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Item No. 5 on the Agenda : Implementation of the Strategic Plan, in particular under the Work Programme for the triennium 2006/2008 as drawn up by the Governing Council at its 84th session, held in Rome from 18 to 20 April 2005

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Strategic Plan "Horizon 2016" Objectives and Resources: An Update</i>
<i>Action to be taken</i>	<i>To be discussed at the Committee's session and, thereafter, to be transmitted, with Governments' comments, to the General Assembly and the Governing Council</i>
<i>Related document</i>	<i>Strategic Plan "Horizon 2016", A.G. (57)3</i>

I. INTRODUCTION: THE MANDATE

1. The Strategic Plan was presented to the General Assembly at its 57th session on 28 November 2003 and thereafter submitted to member States' Governments and the Governing Council at its 83rd session on 19/21 April 2004. Paragraph 111 of the document provides for regular review and, where necessary, updates of the Plan.

2. The Governing Council decided at its 84th session, held from 18 to 20 April 2005, that implementation of the Strategic Plan was henceforth to be analysed once every year, and that monitoring its implementation as well as the implementation of the Work Programme were to be reviewed in light of the budgetary implications. Governments represented on the Finance Committee emphasized the latter aspect at the 105th session of the Sub-committee. It was agreed that this document was to be submitted to the Finance Committee at its 60th session.

II. GENERAL REMARKS

3. Both members of the Governing Council and representatives of member States' Governments, when commenting on the Council's deliberations in April 2005, voiced their impression that UNIDROIT's work was generally perceived as being ever more relevant. The Secretariat shares that impression. Its perception is based on the following:

- UNIDROIT's work is subject of practitioners' and scholarly debate in specialised journals to an extent hitherto unknown; even world industry leaders such as the *Group of 30* make reference to and base their policy recommendations on the Institute's projects;
- for the first time in recent history, a member State's Government has seconded a senior official from its directly responsible ministry to the Secretariat; negotiations for the secondment of a high-level expert from another member State's Government are underway;
- core legislative activities are funded by private donors and extra-budgetary contributions to an ever increasing extent;
- demand for UNIDROIT's outreach services, in particular legal co-operation, is rising steeply;
- last, but not least, the fact that the open international competition for the filling of the post of Deputy Secretary-General currently underway drew no fewer than 24 candidatures from 18 countries in 4 continents, some of them submitted by senior officials from other international Organisations.

III. LEGISLATIVE ACTIVITIES

A. Relevant Objectives

4. The Strategic Plan identifies in paragraphs 8, 9, 17 and 18

STRATEGIC OBJECTIVE N° 1

the preparation and implementation of international instruments (conventions, model laws, statement of principles, etc.) of the highest possible quality by applying strict criteria of scientific rigour and commercial viability and having regard to the legal implications of regional integration processes in the context of global law-making

5. The Strategic Plan reiterates in paragraphs 66 to 69 as

STRATEGIC OBJECTIVE N° 11

the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the Institute's auspices

6. As was repeatedly and convincingly pointed out by members of the Governing Council, *Strategic Objectives Nos 2 to 7 and 12* are to be seen as *complementary* to Strategic Objectives Nos 1 and 11 in that they aim at laying the bases and improving the environment for effectively modernising those areas of private and commercial law which are of critical importance for trade, finance and development.

B. Work Programme and Work Progress

(a) Preparation of Instruments

7. With respect to the *current Work Programme* which runs out in 2005 the position is the following:

- Cape Town Convention on International Interests in Mobile Equipment
 - Protocol on Matters specific to Railway Rolling Stock: two of the three planned regional seminars (for Eastern and Central Europe and for the Americas) have been held, and the third one (for Africa) will be held as soon as the prospective host Government invites; the Rail Registry Task Force having concluded its work in Spring 2005, preparations for the Diplomatic Conference are underway; it is hoped that the prospective host Government will issue an invitation within weeks.
 - Protocol on Matters specific to Space Assets: the Committee of governmental experts planned for 2004 has been held; a well-attended seminar for the Asia-Pacific region was held in Kuala Lumpur (Malaysia); due to the Principal Research Officer's taking over as Deputy Secretary-General a.i. and problems in securing the Space Working Group's involvement no meeting was held in 2005 and the CGE may eventually be unable to finalise its work on schedule.
- Transaction on Transnational and Connected Capital Markets
 - As planned, a Committee of governmental experts for the preparation of a draft Convention on Substantive Rules Regarding Intermediated Securities held its first session in May 2005; the Report on the session and an invitation for the second session will be sent out shortly; inter-sessional work is being conducted by ad-hoc groups assisted by the Secretariat; the Secretariat is involved in regional seminars sponsored by central banks, securities market regulators, Governments and industry.
 - Awaiting adoption of the new Work Programme (*infra*, paragraphs 9 to 12), preparatory work on the second item (Principles and Rules Capable of Enhancing Trading on Emerging Markets) continued.

