



**SUMMARY
OF THE CONCLUSIONS REACHED BY THE GOVERNING COUNCIL
AT ITS 87th SESSION**

(21-23 April 2008)

Item No. 1 on the agenda: Adoption of the agenda

The provisional agenda was adopted as proposed.

Item No. 2 on the agenda: Annual Report 2007 by the Secretary-General

The Council took note, with satisfaction, of the significant progress made on the whole range of projects.

Item No. 3 on the agenda: Appointment of the First and Second Vice-Presidents of the Governing Council

The Council re-appointed Mr Arthur Hartkamp as First Second Vice-President of the Council and, on a proposal by Mr Sánchez Cordero, appointed Mr Didier Opertti Badán as Second Vice-President as of the end of the 87th session.

Item No. 4 on the agenda: Report of the Sub-Committee for the selection of a successor to the Secretary-General and appointment of the new Secretary-General

The Council took note, with satisfaction, of the report of the Sub-Committee of the Permanent Committee for the selection of a successor to the Secretary-General and appointed Mr José Angelo Estrella Faria, currently, Senior Legal Officer at the Secretariat of UNCITRAL, as Secretary-General in accordance with Article 8(1) of the Statute. The Council also adopted the following resolution:

Given the keen interest and legitimate and welcome interest shown by member Governments in being included in the consultation process prior to the Sub-Committee making its proposal to the Council, the Council resolves that, with respect to future selection procedures, a Memorandum of Understanding between the Council, represented by the President of the Institute, and Governments, represented by the President of the General Assembly, be developed with a view to designing an appropriate consultation procedure without changing the relevant provisions of the UNIDROIT Statute. The Memorandum of Understanding must, however, state clearly that the selection will continue to be based exclusively on merits and remain apolitical.

Item No. 5 on the agenda: Matters regarding the position of one of the Deputy Secretaries-General

The Council decided to extend Professor Alessandra Zanobetti's appointment until 31 December 2010.

Item No. 6 on the agenda: Implementation of the Strategic Plan

The Council took note, with satisfaction, of the Secretary-General's report on the implementation of the Strategic Plan and congratulated the Secretariat on the significant

progress made across the board in all areas of the activities where budgetary restraints did not negatively impact its action. The Council took the following decisions regarding specific subject matters addressed by the Strategic Plan:

- (a) The Secretary-General was requested to convey the Council's opinion regarding the need to stabilize the position of the officer in charge of the Institute's depository functions (cf. C.D. (87) p.20) to the General Assembly.
- (b) The Council agreed that the funding of the Library under the general budget needed a significant increase lest its status and objectives as established by the Statute will be seriously undermined.
- (c) The priority accorded to the work on the UNILAW Database (cf. C.D. (87) 6, p. 15 et seq.) by the Council, for submission of the Strategic Plan to the General Assembly, is to be up-graded to "high".
- (d) The Council approved the strategy of using co-operation agreements with first-rate academic and research institutions and non-governmental organizations for enhancing the Institute's outreach capabilities.
- (e) With respect to the project of a "Centre for Transnational Financial Markets Law" the Council
 - (i) expressed its gratitude to the Government of Luxembourg for having explored and discussed, at the highest level, ways of bringing together research, learning, expertise of the financial markets practice and UNIDROIT's intergovernmental efforts to contribute to the development of transnational financial markets law;
 - (ii) agreed that the appropriate approach was to be pragmatic, project-oriented and without commitment of financial resources at this point in time;
 - (iii) welcomed the idea of seeing the Centre hosted by the Faculty of Law, Economics and Finance of the *Université du Luxembourg*;
 - (iv) agreed that a Memorandum of Understanding providing for details regarding the organisation of the Centre and its tasks shall be drawn up and laid before the Governing Council, for approval;
 - (v) requested the Secretary-General, in view of the Centre's academic mission and its focus on financial markets law and in consideration of the Secretary-General's return to his functions of professor of commercial law and private international law, to represent UNIDROIT, *pro bono*, in the Centre's activities and to report regularly to the Council and member States' Governments.

