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Report on the session

(prepared by the Secretariat)

Item No.1 on the agenda: Adoption of the agenda (C.D. (87) 1 rev.)

1. The *President of UNIDROIT* welcomed H.E. Ms Amanda Vanstone, Ambassador of Australia in Italy and Chairwoman of the General Assembly, Mr Peter Adamek, Chairman of the Finance Committee, as well as the members of the Council (see the list of participants as Appendix I to this document) and the observers. Messrs Arat, Hosokawa, Inglese, Sen and Soltysinski sent apologies; in accordance with Article 6(6) of the Statute, Mr Hosokawa was represented by Mr Tatsufumi Sato and Mr Inglese by Ms Sandby-Thomas.

2. The President recalled that the second session of the Committee of intergovernmental experts on the model law on *leasing* had been held at Mascate, in the Sultanate of Oman, that at the close of the fourth session, the Committee of intergovernmental experts had deemed the preliminary draft Convention on intermediated securities to be ready for transmission to a diplomatic Conference and that the Council had authorised such transmission to a diplomatic Conference which was to be held, at the invitation of the Swiss Government, in Geneva in September 2008, and that it was hoped that work on the Cape Town Protocol on space assets would shortly be back on schedule.

3. As to the management of the Institute, the President stressed the importance of effectively re-instating the post of Deputy Secretary-General/Chief Administrator, and thanked the Government of the United Kingdom for the extra-statutory contribution it was making for the fourth year running. He then recalled that the Council would be called upon to appoint a successor to the Secretary-General, who was returning to Heidelberg on 1 October 2008, and finally, he expressed the hope that the Council would have a productive session and fruitful debates.

4. *The provisional agenda was adopted as proposed (see Appendix II).*

Item No.2 on the agenda: Annual Report 2007 by the Secretary-General (C.D. (87) 2)

5. In view of the long agenda and the Council's tight time budget the *Secretary-General*, in introducing this item, referred to document C.D. (87) 2 and proposed to submit only a sketch of the detailed recount for the Council's considerations and discussion. In summation, 2007 had been a year of overstretched human resources as well as a year of tangible achievements; a year of being entangled in the many strings attached to the purse of Governments as well as a year of the detailed solidarity offered, in particular, by one member Government, friends in the private sector and the three foundations; a year of a few delays and some suspense as well as a productive year.

6. As regards the Cape Town Convention and its Protocols, India's accession had now brought the number of Contracting States beyond the threshold of 20. Industry projections of 800 new aircraft to be acquired by Indian carriers over the next few years and 2,500 by Chinese airlines within the same time frame underscored the – in UNIDROIT'S history so far unparalleled – importance of these legislative texts. The Secretary-General reported that he had recently been invited to Beijing to participate in a study group's activities aimed at drawing up an (economic) impact assessment study commissioned to assist the Chinese inter-agency deliberations with respect to China's potential ratification. – The Preparatory Commission tasked with the selection of the Registrar under the Luxembourg Protocol had just made its decision and awarded the contract for the registry to a well-prepared bidder. – A number of meetings aimed at the promotion or, in the case of the draft Space Protocol, getting work back on track had been organized, co-sponsored or attended by members of the Secretariat (Mr Atwood, Mr Stanford, he himself) in Chile, China, Indonesia, Japan and the United States.

7. With respect to the draft Convention on Intermediated Securities, the qualitative leap made by constructive inter-sessional work and during the 4th Session the Committee of governmental experts by resolving the conceptual problem of integrating so-called "transparent" systems (Brazil, China, Colombia, the Nordic Countries and Spain) into the draft had permitted the Council to authorize the transmission of the draft to a Diplomatic Conference to which the Government of Switzerland had in the meantime invited all UN member States.

8. Work to prepare a third edition of the UNIDROIT Principles of International Commercial Contracts had proceeded as unspectacularly as smoothly. Professor Bonell would report under agenda item 10 on the Working Group's second session and Ms Mestre on the extra-ordinarily successful OHADA Conference in Ouagadougou under agenda item 15. A new jewel that had been most recently added to the multi-lingual crown of the Contracts Principles was the Arabic version which had been submitted by an Egyptian team of scholars but still needed some work on lay-out etc. before it could be sent to the printers.

9. Politically of similar importance and, as regards the Organisation's efforts to bring its products closer to their main beneficiaries, i.e. the developing countries, strategically innovative had been the decision to hold the two sessions of a Committee of governmental experts for the preparation of the model law on leasing in Johannesburg (South Africa) and Muscat (Sultanate of Oman). The Deputy Secretary-General Mr Stanford would apprise the Council of details under item 11.

10. The Secretary-General then proposed to ask Professor Don Wallace, Vice-President of the Uniform Law Foundation (ULF), to report on the meeting of the board of directors of the Foundation which had been held on Saturday in Rome, as well as the foundation's activities since the Council's 86th session.

11. *Professor Wallace* gave an overview of the activities of the ULF as well as the UK Foundation's and the American Foundation's fund raising and sponsoring activities focused on the various fields of the Institute's legislative and non-legislative work. Each of the three foundations had organised one major conference: two on the Cape Town Conference and the Aircraft Protocol in New York and London and one on the draft Convention on Intermediated Securities in Amsterdam at which significant amounts had been raised.

12. *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 (C.D. (87) 3)

13. *On a proposal made by Mr Bollweg and Mr Govey, and seconded by Mr Sánchez Cordero, the Council appointed Mr Arthur Hartkamp and Mr Didier Opertti Badán as First and Second Vice-Presidents of the Council until 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 (C.D. (87) 4)

14. The *President, Mr Hartkamp, and Ms Trahan* reported on the details of the selection process, starting with the announcement in June 2007 and culminating in the interviews of five short-listed candidates in November 2007.

15. The *President, Ms Trahan and Mr Hartkamp* provided further details, explanations and clarifications, and the Council discussed the recommendation made by the Sub-Committee.

16. *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 Officer at UNCITRAL, as Secretary-General.*

17. Upon a proposal of the *President* and the members of the Sub-Committee tasked with conducting the selection procedure in the future the Council 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 (C.D. (87) 5)

18. The *Secretary-General* introduced this item in elaborating on the explanations provided in document C.D. (87) 5. He, however, reported that the Permanent Committee, at its 108th session, had concluded to recommend Ms Zanobetti's appointment be extended until 31 December 2010 but that it was for the Council to make the appointment (Article 8 (1) of the Statute).

19. Mr *Bollweg* indicated that, whilst expressing his Government's gratitude to the Government of the United Kingdom for again providing the bulk of the necessary funding, his Government posed and the Council should, in his view, thoroughly discuss the question, as to who would foot the bill for the years to come.

20. Mr *Carbone* indicated his full support for the Permanent Committee's proposal. Ms Zanobetti had worked in an effective and satisfactory way. Mr *Elaraby* and Mr *Verdera y Tuells* joined Mr Carbone.

21. *The Council decided to extend Ms Zanobetti's appointment until 31 December 2010.*

Item No.6 on the agenda: Implementation of the Strategic Plan (C.D. (87) 6)

22. The *Secretary-General*, in introducing this item, proposed to structure the discussion in a way that followed only loosely the structure of the document and highlighted the key objectives of the Institute's work and the evolution of the distinct working methods employed. In this respect there was a wide consensus among both member States' Governments and the whole range of stakeholders identified in the Strategic Plan that the common denominator of the Organisation's objectives was the modernisation (rather than unification) of private, in particular commercial law – in some areas (also) for the most advanced economies and sophisticated legal systems, but more often specifically for developing countries and transition economies. Clear and significant progress in this regard was unfortunately tainted by negative developments which originated in budgetary restraints. Meetings of a Committee of governmental experts (on leasing) in Johannesburg (South Africa) and Muscat (Oman), the Conference (on the draft OHADA contract laws) in Ouagadougou (Burkina Faso) and participation of the Secretariat in inter-agency work (on intermediated securities and the Cape Town Convention) in Beijing (China) were tangible evidence of progress. The creeping decrease of the budget chapter research scholarship programme and the withdrawal of donor Governments was a lamentable set-back. However, the UK Foundation for International Uniform Law had pledged a number of grants, he personally pledged, again, the funds for one scholarship and he appealed to the members of the Council to do, again, likewise.

23. With respect to the objective of broadening the membership of the Organisation, the ASEAN initiative had not been taken forward as expected although the Governments of Australia, China, Japan and the Netherlands had committed resources due to a request from the Government of Indonesia to postpone the envisaged capacity-building seminars. Encouraging progress, both as regards invigorating existing membership ties and raising interest for accession with non-member Governments, was to be reported from three regions: Africa (contacts with the Governments of Angola and Cape Verde), Latin America (a highly successful visit to Chile and renewed contacts with Paraguay), and the Middle East (Saudi Arabia, Oman, United Arab Emirates). The imminent publication of the Arabic and Portuguese versions of the UNIDROIT Principles of International Commercial Contracts would, in his view, assist in strengthening these contracts.

24. The co-ordination and co-operation among the three private-law formulating agencies (Hague Conference, UNIDROIT and UNCITRAL) was about to generate a first common product, i.e. an overview of and guide to the whole range of instruments on secured transactions developed over the years, which would target policy makers in Governments, parliaments and the private sector.

25. With respect to the internal organisational resources the Secretary-General, while acknowledging the efforts made by some Governments, most notably the UK Government, as well as the three foundations, correspondents such as Mr DeKoven, and industry, emphasized the persisting shortfalls. Document C.D. (87)6, p. 19, showed the details. The projections for 2010/12 made in 2003/04 were unlikely to materialize. The most urgent measures for putting the resources at the Secretariat's disposal on a sound footing were the regularization of the positions of, firstly, Mr Atwood who attended in a most dedicated, creative and productive way to the Institute's depositary functions under the Cape Town Convention and who had become more generally a premium asset of the Secretariat and, secondly, Ms Zanobetti as one of the Deputy Secretaries-General. As *hors cadre* officers neither was paid a salary commensurate to their tasks nor did they benefit from periodical pay increases as applicable under the rules of the Co-ordinated Organisations. The Secretary-General pleaded with the Council and the members of its Permanent Committee to lend their support to the negotiations with the Finance Committee on this point.

26. The fourth key objective for the Institute's future was the determined *strengthening of the outreach resources* and, their flip side or mirror image, of its *research capabilities* as well as its *working methods and tools*. With respect to the Library and the Unilaw Database serious concerns, as substantiated in Document (87)6 at p. 11/12 and 15/16 and also raised at the board meeting of the Uniform Law Foundation, were best be addressed under agenda items 16 and 21.

