

The International Institute for the Unification of Private Law : An Overview of the Organization and Its Work

The Honourable Madam Justice Anne-Marie TRAHAN*

INTRODUCTION	325
I. THE PLACE OF UNIDROIT	326
A. The Hague Conference on International Private Law	327
B. The United Nations Commission on International Trade Law (UNCITRAL)	327
II. THE ROLE OF CANADA	328
III. INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT	331
CONCLUSION	332
APPENDIX	333

* Quebec Superior Court, Montreal, Quebec and Member of the Governing Council of UNIDROIT.

As a Member of the Governing Council of UNIDROIT (The International Institute for the Unification of Private Law), I am pleased to be here to give you an overview of its organization and its work. UNIDROIT is an independent intergovernmental Organization. Its purpose is to examine ways of harmonizing and coordinating the private law of States and Groups of States, and to prepare gradually for the adoption by States of Uniform Rules of Private Law. UNIDROIT has published a comprehensive document providing in a succinct but precise and complete way all the required information on this question. I refer you to it. It is not necessary for me to repeat what is in the document. The document mentions the realizations of UNIDROIT. You will allow me to draw your attention to some of them :

- Two *Conventions* were adopted in Ottawa in 1988, one on *International Leasing* and the other on *International Factoring*. They have both been in force since May 1st, 1995 between France, Italy and Nigeria and for Hungary since December 1st, 1996. The *Convention on International Leasing* is also in force for Panama since October 1st, 1997. During the 1998 Session of the Governing Council, we were told that Russia had adhered to the *International Leasing Convention* on February 8th, 1998. As for Canada, the Department of Justice is studying whether or not to adhere to the *Leasing Convention* and is consulting widely with the provinces and interested milieux.

- The *Principles of International Commercial Contracts* was published in 1994. An eminent Canadian professor of law, Professor Paul-André Crépeau (who was born here in Saskatchewan,¹ where this year's Conference is taking place), has actively taken part in the preparation of the *Principles*. They are, as the Governing Council has said in the *Introduction to the Principles*, "a non-legislative means of unifying and harmonizing the law." They aim to establish a set of rules destined to be utilized throughout the world whatever the legal tradition and the economic and political conditions of the countries where they are to apply. According to the indications we have, the *Principles* have been well received and are more and more utilized in international commercial arbitrations.² The *Principles* have already been translated in many languages. UNIDROIT will carry on its work on the *Principles* to update them and complete

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1. Professor Crépeau has another link with Saskatchewan. In 1993, he was the first recipient of the Ramon J. Hnatyshyn prize for the advancement of law given by the Canadian Bar Association at the behest of the former Minister of Justice, who is also from Saskatchewan and who was then Governor General of Canada.
 2. See the eloquent article by Me P. Bienvenu of Ogilvy Renault on this topic in the Newsletter of the White and Case law firm (White and Case International Dispute Resolution) concerning an arbitral award by the I.C.C. (International Chamber of Commerce) where the Principles were used.

See also the comments of Professor E. Gaillard in his presentation entitled "The Use of General Principles of International Law in International Long-term Contracts" (at 7) to the Second I.B.A. International Arbitration Day, November 12-13, 1998, Düsseldorf.

them by covering, amongst others, agency, assignment of contractual rights and duties, limitation of actions, contracts for the benefit of a third party, price reduction, conditions, set-off and waivers.

- The *Guide to International Master Franchise Arrangements* has just been published. It is the result of a close cooperation between UNIDROIT and private practice lawyers, amongst others, the members of Committee X, the International Franchising Committee of the IBA (International Bar Association).³ The Guide covers the whole life of the Franchise. It draws attention to the problems which might arise and lists the pros and cons of the different solutions available. Drafted in plain language, it is easy to understand and has already been well received by practitioners.
- The *1973 Convention providing a Uniform Law on the Form of an International Will* is in force in most of the Canadian provinces.