8. *Assessment of progress*

- Cape Town/Rail Protocol: on the whole satisfactory and still on schedule
- Cape Town/Space Protocol: unsatisfactory and behind schedule
- Transnational Capital Markets/Intermediated Securities: very good and on schedule

9. The *new triennial Work Programme (2006-2008)* has been drawn up by the Governing Council at its 84th session and is awaiting adoption by the General Assembly at its 59th session to be held on 1 December 2005. Eight Governments, several non-governmental Organisations as well as individuals, many of whom served as members of Study Groups in the past, and the Advisory Committee on capital market law had submitted comments and proposals.

10. Stressing the need for *rigorous selectivity* the Council specified as *criteria for its approval* of proposed items: (i) objective interest, (ii) UNIDROIT most appropriate forum, (iii) feasibility within predictable timeframe, (iv) balance between projects for developed and developing countries, (v) required resources and cost-benefit analysis, (vi) overall contribution to the realisation of objectives laid out in the Strategic Plan. The Secretariat was instructed to regularly monitor progress on all items that would be adopted by the General Assembly against the aforementioned criteria.

11. Accordingly, the following items were inserted in the draft Work Programme for the inclusion in the Work Programme 2006 – 2008:

- Cape Town Convention
 - Convening of a Diplomatic Conference for the adoption of the preliminary Rail Protocol and continued work on the preliminary draft Space Protocol (*priority status*).
 - Preparation of a 4th Protocol on Matters specific to Agricultural, Construction and Mining Equipment, subject to the case for such work being confirmed in a preliminary study to be co-ordinated by the Secretariat.
- Transnational Capital Markets
 - Completion of the work on the preliminary draft Convention on Substantive Rules Regarding Intermediated Securities (*priority status*).
 - Convening of one or more Study Group(s) for the preparation of Principles and Rules capable of Enhancing Trading in Securities on Emerging Markets – possibly in the form of a legislative guide (*priority status*).
- Principles of International Commercial Contracts
 - Convening of a new Working Group for the preparation of a yet to be defined number of additional chapters (*priority status*).
- Model Law on Financial Leasing
 - to be funded by external support from Mr Ronald DeKoven, correspondent of the Institute, and in co-operation with the International Finance Corporation (World Bank Group).
- Multimodal Transport
 - In light of the Institute’s long-standing involvement in the drafting of transport law instruments, consideration will be given to the possibility to work on multimodal transport in co-operation with the relevant international Organisations.

12. As to the activities connected with legislative work (legal co-operation and other outreach functions) see *infra*, paragraphs 15 to 31.

(b) Promotion and Implementation of Instruments

13. In 2004/2005 the following resources were devoted to and the following results were achieved:

- Ottawa Convention on International Financial Leasing (1988)
 - One recipient of a scholarship under the research scholarship programme from Iran conducted research on the Convention.
- UNIDROIT Principles of International Commercial Contracts
 - In the framework of the legal co-operation programme and funded by the Government of Switzerland Professor Fontaine was commissioned with the preparation of a Uniform Act on Contracts for the member States of the *Organisation pour l’harmonisation en Afrique du droit des affaires* (OHADA); the draft was submitted to the OHADA member States.

- Use of the Contract Principles in legislation and arbitration worldwide was monitored and the – privately funded – database UNILEX continued to collect cases and bibliographical data.
- The 2004 edition was officially presented at a conference organised jointly with the ICC International Court of Arbitration and held on 16 December 2004 in Paris; the Secretary-General and the Institute’s consultant and co-ordinator of the project made presentations.
- Presentations on the Contract Principles were also made at conferences and seminars, partly organised by Governments and sister-Organisations such as UNCITRAL, in Austria, Brazil, Germany, Italy, the Netherlands, the Slovak Republic, Switzerland and the United States of America.
- The Institute’s principal publication *Uniform Law Review/Revue de droit uniforme* devoted many pages to the new edition in 2004.
- 10 recipients of research scholarships under the scholarship programme – from Argentina, People’s Republic of China, India, Morocco, Romania, Tunisia and Turkey - conducted research on the Contract Principles and related topics.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)
 - In 2004/2005 the following States ratified the Convention or acceded to it: Cyprus, Gabon, Islamic Republic of Iran and Slovenia.
 - A member of the Secretariat is regularly in contact with Governments contemplating ratification or accession.
 - A member of the Secretariat attended conferences and seminars on the Convention, partly organised by Governments, other intergovernmental Organisations or other entities in Algeria, Azerbaijan, France, Italy and the Netherlands.
- Cape Town Convention on International Interests in Mobile Equipment and Aircraft Protocol
 - In 2004/2005 the following States ratified the instruments or acceded to them: Ireland, Oman, Pakistan, United States of America.
 - A member of the Secretariat who, funded by extra-budgetary contributions from four member States, was specifically hired to attend to the Institute’s depositary functions (i) is in almost daily contact with Governments contemplating ratification or accession, (ii) co-ordinates with the International Civil Aviation Organization (ICAO) in its capacity of Supervisory Authority, (iii) advises the Registrar (Aviareto) in matters concerning its functions, (iv) prepares the publication of the proceedings of the Diplomatic Conference.
 - The Secretary-General and the Research Officer in charge of the depositary functions participated in regional seminars, aimed at preparing Governments contemplating ratification or accession in Singapore (Asia-Pacific region) and Prague (Central and eastern Europe).
 - Three recipients of scholarships under the research scholarship programme from Argentina, the People’s Republic of China and the Russian Federation conducted research on the Cape Town Convention.

