other than Italy are typically represented on the General Assembly by members of their diplomatic missions accredited with the Italian Government.

11. The Assembly is convened in Rome by the President at least once a year, in ordinary session, to approve the annual accounts of income and expenditure and the budget. Every three years, the General Assembly approves the work programme of the Institute on the basis of a proposal by the Governing Council and, in appropriate cases pursuant to paragraph 4 of Article 16, revise by the classification of member States for the purpose of apportioning the part of the yearly expenditure not covered by the ordinary contribution of the Italian Government. The General Assembly also appoints the members of the Governing Council every five years.

12. The *Finance Committee* is a consultative body of the General Assembly which, in accordance with Article 8 of the UNIDROIT Regulations, "examines the draft budget and the annual accounts of receipts and expenditure, and formulates an opinion thereon." Its membership is not fixed either by the Regulations nor by the Statute. The Finance Committee is currently made up of the Category I member States, of most of the Category II member States, as well as some countries representing other categories. Italy is the host State and as such traditionally a member of the Finance Committee.

(c) Secretariat

13. *The Secretariat* is the body of the Institute which "ensures enforcement of the decisions of the General Assembly, of the Governing Council, of the Permanent Committee and of the study groups" (Article 18 of the UNIDROIT Regulations). To this purpose, it manages the day-to-day activities of the Organisation and in doing so, is fortunate to have at its disposal a highly qualified and devoted staff. It is supervised by the Secretary-General, who is appointed by the Governing Council on the proposal of the President of the Institute for a mandate of five years. The Secretary-General is assisted by a small team of officers and other employees drawn from different countries

3. Funding

14. When UNIDROIT was first reformed in 1940, funding was on a voluntary basis, chiefly a contribution by the Italian Government. The member States – forty-two at the time – did not legally commit themselves to pay a contribution until the entry into force, in 1964, of an amendment to Article 16 of the Statute that had been approved by the General Assembly at its 10th Session in 1961. Since that time, the contributions system has gradually developed into a system of compulsory contributions the amounts of which are determined by the governing bodies of the Institute.

15. At present, the annual expenditure for the operation and maintenance of UNIDROIT is covered by the receipts entered in the budget which include, in particular, the ordinary basic contribution of the Italian Government, as well as the ordinary annual contributions of the other participating Governments. For the purpose of apportioning the part of the yearly expenditure not covered by the ordinary contribution of the Italian Government or by income from other sources among the other participating Governments, the latter are classified in categories, each corresponding to a certain number of units of account. The amount of each unit of contribution as well as the budget are approved each year by the General Assembly; the amount varies from year to year depending on the amount of estimated expenditure in the UNIDROIT budget. While this system (which follows the system used by the Universal Postal Union and the Hague Conference on Private International Law) is not identical to the assessment system used by the United Nations, in fixing the classification of each member State in one of these categories the General Assembly of UNIDROIT has relied on the percentage of States' contributions to the UN budget.³

³ According to a decision taken by the Unidroit General Assembly at its 52nd session (Rome, 27 November 1998), and reaffirmed at its 69th session (Rome, 1 December 2011), the classification follows the following rules: in the first category (50 units of account) are classified member States that contribute to the

16. The Institute's sole item of "own income" is that generated by the sale of publications and subscriptions to the *Uniform Law Review*. Exchange agreements provide the UNIDROIT Library with a certain number of books and periodicals. Apart from the contributions paid in by member States, some activities receive funding *outside* the regular budget. This is the case, in particular, of the scholarships programme and the database, as well as of several legislative projects.

4. Decision-making process

17. The broad outline of the UNIDROIT decision-making process is fixed by the Statute and the Regulations. It is more formal as regards the General Assembly, and more flexible in respect of the Governing Council. The adoption procedures for the budget and the Work Programme are particularly important in considering the Strategic Plan.

(a) Budget procedure

18. *The budget procedure* is fixed in Article 31 of the Regulations. On 15 March each year, the Secretary-General submits a proposal for a draft budget for the following financial year to the Finance Committee for a preliminary opinion. This draft budget, amended as appropriate in light of the opinion of the Finance Committee, is then submitted to the Governing Council for consideration and subsequently communicated to member Governments for comment. Such comments must reach the Secretary-General by 30 September at the latest. The draft budget is then submitted, together with these comments, to the Finance Committee for final opinion and, together with any amendments recommended by the Finance Committee, laid before the General Assembly for approval.

(b) Work Programme

19. In accordance with Article 5 of the UNIDROIT Statute, the Work Programme is decided by the Governing Council, then adopted by the General Assembly every three years. In accordance with article 12 of the Statute, "[a]ny participating Government, as well as any international institution of an official nature, shall be entitled to set before the Governing Council proposals for the study of questions relating to the unification, harmonisation or coordination of private law." Proposals for new items to be included in the Work Programme may further come from the Governing Council itself or from the Secretariat – in the latter case, this is often in consultation with academics, legal practitioners or other international Organisations. UNIDROIT correspondents are often asked to comment on these proposals before they are submitted to the Governing Council.

20. The decisions of the Governing Council are taken by a majority of members present. Only members of the Governing Council take part in the discussions. Nevertheless, Article 16 of the Regulations authorises the Governing Council to "request representatives of member Governments that have no nationals sitting on the Council to attend its meetings in a consultative capacity".

United Nations budget with more than 3%; in the second category (22 units of account) are classified member States that contribute to the United Nations budget with a percentage ranking between 2 and 3%; in the third category (18 units of account) are classified member States that contribute to the United Nations budget with a percentage of between 1 and 2%; in the fourth (13 units of account) are classified member States that contribute to the United Nations budget with a percentage of between 0.960% and 0.999%; in the fifth category (11 units of account) are classified member States that contribute to the United Nations budget with a percentage of between 0.500% and 0.959%; in the sixth category (9 units of account) are classified member States that contribute to the United Nations budget with a percentage of between 0.450% and 0.499%; in the seventh category (8 units of account) – States that contribute to the United Nations budget with a percentage of between 0.115% and 0.449%; in the eighth category (5 units of account) are classified member States that contribute to the United Nations budget with a percentage of between 0.005% and 0.114%; lastly, in the special category (1 unit of account) are classified member States that contribute between 0.001% and 0.004% to the United Nations budget (currently only San Marino and the Holy See).

C. ACTIVITIES AND WORKING METHODS

1. Preparation of instruments, implementation and promotion

21. In the course of its history, UNIDROIT has used several methods in preparing its instruments. As a general rule, a distinction may be made between the methods used in elaborating instruments intended for incorporation in domestic substantive law (conventions, model laws) and those used for other, non-binding instruments (principles).

(a) Procedure for the preparation and adoption of legislative instruments

(i) Preliminary stage

22. Topics for future work by UNIDROIT are typically proposed to the Organisation by Governments (Article 12(1) of the Statute), members of the Governing Council, international institutions or Organizations (Article 12(2) of the Statute), or correspondents and other interested persons who have come across a problem which they feel might suitably be solved by the adoption of an instrument at international level. Every three years the Secretariat circulates a document containing proposals to Governments, members of the Governing Council and correspondents. The comments made by those contacted will be submitted together with the proposals to the Governing Council for discussion. If the Council considers a particular proposal to be of interest, it will request a preliminary comparative law study to be prepared. Such a comparative law study will be conducted either by a member of the Secretariat, or by an outside expert. The comparative law study will examine the problem area, the solutions adopted in different jurisdictions, the need for an international instrument, and the feasibility of preparing one. This comparative study will be circulated to interested circles and professional associations for comment.