27. If UNIDROIT had the ambition to maintain quantitative and quality levels of its legislative output as well as its post-adoption service (dissemination and educational activities) without there being a realistic chance of significant budget increases, the Organisation had, in his view, to remind itself of its history, its distinct identity, its unique flexibility and to adapt its time-honoured devices of networking, outsourcing and co-operating to changed circumstances. Encouraging post-graduate studies and engaging in topical co-operation with academic institutions was one of those devices. In this regard, plans for receiving young researchers from Kyushu Law School in Fukuoka (Japan) under a scheme sponsored by the Japanese Society for the Promotion of Sciences as well as exchanges with a premium institution in a South American member State were currently being examined. Entering into co-operation agreements with organisations such as the American Association of Private International Law – a draft was attached to document C.D. 87 (6) - might assist the Secretariat in this regard and he would recommend to sign it once it had been revised and streamlined. Re-engineering the network of the Institute's correspondents based on greater selectivity and targeting trusted corporate correspondents was another one. The latter would be discussed under agenda item 19.

28. An innovative additional tool for extending the Institute's reach and tapping external know how, which would otherwise not be available, was the project of a joint venture with the Government of Luxembourg discussed in document C.D. (87)6 at p. 18/19, which had been proposed by the President and the Secretary-General and approved, in principle, by the Grand Duchy's Minister of Justice and Finance: the "Centre for Transnational Financial Markets Law". The objective was to bring together Governments, leading scholars and young researchers as well as the financial community with a view to creating a permanent reservoir of expertise ready to assist the Secretariat and UNIDROIT Study Groups in the development of their projects, capable of carrying out basic research on a continuing basis and equipped to contribute to the dissemination of UNIDROIT work. Luxembourg was considered to be an ideal partner for three reasons: (1) the similarity of working style and decision making as experienced during the diplomatic Conference in 2007; (2) the fact that its financial community was not primarily local but truly international and that its representatives had pledged interest and support; (3) that the Faculty of Law, Economics and Finance of the University of Luxembourg was prepared to host the Centre. It was envisaged that initially it would adopt a pragmatic project-oriented approach without either side making financial commitments. If the Council approved the plan in principle a Memorandum of Understanding would establish details regarding the objectives of the joint venture, its organization and its administration.

29. In concluding, the Secretary-General recalled the Council's decision to further review its working methods both internally (e.g. through working in smaller sub-groups) and in its relationship with other bodies of the Institute such as the General Assembly and Committees of governmental experts. Member Governments continued to urge the Council to proceed on this path, and last year's session as well as the joint session of the Assembly and a Committee of experts later this year would provide material for reflection in this regard.

30. In opening the discussion on agenda item 6, *Ms Trahan* welcomed both the document prepared by the Secretariat and the Secretary-General's presentation, which had focused on the key issues that needed the Council's attention. The substantive proposals submitted with respect to the four subject-matter areas today and the actual progress made since the adoption of the

Strategic Plan reflected correctly the distinct identity of the Organisation and its unique potential, which justified its very existence. In further developing the Strategic Plan the Council and the Secretariat should sharpen the Institute's profile, and the document on the Plan's implementation should itself highlight the objective of maintaining that identity.

31. *Mr Komarov*, while welcoming the suggested additions to the outreach resources, emphasised the need to accord the priority category 'high' to the database.

32. *Mr Harmathy* congratulated the Secretariat on this now routinely updated and mature document which spoke for itself. The Organisation's visibility, until not too long ago a major problem and identified as one of the strategic objectives at the joint Brainstorming Session in 2002, had finally been achieved in a number of States in Africa, Latin America and Asia where UNIDROIT so far had been anything but a household word. The innovative initiative to join forces with others to accomplish first-rate results in the area of capital markets law merited the Council's support. As to the priority status of the database and UNIDROIT's distinct identity he shared Mr Komarov's and Madame Trahan's assessment.

33. *Mr Sánchez Cordero* indicated that the Mexican experience with combining research and legislative reform might indeed serve as evidence, or even as a model, for initiatives as the ones the Secretary-General had mentioned in his report. With respect to the planned Centre for Transnational Financial Markets Law, the Council should express its gratitude to the Government of Luxembourg for placing its trust in UNIDROIT. A joint venture that united all available intellectual and organisational resources was an extra-ordinarily promising project that deserved full support.

34. *Mr Carbone* joined the previous speakers and suggested that the proposed Memorandum of Understanding with Luxembourg make clear that the centre of gravity of UNIDROIT's work in this field as such must remain in Rome.

35. The *President* summarised the discussion and the decisions taken as follows:

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 depositary 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” (cf. C.D. (87) p. 18 et seq.) 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 (C.D. (87) 7)

36. *Ms Zanobetti* (Deputy Secretary-General) introduced document C.D. (87) 7 and illustrated the preliminary estimates for the draft budget, as well as the information documents proposed by the Secretariat with a view to enabling the Governments of the member States and the different bodies of the Institute to form a better idea of the extra-budgetary contributions received by the Institute, and of the way in which the human and financial resources linked in with the different projects and activities. She specified that these documents would be developed further, in particular thanks to the President of the General Assembly who had taken the initiative of proposing a basis for an even more detailed document.

37. *Mr Sturlese* congratulated the Secretariat for its improvements to the budget documents which had increased their transparency and legibility and made it easier to assess the extra-budgetary contributions. He felt that the proposed increases showed a sense of realism since they matched the inflation rate in the euro zone. He did point out that it might be difficult to maintain the budget without the extra-statutory contribution made by the United Kingdom but he felt that, apart from this concern for the future, the draft budget could be approved.

38. *Mr Adamek* (Chairman of the Finance Committee) gave a brief overview of the Committee’s discussions, thanked the Government of the United Kingdom for its extra-statutory contribution and recalled the Committee’s opinion in respect of the preliminary estimates for the 2009 budget, stressing that the members of the Finance Committee urged the Secretariat to spare no effort to make savings where possible.

39. *Mr Widmer* called upon the members to support the budget, but pointed out that the extra-budgetary contributions shown in the information document prepared by the Secretariat should not have been used as a pretext by States to withhold full financial support for the activities of the Institute.

40. *Ms Trahan* stated that she shared the views expressed by Mr Sturlese and Mr Widmer and in her turn also thanked the Government of the United Kingdom for its extra-statutory contribution.

41. *Ms Sandby-Thomas* stressed that respect of the principle of zero growth and the need to set priorities were extremely important to her Government.

42. *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 (C.D. (87) 8(a))

43. *Mr John Atwood* (UNIDROIT Secretariat) reported in detail on the outcome of the diplomatic Conference as well as on its decision with respect to the Protocol's implementation highlighting, in particular, the role assigned to the UNIDROIT and OTIF Secretariats.

44. *Mr Atwood* reported that the Depositary functions had operated smoothly during the previous year, with India having been the most recent State to lodge its instruments of accession: he noted in particular the excellent support given by the administrations of 2 Member States, Mexico and India, in relation to their respective accessions. He also noted that the issues between the Governments of Spain and the United Kingdom in relation to the sovereignty of Gibraltar, which had delayed consideration by European Union of its accession to the Convention, had been substantially resolved, and that it was hoped that progress towards accession by the European Union and its member states would be made during the course of the year. *Mr Atwood* also reported that the report of the Supervisory Authority under the Convention had been received recently, and that the 1st and 2nd annual reports of the Depositary, which were required to take into account the report of the Supervisory Authority, would be finalized shortly. *Mr Atwood* also reported that the Institute had hosted the 2nd Preparatory Commission meeting in April 2008, that this meeting had selected the Registrar for the International Registry for Railway Rolling Stock, and that the process was on track to ensure that the Registry would be operable within a year.

45. *Mr Atwood* also reported that Professor Sir Roy Goode had completed the Official Commentary to the Convention and Luxembourg Protocol, as well as a revised version of the Official Commentary to the Convention and Aircraft Protocol, and that both of these texts would take account of developments that had occurred since the publication of the original Official Commentary in 2002: they would include expanded and additional illustrations, substantially revised and expanded text and, in the case of the revised version of the Commentary to the Convention and Aircraft Protocol, the Regulations and Procedures of the International Registry. *Mr Atwood* noted in particular the Secretariat's indebtedness to Professor Sir Roy Goode, who had worked tirelessly to produce the commentaries, and that the new publications would make a significant contribution to the promotion and understanding of the Cape Town Convention instruments.

46. *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 timeous 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 (C.D. (87) 8(b))

47. *Mr Stanford* briefed the Governing Council on the encouraging developments that had taken place in the previous two years since the Secretariat had taken the initiative in moving forward the Institute's project for the development of a Protocol to the Cape Town Convention on Matters specific to Space Assets, in the face of the failure of most Governments to respond to its requests for assistance with the inquiries decided upon by the Committee of governmental experts at its second session, held in Rome from 26 to 28 October 2004. The Secretariat's efforts had centred on two Government/industry meetings, one hosted by the Royal Bank of Scotland in London on 24 April 2006, and the other hosted by Milbank Tweed Hadley & McCloy L.L.P. in New York on 19 and 20 June 2007. These efforts were directed at getting industry support to complement what assistance it had obtained from Governments. The auguries for the success of this approach were shown to be promising by the representative sample of the key space-faring nations and the space industry, that participated in the London meeting, acknowledging the need to find the means of completing work on the key outstanding issues with a view to permitting timeous completion of the project. It was, in particular, made clear that the condition for industry experts participating in the resolution of these issues was the making of all efforts to complete the future Protocol as timeously as possible.

48. Major work was undertaken by the Secretariat following the London meeting to clarify the three key outstanding issues identified in London (the most appropriate way of extending the application of the Cape Town Convention in respect of space assets to those debtor's rights and related rights without which the satellite was of purely academic value to financiers in the event of default, the most appropriate criteria to be employed for identification of the various categories of space asset encompassed by the preliminary draft Protocol and the question as to how best to balance the need for creditors to be able to enforce their remedies against space assets in the event of default against the keenness of Governments to secure the continuation of the services performed by a satellite where such service was in the nature of a public service). In this work the Secretariat was greatly assisted by Professor Sir Roy Goode and a significant number of representatives of the international commercial space and financial communities.

49. On 1 November 2006 the representative of the Government of the Russian Federation announced that his Government was prepared to consider hosting the diplomatic Conference for adoption of a draft Space Protocol provided that the remaining stages of the intergovernmental negotiations were successful.

50. The various papers prepared following the London meeting provided the main focus of attention for the participants attending the New York meeting, the essential purpose of which was to examine the extent to which they provided a sound basis for the reconvening of the Committee of governmental experts. The meeting gave a positive answer to this question. However, in the process, it looked long and hard at the sphere of application of the preliminary draft Protocol and concluded as to the desirability of this being narrowed in such a way as to concentrate essentially on the satellite in its entirety with a view to realising the objective of timeous completion of the project recognised as being crucial by the London meeting. The New York meeting agreed that the following stage should be to seek to build broad consensus, within both Government and industry, around the provisional conclusions reached there and recognised the importance in this context of Governments giving a clear signal as to their commitment to timeous completion of the future Protocol. A significant side development of the New York meeting was the interest expressed by the Registrar of the International Registry for aircraft objects in hosting the future International Registry for space assets, as an extension of its existing responsibilities.