- UNIDROIT Model Law on Disclosure in Franchising (2002)
 - A member of the Secretariat advises interested Governments on the Model Law and monitors domestic developments relevant for its implementation; due to lack of resources no further efforts aimed at the instrument's promotion were made.
 - Four recipients of scholarships under the research scholarship programme from the People's Republic of China, Moldova and Serbia and Montenegro conducted research on the franchising instruments.
- ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)
 - The Secretary-General made presentations on the Principles in Thailand and the United States of America. Of particular and strategic interest is a presentation to the 'Workshop of African Chief Justices' convened by Trinity College, Dublin (Ireland).
 - The *Uniform Law Review/Revue de droit uniforme* devoted a special issue (Unif.L.Rev. 2004-4) to the instrument.
 - One recipient of a scholarship under the research scholarship programme from Iran conducted research on the Civil Procedure Principles.
- Draft Convention on Substantive Rules Regarding Intermediated Securities
 - Two recipients of scholarships from Costa Rica and Vietnam carried out research on the draft instrument.
- A seminar for member States of APEC, on international instruments regarding credit, finance and capital market transactions prepared by the Hague Conference on Private International Law, UNIDROIT and UNCITRAL was sponsored by Canada and held in Singapore. The Secretary-General made presentations on UNIDROIT instruments and projects.

14. *Assessment of progress*

- Contract Principles: very good;
- Cultural Objects Convention: good;
- Cape Town Convention: good;
- Franchising Model Law: unsatisfactory;
- Principles of Transnational Civil Procedure: too early to assess.

IV. LEGAL CO-OPERATION PROGRAMME

A. Relevant Objectives

15. The Strategic Plan identifies in paragraphs 15, 16, 19 and 20 as

STRATEGIC OBJECTIVE N° 2

the further elaboration of the UNIDROIT research and information facilities as the world's leading source of knowledge and capability-building in the field of transnational private law.

16. The Strategic Plan moreover identifies in paragraphs 26 to 31

STRATEGIC OBJECTIVE N° 3

the gradual and systematic conversion of hitherto stationary know-how, skills, research and legislative capabilities into pro-actively employed outreach resources.

17. At the Brainstorming Sessions, the Governing Council and member States' Governments largely agreed and the Secretariat confirms in light of its discussions with Governments in those regions that the chances of achieving

STRATEGIC OBJECTIVE N° 7

a systematic and sustained effort to broaden the Organisation's representation in Africa, the Middle East and Asia, to fill gaps and re-vitalise dormant membership

is predicated to a significant extent on the success of the legal co-operation programme.

B. Status and Perspectives

18. The first tier of this programme is the *Research Scholarship Programme*. Launched in 1993, it has enabled almost 140 Government officials, members of the judiciary, researchers and practitioners from developing countries and economies in transition to pursue research on transnational private law making use of UNIDROIT's outreach resources, in particular the Library. The second tier is *assistance in the preparation and implementation of domestic law* based on or otherwise related to work carried out at UNIDROIT or the other private-law formulating Organisations. The most prominent example is the draft Uniform Act on Contracts transmitted to OHADA (cf. *supra*, paragraph 13). That Organisation's Permanent Secretariat has indicated that work on related areas are desirable. No commitment could however be made.

19. While legal assistance activities are fully funded by voluntary extra-budgetary contributions from member States' Governments, the research scholarship programme is primarily funded by such extra-budgetary contributions. In 2006, the Republic of Korea and the People's Republic of China will be joined by Italy and Spain who wish that additional scholarships be granted to specifically identified beneficiaries. Other donors may follow. UNIDROIT's general budget contributed € 15,000 in 2004 and 2005, and the same amount is proposed under the draft Budget for 2006. It is to be noted that the number of candidates is increasing.