23. The comparative law study and any comments thereon will be submitted to the Council. The Council will decide whether there are good prospects for a viable instrument to be prepared. If so, it will authorise the President of the Institute to convene a Study Group, or Working Group (Article 13(1) of the Statute) to examine the problem in greater depth and, if it so decides, to prepare a first draft of a future instrument. These groups should "as far as possible", be presided over by members of the Governing Council (Statute, article 13, paragraph 2).

(ii) Study Groups and Working Groups

24. The members of Study Groups and Working Groups are experts in their field, and sit in a personal capacity, as experts and not as representatives of their countries of origin. They are nominated by the President of the Institute at the suggestion of members of the Council and the Secretariat. Governments may also be contacted with a request to suggest an expert, it being clearly understood that as members of the Study Group the experts do not represent their Governments. In the selection of the experts to serve on the groups, a conscious effort is made to ensure the representation of different legal systems and different personal backgrounds, so that each expert can contribute with his or her experience, different geographical origin, so that developing countries and countries in transition are adequately represented, and different working languages to ensure that the instrument adopted will be translatable into the different languages of the world. Study Groups are normally quite small, consisting of about 15 members at most, and, depending on the subject-matter dealt with, may have observers from other Organisations and from representative international professional associations.

25. While Article 10 of the Statute provides that UNIDROIT has five official languages (English, French, German, Italian and Spanish), its working languages are English and French. This means that its official publications are issued in two languages and, where possible, work in Study Groups

and Committees is also carried out in two languages. There are however exceptions: depending on the subject-matter dealt with, and also on the financial resources available, work may be conducted in one language only, normally English. The final product is however issued in both English and French.

26. Once the Study Group has prepared a draft to its satisfaction, and this includes an assessment of the most suitable type of instrument to be adopted, the draft, at this stage called a 'preliminary draft', will be submitted to the Governing Council. If the Governing Council is satisfied with the product (Article 14(1) of the Statute), it will authorise the convening of a Committee of Governmental Experts. It should be noted that this is the procedure followed for international conventions, protocols to conventions and model laws. In the case of other instruments, such as principles or guides, the examination of the final product of the Study or Working Group by the Council will end with the authorisation by the Council to publish the instrument.

(iii) Intergovernmental negotiation stage: the committees of governmental experts and diplomatic conferences

27. Full participation in UNIDROIT committees of governmental experts is open to representatives of all UNIDROIT member States. Non-member States may be invited to participate as observers, and sometimes even as full members.⁴ Observers may also include representatives of other intergovernmental organisations, non-governmental organisations and representative international professional associations, for example the world association of the national professional associations of the area examined. Purely national professional associations are not admitted; they are represented by the world-wide association. Observers may participate in the discussions but are not permitted to vote should a vote be taken.

28. Once the Committee of Governmental Experts has completed its task, the draft instrument as modified by the Committee is submitted to the Governing Council (Article 14(3) of the Statute). If the instrument is a draft convention or protocol, the Governing Council will authorise the transmittal of the draft to a Diplomatic Conference (Article 14(4) and (5) of the Statute) that will be convened by one of the member States of the Organisation. If the instrument is a model law, the Governing Council and sometimes the General Assembly will generally endorse the work of the Committee and authorise the publication of the model law.

(b) Assistance in implementing instruments and promotion

29. The work of UNIDROIT does not end with the finalization and adoption of a text, but includes raising awareness of and promoting the adoption of that text. The growing awareness of UNIDROIT texts in many countries, in particular developing countries, has been accompanied by requests for information and technical assistance in the adoption of those texts from individual Governments and regional organizations. This assistance can be provided directly to the officials and legislators of individual countries through briefings, provision of general explanatory material on the texts under consideration, advice on the advantages of adoption of a particular text, examination and comment on reports and draft legislation. Assistance may be provided through sponsorship of, and participation in, symposia and seminars, which may be organized in conjunction with or by international or regional organizations or Governments.

⁴ This was the case, in particular on the preparatory work and final negotiations that led to the adoption of the 1995 Cultural Property Convention, or of the Cape Town Convention and its protocols, which were developed in cooperation with other organisations (UNESCO, ICAO, OTIF, the UN Committee on Peaceful Uses of Outer Space) with membership that was either broader than the membership of UNIDROIT or, if not broader, not identical with that of UNIDROIT. This is also the case of diplomatic conferences whenever the convening State decides to invite states not members of UNIDROIT to attend.

30. In addition to these well-established means of assisting in the implementation of instruments and promoting their use, it has become customary, at recent diplomatic Conferences, for negotiating States to request UNIDROIT to take on the function of Depository of the instruments adopted (the Cape Town instruments, the Geneva Securities Convention), which places a new burden on the Institute (UNIDROIT is now the Depository of four complex instruments). In addition, as concerns the implementation of the Cape Town instruments, this involves the production of documents relating to numerous declarations and overseeing the establishment of International Registries, and, where the Geneva Securities Convention is concerned, organising the Official Commentary and a “duty” to follow up and promote implementation of the instrument (cf. Resolution No. 3 of the Final Act of the diplomatic Conference).

2. **Non-legislative activities**

31. In keeping with its mandate, as a centre devoted to research, dissemination and exchange of information, UNIDROIT also carries out a number of activities not directly aimed at the formulation of rules of uniform law, but which fulfil an important role in following-up, supporting and raising awareness about the legislative activities of the Institute. These concern the following in particular:

(a) UNIDROIT Library: When UNIDROIT was first founded, the establishment of an international legal documentation centre to underpin the Organisation’s study and research activities was undertaken as a priority, and article 9 of the Statute of UNIDROIT expressly mandates the Institute to maintain a library;

(b) Publications: the publications of the Institute include, on the one hand, the *Uniform Law Review / Revue de droit uniforme*, as an academic publication especially dedicated to international uniform law; and , on the other hand, instruments adopted by UNIDROIT or under its auspices (conventions, principles, models laws and commentaries thereon) and compilations of documents produced by the organisation (e.g. *UNIDROIT Proceedings and Papers – Actes et documents d’UNIDROIT*);

(c) Website: first created in 1995, the UNIDROIT website has become one of the Institute’s main promotional tools;

(d) Data base (UNILAW): UNIDROIT has decided to create a database with a view to supplying Governments, judges, arbitrators and legal practitioners with updated and readily accessible information concerning the various sources of uniform law, in English and French. It has been agreed that the project is to be funded solely from sources other than the Institute’s budget.

32. **The network of UNIDROIT Correspondents:** In order to achieve its statutory objectives, it is essential that Unidroit be kept informed of substantive law developments worldwide. With this in mind, and since certain types of information are hard to come by, UNIDROIT has set up a network of *correspondents* in both member and non-member States; these correspondents, drawn from academia and legal practice, are appointed by the Governing Council.

