U N I D R O I T

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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ORGANISATION OF A UNIDROIT INFORMATION SYSTEM OR DATA BASE ON
UNIFORM LAW

Meeting of Experts on the 1956 Geneva Convention

on the Contract for the International Carriage of Goods by Road (CMR)

Brussels, 26 to 27 September 2000

Comments on Study LXIX – Doc. 8
submitted by Ms C. Holschuh and Mr W. Czapski (IRU)

Rome, September 2000

UNIDROIT 2000, Study LXIX - Doc. 8

Le document susmentionné appelle les observations suivantes :

1 . L'utilisation du schéma, permettant de connaître toutes les informations utiles concernant un instrument juridique, ne sera certainement pas limitée à la seule Convention CMR, mais elle sera également étendue à d'autres conventions Par conséquent, ce schéma devra contenir les informations renseignant sur toutes les situations possibles.

Exemple: l'Allemagne appartient aux Règles de la Haye, la Suède a dénoncé les Règles de la Haye et a adhéré aux Règles de Visby. Même si les deux pays reconnaissent les règles de la Haye (la Suède par le biais des Règles Visby, qui incorporent les Règles de la Haye), elles n'appartiennent à aucun instrument juridique commun sur le connaissement.
Toutefois, le schéma de l'UNIDROIT ne permet pas de saisir ce phénomène, car il ne permet pas de savoir s'il y a dénonciation de la convention ou non.
Il convient donc d'ajouter, une rubrique "Dénonciation".

2. Selon la Convention de Vienne sur le droit des traités, le consentement d'un Etat à être lié par une convention peut être exprimé, entre autres, par la signature (binding signature), la ratification, l'acceptation, l'approbation ou l'adhésion. Il convient alors d'ajouter les mots "Signature without reservation of ratification" ou "Binding signature" à côté des termes "Ratification, Approval, Acceptance, Accession).

3. Le schéma permet de connaître pour chaque Etat l'entrée en vigueur d'une convention. Par contre, le schéma ne permet pas de connaître la date de l'entrée en vigueur de la convention elle-même. Il convient aussi d'ajouter au début de la rubrique "Status of instrument" les deux informations supplémentaires suivantes :

"Done at (town) on (day, month, year)" et
"Entry into force: (day, month, year) in accordance with Article ...) ou
"Entry into force: not yet in force (see Article ...)

4. Des réserves à certains articles de la Convention sont souvent autorisées par la Convention elle-même. Dans ce cas, si ces réserves sont émises par un Etat, leur acceptation par d'autres Parties contractantes n'est pas, en principe, nécessaire.
Il y a également des réserves dont la formulation n'est pas interdite par une convention, celles-ci sont donc valables pour les Parties contractantes qui les ont acceptées. Par conséquent, je propose de remplacer la rubrique "Réservations" par "Status of Réservations". Dans le cadre de cette rubrique les deux sous-rubriques suivantes me paraissent indispensables : "Reservation concerning ……binding for ail Conntracting Parties"
"Réservation concerning ……accepted by following Contracting Parties ……".

J'espère que ces quelques observations vous seront utiles dans le cadre de la discussion qui se tiendra les 26 et 27 septembre à Bruxelles.

W.Czapski
Affaires juridiques

Genève, le 30 septembre 2000

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Below, my initial thoughts on reading the above-mentioned document. They are not given in order of priority. Many are practical questions which may already have been dealt with. I have also added warnings, based on my experience with databases. Again, these may be superfluous.

p. 1   Who will maintain the database? If not a legal expert, who will be responsible for informing him/her of new instruments/cases to be added?

p.2   "The materials will be analysed by experts.." Will they also enter the information in the database? If not, how will they pass on the information to the typist - electronically, handwritten .... ? (NB: information should not be open to interpretation by the typist; all information passed on should be structured in the same way as the database; what incentive will the suppliers of information have to continue to supply in the months and years to come?)
"The bibliographical references will be .... searchable by date of publication". From what can be seen on pp. 12-15 this is not the case.

p.3   Qpening the database. Have you considered including a help function ("How do I .... ?) or a demonstration (How to use ....)

p.4   Frame 1 : I assume that conventions, protocols, annexes will be listed on the start screen (p.3) as separate instruments. If this is the case, I suggest an additional line in frame 1 'Related instruments'. (I note that on p.5 such a link is planned, but will be available only from the frame "Status of Instrument"- How will users know they have to go there to find the link?)