51. Following wide-ranging consultations by the Secretariat with both the Governments and leading representatives of the international commercial space and financial communities who had participated in the London and New York meetings as to the most appropriate means of building the consensus recommended by the New York meeting, the Secretariat proposed to the UNIDROIT General Assembly at its 61st session, held in Rome on 29 November 2007, that it establish a Steering Committee, open to all having participated in the London and New York meetings, for this purpose, a proposal that the Assembly endorsed. He paid tribute to the generosity of the Government of Germany in agreeing to host the launch meeting of the Steering Committee, to be held in Berlin from 7 to 9 May 2008, in which a significant and representative number of players from Government and industry had announced their intention to participate. At this meeting the Steering Committee would, in particular, be considering the sort of drafting amendments to the existing text of the preliminary draft Protocol that would be desirable to give effect to the recommendations of the New York meeting.

52. The Secretariat was optimistic that it would, on the basis of the Steering Committee's work, be in a position later in the year to decide on the reconvening of the Committee of governmental experts for early in 2009. In this connection, he paid particular tribute to the funding granted by the U.K. Foundation for International Uniform Law for the recruitment of a young lawyer to work on the organisation of consensus-building within the Secretariat and to that granted by the German Space Agency for the recruitment of another young lawyer to work externally on consensus-building, in particular with industry. He, accordingly, invited the Council to endorse the Secretariat's plan of action for consensus building within the Steering Committee in such a way as to permit reconvening of the Committee of governmental experts early in 2009 and completion of the project towards mid-2010.

53. *Mr Widmer* regretted that he had not been able to arouse particular interest among Swiss Government circles and that he would, accordingly, be abstaining on any decision to be taken by the Council in this regard.

54. *Mr Gabriel* voiced his Authorities' great interest in this project and their desire to see it given high priority, along the lines proposed in the Secretariat's plan of action.

55. *Ms Trahan*, whilst appreciating the great efforts deployed by the Secretariat in this regard and noting that her Government would be represented at the forthcoming Steering Committee meeting, nevertheless wondered as to the point of the project if the interest of operators was so low.

56. *Mr Carbone* favoured the project being pursued notwithstanding the difficulties that had been encountered. The Government of Italy was particularly interested but recognised that a solution needed to be found to the vexed issue of public service that could prove acceptable to creditors. He perceived the meeting of the Steering Committee as being crucial, since without progress in Berlin the project's chances would be problematic.

57. *Mr Komarov* recalled his Government's support for this project and looked forward to the forthcoming Steering Committee meeting providing clarification of the way forward.

58. *Mr Stanford*, responding to the doubts voiced by Ms Trahan, noted that it was true that the level of interest for the project amongst operators was not as high as might have been hoped for and that the main groundswell of support for this project had come from the Governments of both the space-faring nations and developing countries, although leavened by a significant degree of support from manufacturers and the financial communities. It needed, however, to be recalled that the driving force behind development of the Protocol on Matters specific to Aircraft Equipment was the Aviation Working Group, very much a creature of the world's two leading manufacturers,

namely Airbus and Boeing, whereas, even if the International Air Transport Association had provided significant support amongst airlines, this support was by no means universal. The situation regarding satellite operators was peculiar in that there were two principal world players, commanding what was virtually a monopoly, making it extremely difficult for smaller operators to make any headway, as evidenced by the trail of insolvencies concerning such players. As a result, it was unreasonable to expect the two leading operators to give their active support to an instrument that could only have the result of assisting competitors, however worthy such an aim might be; he submitted that, in the broader global plan, what was more important was that these operators were not opposed to the project and had indeed contributed. When looking at the global plan in relation to this project, he suggested that it was more useful to contemplate the fact, notwithstanding all the difficulties that the Government of India, a major space-faring player, had raised during the negotiations, that, when he had sounded a senior Indian Government figure during his consultations prior to the setting up of the Steering Committee he had been assured that they were right behind the project and that, if necessary, would be prepared to change Indian law to accommodate implementation of the future Protocol. He also reminded the Council that the increasing activity of private players in outer space was such that a regulation of these activities could not be delayed much longer and that this project was seen as represented an extremely important first step in this process.

(c) Preparation of an additional Protocol on Matters specific to agricultural, mining and construction equipment

59. Discussion on this item was referred to agenda item 12 (new triennial Work Programme) .

60. *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

(a) Draft Convention on substantive rules regarding intermediated securities (C.D. (87) 9(a))

61. *Mr Keijser introduced the item by reporting on the results achieved by two post-session informal Working Groups, which the Committee of governmental experts had set up at its fourth session and tasked with further analyzing and, if possible, submitting proposals to the diplomatic Conference on the following issues: (i) provisions identifying what, under the draft Convention, would be recognized as clearing and settlement systems and such systems' "rules"; (ii) is it desirable for the future Convention to spell out standards for what is "good faith" or "innocent acquisition"?; (iii) insolvency related issues. Mr Keijser then shared the Secretariat's assessment of the reports submitted by the three groups and their potential impact on the outcome of the diplomatic Conference.*

62. *Mr Sturlese* expressed his appreciation for the clear explanations given and, generally, for the Secretariat's handling of the preparation of the Conference. In his view, however, one needed to accept that ongoing and future negotiations of this instrument were endangered by what was originally a parallelism and what had now turned into a time-lag between the work at UNIDROIT and the work of the Legal Certainty Group at the European level. The product which the European Group had been able to present so far was, quite obviously, much less mature than the UNIDROIT draft. He indicated that, in his view, the worldwide solutions developed under the aegis of UNIDROIT and the European solutions needed to be compatible.

63. *Mr Widmer* indicated that, in his as well as the Swiss Government's view, the draft which had been submitted to the diplomatic Conference for adoption, was indeed ripe to be finalized and adopted. He asked whether the Secretariat knew why, at this point in time, no non-European Government had notified its participation and how the Secretariat viewed and evaluated hesitations, second thoughts and counter-lobbying in certain quarters in Europe.

64. *Mr Voulgaris*, speaking also in his capacity of Greek delegate to the Committee of governmental experts and the diplomatic Conference, gave an overview of the exceedingly positive results reached so far and of the outstanding issues. If everybody in Geneva would negotiate in a focused matter and in good faith finalization was feasible.

65. *The Secretary-General*, in response to Mr Sturlese, reminded the Council of the "legislative" history of the UNIDROIT draft on the one hand and, on the other, the European "Legal Certainty" project. The European Commission had, from the beginning, acknowledged that they came as an Observer to learn from the much more advanced UNIDROIT Committee. Indeed, the design was a loosely knit set of rules for worldwide use, which left sufficient blank spots for States and Regional Economic Integration Organisations to be filled with more detailed rules as well as with the necessary bridges to the regulatory framework. The work of the informal Working Groups was excellent, and all three open questions were capable of being resolved – where they were controversial, either way. In this respect he fully subscribed to Mr Voulgaris' assessment. In response to Mr Widmer, the Secretary-General indicated that wide non-European participation could be counted on, Brazil, Canada, China, India, Japan, Nigeria, the Russian Federation, South Africa and the United States would certainly notify their attendance shortly. The reluctance, hostility and counter-lobby that Mr Widmer had mentioned came, in his and many delegates and non-participating experts' view, chiefly from one or two financial institutions who benefited from the current state of the law and whose Governments had, legitimately, adopted those institutions' positions and gave them support.

66. *The President* informed the plenary of the Permanent Committee's decisions taken in carrying out the mandate flowing from the Council's decisions at the 86th session (a) to extend the Secretary-General's contract until 30 September 2008, and (b) to request the Secretary-General to take on the task of co-ordinating author of the Official Commentary of the future Convention should the diplomatic Conference resolve that such commentary be drawn up following the adoption of the draft Convention.

67. *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 approved the recommendations made by the Permanent Committee with respect to retaining the Secretary-General's services until completion of the work and requested the Secretary-General to act as co-ordinating author of an Official Commentary should the Diplomatic*

Conference decide to draw up such a document. 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.

(b) Principles and rules capable of enhancing trading in securities on emerging markets

68. Discussion on this item was referred to agenda item 12 (new triennial Work Programme) .

**Item No.10 on the agenda: Principles of International Commercial Contracts
(C.D. (87) 10)**

69. *Mr Bonell* (UNIDROIT Secretariat) reported on the second session of the Working Group on the Contract Principles held in Rome from 4 to 8 June 2007 on which occasion the Group had been seized of five position papers prepared by the Rapporteurs on the following topics respectively: unwinding of failed contracts, illegality, plurality of obligors and/or obligees, conditions, and termination of long-term contracts for just cause. After discussing these papers the Group asked the Rapporteurs to produce first preliminary drafts for its third session in May 2008. With a view to preparing adequately its third session the Rapporteurs met in March 2008 in Hamburg for a one week session, generously hosted by the Max-Planck-Institut für ausländisches und internationales Privatrecht.

70. As to promotional activities, Mr Bonell recalled first of all the endorsement of the UNIDROIT Principles of International Commercial Contracts by UNCITRAL on the occasion of UNCITRAL's 40th plenary session in 2007. He also mentioned his participation at UNCITRAL's congress on "A Modern Law for Global Commerce" where he presented a paper on "Towards a Legislative Codification of the UNIDROIT Principles" and his visit to China in October 2007 where colloquia on the UNIDROIT Principles were held in Wuhan and Beijing. Lastly he announced his forthcoming visit to Australia on the invitation of the Attorney General's Department, the Law Council and the Federal Court of Australia, and of the Universities of Sydney, Melbourne and Canberra.

71. *Mr Sánchez Cordero* informed the Council a Spanish version of the Principles had been published in Mexico and 900 copies had been distributed in Latin America.

72. *Mr Govey* pointed out that recognition of the importance of the UNIDROIT Principles was growing in Australia and that he was pleased Mr Bonell had accepted to undertake a quite intensive process of promoting them in Australia amongst commercial lawyers and arbitrators.

73. *Mr Harmathy* announced that the Hungarian translation of the UNIDROIT Principles, which he was supervising, would be published shortly.

74. *Mr Opertti Badán* stated that the UNIDROIT Principles were being disseminated in his country among commercial lawyers as well as students.

75. *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 (C.D. (87) 11)

76. *Mr DeKoven*, presenting progress with the preliminary draft model law on commercial leasing, in his capacity of Reporter to the Unidroit Committee of governmental experts for the preparation of a draft model law on leasing (hereinafter referred to as the Committee), noted that what had made the first session of the Committee, held in Johannesburg from 7 to 10 May 2007, so extraordinary was the significant attendance of representatives of developing countries and the way in which they had perceived the project as one for their benefit. The Committee had followed closely the recommendation by the Deputy Minister of Justice and Constitutional Development of South Africa, in opening the session, that it seek the establishment of a balanced instrument, taking special account of the needs of developing countries; it had in particular striven to establish such a balance as between the interests of lessor and lessee and those of developing and Western countries. It was recognised that the establishment of such a balance was crucial to bringing about increased investment in the developing world and that of transition economies.