D. **ACHIEVEMENTS AND CHALLENGES**

1. **Membership**

33. In many countries outside Europe, UNIDROIT is still seen as a basically European (or European/North American) institution. This is not surprising. Its seat is in Italy. Its President is Italian. 13 out of 25 members of the Governing Council are European. Only two members of the

professional staff are non-Europeans. This is why, for many years now, the Secretariat has attempted to reach out to non-member States in other regions.

34. Efforts to broaden the Institute's membership beyond the continent with a traditionally high participation (Americas and Europe) have had only moderate success. There have been only five accessions to the UNIDROIT Statute in the last ten years, and only two of these were from outside Europe (Indonesia and Saudi Arabia in 2009).

2. Participation in the work of UNIDROIT

35. While the governing bodies of other international organisations with a similar mandate (such as the Hague Conference or UNCITRAL) are typically comprised of representatives of member States, members of the UNIDROIT *Governing Council* are elected in their personal capacity. There is no doubt that the mix of high-ranking Government officials, judges, practitioners and renowned scholars, acting without the strict constraints of instructions from their Governments, has contributed immensely to the development of transnational private law.

36. At the same time, however, more attention needs to be paid to improving and deepening the communication between the Council and the General Assembly, as well as between the organisation as such as its member States and interested circles within member States. The insufficient level of response by Member States' Governments to the Secretariat's requests for comments on future work, and the decrease in the input obtained through the network of correspondents over the years confirm the need to devise more efficient communication processes and strategies.

3. Implementation of instruments

37. Since it was first established, UNIDROIT has elaborated almost seventy studies and projects. Much of that work has culminated in international instruments; the following international conventions and model laws were prepared by UNIDROIT and, where the conventions are concerned, approved at diplomatic Conferences convened by member States:

- *1964 Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (The Hague)*;
- *1964 Convention relating to a Uniform Law on the International Sale of Goods (The Hague)*;
- *1970 International Convention on Travel Contracts (CCV) (Brussels)*
- *1973 Convention providing a Uniform Law on the Form of an International Will (Washington)*;
- *1983 Convention on Agency in the International Sale of Goods (Geneva)*;
- *1988 UNIDROIT on International Financial Leasing (Ottawa)*;
- *1988 UNIDROIT Convention on International Factoring (Ottawa)*;
- *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome)*;
- *2001 Convention on International Interests in Mobile Equipment and 2001 Protocol on Matters specific to Aircraft Equipment (Cape Town)*;
- *2007 Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg)*
- *2009 UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva)*
- *2002 Model Franchise Disclosure Law*
- *2008 UNIDROIT Model Law on Leasing*

38. Moreover, UNIDROIT has published:

- *UNIDROIT Principles of International Commercial Contracts (1994; new edition 2004);*
- *Guide to International Master Franchise Agreements (1998);*
- *Principles of Transnational Civil Procedure (in co-operation with ALI) (2004).*

39. UNIDROIT's work has also served as the basis for a number of international instruments adopted under the auspices of other Organisations:

- *1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) (adopted under the auspices of the Economic Commission for Europe of the United Nations)*
- *1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict*
- *1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (adopted under the auspices of ILO, UNESCO and WIPO)*
- *1958 Hague Convention concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children (adopted under the auspices of the United Nations Economic and Social Council)*
- *1962 European Convention on the Liability of Hotel-keepers concerning the Property of their Guests (adopted under the auspices of the Council of Europe)*
- *1955 Benelux Treaty of 1955 on Compulsory Insurance against Civil Liability in respect of Motor Vehicles*
- *1959 European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles (adopted under the auspices of the Council of Europe)*
- *1955 European Convention on Establishment (adopted under the auspices of the Council of Europe)*
- *Protocol No. 1 concerning the Rights in rem in Inland Navigation Vessels annexed to the 1965 Convention on the Registration of Inland Navigation Vessels (adopted under the auspices of the Economic Commission for Europe of the United Nations)*
- *Protocol No. 2 concerning Attachment and Forced Sale of Inland Navigation Vessels annexed to the 1965 Convention on the Registration of Inland Navigation Vessels (adopted under the auspices of the Economic Commission for Europe of the United Nations)*
- *1980 United Nations Convention on Contracts for the International Sale of Goods*
- *1973 Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR) (adopted under the auspices of the Economic Commission for Europe of the United Nations)*

40. Some instruments prepared by UNIDROIT have become real landmarks in the fields of law they cover. This is particularly true of the UNIDROIT Principles on International Commercial Contracts, the Cape Town Convention, and the 1995 Rome Convention. Remarkable achievements of earlier days, before UNIDROIT developed the practice of finalising its instruments under its own auspices, include the *1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO)*, and the *1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) (UN/ECE)*. Some of those early instruments were not themselves very successful, but served as the basis for other successful instruments, such as the 1964 Hague Conventions, without which it would not have been possible to develop the United Nations Convention on Contracts for the International Sale of Goods (CISG).

41. Other instruments have been less successful than its drafters would have expected and have either not entered into force (the 1983 Agency Convention, for example), or attracted a low number of ratifications (e.g. the 1988 Leasing Convention, the 1988 Factoring Convention, the 1974 Washington Convention). There are various reasons for this, including, depending on the instrument, any or a combination of the following: criticism of policy choices in the instrument; lack of support or opposition by an industry group; lack of interest by Governments or of a driving force for promoting the Convention domestically; insufficient investment by the Secretariat in promotion and awareness efforts.

3. Non-legislative activities

42. The Strategic Plan adopted in 2003 contemplated, as *Strategic Objective No. 2*, "the further elaboration of the UNIDROIT research and information facilities as the world's leading source of knowledge and capability-building in the field of transnational private law."

43. There has since been some obvious progress in the implementation of that objective (see document C.D. (88) 9, para. 33). However, it would be illusory to believe that UNIDROIT is anywhere near becoming the "world's leading source of knowledge and capability-building in the field of transnational private law", and the Secretariat cannot but admit that this objective is far from being achieved. The coverage of the website and the *Uniform Law Review* is limited, for the former, to UNIDROIT's own activities, and for the latter, to the contents of the Review itself. As regards the data base, coverage is fragmentary and by no means close to encompassing the whole body of "transnational private law". The Library, on the other hand, has achieved the cataloguing of its holdings, but the financial resources available to it clearly limit its ability to attain full coverage of transnational private law.

CHAPTER II. OUR "MARKET"

A. WHAT IS LEGAL HARMONISATION FOR?

44. The ultimate purpose of the harmonisation of law is to facilitate relations between States and between individuals and businesses of different States by providing for the same, or for a very similar, regulation of those areas of law where relations are most frequent or where the difficulties associated with those relations are such that some form of agreement is imperative. Another important objective is to promote economic development by proposing legislative models or principles aimed at enhancing the private law framework for foreign and domestic investments in economic activities.

45. The perception of the increasing need for uniform law was aptly summarized by René David, in the light of the unprecedented expansion of international commerce in the 20th century as a result of ease of transport, increased mobility of people and capital, international distribution of labour.

[. . .] Such links mean that complete state independence in matters of law results in anarchy: international relations require an international law construed in the same way by the various states concerned. To regulate this intercourse we must find a means of reconstructing a body of law acceptable to all nations [...] and we must ensure that the most diverse countries will recognize the value of a body of law destined to govern international relations but which does not emanate from national authority.⁵

⁵ R. David, 'The International Unification of Private Law', Chapter 5 of Volume II of the *International Encyclopaedia of Comparative Law*, (Tubingen/ Paris/New York 1971), p. 5.