If the software does not allow for this automatically, when relationships are being set up in the database it should be remembered that these are not only downwards (grandparent → parent → child) but also upwards

Frame 1 : The sub-heading 'Info on Database' is misleading - it is not information about the database (software), but the contents of the database. 1 would suggest 'Info in Database' or 'Contents of Database'

p.5   If the complete text of a convention is made available, which format will be used?

Frame "Status of Instrument". This is unclear. How do the frames on the right work? Are they used to search, to display or both? How does the search frame work? What are we allowed to search for? If it is countries only, is there a drop-down list, does the user enter a complete name or an abbreviation? If the country frame lists the countries, why have a search frame?

p.6   The problem mentioned regarding searches which highlight partial hits may be solved in certain cases by typing the term in inverted commas.

p.8-9 Cases selected by date or by country - the title of these frames is incorrect, as no value has been attributed to the article.

Regarding the date format, this should be standardised throughout. Here it is yyyymmdd; on pages 15 and 16 it is dd/mm/yyyyy

It may be useful to allow searches for dates 'between …and ….', 'before ….' 'since...'.

p.9   Frame 2: When does the text of the article appear? Why does the button "All cases" then give a further choice of two, and "Cases by issue" is separate?

p.10   Frame 3: if the user does not know the name of the author, will all references be listed? (NB. Too restrictive - several authors may be well known to experts in the field, but will students necessarily be familiar with their names?)

p.11   Frame 1: Wrong title ('Selected country'). Based on previous frames, a user could normally expect to arrive at a search screen where he would select the issue to search for. This frame appears to be the results screen - the only way of arriving directly at the result would be to double click on an issue listed in the previous frame. Why click on the number of cases to arrive at a list for a country? (Users would normally expect to click on the country name.)

Frame 2: similarly, this displays the result of a search, so why is there a search field?

p. 12 Frame 2: How are these entered and referenced?

p. 13 Frame 1: When entering the name of the author, can wild cards be used in case of spelling differences or typos? Does the PRINT button print the complete list? Is it possible to see the complete reference by double-clicking on the item of interest? Would it not be more useful to provide details other than the author and title in the results list? (NB: it is a time-consuming and frustrating process to open each item individually to see which is the one we are really interested in!)

p. 15 Frame 1: Wrong title - as this leads on from the reference viewed in the previous frame (frame 2, p.14), the title should be 'Print reference' (… unless there is a mistake on pages 14 and 15, and this frame is the result of the print option in frame 1 of p.14).

The explanation under frame 1 of what is printed makes no mention of author and title- I assume these are printed in all cases.

p.16 If the search in frame 1 is not a full text search, the relevant fields (language, CMR provisions) must be added to the data input mask

p.17 The indication 'français' at the bottom of the frame is misleading - on web sites, this usually means 'French version of this page'.

General remarks:

- In the search frames, 'prior' should be replaced by 'previous'

- When the search results appear, how will they be sorted - alphabetically, numerically, chronologically ... ? (For the bibliographical references, I suggest inverse chronological order.)

- When entering the information, clear instructions have to be given to all typists as to the rules to be followed, otherwise the results may cause some surprises. For example, typing these three authors in the following way

- SMITH, James   SMITH John   SMITH,Alan

- would produce an alphabetical listing where John appears before James, with Alan in last place!

- As well as drawing up lists of issues, terms etc., has any thought been given to the use of predefined lists for recurring items such as names of journals, authors etc. (if nothing else, this ensures fewer errors when entering data.)

- The search frames should be standardised as far as possible. In general, it is not clear if 'Search' is the title of a field or if it will activate the search. I would suggest the title of the field be the item to be searched for (e.g. country, date, etc.) and SEARCH be a button to launch the search.

- When drawing up lists of keywords, themes etc., remember to allow for the evolution of the subject.

- Will someone have overall responsibility for checking entries?

Carol HOLSCHUH
IRU - Head of Documentation Centre

Geneva, 30 August 2000