TABLE A: UNIDROIT Research Scholarships Programme (2003-2005)

Sources of Funding	Year	Percentage for the corresponding year
UNIDROIT – Chap.XI		
2003 budget	2003	39.50
2004 budget	2004	45.16
2005 budget	2005	45.00
Government of the Republic of Korea		
	2003	25.80
	2004	24.72
	2005	24.50

Government of the People's Rep. China		
	2003	25.30
	2004	30.10
	2005	29.50
Aviation Working Group	2003	9.10

Other donors to the Programme since 1993: Council of Europe; Agence de la Francophonie (ACCT) ; Government of Finland; Government of France; Government of Sweden; Associazione Italiana Leasing (ASSILEA); Russian Foundation for Legal Reforms; Transnational University for Law & Business Studies (Seoul).

C. Assessment of relevance and progress

20. The Secretariat believes – and comments received from the beneficiaries' national Governments confirm – that the legal co-operation programme's impact on realisation of Strategic Objectives Nos 2, 3 and 7 is very high. The progress is very good in proportion to the funding available. The funding as such is unsatisfactory.

V. UNIDROIT INFORMATION CENTRE

21. The Strategic Plan identifies, in accordance with Articles 1 (c) and (e), 9 of the UNIDROIT Statute, as relevant Strategic Objectives Nos 2 and 3 (quoted *supra*, paragraphs 15, 16) the further development of the various components of the UNIDROIT Information Centre.

A. Development of the UNIDROIT Information Centre

22. The **UNIDROIT Library** is the leading specialised library worldwide. As regards expenditure for the Library (purchase of books and periodicals as well as making the catalogue available on the Internet) the position is the following:

TABLE B: Expenditure for Library (purchase of books and periodicals and, as of 2005, software) covered by extra-budgetary contributions and by the budget (expressed in euro, not adjusted for inflation)

Contributor Year	Italian Ministry of Culture	DFG ⁽¹⁾	Various Donations	UNIDROIT ⁽⁶⁾
1999	8,263.31	8,263.31		90,380.00
2000	7,746.85			90,380.00
2001	7,746.85	6,000.00		90,380.00
2002	6,000.00			90,380.00
2003	6,000.00	2,500.00		90,500.00
2004	--	--	30,000.00 ⁽²⁾ 5,000.00	
2005	--	--	25,000.00 ⁽²⁾ 20,000.00 ⁽³⁾ 38,000.00 ⁽⁴⁾ 20,000.00 ⁽⁵⁾ 10,000.00 Total 113,000.00	90,500.00 15,000.00 ⁽⁷⁾

⁽¹⁾ *Deutsche Forschungsgemeinschaft* (Research Fund of the German Universities).

⁽²⁾ Max-Planck Institute for Foreign Private and Private International Law, Hamburg.

- (3) Library of the Department of Trade and Industry of the United Kingdom.
 (4) Prof. Chiomenti, Rome
 (5) Library of the Law Faculty, Luzern, Switzerland.
 (6) Of the budget in the financial year indicated.
 (7) Aleph software (catalogue).

As regards salaries of staff attached to the library and the total staff salaries, the trend is as follows (percentage of the total amount of salaries paid by the Institute indicated in brackets):

1998:	1 A2.1 + 1 B1.1 + 1 B2.2 + 1 B1.1 + 1 C5.5 (5 salaries)	= € 116,478.00 (= 16.59%)
2003:	1 B4.5 + 1 B4.4 + 1 B4.3 + 1 B6.3 (35%) + 1 C4.1 (5 salaries)	= € 119,130.00 (= 12.00%)
2004:	1 B6.4 (35%) + 1 B4.4 + 1 B5.1 + 1 C4.3 + 1 B5.3 (5 salaries)	= € 129,704.00 (= 12.41%)
2005:	1 B 4.5 + 1 B 5.4 + 1 B6.5 (35%) + 1 C4.4 + 1 B5.2 (5 salaries)	= € 138,976.00 (= 12.38%)

23. The presentation of the Library collection on the Internet is one of the Library's strategic priorities. Migrating the catalogue to an electronic format commenced in 2003. At this time, 30 per cent of the catalogue of the Library's holdings are accessible online. In 2005, the current library software, which no longer meets the growing needs of system security, will be replaced by a modern integrated library system, the Aleph 500 software. After the migration of catalogue data and system testing, the Library's online catalogue will be accessible on the Internet in April 2006. The Law Librarian is assisted by stagiaires from the University Paul Valéry, Montpellier (France), and 15 voluntary and unpaid collaborators dispatched by the European Law Students Association (ELSA) from throughout the continent. It is planned to complete the work in 2007.