46. It should be noted that uniform law, however useful, is seldom, if ever, a necessary condition for international trade and investment. Therefore, legal harmonisation efforts do not rank particularly high among government priorities.

47. Legal harmonisation has traditionally been justified by the assumption that it removes “legal obstacles to trade” and therefore contributes to economic growth. Unfortunately, this postulate of the international harmonisation effort has never been empirically substantiated, and may in fact have given too much weight to the legal aspect of trade in general and the importance of a unified legal background in particular. The absence of easily quantifiable benefits arising out of the adoption of uniform law instruments represents a significant handicap for their implementation.

B. WHO IS IT FOR ?

48. Legal harmonisation is ultimately intended to benefit judges, arbitrators, business and practitioners by providing them with predictable, uniform rules to apply in cross-border transactions or information on uniform law intended to facilitate its application. This general premise can be broken down into three broad groups of beneficiaries, depending on the nature of the instrument.

1. Conventions and model laws

49. For conventions, the ultimate beneficiaries will be those parties who, in their transactions, stand to gain from greater legal certainty and predictability that results from a harmonised set of rules applying in the various jurisdictions in which they operate or with which they transact. The nature of the instrument, however, places the implementing States in the forefront, as the immediate “clients” or “addressees” of the new instrument. This means that, for conventions, a dual level of awareness and sensitivity is required:

- (a) to the interests and concerns of Governments of member States; and
- (b) to the interests and concerns of the domestic industries and private operators in the member States.

50. Two intermediate or parallel groups of interested parties must also be taken into account, namely intergovernmental Organisations having a vested interest in the area covered by the new convention; and international non-governmental Organisations representing internationally active stakeholders.

51. These considerations are equally valid for instruments aimed not at harmonising laws but rather at modernising domestic legislation in a particular area. It is true that the non-binding nature of a model law increases the flexibility for States in the negotiation process, allowing them to focus mainly on the benefit that private operators in the enacting State may derive from the implementation of the international standard. Two factors, however, need to be borne in mind:

- (a) the political acceptability of the standard for the prospective enacting States; and
- (b) the extent to which States not in need of new legislation in the relevant area are willing to endorse a set of legal standards that may be at variance with their own domestic system.

2. Principles and contractual guides

52. For products intended for direct use by private parties, the situation is slightly different. Here, the quality, utility and practical value of the end product for the ultimate users (lawyers, judges, arbitrators) is the primary focus of attention, and the absence of a political instance of adoption at the domestic level gives member States a less prominent role. Nevertheless, there are important reasons for being aware of domestic political sensitivities also in this context:

(a) “soft law” instruments, such as the UPICC, issued under the seal of an intergovernmental Organisation, may be seen as a benchmark for assessing the quality of the law in any given area; and

(b) “soft law” instruments enjoying a widely recognised authority, as is the case of UPICC, can and have been used as a basis for developing new domestic or regional legislation in the areas they cover.

3. Non-legislative activities

53. For non-legislative activities, the spectrum of beneficiaries is more easily identified, since it corresponds directly to the universe of their end-users, that is:

(a) in the case of the Library, those who visit it;

(b) in the case of the *Uniform Law Review*, those who read it;

(c) in the case of the UNILAW data base, those who consult it;

(d) in the case of the scholarships programme, those who receive the scholarships.

54. The fact that these activities are sponsored by an intergovernmental Organisation maintained by contributions from member States imposes a constant assessment of the extent to which those activities effectively support the overall aims of the Organisation. This means, in particular, that non-legislative activities need to be clearly linked to the Organisation’s mandate and its products and should provide services that are not available elsewhere. Moreover, the activities must provide an added value to the Organisation itself and represent effective tools to support its core activities, promote its work and raise awareness about UNIDROIT and its achievements. None of them can be allowed to become “just another” activity of its kind, in particular if they are felt to duplicate activities that can be carried out more effectively elsewhere.

C. WHO ARE OUR “COMPETITORS” ?

1. Rule-making

55. The term “competition”, when applied to the rule-making bodies, is misleading insofar as each Organisation operates under its own institutional framework toward the implementation of a particular intergovernmental mandate and none of them has as its objective or strategy to dominate a particular field of activity to the exclusion of any other. Nevertheless, the particular structure, resources, membership or working methods of any given Organisation may, under certain circumstances, render one or the other Organisation relatively more attractive than another for pursuing one or the other projects or better equipped for carrying out one or the other type of activity. This is the meaning of “competition” in the present context.

(a) Multilateral

56. At the global level only two Organisations have a specific mandate that is similar to that of UNIDROIT: the Hague Conference on Private International Law and the United Nations Commission on International Trade Law (UNCITRAL).

57. The oldest institutionalised forum for legal harmonisation, the Hague Conference on Private International Law held its first meeting in 1893 and became a permanent inter-governmental Organisation in 1955, upon the entry into force of its Statute. Its mandate is the progressive unification of the rules of private international law. The Hague Conference meets in principle every four years in Plenary Session (ordinary Diplomatic Session) to negotiate and adopt Conventions and to decide upon future work. The Conventions are prepared by Special Commissions or working groups held several times a year, generally at the Peace Palace in The Hague, increasingly in various member countries. Special Commissions are also organised to review the operation of the Conventions and adopt recommendations with the object of improving the effectiveness of the Conventions and promoting consistent practices and interpretation.

58. In 2007, the Hague Conference established the International Centre for Judicial Studies and Technical Assistance to promote and support the delivery of assistance and training on the Hague Conventions to Government and legal officials around the world. Assistance by the centre might involve providing advice on legislation, structural organisation and capacity building; identifying and overcoming bad adoption practices; and training people involved in the adoption procedure and in the child protection system in general.

59. 68 States and the European Union are members of the Hague Conference. The Organisation is funded principally by its Members. Its budget is approved every year by the Council of Diplomatic Representatives of Member States. The Organisation also seeks and receives some funding for special projects from other sources. The Hague Conference also carries out specific projects and activities under a supplementary budget funded through voluntary contributions.

60. UNCITRAL was established in 1966 as a subsidiary organ reporting directly to the United General Assembly. Its mandate, according to General Assembly resolution 2205 (XXI), is the improvement and harmonisation of international trade law. UNCITRAL currently has 60 Member States, elected for a period of five years, but all member States of the United Nations are admitted to participate at its meetings. Its secretariat, the International Trade Law Division of the UN Office of Legal Affairs is located in Vienna. UNCITRAL carries out its tasks, with the assistance of the secretariat, in one annual plenary meeting and in working group meetings on specialized topics, for a total of up to 14 weeks per year. While the main activity of UNCITRAL consists in preparing uniform law instruments (conventions, model laws, legislative guides), the UNCITRAL secretariat carries out a number of information and technical assistance activities. UNCITRAL and its secretariat are funded through various chapters of the United Nations regular budget.