77. The second session of the Committee had been held in Muscat from 6 to 9 April 2008. A good number of the States represented in Johannesburg had attended once more, supplemented by a good number of representatives of Middle Eastern States. The States participating in this session had shown their gratefulness for Unidroit's support for this project and the level of discussion had been extremely encouraging. It was particularly important to note that Tanzania enacted its Financial Leasing Law, based on the preliminary draft model law, on 11 April 2008 and that similar laws are under preparation in both Afghanistan and on the West Bank.

78. It was important to recall that the World Bank and the International Finance Corporation had encouraged Unidroit, when considering embarking on this project, to make its benefits as widely available as possible, noting in particular the dramatic shortage of infrastructure financing in Africa. On the last day of the second session of the Committee, one State had pressed for a potentially very broad exclusion from the sphere of application of the proposed model law at variance with that call; the effect of this proposal would have been to exclude from the sphere of application of the proposed model law all mobile equipment, of a type envisaged by the Cape Town Convention on International Interests in Mobile Equipment, with the effect that, where local law governing such equipment was in conflict with the proposed model law, that local law would prevail. After studying the proposal closely, he had concluded that it was founded on an assumption that was not justified, since, in his 40 years of experience in dealing with big-ticket financing, he had not found that it was difficult to be in compliance with local law, in the sense that the carrying out of due diligence in respect of a transaction involving billions of euros was a relatively small matter in relation to the overall cost of the transaction. As an example of the sort of transaction that would be cut out of the sphere of application of the proposed model law under the proposal in question, he cited the example of an aeroplane responsible for spraying pesticides in support of agriculture: he did not believe that it would be appropriate for developing countries and economies in transition to be deprived of the benefits of the future model law in respect of such transactions.

79. He suggested that the process for moving the preliminary draft forward should be conducted in thoughtful fashion, involving the developing countries and economies in transition for which it was intended, with a view to ensuring that it embodied a balanced set of rules and enjoyed a sufficiently broad application.

80. *Mr Gabriel* complimented Mr DeKoven and the Secretariat for their productive work. He considered the preliminary draft an excellent product. He recognised the importance that it fit well with the needs of developing and transition economies in this area. He believed that any rough edges that might remain could be resolved in an amicable way.

81. *Ms Trahan*, while applauding the excellent work that had been accomplished by the Committee of governmental experts, expressed concern about two aspects of the French-language version of the preliminary draft model law. First, she suggested that the title of the preliminary draft model law in French should use the term *crédit-bail* instead of the English term *leasing*. She noted that this was the term used by the French legislator in the 1966 Law. Secondly, she drew attention to the fact that in the English-language version of the preliminary draft model law the same terms *lessor* and *lessee* were used to denote the same parties regardless of whether the transaction concerned was a financial lease or a lease other than a financial lease, whilst, in the French-language version, the term *lessor* in the context of a financial lease was rendered by the term *bailleur* and in the context of a lease other than a financial lease by the term *locateur* and the term *lessee* in the context of a financial lease was rendered by the term *preneur* and in the context of a lease other than a financial lease by the term *locataire*.

82. *Mr Stanford*, thanking both Mr DeKoven and all those members of the initial Advisory Board and those who had assisted the Committee of governmental experts in one way or another for contributing so signally to the development of the preliminary draft model law while providing their services on a totally unremunerated basis, recalled that this unique development in the Institute's working methods went back to the decision by the Governing Council at its 84th session, held in Rome from 18 to 20 April 2005, that the project should be without impact upon the Institute's Budget. It was, he suggested, particularly commendable that not only had the development of the project moved forward without any impact upon the Institute's Budget with the exception of his and Ms Schneider's participation in the two sessions of the Committee but that it had been virtually completed in record time, namely a mere three years.

83. Having, since the second session of the Committee, discussed the proposal made by one Government on the last day of that session referred to by Mr DeKoven with the Government concerned, he shared the optimism of Mr Gabriel as regards the likelihood of any remaining rough edges being capable of being resolved in amicable fashion.

84. The apparent discrepancy between the English- and French-language versions on the terms used to render *lessor* and *lessee* in respect of the two different types of lease covered by the preliminary draft model law to which Ms Trahan had alluded was a matter that the Secretariat had already taken up with Mr E. M. Bey, the French-language expert on the Advisory Board. The problem essentially arose from the fact that neither the Government of France nor the Government of Canada (nor indeed any other French-speaking Government apart from Burundi) had been represented in Muscat (or indeed at the session in Johannesburg) so that the Secretariat had had no other option but to defer resolution of this question until after the session. As regards the title of the preliminary draft model law, he pointed out that the term *crédit-bail* only referred to financial leases and was unique to the French Law of 1966, which explained why the Committee had decided to use the more widely employed term *location-financement* to render financial lease and had decided to use the term *leasing*, which was generally used in France and other French-speaking countries to cover those situations where one was talking about both financial leases and leases other than financial leases, that is the two different cases covered by the preliminary draft model law, in the title of the preliminary draft.

85. *Ms Trahan* reiterated her concerns about transmitting the French text to the Unidroit General Assembly for finalisation when, as she saw it, the two language versions were not in line on the question of the terminology used to render the terms *lessor* and *lessee* and could, therefore, prove the source of ambiguity.

86. *Mr Gabriel* noted that it was not unusual for problems of translation to arise in the preparation of international instruments and for such problems to be left to the Secretariat of the sponsoring Organisation to work out; he suggested that this was just such a problem and that it be

left to the Secretariat to resolve it. He added that he had every confidence in the Secretariat's ability to resolve this issue.

87. *Ms Schneider* submitted that the discrepancies between the two language versions on the term lessor and lessee referred to by Ms Trahan were more apparent than real, in so far as each clause in which the different French-language terms appeared was prefaced by language indicating whether the transaction which was the subject of that clause was either a financial lease (in which case the corresponding French terms were bailleur and preneur) or a lease other than a financial lease (in which case the corresponding French terms were locateur and locataire).

88. After Ms Trahan had recalled that the problem she had alluded to was one that arose regularly and demonstrated the need for the drafting of Unidroit instruments to take place in both languages in parallel, *Mr Stanford* indicated the Secretariat's commitment to achieving a solution which would guarantee genuine parallelism between the two language versions, through raising the question at the time of the draft model law's transmission to Governments for finalisation, so that Governments would be ready to find a suitable solution on the occasion of the joint session of the Unidroit General Assembly and the Committee of governmental experts, which the Secretariat proposed should be given responsibility for finalising and adopting the draft model law as it would emerge from the Council.

89. With a view to guaranteeing the model law to emerge from such joint session the maximum coverage in those developing and transition economies for which it was specifically intended, he, moreover, invited the Council to consider passing a Resolution calling upon the States attending such 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.

90. *Mr Sekolec* (Secretary of UNCITRAL) placed on record the UNCITRAL Secretariat's deep appreciation of the excellent co-operation that had informed the negotiations between the two Organisations for dealing with the relationship between the preliminary draft model law and the UNCITRAL Legislative Guide on secured transactions.

91. *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 (the text of which is reproduced in Appendix III to this report) 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)
(C.D. (87) 12)**

92. The *Secretary-General*, in introducing this item, recalled the criteria for future UNIDROIT Work Programmes as established by the Council and the General Assembly and listed in C.D. (87) 12 paragraph 5. He then gave additional explanations and details with respect to the responses received from Governments, intergovernmental Organisations, industry associations and the Institute's correspondents as shown in Annex II to the document. As to legislative work, which was either awaiting finalisation or which had been recommended by the various categories of stakeholders, the indications for the subject-matter area financial markets law were clear if one added the – omitted – recommendation by ISDA, the most important global trade association, to the votes expressed in favour of an instrument on netting. Netting and the legislative guide for emerging markets were by far those items that had attracted most nominations. The Secretary-General provided further information regarding the reasons why netting was a centre-piece for sound and robust transactions that avoided systemic risk and was essential for competitiveness of emerging markets. He moreover recalled that the legislative guide enjoyed already priority status under the 2006-2008 Work Programme but that, due to lack of resources, no effective work had so far been carried out. The Secretary-General finally emphasised the strong showing of non-legislative activities and post-adoption services, in particular regarding the Cape Town instruments and the draft Convention on Intermediated Securities, which had been recommended by member Governments.

93. *Mr Widmer* opened the discussion and indicated that, for Switzerland, the two capital-markets law projects as well as the work on the UNIDROIT Principles of International Commercial Contracts had clearly top priority. There was little enthusiasm for a fourth protocol to the Cape Town Convention; if at all, work on a protocol on matters specific to agricultural equipment might be undertaken.

94. *Ms Trahan* indicated that, in her and the Canadian Government's view, neither an additional Cape Town Protocol nor work on an instrument regarding liability for malfunctions of satellite based services should feature on the Work Programme. Conversely, one of the non-legislative activities, the Library, deserved maximum attention and significantly enhanced funding over the years to come.

95. *Mr Gabriel* advised the Council that the US Government attached the greatest importance to the promotion of the Cape Town instruments and to starting work on (at least) one of the capital-markets projects outlined in the Secretariat's document. With respect to the non-legislative activities his order of priorities was, first, the scholarship programme, second, the data base and, third, the Uniform Law Review. He moreover expressed the view that the item liability for satellite based services needed more exploratory research and consultations with Governments.

96. *Mr Harmathy* supported fully what had been outlined by the previous speaker. The capital-markets projects as well as the completion of the work on Cape Town protocols, including promotion, should enjoy priority status as should, in the area of non-legislative activities, the work on the data base.

97. *Mr Govey* underscored what had been submitted in writing by the Australian Government, i.e. that completion of still outstanding work, including promotion, was of paramount importance.

98. *Mr Carbone* took the position that the non-legislative activities required the Council's particular attention. In light of its international standing within the scholarly community the Uniform Law Review undoubtedly topped the list of priorities, followed by the data base. As regards legislative instruments, it was timeous to start with in-depth research on the item of liability for

satellite based services on condition, however, that it focused on the delictual aspects, i.e. the law of torts. Apart from this promising and innovative project, the Institute's resources should be devoted to the two instruments on financial markets law, i.e. netting and the legislative guide for emerging markets, taking full advantage of the Luxembourg based Centre for Transnational Financial Markets Law and its co-sponsors in the industry.

99. *Mr Hartkamp* emphasised that the foundations had been created to shoulder the burden of funding non-legislative activities as it was unrealistic to expect more sympathetic approaches in these areas on the part of civil servants.

100. *Mr Zhang* stated that the "old" projects were on track and continued to enjoy the attention required. As far as the capital-markets projects were concerned, he reminded the Council that the project of a legislative guide for emerging markets – on hold for quite some time – had been co-sponsored by the Government of China. He hoped that the co-operation with the Luxembourg Centre would now energise the Institute's work in this area.

101. *Mr Voulgaris* joined Mr Gabriel and Mr Widmer in their evaluation of the status as regards the Cape Town protocols. The draft Space Protocol needed, for the time being, the Secretariat's full attention, and commencing work on a fourth protocol had to be subordinate. Once the draft Convention on Intermediated Securities was adopted, the Secretariat should immediately set up study groups on netting and for the preparation of the emerging markets guide.