24. The Institute's flagship publication is the **Uniform Law Review/Revue de droit uniforme**. It must be emphasised, however, that the Review is the only specialised legal periodical on transnational private law which covers all relevant activities in other intergovernmental Organisations both at the universal and the regional levels. Officers of sister Organisations such as UNCITRAL, the Hague Conference, the OAS, ASEAN etc. regularly contribute articles covering their respective fields of expertise. As regards expenditure for and revenue generated by the Review, the position is the following (expressed in euro; for 2005 estimates)

TABLE C: Expenditure for and revenues generated by the "Uniform Law Review/Revue de droit uniforme" (New Series) (expressed in euro)

Year	Printing Expenditure		Revenue	Net result for budget
2003	1084 pages	25,000.00	25,000.00	- -
2004	972 pages	22,000.00	24,500.00	+ 2,500.00
2005	900 pages	20,000.00	24,000.00	+ 4,000.00

25. Due to a change of distribution channels for the publications it is expected that the Review will generate significant revenue from 2006 onward. The Secretariat currently works on making the Review accessible online (current issues and the complete series).

26. The Review is being actively used for exchange arrangements aimed at obtaining periodicals (182) and monographs the acquisition of which would not be possible under current budget restraints. It is estimated that items worth € 8,700.00 are received yearly. Around 50 copies of the

Review are distributed free of charge to developing countries. More than 100 copies are sent free of charge to the depositary libraries designated by member Governments and to other international Organisations.

27. **Other publications** include the *Digest of Legal Activities of International Organizations and other Institutions* and the UNIDROIT Proceedings and Papers.

28. The structure and the content of the **UNIDROIT website** is currently being reviewed. In light of the significant success enjoyed by the reserved area for the Governing Council it is envisaged to provide for another such reserved area for member States' Governments. The implementation of a content-management programme is under consideration. So far, it was the Secretariat's policy to have the website administered in-house and as low-cost as possible. Any significant up-grading will require external expertise and/or new equipment and will obviously be subject to the availability of the necessary funding.

29. The – entirely externally funded – **UNILEX**, the world's leading data-base on the UN Convention for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts, continues to draw praise for its analytical precision and its user-friendliness.

30. Data accessible through the – entirely externally funded – **UNILAW data-base**, in accordance with preferences indicated by the Governing Council and the external funder for the time being focused on case law and bibliography regarding the Convention for the International Carriage of Goods by Road (CMR), in 2004 and the first semester of 2005, increased by 400 per cent. It is the Secretariat's medium-term policy objective to integrate both data-bases functionally to the extent the private donors consent.

B. Assessment of relevance and progress

31. The assessment of relevance and progress of the various components of the UNIDROIT Information Centre is as follows:

- *UNIDROIT Library*: relevance worldwide unique; progress regarding online searchability on schedule.
- *Uniform Law Review*: relevance worldwide unique, progress regarding online services satisfactory.
- *Website*: user-friendliness satisfactory; speed of updates and layout unsatisfactory and reflecting low-cost nature; change of approach under consideration and subject to availability of funding.
- *Data-bases*: relevance very significant, progress satisfactory.

VI. ADDRESSING IDENTIFIED WEAKNESSES

A. Low Profile and Insufficient Representation in Certain World Regions

32. The Strategic Plan identifies in paragraphs 51 to 54 the lack of global presence and in particular the "white areas" on UNIDROIT's map of Asia, Africa and the Middle East as a matter of concern. A number of dormant memberships in Latin America, not infrequently cases where lack of participation is reflected in periodic or constant non-payment of assessed contributions, are equally unsatisfactory.

33. The widely perceived imbalance of UNIDROIT's Work Programme in favour of an agenda based on the priorities of developed economies has, in the Secretariat's view, been effectively addressed in drawing up the next triennial Work Programme (2006-2008). This strategic direction must be confirmed and made irreversible over the years to come.

34. While significant efforts to strengthen the Organisation's physical presence and visibility in Asia and Latin America – to no small extent funded privately – have been and are being made, the – primarily budget-induced – structural limitations are obvious. Apart from visits by members of the Secretariat that were related to the Work Programme (*supra*, paragraphs 13, 14*) the Secretary-General visited the following countries at the invitation of the respective Governments for discussions aimed at either the re-vitalization of the country's participation or its accession to the UNIDROIT Statute: Brazil, India, Malaysia (twice), Singapore and Thailand (twice). However, target countries are expecting more. One African Government demanded that commitments for medium-term technical assistance in the area of legal reform be made in advance of its taking decisions that would have paved the way for the accession process. Similarly, an Asian Government which is receiving aviation industry representatives giving advice on the accession to the Cape Town Convention as these lines are being written requested the Secretariat to send, at shortest notice, an officer to assist it in those consultations. For only all two well-known reasons the Secretariat was unable to respond positively. To sum up, substantial progress in broadening and re-invigorating the Institute's membership in Asia, Africa and Latin America will not be made as long as it is not physically present in those regions or, at least, able to provide legal co-operation services (*supra*, paragraphs 13, 18, 19) at its Rome headquarters.