61. Besides those two Organisations, a large number of international Organisations undertake, continuously or sporadically, to prepare uniform law instruments or to promote legal standards in areas of private law directly relevant to their mandates. Those Organisations may be specialised agencies or organs of the United Nations, such as the International Civil Aviation Organisation (ICAO), the International Maritime Organisation (IMO), the World Intellectual Property Organisation (WIPO), the UN Conference on Trade and Development (UNCTAD), the Economic Commission for Europe (UN/ECE); multilateral financial institutions (such as the World Bank, and regional development banks); or other Organisations with limited membership, such as the Organisation for Economic Cooperation and Development (OECD) or the Commonwealth Secretariat.

62. There is no hierarchy or standing institutional arrangement between intergovernmental rule-making bodies. Thus, it has happened in the past that different bodies approve action plans or lines of work envisaging the formulation of uniform rules or other instruments relating to the same subject or a similar one. This is possible because different bodies may be composed of different member States not in the habit of consulting the work programme of other bodies before approving their own. Often, the same State is a member of different bodies, but communication between its representatives in each one of these may be less than ideal.

(b) Regional

63. Except for the Council of Mutual Economic Assistance, which ceased to exist in 1991, all regional intergovernmental Organisations involved with harmonisation of commercial law in the years following the end of World War II, such as the European Union (EU) or the Organisation of American States (OEA), are still active today. Various other Organisations have been created since 1966 (APEC, ASEAN, COMESA, MERCOSUR, NAFTA, OHADA, SADCC, to name but a few). They are all, in one way or another, involved in activities that have at least some component of trade law harmonisation. The emergence of these new international Organisations or regional mechanisms of economic integration considerably increases the inherent difficulty of co-ordinating international harmonisation efforts.

64. The legislative activities of the EU deserve a special mention in view of the particular history of UNIDROIT and the place of European States within UNIDROIT membership. The expansion of the European integration process over the past twenty years, accompanied by ever-broadening Community competences, has led to growing complexity in the administrative and decision-making structures of the European institutions, so that several Directorates-General – each assisted by different groups of experts and exposed to varying interest groups – may be involved in any given topic. It has also caused a significant increase in the number of legislative harmonisation projects in the area of commercial law or related topics.

(c) Private

65. A number of private sector entities engage in work aimed at developing legal standards for transnational business activities. Chief among these is the International Chamber of Commerce. Private sector entities such as the International Chamber of Commerce (ICC) are not “competitors” of UNIDROIT as regards most of the latter’s legislative work. Indeed, their non-governmental character does not make of them suitable fora for the negotiation of binding instruments. However, they may occasionally “compete” with UNIDROIT in two ways:

(a) They may compete **positively** with UNIDROIT by developing contractual standards intended for use by private business entities;

(b) They may also compete **negatively** whenever they fear that the self-regulations function may be disturbed by the development of a binding instrument in an area in which they have a vested interest.

2. Non-legislative activities

66. Research centres, university libraries, law journals, commercial and academic databases all offer services and information tools that to a greater or lesser extent resemble some of the non-legislative activities carried out by UNIDROIT.

D. WHAT ARE THEIR STRONG POINTS AND LIMITATIONS COMPARED TO UNIDROIT?

67. UNIDROIT is an independent intergovernmental Organisation with a certain number of assets, whose approach often sets it apart from the other Organisations in the sector. To begin with, its a-political approach (although not unique) enables UNIDROIT to work efficiently with all States without being influenced by considerations of a political character to elaborate universally acceptable solutions. The varied membership of UNIDROIT, the care exercised by the Secretariat in the selection of experts to participate in study and working groups, and the tradition of drafting instruments simultaneously in English and French are all features of an approach that respects the different legal traditions in the context of its projects. Finally, UNIDROIT is able to produce and disseminate important resources in the shape of documents, information, research and permanent education which are available to civil servants, legislators and others involved in the implementation of private law instruments. These characteristics are not in themselves sufficient to give UNIDROIT a competitive advantage in all areas, and they may present both advantages and disadvantages, as compared to other Organisations.

68. Larger international organisations benefit from substantially higher budgetary appropriations for conferences and meetings, specially dedicated interpretation and translation services in various languages, economies of scale provided by centralised administrative support and general services structures (meetings planning and management, documents translation and distribution, security, building management, financial and personnel administration). Another relative advantage of larger international organisations is better liaison with member States, since most communications are channelled through missions especially equipped for handling multilateral affairs.

69. At the same time, however, the structure, rules of procedure and working methods of larger international organisations also entail a number of constraints to which UNIDROIT is not subjected. The greater flexibility enjoyed by UNIDROIT in determining the working methods most appropriate for a given project allows UNIDROIT better to “calibrate” the pace of progress and to avoid engaging member States in intergovernmental negotiations before a project is “ripe” for that stage.

70. A comparison with non-governmental bodies, such as the ICC or the American Law Institute (ALI), in turn indicates a clear advantage for UNIDROIT as a result of its intergovernmental character, which impresses a mark of political approval upon all UNIDROIT instruments. At the same time, however, UNIDROIT lacks a comparable capacity of mobilising private sector involvement and funding for projects and promotion activities.

71. A comparison of the relative advantages and disadvantages of UNIDROIT as compared to Organisations and institutions offering services similar to those of the “non-legislative” branch of the Institute (library, publications, scholarships, technical assistance) would be necessarily more complex given the high number and wide variety of those potential “competitors”. The initial assessment of the Secretariat – admittedly somewhat speculative and not at this stage empirically substantiated in all its points – is that UNIDROIT is at a clear disadvantage given the severe limitation of the resources it can devote to them.

CHAPTER III. INSTITUTIONAL OBJECTIVES

72. The Governing Council has identified a few key institutional objectives that should guide the development of the Strategic Plan and the periodic assessment of its effectiveness.

A. TO PRESERVE OUR CONTINUED INDEPENDENCE

73. An independent intergovernmental organisation with the mandate and particular features of UNIDROIT has both political importance and practical utility. Preserving the independent existence of UNIDROIT is a key long term objective for the organisation for the achievement of which all member States are invited to contribute.

74. The independent presence of UNIDROIT has more than only political or symbolic value. Indeed, UNIDROIT has a unique mandate: to attain the interdependent objections of legal harmonisation, which forms the linchpin of its work. UNIDROIT is the only intergovernmental Organisation with a statutory mandate covering the entire spectrum of private law. The Convention on the Form of an International Will (Washington, 1973), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995), and the ALI/UNIDROIT Principles of Transnational Civil Procedure are clear evidence that the international community needs an Organisation with a mandate reaching beyond commercial law and into other areas of private law. Furthermore, UNIDROIT is the only intergovernmental Organisation that combines a mandate to promote the harmonisation of private law with a mandate and a tradition to function as a research centre for uniform law.

75. It follows from the above that the paramount objective to guide the strategic position of UNIDROIT in the future should be to affirm and strengthen its role of as 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 takes into account its relative advantages and expertise of the organisation, and that avoids both unnecessary duplication of efforts underway elsewhere and inefficient dispersion of its scarce resources.

76. Preserving the organisation's independence does not mean steering it into isolation and should not give opportunity for conflict or duplication. On the contrary, independence should mean using the organisation's particular profile and expertise to supplement meaningfully the work of other organisations. In a policy review conducted as early as in 1994, the Secretariat had already drawn the attention of the Governing Council to the fact that "such are the financial constraints on intergovernmental co-operation in the legal field at the present time that the existence of different organisations acting in concert can only be beneficial to the interests of the international community as a whole"(UNIDROIT 1994 – C.D. (73) 9, para. 42). Co-operation with other organisations is, therefore, more than a mere strategy: it is an imperative of efficiency that should be observed pragmatically, but consistently.