102. *Mr Verdera y Tuells* recalled the importance of the Library as the historic basis of all UNIDROIT work on legislative instruments.

103. *Mr Elmer* cautioned against binding the new Governing Council's and the new Secretary-General's hands. Scientific preparation of new projects, such as the one regarding liability for satellite based services, could be carried out without encroaching upon that margin of discretion.

104. *Mr Opertti Badán* shared the Secretary-General's judgement that much success depended on a robust network of co-operation agreements with regional organisations, such as the American Association of Private International Law, the new Luxembourg Centre and others. He encouraged the Secretariat to further develop this network.

105. *Ms Sandby-Thomas* advised the Council that the UK Government as well as the financial services industry and central banks believed that the criteria for drawing up any new Work Programme, as recalled in document C.D. (87) 12, needed to be respected and that, consequently, work on an instrument on netting, the legislative guide for emerging markets, and an instrument assisting in standardising client classification were of the highest priority.

106. *Mr Sato* stated that, apart from the finalisation of the draft Convention on Intermediated Securities, continued work on the UPICC was the area the Japanese Government attached the greatest importance to.

107. *Mr Bollweg* indicated that soundings of German industry had led to his Government's assessment to give priority to the finalisation of the third edition of the UPICC as well as the draft Space Protocol. With respect to new projects, he favoured – encouraged by expressions of interest received from the most important German manufacturer of agricultural equipment – taking up work on a fourth protocol.

108. *The President* read out a letter from *Dr Sen* who firmly indicated that now the time had come to devote the necessary resources to the legislative guide for emerging markets. The

Institute was to be congratulated on having secured means of tapping the industry's expertise through the joint venture with the Government of Luxembourg.

109. *Mr Elaraby* recalled that the project of a legislative guide had been adopted, three years ago, at the request of the Governments of Egypt, China and India. As far as his Government was concerned, that continued to be the position.

110. With respect to the proposals to take up work on a fourth Cape Town Protocol, *Ms Peters* (UNIDROIT Secretariat) presented the project, recalling that the research undertaken by the Secretariat, which had been completed in 2007 with the dispatch of a questionnaire to the member States of the Institute and to the other States that had been involved in the drafting process of the Cape Town Convention. 30 replies had been received, a good result compared to the number of States that usually responded to questionnaires, but not enough to draw definite conclusions. More States responded to questions involving agricultural equipment, slightly fewer to questions regarding mining equipment and even fewer to questions in respect of building materials. The question therefore arose as to whether the scope of application of the Protocol should be confined to agricultural equipment alone. *Ms Peters* also recalled that she had prepared a preliminary draft Protocol by merging the provisions in existing Protocols and adapting them where appropriate (see document C.D. (86) 8 d)).

111. Following the 2007 Council session, the document had been transmitted to the member States and the other States involved in the drafting process of the Cape Town Convention for comment, as instructed. Only two comments had been received: one from the Netherlands, evincing scant interest, and another from Germany, which on the contrary expressed great interest in seeing the project revived. With a view to eliciting further replies, *Ms Peters* suggested that the draft be transmitted to the member States and to the interested circles, which could be done at little cost using e-mail.

112. *Mr Hartkamp* took the view that it would not do to restrict the scope of application of the Protocol to agricultural equipment. The draft might be circulated as had been suggested, following which the Council could examine a report on the reactions received at its next session. *Mr Bollweg* agreed with this procedure.

113. *Ms Sandby-Thomas* suggested that since reactions to the draft Protocol had not been particularly encouraging, the project should be crossed off the Work Programme.

114. The *Secretary-General* stated that if the proposed procedure were adopted, the relationship between the planned Protocol and the *Model Law on Leasing*, the *Cape Town Convention*, the *United Nations Convention on the Assignment of Receivables in International Trade* (2001) and the *UNCITRAL Legislative Guide on Secured Transactions* (2008) should be examined. The *Secretary-General* responded to the interventions by Messrs Gabriel and Bollweg, indicating that *Ms Peters* would continue to monitor, on the basis of her preliminary report submitted to the Council in 2007, Governments' and industry's reactions so as to enable the General Assembly to make informed choices in December.

115. It was decided to transmit the draft Protocol to the member States and interested circles and that the relationship between the draft and the relevant international instruments would be examined.

116. With respect to the idea of an instrument on liability for malfunctions of satellite-based services he suggested that Messrs Carbone, Bollweg and Gabriel might form the nucleus of a Study Group (maybe also inviting Professor Magnus, the author of the study commissioned by the Secretariat) and report back to the Council as soon as practical.

117. As regards the now unanimously accepted work on netting and the emerging markets guide as well as the new item favoured by the UK, i.e. an instrument facilitating convergence of criteria for client classification regimes, the Secretary-General submitted that the substantive relationship between the three items made it safe to set up immediately a Study Group for the preparation of an instrument on netting, and that the wider ranging and more onerous scientific groundwork for the legislative guide would take advantage of that Study Group's results as well as results that might emerge from a working group on client classification because both netting and client classification standards were crucial vehicles for developing emerging markets' legal infrastructure. In his view, the Luxembourg Centre would be of invaluable assistance to this regard.

118. *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 and industry. 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

119. (a) The *ad hoc* Committee's recommendations for amendments of (see Appendix IV) Parts I and II – Organisation of the Institute – Financial Administration were approved by the Council and will be submitted to the General Assembly, for adoption.

120. (b) Except Article 62 which was approved, certain proposals discussed between the Secretariat and the *ad hoc* Committee with respect to Part III will be subject to further consultations among members of staff and the Secretariat and will thereafter be submitted to the Council and to the General Assembly.

121. *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 (C.D. (87) 14)

(a) CMR Protocol (C.D. (87) 14 (a))

122. *Ms Peters* (UNIDROIT Secretariat) briefly introduced this project, recalling its history, how Mr Jacques Putzeys formerly a member of the Governing Council and one of the foremost experts on the CMR, had participated on the Institute's behalf, albeit at his own expense, in the preparation by the UN Economic Commission for Europe of an Additional Protocol to the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the Electronic Consignment Note. A first draft prepared by Mr Putzeys and based on the principle of functional equivalence had been opposed by Germany which wanted another approach to be adopted. A second draft had been prepared by Mr Putzeys together with Mr Estrella-Faria of UNCITRAL. This draft had been discussed and was due to be signed at a ceremony which would be held in Geneva on 27 May 2008. Mr Putzeys urged the Institute to be present, considering the role played by UNIDROIT in its preparation.

123. *Ms Trahan* stressed the generosity of Mr Putzeys in participating on the Institutes behalf but at his own expense. She proposed that a letter be sent to Mr Putzeys expressing the appreciation of the Institute and its Council. As regarded participation in the signature ceremony in Geneva, she definitely felt that UNIDROIT should be present at the ceremony.

124. *Mr Hartkamp*, who was chairing the meeting, endorsed the request that a letter of thanks and appreciation be sent to Mr Putzeys and also the indication that somehow UNIDROIT be present at the ceremony.

125. *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 (C.D. (87) 14 (b))

126. *Mme Schneider* (UNIDROIT Secretariat) outlined the situation with regard to the implementation of the 1995 Convention on Stolen or Illegally Exported Cultural Objects and indicated that Greece had ratified the Convention in 2007. She stressed that there was great interest in Convention, as evidenced by the many events organised around it, in particular by UNESCO, several Universities and other bodies, and in which she tried to participate as often as possible, time and money permitting. She recalled that the Convention also called for the Secretariat to provide legislative assistance to States intending to accede to it.

127. *M. Sánchez Cordero* informed the members of the Council that the Washington Convention providing a Uniform Law on the Form of an International Will had been chosen as the basis for uniformisation in the NAFTA countries. He added that the Mexican Government had initiated the procedure leading up to ratification of the Convention on Stolen or Illegally Exported Cultural Objects.

128. *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 (C.D. (87) 15)

129. *Ms Mestre (UNIDROIT Secretariat) presented the two main lines of legal co-operation. She referred, first of all, to the Colloquium on the "Harmonisation of Contract Law within OHADA" which was held in Ouagadougou on 15-17 November 2007, under the aegis of Unidroit in collaboration with the University of Ouagadougou and the Permanent Secretariat of the Organisation for the Harmonisation of Contract Law in Africa (OHADA) and co-funded by the Swiss and Luxembourg development directorates, by the *Fonds Jean Bastin* and the *US Foundation for International Uniform Law*. The Colloquium was intended as a forum to introduce and discuss with leading jurists the preliminary draft OHADA Uniform Act on contract law prepared by UNIDROIT at the behest of the OHADA Council of Ministers, and drafted by Professor Marcel Fontaine. Ms Mestre stressed the scholarly success of the event, which was attended by a large number of experts from African member and non member States of OHADA as well as from other continents. The Colloquium had sparked a useful debate, but had also spotlighted a number of points that might complicate the legislative process now underway. The UNIDROIT Secretariat would continue its collaboration with OHADA if requested by the OHADA competent authorities. That said, and regardless of the follow-up that would be given by OHADA to the preliminary draft prepared by UNIDROIT, she felt there was good reason to believe that the Colloquium would have positive fall-out for the ongoing debate on the modernisation of contract law at regional and continental level and for the promotion of UNIDROIT and its work.*

130. *Mr van Loon (Hague Conference on Private International Law) indicated that uniform law instruments were insufficiently known in Africa and suggested that UNIDROIT, UNCITRAL and the Hague Conference might envisage joint initiatives to promote their work and their international instruments.*

131. *As to the UNIDROIT Research Scholarships Programme, Mr Pierre Widmer presented the report of the Scholarships Sub-Committee on the Governing Council scholarships (see Appendix V attached to this report). He indicated that the Sub-Committee had been seized of the report on the implementation of e Programme for 2007-2008, and that it had examined the applications received with a view of expressing an opinion in the light of available funding. The Sub-Committee wished in this connection to invite the Governing Council to recommend that the General Assembly increase the allocation provided for in Chapter 11 of the Institute's budget to 1% of the contributions made by the member States other than Italy, as had been agreed when the Programme was first set up.*

132. *Ms Trahan and Messrs Gabriel, Sánchez Cordero, Voulgaris and Zhang expressed their support for the Scholarships Programme, underscoring its advantages not only for the beneficiaries but also for the Institute, and stressed the importance of making every effort to develop it further – not least by the members of the Governing Council itself – and to obtain additional funding for the Programme.*

133. *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 (C.D. (87) 16)

134. *Ms Maxion (UNIDROIT Secretariat) informed the members of the Council that the Library Catalogue had been available on line since 2007. She added that the training programme organised together with the European Association of Law Students (ELSA) was proceeding satisfactorily. She also stressed that the price of books and periodicals was rising steadily, and this was why the Secretariat was especially grateful for the donations it received, in particular from the Department of Trade and Industry of the Government of the United Kingdom, the Max Planck Institute in Hamburg and the Library of the Law Faculty of Lucerne, Switzerland. The Library continued to attract researchers from a wide range of countries.*

135. *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 (C.D. (87) 17)

