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**Item No. 12 on the agenda: Implementation and promotion of UNIDROIT instruments
other than the Cape Town instruments**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>State of implementation of the UNIDROIT Conventions and promotion of instruments other than the Cape Town instruments</i>
<i>Action to be taken</i>	<i>Allocation of necessary resources especially for instruments already adopted</i>
<i>Mandate</i>	<i>Strategic Objective No. 11: the systematic promotion of and active assistance in implementing, applying and monitoring international instruments elaborated under the Institute's auspices.</i>
<i>Priority</i>	<i>High</i>
<i>Status</i>	<i>Ongoing activity</i>
<i>Related documents</i>	<i>C.D. (88) 2 (Report on the Activity of the Institute in 2008); C.D. (88) 9 Strategic Plan (pp. 6-8); UNIDROIT website</i>

I. IMPLEMENTATION OF INSTRUMENTS ADOPTED UNDER THE AUSPICES OF UNIDROIT

1. As to the state of implementation (on 31 December 2008) of all the Conventions prepared by UNIDROIT and approved at diplomatic Conferences convoked by UNIDROIT Member States, see the Annexe to document C.D. (88) 2 (Annual Report 2008 – situation on 31 December 2008) and/or the UNIDROIT website (<http://www.unidroit.org/english/conventions/c-main.htm>) (which is regularly updated).

Adoption of a new instrument

2. The *Model Law on Leasing* was adopted at a joint session of the UNIDROIT General Assembly and the Committee of governmental experts on 13 November 2008 (cf. UNIDROIT 2009 – C.D.(88)2 and C.D.(88) 6).

Ratifications/accessions and outlook

3. Also to be noted is the deposit, in January and February 2009, of several instruments of ratification or accession:

- *Convention on International Interests in Mobile Equipment* (five instruments);
- *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (four instruments).

4. The 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*:

- Following two study / training visits organised by the UNCTAD/WTO International Trade Centre (as part of the LegaCarta project) in *Vietnam* and *Madagascar* in 2008, the authorities of these two countries expressed keen interest in this Convention and included it on the list of instruments earmarked for priority accession;
- In the framework of the proposed reform of its legislation on National Monuments (1930 – 2004), *Ireland* is now drafting the chapters which will enable it to accede to the 1995 UNIDROIT Convention;
- *Sweden* has also decided to accede to the 1995 Convention and is now making the necessary amendments to its national legislation.

Denunciation

5. On 14 January 2009, the Republic of Argentina deposited with the Federal Service of Foreign Affairs, External Trade and Development Co-operation of Belgium its denunciation of the 1970 *International Convention on Travel Contracts (CCV)*. In accordance with the provision of Article 37 of this Convention, the denunciation will take effect in respect of the Republic of Argentina on 14 January 2010. The Convention will remain in force between Benin, Cameroon, Italy and Togo.

Requests for information concerning older conventions

6. Each year, the UNIDROIT Secretariat receives about half a dozen requests for information in respect of the *1973 Convention providing a Uniform Law on the Form of an International Will* (from the United States of America only).

II. PROMOTION OF UNIDROIT INSTRUMENTS

7. It should be recalled that the UNIDROIT budget (*Chapter 10 – Promotion of UNIDROIT instruments*) does not make a distinction between instruments under preparation and instruments that have already been adopted, and that it provides for only 5,000 euros for 2009, an amount that has remained unchanged since 2005 (no increase means a cut). The draft budget for 2010 provides for no increase, although a new instrument was adopted in 2008 (Model Law on Leasing) and another is to be adopted in 2009 (Convention on Substantive Rules regarding Intermediated Securities) which will have to be promoted to the best of our ability. For details of the limited resources at the Institute's disposal for the promotion of its instruments, see the table in the document on the Strategic Plan (UNIDROIT 2009 – C.D. (88) 9, § 27).

A. Instruments under preparation

8. As to instruments under preparation, these are of course promoted throughout the preparatory stage when the various committees meet, during national or regional seminars, by means of articles published in *Uniform Law Review/Revue de droit uniforme*, by the scholars hosted by the Institute and through the UNIDROIT website. There is no need here to recall the importance of these various means in promoting the Institute's work; suffice it to refer to the respective Council documents dealing with each of the topics on the Work Programme for further information.