B. Office Infrastructure and Management

35. The Strategic Plan identifies in paragraphs 58 to 65 three Strategic Objectives:

STRATEGIC OBJECTIVE N° 8

*is to establish up-to-date and unified procedures
of electronic document management and record-keeping*

STRATEGIC OBJECTIVE N° 9

*is the gradual but constant up-grading and completion of equipment, in particular
of the information and communication equipment, at the disposal of the Secretariat
with a view to enhancing the effectiveness and cost efficiency of its activities*

STRATEGIC OBJECTIVE N° 10

*is to achieve autonomy with respect to the provision and maintenance of
information technology by retaining in-house IT-expertise*

36. Paragraph 65 states that these objectives should be achieved by the end of 2006 provided the necessary funding was made available. No progress was made because neither in 2004 nor in 2005 did the budget allow any additional investment in either equipment or software. Retaining in-house IT-expertise was not possible for the same reasons. While the provision made under Chapter 7 Article 5 of the draft Budget 2006 is a first effort to address the former investment gap,

* In addition, local and regional workshops on the work of the Study Group for the preparation of the preliminary draft Convention on Intermediated Securities (*supra*, paragraph 7) were organised in the following countries: Argentina, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hungary, India, Italy, Japan, Malaysia, Mexico, Sweden, Switzerland, United Kingdom and United States of America.

addressing the latter would, for the time being, appear to be unrealistic. The cost created by this situation, both materially and in terms of image, may well rise. System failures are becoming more and more frequent.

37. It is hoped that officers and clerical support staff will, notwithstanding challenging timelines for work on the various projects, find some spare time which the Secretariat wishes to devote to achieving Strategic Objective No. 8. It is noted that the design and the co-ordination of the required efforts appear to be typically within the remit of a chief administrative officer, i.e. the Deputy Secretary-General whose post has finally been advertised.

38. *Assessment of progress*

Entirely unsatisfactory.

C. Staffing

(a) Understaffing

39. The Strategic Plan examines the situation of serious and at the time undisputed understaffing and its potential to defeat by Strategic Objectives in paragraphs 75 and 76. As regards a timeframe for bridging the gap, an organisational chart based on the assumption of some progress during 2004 and 2005 presents the desired hypothetical situation in 2006 as follows.

General	Instruments	Documentation and Publications	Scholarships Programme and legal co-operation
1 Secretary-General	3.5 Officers (incl. Treaty Clerk)	1 Officer data bases	1.5 Officer
1 Deputy Secr.-General / Chief Admin. Officer	2 Admin. Support / Secretaries	1 Officer publications	0.5 Admin. Support / Secretary
1 Treasurer		1 Translator / drafter / web-administrator	
1 IT-Technician		1 Librarian	
1.5 Admin. Support / Secret. / Archivists		1 Assistant	
2.5 Messengers / Porters		1 Library Receptionist/ Loan Desk	
		1.5 Admin. Support / Secretaries	
		1.5 Printer	

40. While the United Kingdom's extra-budgetary donation has finally paved the way to filling the post of the Deputy Secretary-General at least for the financial year 2006, other projections, most notably the opening of a post for an IT-technician, have not materialised. Moreover, notwithstanding the additional officer whose services have been retained for attending to the Institute's treaty obligations under the Cape Town Convention and who is funded by extra-budgetary contributions and notwithstanding the secondment mentioned *supra*, paragraph 3, and the extension of funding by the German Banking Federation for the officer in charge of the

intermediated securities Convention, the staffing objectives laid out in 2003 have proven to be slightly too optimistic.

41. A comparison of the actual figures shows the following:

	2003	2005
Category A	8	11 ¹
Category B	7	9 ²
Category C	5	3

(b) Career Development

42. With respect to administrative and technical support staff, in particular the stated lack of opportunities for promotion and continuing qualification (Strategic Plan, paragraph 82), the fundamental problems will remain unchanged. However, the Secretariat has been able to offer a modest – partly privately funded – series of English language courses.

(c) Assessment of progress

43. In term of sheer numbers satisfactory. However, only at such time as the post of Deputy Secretary-General will have been filled definitely will a reliable assessment of the progress made and the needs and directions for the future be possible.