136. *The Secretary-General briefly commented on the state of affairs, including plans for the content of issues Nos 3 and 4 of 2008.*

137. *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 (C.D. (87) 18)

138. *The Secretary-General, in introducing this item, recalled the Council's deliberations at its 86th session. He indicated that only eleven out of 94 correspondents had replied to his letter, namely Ms Katharina Boele-Woelki (The Netherlands), Mr Abdellah Boudahrain (Marocco), Mr Gabriele Crespi Reghizzi (Italy), Mr Ron Cuming (Canada), Ms Cecilia Fresnedo de Aguirre (Uruguay), Mr Souichirou Kozuka (Japan), Mr David Morán Bovio (Spain), Mr Ergun Özsunay (Turkey), Mr Francisco Sánchez-Gamborino (Spain), Mr Philip Zeidman (United States of America), Mr Frank Zumbo (Australia). He proposed that the persons listed in the Annex to C.D. (87) 18 rev. be appointed, for the period 1 May 2008 to 30 April 2011, although most of them had not replied by virtue of the fact that they had been involved in recent times in UNIDROIT activities.*

139. *Ms Trahan, Mr Govey, Mr Gabriel and Mr Widmer raised the issue that some of the "no shows" might not have received the Secretary-General's letter because the contact details had been outdated. Some additional research might be warranted. Mr Govey observed, in addition, that it might not be easy to find a formula to communicate that a person had been appointed although he or she might have remained silent because not interested in being re-appointed. The Secretary-General should have some discretion in handling the follow-up action.*

140. *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
(C.D. (87) 19)**

141. The *Secretary-General* briefly introduced document C.D. (87) 19 and recalled the Council's previous discussions and decisions regarding the criteria for the selection of correspondents who would effectively contribute to the Institute's work.

142. *Ms Trahan* presented Professor Sibidi Emmanuel Darakoum (Canada) giving a brief overview of his academic achievements and his UNIDROIT related recent activities. The President and the Secretary-General supported the proposal.

143. The *President* presented, supported by the Secretary-General and Professor Sir Roy Goode, Honorary Member of the Council, the proposal to appoint, as corporate correspondent, the global law firm of Freshfields Bruckhaus Deringer in recognition of unprecedented contribution over two decades to various UNIDROIT projects. Mr Bollweg, Ms Sandby-Thomas and Mr Gabriel joined the proposers.

144. *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 (C.D. (87) 20)

145. *Ms Howarth* (UNIDROIT Secretariat) reported that the UNIDROIT website continued to be an extremely effective means of making the Institute and its work known to a vast public worldwide. Development and updating were being carried out on an ongoing basis. She then presented the website's new layout of the English language and French language home pages featuring a side navigation bar, an area for images, a search engine. The website's pre-home page and URL remain unchanged.

146. *Ms Howarth* also presented two new CD-ROMs she had prepared: UNIDROIT Proceedings and Papers 1997-2007 / Actes et documents d'UNIDROIT 1997-2007 and Principles of International Commercial Contracts 1970-2004, copies of which had been distributed to members of the Council. The latter CD-ROM contained all the preparatory work (in English only) leading up to the two editions (1994 and 2004) of the Principles of International Commercial Contracts for a total of 154 documents.

147. She added that there were now 47 depository libraries each of which received the annual updated CD-ROM containing UNIDROIT Proceedings and Papers as well as the Uniform Law Review / Revue de droit uniforme and UNIDROIT publications on request.

148. *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 (C.D. (87) 21)

149. *Ms Peters* (UNIDROIT Secretariat) gave a demonstration of the UNILAW data base, illustrating its new features and the sections just opened. The new features included lists of the cases collected for the different conventions (in pdf); links to articles on case law; the text of protocols to the different conventions (in pdf); a section with summaries of the judicial systems of

a number of countries (in pdf); a list of editors and collaborators (in pdf); and a list of useful links (in pdf). The new sections were: carriage by air, carriage by sea, cultural property, secured transactions, and special contracts.

150. The *Secretary-General* explained in details his serious concerns with respect to the development of the data base, as outlined in document C.D. (87) 6, at pp. 11/12 and 15/16 and as also discussed at the meeting of the Board of the Uniform Law Foundation. Ms Trahan wondered which data base ever was complete, as there were new cases all the time.

151. *Mr Komarov* expressed his great surprise at this project having been awarded only low priority. Its priority had to be raised. Giving it low priority did not benefit the Institute's image. It was a very important project, not the least because it was the modern way to access information. The younger generation always started to search for information by using electronic means. UNIDROIT products were more easily accessible if they were in a data base and who was better placed than UNIDROIT to provide this information? *Ms Trahan* agreed with *Mr Komarov*. She suggested the data base should be co-ordinated with the Uniform Law Review. It would be very useful to lawyers from countries without access to other sources of information.

152. *Mr Widmer* drew attention to the document on the Strategic Plan (CD(87) 6) in which the Secretary-General had written "unless significant additional resources are committed either by member Governments or private donors, the Institute, conscious of its responsibility towards member States' Governments, cannot continue to support this project." It was necessary to decide what one wanted. Ms Trahan however retorted that she had not given that document blanket approval and she intended to discuss some points, in particular the data base.

153. *Mr Gabriel* stressed the importance of the data base which gave access to the whole world. There were parts of the world which did not have ready hard copies of research and the point was being reached where it was possible to have access to a computer just about anywhere in the world. The data base was providing a service globally that could not be obtained anywhere else. He stated that he would give it high priority. *Mr Harmathy* agreed, stating that the data base was important and should not be stopped. *Mr Govey* also agreed with *Mr Gabriel* and added that the data base was such an important project from the point of view of promoting the work of UNIDROIT and other organisations in the international harmonisation arena that UNIDROIT could not afford to put it to one side and give it low priority. It was great promotion for UNIDROIT itself, both of its current work and vis-à-vis countries it was hoped might join the Institute. If there was not enough money for what was desired, then perhaps it was necessary to find ways of doing it within the resources available. It might not be as good as desired, but UNIDROIT could not afford to abandon it.

154. *Mr Carbone* felt that it was absolutely impossible for the Institute to work ahead without two instruments as important as the data base and the Review working properly. Having achieved a sure and positive reliability in the scientific world it would be a pity not to pursue the activities in these two fields with the maximum effort. *Mr Hartkamp* agreed with the previous speakers on the relative importance of the data base and recalled that it had been hoped that funding from the foundations should be directed towards non-legislative activities as the legislative activities would normally be covered by the budget. If it could be arranged that especially the Scholarships Programme and the data base could be funded from the money from the foundations, he hoped they could be maintained and perhaps even extended in the near future. *Mr Voulgaris* also included the data base among the important projects, hoping something might be earned from it. Finally, *Ms Sandby-Thomas* stated she had become convinced that the data base, which was for the students of today and the future, should be maintained.

155. *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
(C.D. (87) 22)**

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

APPENDIX I**LIST OF PARTICIPANTS /**
LISTE DES PARTICIPANTS

(Rome, 21 – 23 April 2008 / Rome, 21 – 23 avril 2008)

MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION

Mr Berardino LIBONATI	President of UNIDROIT / <i>Président d'UNIDROIT</i>
Mr Martin ADENSAMER	Head of Unit Private International Law Federal Ministry of Justice Museumstrasse 7 P.O. Box 63 1016 Vienna (Austria) Tel.: (+43 1) 52152 2131 Fax: (+43 1) 52152 2829 e-mail: martin.adensamer@bmj.gv.at
Mr Antonio BOGGIANO	Professor of Law, Emeritus Judge and President of the Supreme Court Avenida Alvear 1708 2° 1014 Buenos Aires (Argentina) Tel.: (+54 11) 4812 9208 Supreme Court Tel.: (+54 11) 4371 4040 e-mail: antoniboggiano@fibertel.com.ar
Mr Hans-Georg BOLLWEG	Head of Division Federal Ministry of Justice Mohrenstrasse 37 10115 Berlin (Germany) Tel.: (+49 30) 2025 9124 Fax: (+49 30) 2025 9128 e-mail: bollweg-ha@bmj.bund.de
Mr Sergio CARBONE	Professor of Law at the University of Genoa Studio Carbone e D'Angelo Via Assarotti, 20-9 16122 Genova (Italy) Tel. (+39 010) 8317082 Fax (+39 010) 8314830 e-mail: smcarbon@tin.it
Mr Nabil ELARABY	former Judge to the International Court of Justice Senior Partner Zaki Hashem and Partners Attorneys at Law 23, Kasr El Nil Street Cairo 11211 (Egypt) Tel: 202-393-3766 Fax: 202-393-3585 e-mail: nabil.elaraby@hashemlaw.com

- Mr Michael B. ELMER
Judge of the Danish Maritime and Commercial Court
Bredgade 70-72
1260 Copenhagen (Denmark)
Tel. (office): (+45 33) 47 92 03
Tel. (home): (+45 33) 55 49 63
Fax: (+45 33) 47 92 82
e-mail: michael@elmer.eu
elmer@shret.dh
- Mr Henry D. GABRIEL
DeVan Daggett Professor of Law
Loyola University
School of Law
526 Pine Street
New Orleans, LA 70118 (United States of America)
Tel.: (+1 504) 861-5667
Fax: (+1 504) 861 5894
e-mail: gabriel@loyno.edu
- Mr Ian GOVEY
Deputy-Secretary
Civil Justice and Legal Services
Attorney-General's Department
National Circuit
Barton, A.C.T. 2611 (Australia)
Tel.: (+61 2) 6288 0580 (home)
Tel.: (+61 2) 6250 6012 (office)
e-mail: ian.govey@ag.gov.au
- Mr Arthur Severijn HARTKAMP
former Procureur-Général at the Supreme Court of
The Netherlands;
Professor of Private Law
Alexander Gogelweg 21
2517 JD Den Haag (The Netherlands)
Tel. (home): (+31 70) 355 2540
e-mail: a.hartkamp@hetnet.nl
- Mr Gerard HOGAN
Fellow, Trinity College
19 Charleville Road
Rathmines
Dublin 6 (Ireland)
Tel.: (+353 1) 496 3744
Fax: (+353 1) 497 9074
e-mail: ghkq@eircom.net
hogang@tcd.ie ghogan@lawlibrary.ie
- Mr Alexander S. KOMAROV
Professor of Law
Head of Private Law Department
Russian Academy of Foreign Trade
Pudovkin Str. 4A
Moscow 119 285 (Russian Federation)
Tel.: (+7 495) 688 8720 (home)
Fax: (+7 495) 688 8720 (home) / 929 0153
e-mail: ask1949@mail.ru
- Mr Byung-Hwa LYOU
President and Professor of Law
TLBU Graduate School of Law in Seoul
300, Naeyu-dong
Koyang-si, Kyunggi-do
412-751 Seoul (Repubblica di Corea)
Tel.: (+82 31) 960 1001
Fax: (+82 31) 963 1114
e-mail: lyou@tlbu.ac.kr