9. Most of these activities are financed by the Institute's ordinary budget. As a rule, however, this does not apply to national seminars, which are usually organised by the interested States.

B. Instruments already adopted under the auspices of UNIDROIT

10. The most pressing problems facing the Institute relate to instruments already adopted, owing to *lack of financial and staff resources*, however much the different UNIDROIT organs may reiterate the importance of promoting our instruments. We may well ask why we bother to elaborate new Conventions if we do not continue, after they are adopted, to promote them so as to ensure their widest possible application.

11. *UNIDROIT's non-political status is an asset* when it comes to elaborating its instruments – the representatives who participate in the working sessions are experts in the matter under discussion -, but it can also be a *handicap* when it comes to Parliaments ratifying or acceding to the resulting Conventions. What is more, UNIDROIT instruments are open to non Member States that have not acquired the know-how that comes from participating in the negotiating process and therefore need to strengthen their capacities in order to incorporate, implement and properly apply these instruments. This makes further calls on the Secretariat's time which, of course, do also something apply to non-member States.

12. As indicated in the document on the Strategic Plan (UNIDROIT 2009 – C.D.(88) 9, § 26), “[I]acking the resources for a comprehensive implementation strategy, the *promotional activities of UNIDROIT have remained essentially demand-driven*, rather than pro-active as originally envisaged.” Taking a global view of the Institute's promotional activities over the past three years in respect of instruments already adopted reveals that much of the work has been concentrated on international interests in mobile equipment, the UNIDROIT Principles on International Commercial Contracts and the international protection of cultural property. The other areas where UNIDROIT has been active hardly appear on the list of promotional activities. One reason for the greater visibility of some instruments is their level of acceptance, industry support where the industry seeks speedy implementation of the instrument, or partnership with another organisation actively engaged in the instrument's promotion. Usually this means that the cost of organising conferences and seminar, and travel costs of UNIDROIT officials are borne by the organisation in question. Instruments that do not enjoy such visibility receive less attention, and this eventually compromises their promotion.

13. For *concrete examples of the promotion of these instruments*, in particular the Unidroit Principles of International Commercial Contracts, the ALI/UNIDROIT Principles of Transnational Civil Procedure, or the UNIDROIT Model Law on Leasing, see the Annual Report of the Activity of the Institute in 2008 (C.D. (88)2).

◆ ***UNIDROIT Convention on International Leasing international (1988)***

14. The text of the Model Law on Leasing largely takes its inspiration from the Ottawa Convention and the International Finance Corporation intends to propose the implementation of the Model Law in all the countries where it operates. This is a good example of indirect promotion of the Ottawa Convention.

◆ ***UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)***

15. Interest in this Convention, which helped to make UNIDROIT known outside strictly commercial law circles, has been rekindled recently because of the greater visibility given by the press to trafficking in cultural property and to cases involving the return of cultural objects. The Secretariat is frequently asked to take part in national, regional or international training sessions, or, more specifically, is approached by Governments in need of technical assistance with a view to ratifying the Convention or acceding to it (see, in particular, document UNIDROIT 2009 – C.D. (88) 2, p. 16). Examples are the training sessions organised in Lebanon (national training for Iraq), in Tunisia and Bosnia-Herzegovina (regional training) and in Greece, Korea and Italy (international training).

16. In promoting this instrument, and indeed since the early days of its drafting, UNIDROIT has received the active support of UNESCO (it should be recalled that UNIDROIT undertook the work that led to the 1995 Convention at UNESCO's request). It is true that the 1995 Convention is largely complementary to the *1970 UNESCO Convention Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and that UNESCO recommends that its Member States become Parties to both instruments. Not only is UNIDROIT invited to UNESCO's institutional meetings, but UNESCO also regularly involves UNIDROIT in its aid and training programmes (and usually pays for the UNIDROIT official's travel and accommodation costs).