VII. AVAILABLE STAFF – WORK PROGRAMME 2006/2008 - PRIORITIES

44. In the context of the preparation of the Institute's Work Programme for the 2006/2008 triennium, the Secretariat has estimated that, of the four full-time Category A professional members of staff, not including the Secretary-General, on average, only 2.20 units are currently available to work on the legislative part of that Programme (the part-time Category A professional member of staff is responsible for certain of the Institute's outreach activities, in particular the administering of the Institute's web site and the editing of the *Digest of Legal Activities of International Organizations and other Institutions*). In particular,

- the Principal Research Officer is currently exercising the functions of Deputy Secretary-General *ad interim* and will, so long as he continues to act in that capacity only be able to devote 15%-25% of his time to the Institute's legislative activities;
- one Research Officer is only supporting the Institute's legislative Work Programme on special occasions such as diplomatic Conferences and sessions of Committees of governmental experts and through routine translation of documents, with on average 80% of her time being devoted to the Institute's outreach activities, in particular the administration of the legal assistance and scholarships programme as well as the editing of the *Uniform Law Review*;

¹ Of whom one part-time, one secondment until end-2005, one privately sponsored and whose contract expires end-2005, one consultant (plus one *volontaire international*, a kind of top-level intern seconded by the French Government).

² Of whom one on a one-year contract and one on a part-time basis.

- another Research Officer, following completion of the Guide to International Master Franchise Arrangements in 1998 (and the subsequent preparation of the Spanish-language version thereof) and of the Model Franchise Disclosure Law in 2002, devoted on average 80% of her time to the development of the UNILAW data base but, the foundations for that data base, one important branch of the *UNIDROIT Information Centre*, having, however, been laid, it is now possible to reverse that proportion so as to make 80% of that officer's working time available for legislative activities.

45. It is true that, over and above the aforementioned full-time Category A members of staff, a number of other units of professional staff are currently available to work on the Institute's legislative activities. The first of these, however, another Research Officer, whose contract will, at least up until the end of 2006, be funded out of extra-budgetary contributions, is, under the terms of this funding, responsible for the Institute's depositary functions under the Cape Town Convention and the Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*). The secondment of the second, a Research Officer seconded by the Government of the United Kingdom, is for one year (2005) only. The duration of the contract of the third, a Research Officer funded by the German Banking Federation, is still open but may not be extended to 2006. As will be seen, only the fourth of these, the aforementioned consultant, and the young lawyer seconded to the Institute by the French Government for a 12-month period (that is renewable) under its "volontaires internationaux" programme will definitely be available to work on the legislative part of the Institute's Work Programme in 2006.

46. The Secretariat is, however, of the view, that the carrying out of the Work Programme for the 2006/2008 triennium should be based on 3.50 units of professional staff (including the consultant and the young French lawyer) being available to work on the Organisation's legislative activities. It takes the view that any additional resources that may become available, such as additional or longer-term secondments from member Governments and private donations, as well as the Secretary-General's own contribution to its legislative work, should be invested in shortening gestation periods for the completion of projects and the promotion of instruments adopted.

47. The Secretariat would, moreover, anticipate that the planned diplomatic Conference for the adoption of the draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock will absorb the time of up to 1.50 units of professional staff, depending on the venue of the Conference, during the first half of 2006, so that, on the assumption that the consultant will be working full-time on the preparation of new chapters of the UNIDROIT Principles of International Commercial Contracts, there will initially in 2006 be only 1.00 and subsequently 2.50 units available for completion of work on the preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets and the preliminary draft Convention on harmonised substantive rules regarding intermediated securities, both of which are, however, due to be completed, with the holding of diplomatic Conferences, in 2007.

48. The question may be raised whether a small Organisation such as UNIDROIT will be able to maintain over time its unique integrated structure of activities where legislative work, research, documentation and publication as well as legal assistance are delicately intertwined. The need to prioritise and the directions to take are discussed in the Strategic Plan in paragraphs 88 to 97. The criteria indicated there have, indeed, been observed in drawing up the Work Programme for the triennium to come.

49. While the Secretariat agrees with the overwhelming majority of member States' Governments that all three branches of the Organisation's activities make up UNIDROIT's distinct identity and are crucial elements in its quest for reaching the goals set forth in the Plan and that priorities must therefore be established *within* each branch rather than in favour of any one and at the expense of any other, the challenges regarding the international private-law landscape in its entirety (Strategic Plan, paragraphs 96, 97) are for Governments to address and not for any one of

their Organisations. The three private-law formulating Organisations have over years proven that they are capable of co-ordinating effectively.

50. If anyone were to suggest that the non-legislative facets of the Institute's activities might, in times of budget restrictions, be relegated the attention would have to be drawn up the fact that the Statute mandates their being carried out (*supra*, paragraph 21). Cutting further down on the legal-assistance programme, would be the death knell to the Institute's ambition to reach truly universal presence and visibility.

51. With respect to the legislative branch, of the projects approved with priority status none would appear to be capable of generating savings if deleted. Least of all the draft Convention on Intermediated Securities which, while arguably the economically most important item on the programme, has been and still is more than 50% privately funded.