- Mr Didier OPERTTI BADAN
Ambassador
Calle Joaquín Núñez 2954
11200 Montevideo (Uruguay)
Tel.: (+59 82) 711 7790 (home)
e-mail: dopertti@aladi.org
ceciliafresnedo@gmail.com
Professor of Private International Law
Former Secretary-General ALADI
- M. Jorge SÁNCHEZ CORDERO
Director of the Mexican Center of Uniform Law
Professeur et notaire public
Arquimedes 36
Polanco
11560 Mexico City (Mexico)
Tel.: (+52 55) 5281 2108
Fax: (+52 55) 5281 0337
e-mail: jorgeas@mx.inter.net
notario@notaria153.com.mx
- Ms Rachel SANDBY-THOMAS
representing Mr Anthony Inglese
Solicitor and Director-General
Legal Services Group
Department of Business, Enterprise and
Regulatory Reform
1 Victoria Street
LONDON
SW1H 0ET (United Kingdom)
Tel.: (+44 207) 215 3039
Fax: (+44 207) 215 3376
e-mail: Rachel.Sandby-Thomas@berr.gsi.gov.uk
- Mr Tatsufumi SATO
representing Mr Kiyoshi HOSOKAWA
Counsellor
Civil Affairs Bureau
Ministry of Justice
1-1-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8977 (Japan)
Tel.: (+81 3) 3592 7114
Fax: (+81 3) 3592 7039
- M. Bruno STURLESE
Avocat général
près la Cour d'appel de Paris
Palais de Justice
4 Bd. du Palais
75001 Paris (France)
e-mail: Bruno.Sturlese@justice.fr
- Mme Anne-Marie TRAHAN
Juge à la Cour Supérieure du Québec
Palais de Justice
1, rue Notre Dame est, bureau 15-45
Montréal (Canada H2Y 1B6)
Tel.: (+1 514) 393 2193
Fax: (+1 514) 393 2773
e-mail: amtrahan@judex.qc.ca
- M. Evelio VERDERA y TUELLS
Professeur émérite des Universités
Complutense-San Pablo-CEV de Madrid
Almagro 46, 2° B
28010 Madrid (Espagne)
Tel.: (+34 91) 308 2509 / 319 3722
Fax: (+34 91) 308 3412
e-mail: verdera@evelio.e.telefonica.net

- M. Ioannis VOULGARIS
Professeur émérite de droit international privé et de droit comparé à l'Université "Démokritos" de Thrace, Avocat à Athènes
45 rue Spefsippou (home address)
10676 Athènes
7, Rue Georges Gennadiou
106 78 Athènes (Grèce)
Tel. et Fax: (+30 210) 3820 629 (office)
Tel.: (+30 210) 721 4765 (home)
Fax: (+30 210) 725 1264 (home)
e-mail: ivoulga@law.duth.gr
- M. Pierre WIDMER
Professeur émérite
Ancien Directeur
Institut suisse de droit comparé
Egelbergstrasse 40
3006 Berne (Suisse)
Tel. (privé): (+41 31) 351 4448
Tel. (office): (+41 21) 692 4965/11
Fax: (+41 21) 692 4949
e-mail: Pierre.Widmer@gmx.net
pierrewi@bluewin.ch
- OBSERVERS:**
- Ms Sally MOSS
Head
Legislation and International Policy Unit
Department of Business, Enterprise and Regulatory Reform
1 Victoria St.
LONDON
SW1H 0NN (United Kingdom)
Tel.: (+44 207) 215 3006
Fax: + (44 207) 215 3376
e-mail: sally.moss@dti.gsi.gov.uk
- Mr Jernej SEKOLEC
Secretary
UNCITRAL
Vienna International Centre
Box 500
A-1400 VIENNA (Austria)
Tel.: (+43 1) 26060 4060
Fax: (+43 1) 26060 5813
e-mail: uncitral@uncitral.org
- Mr Hans VAN LOON
Secretary-General
Hague Conference on Private International Law
6, Scheveningseweg
2517 KT The Hague
Tel.: (+31 70) 363 3303
Fax: (+31 70) 360 4867
e-mail: secretariat@hcch.net
- Ms Amanda VANSTONE
Ambassador of Australia in Italy
President of the General Assembly / *Présidente de l'Assemblée Générale*
- Mr Peter ADAMEK
Consul
Embassy of Germany in Italy
Chairman of the Finance Committee / *Président de la Commission des Finances*

UNIDROIT

Mr Herbert KRONKE
Mr Martin STANFORD

Secretary-General / *Secrétaire Général*
Deputy Secretary-General / *Secrétaire*
Général Adjoint

Ms Alessandra ZANOBETTI

Deputy Secretary-General / *Secrétaire*
Général Adjoint

Mr Michael Joachim BONELL

Consultant

Ms Frédérique MESTRE

Senior Officer / *Fonctionnaire principale*

Ms Lena PETERS

Senior Officer / *Fonctionnaire principale*

Ms Marina SCHNEIDER

Senior Officer / *Fonctionnaire principale*

Ms Paula HOWARTH

Senior-drafter / *Traductrice-rédactrice*

Mr John ATWOOD

Senior Officer / *Fonctionnaire principal*

Ms Bettina MAXION

Librarian / *Bibliothécaire*

Mr Daniel PORRAS

Associate Researcher / *Chercheur associé*

APPENDIX II

AGENDA

1. Adoption of the agenda (C.D. (87) 1 rev.)
2. Annual Report 2007 by the Secretary-General (C.D. (87) 2)
3. Appointment of the First and Second Vice-Presidents of the Governing Council (C.D. (87) 3)
4. Report of the Sub-Committee for the selection of a successor to the Secretary-General and appointment of the new Secretary-General (C.D. (87) 4)
5. Matters regarding the position of one of the Deputy Secretaries-General (C.D. (87) 5)
6. Implementation of the Strategic Plan (C.D. (87) 6)
7. Preparation of the draft budget for the 2009 financial year (C.D. (87) 7)
8. 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 (C.D. (87) 8(a))
 - (b) Preliminary draft Protocol on Matters specific to Space Assets (C.D. (87) 8(b))
 - (c) Preparation of an additional Protocol on Matters specific to agricultural, mining and construction equipment: see item 12
9. Transactions on transnational and connected capital markets
 - (a) Draft Convention on substantive rules regarding intermediated securities (C.D. (87) 9(a))
 - (b) Principles and rules capable of enhancing trading in securities on emerging markets: see item 12
10. Principles of International Commercial Contracts (C.D. (87) 10)
11. Model law on leasing (C.D. (87) 11)
12. Triennial Work Programme of the Organisation (2009-2011) (C.D. (87) 12)
13. 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:
 - (a) Parts I and II - Organisation of the Institute – Financial Administration (C.D. (87) 13 (a))
 - (b) Part III – Staff (C.D. (87) 13 (b))

14. Implementation and promotion of UNIDROIT instruments other than Cape Town instruments (C.D. (87) 14)
 - (a) CMR Protocol (C.D. (87) 14 (a))
 - (b) Other instruments (C.D. (87) 14 (b))
15. Legal co-operation programme (C.D. (87) 15)
16. Situation of the Library (C.D. (87) 16)
17. Uniform Law Review/ *Revue de droit uniforme* and other publications (C.D. (87) 17)
18. Report on the situation regarding correspondents (C.D. (87) 18)
19. Proposals for the appointment of correspondents (C.D. (87) 19)
20. The UNIDROIT Web Site and Depository Libraries for UNIDROIT documentation (C.D. (87) 20)
21. The Uniform Law Data Base (C.D. (87) 21)
22. Date and venue of the 88th session of the Governing Council (C.D. (87) 22)
23. Any other business.

APPENDIX III**RESOLUTION (87) 1**

adopted by the UNIDROIT Governing Council
at its 87th session (Rome, 21/23 April 2008)

THE GOVERNING COUNCIL,

MINDFUL of the fact that the draft model law on leasing to be finalised and adopted at a joint session of the UNIDROIT General Assembly and the UNIDROIT Committee of governmental experts for the preparation of a draft model law on leasing, due to be held in Rome in late 2008, has been conceived primarily for the benefit of developing countries and economies in transition to a market economy, leasing providing such countries with an important source of capital for the development of infrastructure and small- and medium-sized enterprises, and that the draft model law has excited wide interest in developing and transition economies,

CONSIDERING at the same time the considerable strides that have already been made in implementing the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment, both opened to signature in Cape Town on 16 November 2001, and the hopes entertained for both the implementation of these instruments in yet more States and implementation of the Protocol to the Convention on Matters specific to Railway Rolling Stock, opened to signature in Luxembourg on 23 February 2007, and such other Protocols to the Convention as are already under preparation by UNIDROIT or may be undertaken in due course,

WHEREAS it is necessary to ensure that the draft model law on leasing realise its special purpose of increasing the availability of lease finance for developing and transition economies in respect of as broad a range of assets as possible while safeguarding the application of the regimen introduced for high-value mobile assets by the Cape Town Convention,

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those States participating in the aforementioned joint session of the UNIDROIT General Assembly and the Committee of governmental experts to respect the particular purpose of the draft model law, 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.

APPENDIX IV

**Proposals for a revision of Parts I and II of the Regulations –
Organisation of the Institute – Financial Administration**

**and of one Article of Part III of the Regulations –
Staff**

agreed upon by the Governing Council at its 87th session for transmission to the general Assembly at its 63rd session for adoption

PART I

ORGANISATION OF THE INSTITUTE

GENERAL ASSEMBLY

Provision current wording	Amendments approved	Explanatory notes
<p align="center">Article 4</p> <p>1. – The Assembly shall be presided over by a Chairman, who shall be the senior ranking diplomat of the Governments represented. The Chairman shall conduct the deliberations and announce the results of votes of the Assembly. He shall also have the casting vote.</p> <p>2. – The Secretary-General shall organise the secretariat of the Assembly.</p>	<p align="center">Article 4</p> <p>(1) The Assembly shall be presided over by <i>its President, who shall be the Ambassador or highest ranking diplomatic representative of the member State holding the Presidency during the year during which the session of the Assembly is convened.</i></p> <p>(2) <i>The member State holding the Presidency shall be chosen in consultations from amongst the member States of one of the five continents [one of the regions in the sense of Article 5 ter] on a rotating basis.</i></p> <p>(3) = old para (2)</p>	<p>The changes reflect standing practice since 1999 in response to calls for raising the level of involvement of Governments and the desire to enhance inclusiveness and a more balanced geographic representation.</p>

GOVERNING COUNCIL AND PERMANENT COMMITTEE

Article 13

1. – The President shall submit to the members of the Governing Council a draft agenda one month before the date set for the opening of the session. Matters of urgency may, however, be entered on the draft agenda after that date. The draft agenda shall indicate as far as possible the names of the rapporteurs for the different items as well as the relevant documentation.

2. – The President may consult with the members of the Governing Council by letter. Should any proposal made by him be unanimously approved, the President shall give immediate execution to it.