17. *This close co-operation with UNESCO has taken different forms in the past year, or will take shape in the months to come:*

- involvement of UNIDROIT in the UNESCO *campaign* addressed to States, art dealers and the public at large to make them aware and inform them of the damage done by illicit trafficking in cultural property. A meeting is scheduled in Paris next May with the *Syndicat national des Antiquaires*, a fierce opponent of the Convention which managed to block its ratification by France in 2002; and UNIDROIT has participated in the preparation of a volume on the different aspects of the return of cultural property from a historical, ethical, philosophical and legal point of view;

- *participation by* UNIDROIT in national, regional or international meetings on the subject; the opportunity to present the Convention to representatives of Governments, museums and others (in particular, a five-day training seminar in Lebanon for Iraqi lawyers in November 2008);

- *translation* of the text of the Convention in United Nations languages other than French and English (i.e., Arabic, Chinese, Spanish and Russian). Following its participation in the training seminar for Iraqi lawyers, UNIDROIT secured the translation into Arabic by UNESCO's Office for Iraq of the explanatory report to the Convention and of some other documents. Co-operation with the UNCTAD/WTO International Trade Centre, in the form of a seminar organised in Vietnam, has resulted in the translation of the Convention into Vietnamese. All these documents have been placed on line on the UNIDROIT website;

- UNESCO has asked UNIDROIT to collaborate in, or to undertake, the drafting of a model law on the protection of cultural property (see document UNIDROIT 2009 – C.D.(88) 7 Add. 5);

- Since UNIDROIT has had to drop the idea of collecting all national legislation in respect of the export of cultural property (the Convention requires Contracting States to communicate its legislation to the Depositary) into a database accessible on the UNIDROIT website, the Institute has given preference to co-operating with UNESCO, which has the financial and human resources that the Institute does not, and which runs a database on national legislation on the cultural heritage. The UNIDROIT website has a link to this UNESCO database.

18. UNIDROIT has also established collaboration links with the *Carabinieri Tutela Patrimonio Culturale* and, in this context, will take part next June in Vicenza in a multidisciplinary training seminar for African countries (an entire week will be devoted to the legal aspects of the fight against illicit trafficking and, in particular, to the 1970 and 1995 Conventions).

19. UNIDROIT has been asked, in the framework of the *European Euromed Heritage IV programme*, to co-organise (at no cost to UNIDROIT) a training workshop entitled "Reinforcing the institutional and legislative setting in the field of cultural heritage". This workshop will be organised in Lebanon next September together with the countries of the Mediterranean basin, in particular those in the Near East.

20. Finally, UNIDROIT is regularly invited to participate in training sessions organised by INTERPOL or in the framework of the *European Union's TAIEX programme*.

21. UNIDROIT has also been working on the webpage devoted to the 1995 Convention on the *Institute's website* (<http://www.unidroit.org/french/conventions/1995culturalproperty/main.htm>), placing all the documents dealing with "International Protection of Cultural Property" published since 1986 on line (<http://www.unidroit.org/french/conventions/1995culturalproperty/etude70-archive-f.htm>).

III. CONCLUSION

22. Just as, for example, the Hague Conference on Private International Law which devotes over 60% of its time and resources to the follow-up of its Conventions, so UNIDROIT ought to be in a position to develop whatever activities are vital to promotion, education and training in respect of its instruments.

23. UNIDROIT has consistently stressed the importance of efficient co-operation with Governments and with the other international Organisations with a view to rationalising the use of resources and improving the quality of the assistance given (cf. § 25, 29 et 31 of document C.D.(88) 9), but this should not mean that it should not promote its own instruments as much as possible on its own too. Of course, promotion also implies the use of *ad hoc* means, but it should not be forgotten that fund-raising takes time (which the Secretariat currently does not have).

24. The Secretariat is now the Depositary of three instruments, will soon be of the future Convention on Intermediated Securities and is in favour of becoming the Depositary of all its future instruments. This obviously has repercussions for its post-Convention activities which will henceforth involve obligations. Will we be able to invest the necessary resources without neglecting other instruments?

25. What we need is support, not in principle, but in practice, by freeing real resources for this "chronically and severely neglected" activity to enable us to establish a strategy and determine priorities both in terms of time and money (see also §§ 30 and 32 of the Strategic Plan, UNIDROIT 2009 – C.D. (88) 9).