B. BROADENING PARTICIPATION IN AND ENHANCING THE VISIBILITY OF THE ORGANISATION

77. Measures to enhance the visibility of and broaden participation in the Organisation's work may be taken at various levels and by various means, beginning with efforts to increase formal membership in the Organisation, and continuing with efforts to secure greater involvement by industry, practitioners and the academic world, and to raise awareness about UNIDROIT and its achievements.

1. Membership

78. Discussions with Governments of non-Member States suggest that they may face the following *disincentives* to joining UNIDROIT: firstly, the annual contribution to the budget of this independent Organisation, small as it may be; secondly, the fact that membership does not entail immediate benefits which a Government does not otherwise enjoy (as many do, e.g. in FAO, IFAD, etc.); thirdly, the absence of certain working languages (e.g. Arabic or Spanish); fourthly, the Work Programme, which is perceived as not catering for the needs of legal systems in developing countries; fifthly, the insufficiency of resources for promotion activities, assistance in implementation of UNIDROIT instruments and other forms of legal co-operation; sixthly, shortage of staff in Governments, making it difficult to follow up on work in international Organisations.

79. Efforts to broaden the membership of UNIDROIT must, therefore, be carefully weighed against the expectations likely to be placed on UNIDROIT by prospective member States. The main advantage of membership is – and will for a long time remain – the possibility actively to participate in the Organisation’s work programme and influence the development of projects on the Organisation’s agenda. The more technical the projects become, the less likely many countries will be to be able actively to participate or fully contribute to the substantive aspects of UNIDROIT work. Since the cost of participation must in most cases be borne by the member States themselves (travel of delegates and experts), few countries not already members of UNIDROIT (who collectively carry about 98% of the budget of the UN) are in a position effectively to profit from membership.

80. Lesser developed countries (or at least the Government instances that decide about whether or not to join an international Organisation) typically evaluate what they are likely to gain from becoming a member of an international Organisation. Recent experience shows that for Organisations carrying out technical work, as is the case of UNIDROIT, non-member States attach great importance to the likelihood of obtaining technical assistance, expert training and other forms of capacity building from the Organisation. Unless the expected benefits outweigh the cost of membership and participation in the Organisation’s work, the prospects of expanding membership in the developing world should be evaluated cautiously.

81. *Therefore, a realistic strategy to broaden membership of the Organisation should focus on a selected group of countries, mainly the larger economies of the regions that are under-represented in the Institute’s membership.*

2. Industry and practitioners

82. UNIDROIT has a long-standing practice of seeking the contribution of private sector experts – industry representatives, legal practitioners and others, in an advisory capacity – to most, if not all, its legislative projects. This was already the case even prior to the formulation of the Strategic Plan, as demonstrated by the high level of activity of the legal profession in the Study Group on Franchising, of industry representatives in the work that led to the adoption of the Cape Town Convention and its two Protocols, as well as in the ongoing negotiations on the preliminary Draft Space Protocol, or at the drafting stage of what is now the UNIDROIT Convention on Substantive Rules for Intermediated Securities.

83. Nevertheless, the increasingly technical and complex nature of UNIDROIT’s work (banking and financial law, but also contract law and procedural law), and the influence which the relevant industries bring to bear on Governments in recognition of the practical impact of the various legislative projects on these sectors, renders it even more imperative that they be involved in the work at a very early stage. UNIDROIT might think of extending its co-operation with the private sector to an exchange of ideas outside the formal context of specific projects, in the shape, for example, of more or less regular meetings. Such consultations might provide an interesting forum

to identify the relevant sectors' practical needs in seeking greater harmonisation and to discuss how best to approach these. Greater transparency at the discussion stage, for example by publishing press releases or the outcome of discussions, might help to allay any fears of undue influence on the part of pressure groups.

84. Here, the obstacles confronting the Secretariat stem, on the one hand, from the lack of institutional consultation mechanisms with the private sector (no "observer status" option) and, on the other hand, from the scarcity of financial and logistical resources (no suitable premises) to organise formal consultations, seminars and other information meetings.

3. The academic world

85. UNIDROIT was born, and existed for many years, as a quasi-academic institution. For decades, the sharpest legal minds served on the Institute's bodies and participated in its study groups. Its partners and associates tended to be universities, research organisations and independent researchers rather than Government agencies, national and international bar associations or the judicial authorities. This began to change as other interested parties gradually became more involved, yet the elaboration, in particular, of instruments in the banking and financial fields have given rise to the increased presence in the governmental delegations of scholars specialising in these matters.

86. The Secretariat and the Governing Council should make all possible efforts for revitalising the network of correspondents. At the same time, higher priority should be given to the establishment of institutional links between UNIDROIT and research institutions, rather than with individuals.

4. Making UNIDROIT visible and reaching out to the general public

87. The impact and relevance of the UNIDROIT Work Programme largely depend on the Organisation's visibility and on the recognition it receives in the wider world. A concerted effort will have to be made to present the results of our activities to the general public and to decision-makers, underpinned by a publications policy capable of showing the Organisation's greatest achievements, and its contribution to the international debate in the areas it covers, to best advantage.

88. For it to become truly visible, UNIDROIT must have proper production tools and the wherewithal to disseminate information efficiently. The Organisation's Internet website, unidroit.org, today is the most important of these instruments, both by reason of the volume of information it dispenses and because of the growing number of users. It therefore deserves special attention. By incorporating the Organisation's more traditional media (publications), our Internet website is growing into a multimedia tool, a working tool, a platform in which to organise and make available to the public the knowledge produced by the Organisation in its area of competence.

89. It is indispensable that UNIDROIT succeed in reaching the general public in its different member States. That is why it is important that it continue to publish its information products (press releases, website, publications) in several languages and, if possible, even to reinforce that multilingualism.

C. GUARANTEEING THE HIGH QUALITY OF OUR WORK

90. In line with its mandate, UNIDROIT should follow a general blueprint for the purpose of planning its activities in each area. In this connection, UNIDROIT should seek the best possible thought balance between theory and practice, that is to say, it should:

- (a) clearly pinpoint the problems (think-tank);
- (b) implement a broad-ranging dialogue with national experts in order to develop guidelines to solve these problems (normative action); and
- (c) disseminate the results of these projects to its member States and beyond (centre of dissemination and exchange of information).

91. Clearly, these objectives assume the existence of a well-designed, sharply-focused Work Programme, in which the allocation of funds is properly balanced, clear priorities are set and the results for each topic are measurable. Globally speaking, UNIDROIT needs an innovative, creative approach for the Work Programme, in order to demonstrate its relevance, usefulness and impact, in particular by involving the community at large.

92. The positive fall-out of the economic impact study relating to the Aircraft Protocol to the Cape Town Convention⁶ prompts the Secretariat to propose that an economic analysis, whenever feasible and appropriate to the topic, be made part and parcel of the decision-making process leading to the formulation of uniform law instruments. This would make it easier to obtain the support of representatives of the private sector and legal practitioners for new projects.