Article 14

1. – The deliberations and decisions of the Governing Council shall not be valid unless a majority of its members is present. The decisions of the Council shall be valid when taken by a majority of the members present and casting a vote. In the event of an equal number of votes being cast, the President shall have the casting vote.

2. – Voting shall be by show of hands unless one member requests a vote by roll-call. In such circumstances, the members shall be called in alphabetical order.

Article 13

(1) unchanged

(2) The President may consult with the members of the Governing Council *in writing or by any other means of communications*. Should any proposal made by *the President or by a member of the Council* be approved, the President shall give effect to it.

Article 14

(1) The deliberations and decisions of the Council shall not be valid unless a majority of its members *participate therein*. The decisions shall be valid when taken by a majority of the members *participating* and casting a vote. In the event of an equal number of votes being cast, the President shall have the casting vote.

(2) Voting shall be by show of hands *or, if voting is taking place without a physical meeting of the Council, by any appropriate means permitting determination of the voting member's opinion*. If one member requests a vote by roll-call, the members shall be called in alphabetical order.

1. In recent years, important decisions were made on the basis of written communications. In the future and available equipment permitting, discussions may be organised and decisions may be taken by using conference calls, video conferences calls, video conferences and other means of virtual meetings and decision making at distance.

2. However, neither the Council nor the Permanent Committee should lose the advantages of face to face meetings. New Article 17 *bis* establishes what should be the rule and what the exception

3. Article 13 (2) extends the right to make proposals which, where unanimously adopted, are to be immediately executed to *all* members of the Council. The requirement of unanimity was abolished as it was in contradiction to the provision of Article 14(1).

3. – Notwithstanding the provisions of paragraph 2 of this article, decisions concerning persons shall be taken by secret ballot.

Article 17

1. - The Permanent Committee shall ensure the continuity of the Institute's operation in accordance with the instructions of the Governing Council.

2. - The decisions of the Permanent Committee shall be valid only if at least three of its members, including the President, attend the meeting or are represented at it. Decisions shall be taken by a single majority.

3. –Notwithstanding the provisions of paragraph 2 of this article, decisions concerning persons shall be taken by secret ballot. *In cases of distance voting the authenticity and the secrecy of the vote must be ensured by appropriate means.*

Article 17

(1) unchanged

(2) The decisions of the Permanent Committee shall be valid only if at least three of its members, including the President, *participate in the meeting or otherwise organised deliberations* or are represented. Decisions shall be taken by a simple majority.

(3) Where the Permanent Committee is called upon to discuss or make decisions regarding staff matters, the staff shall be invited to designate a representative to participate in that meeting.

Article 17 bis

(1) Physical meetings shall be the regular and preferred way for the Governing Council and the Permanent Committee to organise their deliberations and take decisions.

(2) Decisions regarding a member of staff shall, subject to the exception provided for in Article 62(4), be taken in physical meetings of the Committee and the member of staff concerned shall be given an opportunity to present his or her case at that meeting.

(3) Writing, telephone conferences, video meetings, distance voting and other means of electronic communication and decision making shall be used on an ad hoc basis where deemed adequate.

SECRETARIAT

Article 20

1. – The Deputy Secretaries-General shall assist or replace the Secretary-General in the organization and performance of the Institute's scientific tasks.

2. - Should the Secretary-General's post remain vacant, the senior Deputy Secretary-General shall fill the vacancy until a successor is duly appointed. In addition he or she shall substitute the Secretary-General in the event of the temporary absence of the latter.

Article 21

1. – The Head Librarian shall supervise the operation of library services and the maintenance of bibliographic material. He shall submit to the Secretary-General lists of proposed acquisitions.

Article 20

(1) unchanged.

(2) When the Institute has two Deputy Secretaries-General, the Governing Council may designate one of them as Secretary-General ad interim in cases of vacancy or absence of the Secretary-General.

Article 21

(1) The Head Librarian shall supervise the operation of Library services and the maintenance of bibliographical material.

In line with the Council's decision that, where in accordance with Article 8 (1) of the Statute, there are two Deputy Secretaries-General, one of them should be required to have a professional profile that includes experience on the area of administration, accounting and personnel management, the changes in Article 20 (2) reflect the need that during vacancies stability and continuity at the executive level is a primary concern.

1. In recent years, the Librarian's role has been strengthened mainly as a consequence of (a) her being the first professional librarian by training and prior work experience, (b) the importance of IT expertise, and (c) the importance of operating the Library within the network of other specialized and better funded libraries. At the same time, the funds at the disposal of

2. – A general purchasing plan for the Library shall be drawn up at the beginning of each financial year by the president with the assistance of the Secretary-General, the Deputy Secretaries-General and the Head Librarian.

Article 22

Whenever functions pertaining to the management of the Institute are performed by civil servants of a member Government duly paid by such Government, provisions concerning staff appearing in Part Three of these Regulations, including salaries scales, shall not be applicable. The Governing Council may however grant them an allowance for their collaboration as well as a sum for representation expenses and, if need be, a travel allowance.

(2) The Head Librarian shall report regularly to the Governing Council and the General Assembly identifying the state of affairs and the needs of the Library.

Article 22

Whenever functions pertaining to the management of the Institute are performed by civil servants of a member Government duly paid by such Government, provisions concerning staff appearing in Part Three of these Regulations, including salary scales, shall not be applicable. The Governing Council may however grant them an allowance for their collaboration as well as a sum for representation expenses and, if need be, a travel allowance. *The Institute shall however grant such travel and other allowances as are commonly granted to members of the professional staff of the Institute.*

the Library under the Institute's regular budget make acquisition of books an almost marginal and exceptional event. Donations and exchange arrangements with other libraries and Government departments in member States are an increasingly important source of new material. Deletion of old Article 21 (2) would realign the Regulations with reality.

2. The proposed new paragraph 2 stresses the importance of governing bodies' being regularly apprised of the needs of the Library, a branch of the Institute's activities which is mandated by Article 9 of the Statute.

1. The Institute actively pursues the option of having civil servants from member States' governments seconded to the Organisation as a means to strengthen its ranks and to broaden its resources in terms of professional background.

2. In practice, secondments will tend to be short-term (one to three years) and the involvement of the Governing Council may be cumbersome. The President and the Secretary-General should therefore be authorized to make the necessary arrangements.

3. Furthermore, paragraph 2, as amended, reflects the need to guarantee equal treatment of seconded officers.

PART TWO**FINANCIAL ADMINISTRATION****Article 26**

1. All Institute funds shall be deposited in banks selected by the Finance Committee.

2. The Institute may also possess a post office current account.

Article 26

1. unchanged

2. to be deleted.

Following corporatisation of the Postal Services the financial services provided by that organization are effectively provided by the "post bank" so that no need to mention it separately exists.

Article 34

The Secretary-General, on the advice of the Treasurer, shall approve the proposals where appropriate and sign an order for payment.

Article 34

The Secretary-General *or the Deputy Secretary-General exercising the functions of Chief Administrative Officer or a person designated by the Permanent Committee*, on the advice of the Treasurer, shall approve the proposal where appropriate and sign an order for payment.

The changes reflect the decision to always designate one of the Deputy Secretaries-General as Chief Administrative Officer and to assign primarily administrative functions to him.

PART THREE**STAFF****Article 62**

1. – If either the work or the behaviour of an official or employee or the ability displayed are unsatisfactory, the Permanent Committee may decide, on a proposal by the Secretary-General, that the periodical increment to which the official or employee would otherwise be entitled be postponed by one year.

Article 62

(1) Unchanged.

The current wording of Article 62 does not provide for termination of the Contract "for cause", as known and provided for in virtually all domestic systems of labour law. Under the relevant rules the employer may terminate the contract in cases of gross violations of his or her duties on the part of the employee without giving notice.

2. – If the inefficiency of the official or employee has become manifest and his work output has proved to be inadequate, the Permanent Committee may terminate the employment of the official or employee. In such cases the official or employee shall not be entitled to the indemnity referred to in Article 61, paragraph 2 of these Regulations.

3. – The termination notice in cases covered by the present article shall be submitted to the official or employee at least three months in advance. The reason for termination shall be duly brought to the knowledge of the party concerned.

(2) Unchanged.

(3) Unchanged.

(4) No termination notice shall be required where an official or employee is dismissed for cause.

APPENDIX V**Report of the meeting of the *Scholarships Sub-Committee*
of the Governing Council**

Wednesday 23 April 2008, 9.00 a.m.

The Scholarships Sub-Committee was made up of Messrs Gabriel, Komarov, Lyou, Sen, Verdera y Tuells, Widmer and Zhang as well as Mr Kronke and Ms Mestre of the Secretariat. Mr Widmer chaired the meeting.

The following documents were submitted to the sub-committee in addition to Council document (C.D. (87) 15 (“Legal Co-operation Programme”):

The Report on the Implementation of the Programme in

- The Report on the Implementation of the Programme in 2006 : Study LXV – Scholarships exec. 19.;
- An updated table setting out funding details for 2007 and 2008 ;
- The work, conclusions and research reports of the beneficiaries of the programme in the period January 2007 - March 2008 (for consultation);
- Applications received by the Secretariat for 2008-2009 (for consultation)

As always, the Sub-Committee recalled the important role played by the scholarships programme not only in the context of legal co-operation but also as a tool to promote UNIDROIT and its work.

As to funding, the Sub-Committee expressed its regret at the drop in available resources for 2008-2009, coupled with the reduction in the allocation under Chapter XI of the general budget, which now stood at 0.58% of the contributions of Member States other than Italy instead of the 1% share initially decided upon. It expressed the hope that the Governing Council would encourage the General Assembly to restore the Programme’s funding to its former level. It also took note of the funds that were actually available and of the availability of a scholarship thanks to the individual contributions made by the members of the Governing Council. It also expressed its gratitude at the intention expressed by Professor Lyou to provide a contribution to the Programme for the current year through the TLBU University.

As to the applications received by the Secretariat for the coming year, the sub-committee took note of the large number of applications (44). It formulated a series of recommendations, in particular with a view to maintain and strengthen the links with those African countries that had expressed an interest in the OHADA project, and suggested that the Governing Council scholarship be awarded to Ms Gouem (Burkina Faso), whose research project addressed the preliminary draft OHADA Uniform Act on contract law. It was agreed to mandate the Secretary-General to establish an order of precedence in accordance with the usual selection criteria (i.e. the conditions stipulated by donors, the general guidelines laid down by the Scholarships Sub-Committee in April 1999 – see below –, the “strategic” objectives of forging closer links with certain member States or with potential new member States).

[General criteria established by the Scholarships Sub-committee in April 1999 :

- (a) preference to be given to applicants conducting research on topics relevant to the activities of UNIDROIT (past achievements, items on the current work programme, private law in the broadest sense);
- (b) preference to be given to graduate or post-graduate level applicants;
- (c) the widest possible geographical variety to be sought as to applicants' countries of origin;
- (d) preference to be given to applicants with research projects likely to have maximum practical impact;
- (e) preference to be given to applicants possessing sufficient linguistic ability to use the bibliographical materials to best advantage.]