Item No. 7 on the agenda: Preparation of the draft budget for the 2009 financial year

After taking note of the presentation by the Chairman of the Finance Committee of the provisional views expressed by the member Governments represented on the Committee, the Council approved the draft budget prepared on the basis of the preliminary estimates, including an extra-statutory contribution by the United Kingdom, and requested the Secretariat to allocate the amount of that contribution in accordance with the instructions of the donor Government.

Item No. 8 on the agenda: International interests in mobile equipment

(a) Implementation and status of the Cape Town Convention, Aircraft Protocol and Luxembourg Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock

The Council took note of the significant progress that had been made since the last session and invited member States' Governments to (a) work towards further ratifications

and accessions; (b) ensure that the Preparatory Commission set up under the Luxembourg Protocol will successfully carry out its mandate in a timely fashion; (c) make appropriate efforts to ensure that the Institute will continue to be in a position to carry out its depositary functions, in particular through funding of the post of the officer attending to those functions. The Council approved the publication and distribution of the Revised Edition of the Official Commentary to the Cape Town Convention and Aircraft Protocol as well as the Official Commentary to the Cape Town Convention and Luxembourg Protocol.

(b) Preliminary draft Protocol on Matters specific to Space Assets

The Governing Council took note with appreciation of the significant progress achieved by the Government/industry meetings held in London and New York toward permitting early resumption of the Committee of governmental experts and welcomed the decision offered by the new Steering Committee established by the General Assembly to build consensus around the provisional conclusions reached at the New York meeting to provide solutions to the key outstanding issues in respect of the preliminary draft Protocol sufficient to justify the reconvening of the Committee of governmental experts early in 2009 and to permit completion of the proposed Protocol towards mid-2010.

The Governing Council expressed its gratitude to the Government of Germany, the U.K. Foundation for International Uniform Law and the German Space Agency for the generous support that they had committed to advancement of the project.

Item No. 9 on the agenda: Transactions on transnational and connected capital markets

Draft Convention on substantive rules regarding intermediated securities – The Council expressed its gratitude to the Government of Switzerland for having invited all UN member States and observers to attend the Diplomatic Conference for the adoption of the draft Convention. The Council took note, with satisfaction, of the state of preparations for the Diplomatic Conference and in particular the post-session work undertaken by participants in the Committee of Governmental Experts regarding further study of and possible solutions for three specific issues. The Council invited member Governments, Observers and the Secretariat to deploy all necessary efforts and to co-operate constructively with a view to ensuring the success of the Diplomatic Conference and the future Convention.

Item No. 10 on the agenda: Principles of International Commercial Contracts

The Council took note, with satisfaction, of the progress made since the previous session in the preparation of additional chapters of the UNIDROIT Principles of International Commercial Contracts.

Item No. 11 on the agenda: Model law on leasing

The Governing Council took note with appreciation of the excellent work accomplished by the Committee of governmental experts and, subject to recognition of the need for adjustments to be made to the English- and French-language versions to bring the two into line on the matter of the terms employed to denote “lessor” and “lessee” and for the French-language version to find a more appropriate French equivalent for the English term “leasing” in the title, authorised the transmission of the draft model law on leasing to Governments for finalisation and adoption at a joint session of the UNIDROIT General Assembly and the Committee of governmental experts.

The Council took note of concerns expressed regarding the sphere of application of the draft model law in relation to that of the Cape Town regimen and invited the Secretariat to deploy the necessary efforts to find an amicable solution to such concerns, involving the parties concerned.

The Council passed the text of a Resolution calling upon the States attending the aforementioned joint session to respect its particular purpose, namely to increase the availability of lease finance for developing and transition economies, and, therefore, to

ensure that it apply to as broad a range of assets as possible while safeguarding the application of the Cape Town regimen to the extent necessary.