93. The “quality” of a uniform law instrument is the product of careful balance of various factors, including, in particular, its practical usefulness, and the economic or commercial benefits it may generate. Advice and input from industry representatives and other private sector experts are therefore essential for the success of the instruments prepared by UNIDROIT, and the Organisation should continue its tradition of openness to co-operation with industry representatives. At the same time, however, UNIDROIT must preserve its independence and impartiality, as an intergovernmental Organisation accountable to member States, and cannot afford to be perceived as being susceptible to undue interference.

CHAPTER IV. TOWARDS A UNIDROIT STRATEGY

94. Drawing on the analysis of the current situation of the institutional set up and historic development of UNIDROIT, its functions, context of operation and comparative advantages, its achievements and occasional challenges in its long history, it seems important, to affirm the role of UNIDROIT as a forum for the development of high-quality uniform rules, norms and principles (see paragraph 75) to maintain a consistent and sustained effort to:

- (a) Further develop the capability of UNIDROIT, through its flexible working methods, to function as a meeting place where legal scholars, government officials and industry leaders to study and discuss issues of private law and to work together to deliver international legal instruments that help promote a better climate for international trade; and

⁶ See Heywood W. Fleisig, “The Proposed UNIDROIT Convention on Mobile Equipment: Economic Consequences and Issues, *Unif. L. Rev. / Rev.dr. unif.* 1992-2, 253 *et seq.*..

(b) Enhance the capacity of UNIDROIT to act as a place of learning and access to new thinking on private law harmonisation and modernisation and to promote effectively its work and the benefits it brings to international trade at both a regional and a global level by intensifying the working relations with key industry stakeholders, organisations.

A. CONCENTRATING ON WHAT WE DO BEST

95. There can be no doubt about the limited capacity for UNIDROIT to take on new projects or to open new lines of activity. Although some additional capacity may be generated by various measures to enhance efficiency, the Secretariat submits that UNIDROIT has already reached the limit of what it can deliver within the existing resources. It is therefore absolutely indispensable to establish clear priorities for the work of UNIDROIT.

96. This will undoubtedly entail difficult decisions, in particular where it comes to “slimming down” the Programme. However, this retrenchment should not be understood as systematically cutting certain activities in favour of others. On the contrary, it should be the outcome of a coherent strategy and rational short and medium-term planning. It is against this background that UNIDROIT should assess some of the practical consequences of the decisions that are to be taken.

1. Legislative activities

97. The formulation of uniform law instruments is the primary activity of UNIDROIT according to its Statute and the one for which it is most widely known. At the same time, however, it is obvious that the capacity of UNIDROIT to handle legislative projects is very limited.

98. *As a rule-making body, UNIDROIT should concentrate on:*

- *the areas in which its flexible structure and academic network represent an added value: an example would be the UNIDROIT Principles of International Commercial Contracts*
- *the areas in which UNIDROIT has special expertise and where the fact that it is not evenly represented around the globe would be an advantage rather than a drawback, since its more restricted and informal working environment makes for greater flexibility: an example would be the Cape Town instruments and the UNIDROIT Convention on Substantive Rules for Intermediated Securities*
- *those areas of private law that are not covered by other Organisations with much greater resources, in particular where synergies with other Organisations, especially those based in Rome, are possible: cultural property (ICCRROM), land law, selected private law aspects of agricultural funding (FAO,IFAD), social business (IDLO)*

99. UNIDROIT must further ensure that projects selected for inclusion in the Work Programme offer a satisfactory level of returns, in terms of visibility and recognition.

2. Legal co-operation

100. Assisting Governments, legislators and the judiciary in developing countries not only with the implementation of uniform law instruments but with domestic law reforms is an important – even essential – complement of the work of harmonising legal rules. At the same time, considerable resources are needed to properly design, implement and follow up technical assistance and legal co-operation programmes.

101. UNIDROIT should , therefore, aim at exploring synergies with other Organisations better equipped than UNIDROIT to carry out technical assistance activities and to limit UNIDROIT's own initiatives in this area to those instances where an outside partner is not likely to be found. Increased co-ordination with law reform and technical assistance bodies could supplement UNIDROIT's own promotion activities. Also, at least in theory, formulating agencies could pool their resources with a view to the joint promotion of their instruments, at least of those that are complementary.

102. *In the light of the above, the following scenarios would seem to be possible:*

(a) *to systematically integrate strategic considerations on promotion of a future instrument into the decision-making process that leads to the inclusion of a topic into the Work Programme. In other words, UNIDROIT should assess, already at the stage of feasibility studies, how the future instrument might be promoted and which Organisation should, already at that stage, be approached as a potential partner;*

(b) *to devise common promotion and technical assistance programmes with other rule-making agencies having developed complementary instruments (UNCITRAL/UNIDROIT/Hague Conference for CISG/UPICC/Choice of Law-Applicable Law/E-Commerce; HCCH/UNIDROIT for Securities trading; HCCH/ UNIDROIT on migration, family law, Washington Convention; UNCITRAL/UNIDROIT/Hague Conference in the area of secured transactions).*

(c) *to intensify contacts with non rule-making bodies so as to persuade them of the usefulness of incorporating the promotion of UNIDROIT instruments into their technical assistance and law reform programmes (already the case for Cape Town, could be further explored for securities).*

3. Non-legislative activities

103. The non-legislative activities of UNIDROIT represent an important part of the Work Programme. If Governments were contemplating to seek *synergies* and to identify *priorities across* the community of Organisations of which they are members, it would seem to be economically more efficient to *strengthen* documentation, research and other outreach resources at UNIDROIT rather than to scale them down or start re-building them elsewhere, at a necessarily lower level. This approach to prioritisation might imply *pooling of resources* and *sharing of burdens* wherever functional and technically feasible.

104. The UNIDROIT Library is an activity mandated by the Statute and must be maintained and expanded through an acquisitions and information management policy that preserves its unique profile and prevents it from becoming "just another" legal library available for researchers in or passing by Rome. In particular, the investment in the Library should prioritise measures aimed at:

(a) supporting the research activities needed to carry out the Organisation's Work Programme;

(b) enhancing the attractiveness of the Library for researchers from around the world, in particular from developing countries, taking into account the expectations of researchers in today's world; and

(c) intensifying exchanges with other libraries, including libraries maintained by other intergovernmental Organisations, such as the Hague Conference and UNCITRAL.

105. The provision of information on the implementation, interpretation and application of UNIDROIT instruments (as is currently done through the UNILAW database) should be maintained

and expanded. Partnerships with academic institutions should be explored to complement the activities of the Secretariat.

106. Finally, not all activities must necessarily lead to the preparation of new instruments. The breadth of the mandate given to UNIDROIT, its structure and history make the Institute well suited for functioning occasionally as a “think-tank” on private law matters. The organisation of colloquia on selected topics and the publication of their proceedings in the *Uniform Law Review*, as was the case with the papers presented at the 2002 Congress to celebrate the 75th Anniversary of UNIDROIT, is an example of an activity that the Institute should continue pursuing.

