
THE HARMONISATION OF CONTRACT LAW WITHIN OHADA
Colloquium at Ouagadougou (Burkina Faso) – 15-17 November 2007

CONCLUSIONS OF THE COLLOQUIUM

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

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

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

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

The following **reports** were presented * :

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

* Click on blue colour coded titles for abstract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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