Item No. 12 on the agenda: Triennial Work Programme of the Organisation (2009-2011)

The Council recommended that the General Assembly adopt the following Work Programme for the 2009-2011 triennium:

(a) With respect to legislative activities, priority is to be accorded to (i) finalisation of the additional chapters of the UNIDROIT Principles of International Commercial Contracts currently under preparation; (ii) finalisation of the Space Protocol to the Cape Town Convention; (iii) work on an instrument on netting in financial services, a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets and, resources permitting and possibly included in that guide, rules facilitating convergence of national investor classification systems. The Council expressed its expectation that work on the aforementioned items will be carried out with the assistance of the envisaged Centre for Transnational Financial Markets Law. As regards future work on an additional protocol to the Cape Town Convention (on agricultural and, possibly, other equipment), definite decisions will be taken based on the assessment of further research and tentative drafting to be carried out by the Secretariat. As regards work on an instrument on civil liability for malfunctions in satellite-based services, definite decisions will be taken on the basis of further consultations carried out by an *ad hoc* committee set up by the Council;

(b) With respect to non legislative activities, the Council recommended that, apart from the Library and its priority status, high priority be accorded to the research scholarship programme, the Uniform Law Review, and the UNILAW Database.

The Council invited the General Assembly to provide for some margin of discretion so as to permit the incoming Secretary-General to personally assess the situation in light of available resources and to sharpen the Work Programme's profile in accordance with the Strategic Plan.

Item No. 13 on the agenda: Report on the work of the ad hoc Committee on the Regulations regarding the Organisation of the Institute – Financial Administration – Staff, consultations with the staff, and recommendations submitted by the ad hoc Committee and the Secretariat

The Council approved the *ad hoc* Committee's proposals for a revision of Parts I and II of the Regulations and their transmission to the General Assembly, for adoption. The Council invited the Secretary-General to finalise consultations with respect to Part III of the Regulations (Staff) and to submit a proposal for further action to the Council at its 88th session.

Item No. 14 on the agenda: Implementation and promotion of UNIDROIT instruments other than Cape Town instruments

(a) CMR Protocol

The Council decided that a letter expressing the gratefulness and appreciation of the Institute and Council for all he had done be sent to Mr Putzeys. It also decided that UNIDROIT should be present at the ceremony for the signature of the Additional Protocol to the 1956 Convention on the Contract for the International Carriage of Goods by Road concerning the Electronic Consignment Note.

(b) Other instruments

The Council took note with satisfaction of the adoption of a Protocol to the CMR based on a joint proposal by the UN/ECE and UNCITRAL, and expressed its gratitude to Mr Putzeys for his personal contribution to this success. The Council also took note of progress made in respect of the promotion and implementation of the 1995 Convention on Stolen or Illegally Exported Cultural Objects.

Item No. 15 on the agenda: Legal co-operation programme

The Council took note with satisfaction of the encouraging results both as regarded technical co-operation (in particular the Uniform Act on contract law for the member States of OHADA and the various activities to promote it) and the Research Scholarships Programme. The Council expressed its gratitude to the donor Governments, to the United Kingdom Foundation and to the American Foundation for International Uniform Law for their support, and to the Secretary-General for his personal contribution which funded one research grant. The members of the Council moreover decided to make a collective contribution with a view to funding a further grant.

Item No. 16 on the agenda: Situation of the Library

The Council noted, with satisfaction, the excellent results in maintaining a high standard of the collection and in achieving world-class standard in administering the on-line catalogue and integrating the Library in a network of the leading specialised libraries notwithstanding by now untenable budgetary restraints.

Item No. 17 on the agenda: Uniform Law Review/ Revue de droit uniforme and other publications

The Council noted, with satisfaction, the high substantive standard maintained under the new and low-cost management formula imposed by member States and prevailing budget policies.

Item No. 18 on the agenda: Report on the situation regarding correspondents

The Council decided to pursue the way of implementing its decisions of the previous session elected by the Secretariat, subject to minor technical adjustments.

Item No. 19 on the agenda: Proposals for the appointment of correspondents

The Council appointed the global law firm of Freshfields Bruckhaus Deringer LLP and Professor Sibidi Emmanuel Darankoum as Correspondents.

Item No. 20 on the agenda: The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation

The Council noted, with satisfaction, that a new layout for the Website was newly completed and additional member Governments designated depository libraries in their respective countries.

Item No. 21 on the agenda: The Uniform Law Data Base

The Council noted, with satisfaction, recent progress with respect to the content of the database and instructed the Secretary-General to advise the General Assembly of the Council's decision to up-grade the priority accorded to this item.

Item No. 22 on the agenda: Date and venue of the 88th session of the Governing Council

The Council agreed that its 88th session would be held from 20 to 22 April 2009 in Rome.