VIII. FINANCIAL RESOURCES UNDER THE DRAFT BUDGET 2006: MARGINS FOR FLEXIBILITY?

52. At a glance, the draft Budget for the financial year 2006 provides for the following expenditure:

Ordinary expenditures:	
1. Reimbursement of expenses (Governing Council, Committees of Governmental Experts, Auditors, official journeys of staff members)	146,300
2. Salaries and Allowances	1,179,500
3. Social security charges	308,000
4. Compensatory payments for retired staff	2,500
5. Printing costs	36,500
6. Administrative expenses	97,850
7. Maintenance costs, etc.	116,500
8. Library	113,500
Extraordinary expenditures:	
9. Promotion of UNIDROIT instruments	5,000
10. Legal co-operation programme	15,000
Total expenditure	2,020,850

Item 1 are expenses mandated by the Statute and the Regulations. Item 2 expenses flow from UNIDROIT's being part of the Co-ordinated Organisations. Items 3 and 4 are legally mandated. Items 8 and 9 are expenses mandated, in essence, by the Statute. Items 6 and 10 are, on aggregate and adjusted for inflation, almost unchanged over the period 2003-2006.

53. In conclusion, the Secretariat would submit that a common effort is required in order to achieve a significant degree of systemic flexibility within the budget with a view to increasing margins for expenditure under items 6, 8, 9 and productive 10.

WORK PROGRAMME FOR THE TRIENNIUM 2006/2008

*as drawn up by the Governing Council at its 84th session
(Rome, 18/20 April 2005)*

PART I: PREPARATION OF UNIFORM LAW INSTRUMENTS AND EXERCISING OF DEPOSITARY FUNCTIONS IN RESPECT THEREOF

(topics for which priority was proposed are marked by an asterisk)

1. **International interests in mobile equipment** - Cape Town Convention and related Protocols

* (a) *Convention on International Interests in Mobile Equipment (Cape Town, 16 November 2001) and Protocol thereto on Matters specific to Aircraft Equipment (Cape Town, 16 November 2001)* - exercising of depositary functions, in particular in relation to the International Registry for aircraft objects and the Supervisory Authority of that Registry;

* (b) *Draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock* - organisation of a regional seminar for Africa and of a diplomatic Conference of adoption by mid-2006;

* (c) *Preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets* - completion of a draft Protocol capable of being laid, as soon as possible, before a diplomatic Conference of adoption; and

(d) *Future Protocol to the Cape Town Convention on agricultural, construction and mining equipment* - subject to the case for such work being confirmed in a preliminary study, that should also examine the possibility of including industrial and civil works equipment within the scope of the project.

*2. **Principles of International Commercial Contracts** - with work following the same lines as hitherto, with the Secretariat being invited to consider the membership of the Working Group and also who might usefully be invited to participate as observers and with wide support being expressed for work focussing on, first, unwinding of failed contracts, secondly, illegality, thirdly, plurality of debtors and creditors, fourthly, conditions (that is suspensive conditions or conditions precedent and resolute conditions or conditions subsequent) and, fifthly, suretyship and guarantees but with more detailed proposals being due to be laid by the Secretariat before the Governing Council at its 85th session, as soon as possible after which the reconvened Working Group should hold its first session.

3. **Capital markets**

* (a) *Preliminary draft Convention on harmonised substantive rules regarding intermediated securities* - completion of a draft Convention capable of being laid, as soon as possible, before a diplomatic Conference of adoption; and

* (b) *Emerging markets* - decentralised preparation of an instrument, probably to take the form of a legislative guide.

4. ***Model law on leasing*** - subject to the availability of external support, with it being noted that, thanks to the efforts of Mr Ronald DeKoven, a UNIDROIT correspondent, such external support is indeed forthcoming.

5. ***Multimodal transport*** - with, given UNIDROIT's longstanding involvement in the drafting of transport law instruments, consideration being given to the possibility of working in co-operation with the relevant international Organisations.

PART II: ACTIVITIES CONNECTED WITH THE UNIFICATION OF LAW

1. ***Programme of legal co-operation*** - for developing countries and countries in economic transition

(a) *Research scholarships programme* and

(b) *Assistance in legal drafting* - in particular, co-operation with the Organisation for the Harmonisation of Business Law in Africa (O.H.A.D.A.) for the preparation of a draft Uniform Act on Contracts.

2. ***Promotion of UNIDROIT activities and instruments*** - in particular the Institute's web site.

3. ***UNIDROIT publications*** - in particular

(a) *Uniform Law Review/Revue de droit uniforme*;

(b) *Digest of Legal Activities of International Organizations and other Institutions*;

(c) *UNIDROIT Proceedings and Papers* and

(d) *Acts and Proceedings of the diplomatic Conference at which the Cape Town Convention and the Aircraft Protocol were opened to signature.*

4. ***Data base on uniform law (UNILAW)***

5. ***Uniform Law Foundation.***