B. INVESTING IN FOLLOW-UP AND PROMOTION OF INSTRUMENTS

107. Uniform law instruments typically attract little, if any, political interest. Their sole purpose is to facilitate the cross-border activities to which they relate. In most cases, the economic benefit is not easily – if at all – quantifiable. Being *useful* but – with a few exceptions – not strictly speaking *necessary*, uniform instruments in the private law area are not typically treated as a priority for domestic adoption. Furthermore, as States usually act according to the principle of reciprocity, and only move forward on certain matters after other key partners have moved in the same direction, international conventions may take several years to enter into force or be ratified by a sufficiently significant number of countries.⁷ These circumstances mean that, apart from choosing the right topic, an Organisation such as UNIDROIT must develop a strategy for the promotion of its instruments.

108. Continued contact, briefing missions, seminars and similar events are needed to promote ratification at the domestic level. Without them, the time and resources invested by States in the preparation of uniform law instruments over several years run the risk of having been in vain. UNIDROIT should aim at doubling the resources available for the promotion of its instruments, through efficiency gains, reallocation, voluntary contributions or otherwise, within the coming years.

C. FINDING PARTNERS FOR WHAT CANNOT BE ACCOMPLISHED ALONE

1. Co-operation with other Organisations

109. In addition to co-ordination of Work Programmes, UNIDROIT should seek to extend co-operation to the stages of project execution. In the earlier days of its history, UNIDROIT often undertook the initial, conceptual phase of the development of uniform law instruments, leaving it to other Organisations, with greater financial resources or better conference facilities, to bring these projects to completion (CMR, OTT).

110. UNIDROIT member States are invited to devise co-operation mechanisms that would allow UNIDROIT instruments, where appropriate to the subject matter and the requirements of the participants, to be adopted at other fora in which UNIDROIT member States participate on the basis of equality, co-operation and mutual respect, with proper recognition being given to the work done by UNIDROIT, adequate opportunity for UNIDROIT to participate at the work developed elsewhere, and with a view to the finalisation of work as a joint project.

⁷ The pattern followed by the signatory States of the CISG offers an interesting example. Of the nineteen countries that signed the Convention before 1 September 1981, only three ratified it within less than five years (France, Hungary and Lesotho), while most needed between five and ten years (Austria, Chile, China, Denmark, Finland, Germany, Italy, Norway and Sweden). Three countries took between ten and fifteen years to ratify the CISG (Netherlands, Poland and Singapore), and two have not yet done so (Ghana and Venezuela).

2. Fund-raising

111. The Secretariat should continue to explore possibilities for partnering with private sector entities for funding projects and other activities, with due respect for the Organisation's independence. Full information on sums received and actual expenditure should be provided to the Governing Council and the General Assembly. While supplementary funding is welcome, in particular to support non-legislative activities and technical assistance, member States ensure that the regular budgetary resources meet the basic funding needs of the Organisation

D. STEPPING UP THE INVOLVEMENT OF PARTICIPANTS IN THE PROCESS

112. Efficient communication between the Secretariat and its principal co-actors in the process is essential to the success of the Organisation's activities. The Governing Council sees a need to involve more deeply the member States in the assessment of the Work Programme and has decided henceforth 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. For that purpose, the Governing Council has requested the Secretariat to make the documentation for sessions of the Governing Council available to all member States prior to the relevant session.

113. The Governing Council, in addition, initiating work on any projected topic could involve expanded "Study Groups", so that there would be effective geographic representation, and selected preliminary studies and draft texts could be circulated to all members States and separately to relevant private or commercial or other sectors so that the views of States as well as affected interest groups would be before participants in Study Groups or other work entities of the Institute. Again, this could be done without making any changes to the Statute and without substantial additional expenditure.

114. The Governing Council also encourages its members to actively promote the legislative instruments of the UNIDROIT and the name of the Institute through their academic, professional and personal networks. UNIDROIT correspondents should be invited to collaborate with this task, for instance by promoting the study of UNIDROIT's mission, its work and the instruments it produces at university programs and courses, as well as in judicial training Centres, advocating the use of UNIDROIT instruments in private practice, promoting UNIDROIT's publications among students, professionals and judges, and disseminating information on, and seeking support for, UNIDROIT's scholarships among senior students and scholars.

E. MAKING THE MOST OF RESOURCES (SECRETARIAT)

115. In a rapidly changing environment, UNIDROIT must make sure that it operates as a dynamic organisation with a clear vision of who is responsible for what, that uses its resources judiciously and that organises its work with a view to efficiency and obtaining the looked-for results. The emphasis should be on two distinct areas, i.e. (1) results-based management, and (2) the management of human resources.

1. Introducing results-based management tools

116. The efficient use of resources requires mechanisms and processes that ensure

- (a) integrating organisational strategy as a criterion for project selection;
- (b) establishment of clear priorities;

- (c) early and accurate assessment of cost implications for new projects;
- (d) sound feasibility studies;
- (e) clear planning of projects, including quality benchmarks, realistic output deadlines and risk assessment;
- (f) project evaluation and periodic review of the Work Programme.

117. The Secretariat should continue the recent practice of systematically compiling and submitting information as to the cost of specific projects, and of elaborate documents highlighting the link between the budget and the implementation of the Work Programme by means of more detailed information on the allocation of resources, with a view to facilitating member States' internal assessment of the costs and benefits of participating in a given project, on the one hand, and ensuring reliable long-term allocation of sufficient resources, on the other hand.

118. The Secretariat should continue to modernise and render more efficient its administrative policies and procedures, in particular by enhancing its meeting planning capability and resources, digitalising its documentation archives, posting as much documents as possible on its website and further developing its correspondence and records management system.

119. The Secretariat should keep its procurement practices under review and periodically assess whether current contractors still deliver value-for-money and whether alternative sources of supply can be explored. Moreover, UNIDROIT should aim at correcting the current imbalance between fixed costs and project-related expenditure with a view to enhancing its capability of delivering services to its member States.

2. Making better use of human resources

120. The Secretariat's staff is its most valuable resource. The paramount objective for UNIDROIT must always be to keep a committed, motivated and loyal staff that meets the highest standards of professional competence and integrity. To achieve that objective, UNIDROIT must develop and apply modern personnel policies and devise a management strategy to ensure that staff are responsive to the demands placed on the Organisation. With those objectives in mind, UNIDROIT should, in particular:

- (a) Consider measures to improve staff mobility and to better equip the organisation to welcome young lawyers for limited periods of service with the Institute;
- (b) Increase its investment in continuing qualification ("language courses, enhancement of IT capabilities, etc.") for administrative support and technical staff;
- (c) Further reduce the amount of time spent by professional staff on tasks other than substantive legal work or other project-related tasks; and
- (d) Continue its efforts to outsource tasks capable of being performed by independent contractors and service providers, in particular translation, editing and similar services.

CONCLUSION

121. Within limits, some of the measures needed to increase or improve UNIDROIT's ability to respond to the challenges which it faces, can be taken by the Secretariat. As far as the internal management of UNIDROIT is concerned, the Governing Council and the member States may rely on

the devotion, loyalty and motivation of the Organisation's staff, and on the Secretary-General's determination to give of his best in fulfilling his duty as administrator of the human and financial resources entrusted to him. However, with regard to most of the other aspects discussed in this document, it is up to the member States and the bodies set up under the Organisation's Statute to instruct the Secretariat as to how to achieve the goals it has been set.