Today, I would like to deal with three points in particular. For those of you who are not familiar with what is going on in the field of the unification of law, I will explain the place of UNIDROIT in this context. I will then show why Canada's presence in international organizations dealing with the unification of law is important and what role Canada can and must play in such organizations. Finally, I will deal more particularly with some aspects of the Project on *International Interests in Mobile Equipment* about which Professor Cuming will give more details later on.

I. THE PLACE OF UNIDROIT

UNIDROIT was created in 1926 as an auxiliary organ of the League of Nations. Following the demise of the League, UNIDROIT was re-established in 1940 on the basis of a multilateral agreement. The seat of UNIDROIT is in Rome, Italy. I would particularly like to point out the generosity of the Italian Government which provides Villa Aldobrandini, the seat of UNIDROIT. The Italian Government also appoints the President of UNIDROIT and chooses for this high office a person whose competence and reputation are well known on the international scene, thereby insuring that UNIDROIT maintains its important place in the field of the unification of law.

Other organizations have been created since 1926 whose purpose is also the unification and harmonization of international law.

A. The Hague Conference on International Private Law

3. The cooperation between UNIDROIT and associations such as the IBA insures that the work of UNIDROIT is anchored in reality. A Canadian lawyer, Me A.S. Konigsberg, Q.C., of Montreal, has taken part actively in the work leading to the preparation of the Guide. He was "Rapporteur" on Chapters 3 and 10.

I'm sure you know the Hague *Convention on the Civil Aspects of International Child Abduction*. Another Hague Convention that will play a more important role in the years to come is the *Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption*. There are many other Hague Conventions in a variety of fields.

B. The United Nations Commission on International Trade Law (UNCITRAL)

While UNIDROIT and the Hague Conference are independant organizations, UNCITRAL is an organ of the United Nations. As can be seen from its name, its activities are directed more particularly to international trade law. Who has not heard about the *United Nations Convention on Contracts for the International Sale of Goods*⁴ (C.I.S.G.), or the UNCITRAL *Arbitration Rules* or the UNCITRAL *Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works*, etc.?

Other organizations exist at the regional level. One is close to us : "CIDIP : The Interamerican Conference on Private International Law."

Throughout history, the harmonization of certain aspects of Private Law and particularly of commercial law has been necessary. Already, in the Middle Ages, the cities who were members of the Hanseatic League had elaborated their own rules : the *lex mercatoria*. However, in this era of globalization (one of the consequences of which is a considerable increase in exchanges), the harmonization of certain aspects of Private Law is an indispensable tool. Its aim is to facilitate not only exchanges but also communication between countries and individuals. This is why the existence of organizations such as the ones I mentioned above (including UNIDROIT) is indispensable.

4. This *Convention* has its origin in the 1964 *Convention* relating to a *Uniform Law on the Formation of Contracts for the International Sale of Goods* and the 1964 *Convention* relating to a *Uniform Law on the International Sale of Goods*. Prepared by UNIDROIT, these *Conventions* were adopted in The Hague in 1964, They were in force essentially for european and developed countries. UNCITRAL used these *Conventions* as a start for its work and has elaborated the CISG which is a more universal scope in its approach.

II. THE ROLE OF CANADA

Canada is not only a bilingual country but it is also a bijural one. It is the only country in the world (except for Cameroun, Mauritius, Vanuatu and The Seychelles) to practice not only Civil Law in French and Common Law in English but also to practice them in the other language, that is, Common Law in French and Civil Law in English.⁵ In international fora such as UNIDROIT, UNCITRAL or the Hague Conference, confrontations between delegates are not, in general, of a political nature but of a legal one : between Civil Law and Common Law. Often, problems arise because it is difficult to transpose a legal concept from one language to another. Canada can and must play a unique role because of its bilinguism and bijuralism. Let us not forget that, even prior to Confederation, Civil Law was practised and taught in English in Lower-Canada. One of the three commissioners charged with drafting the Civil Code of Lower-Canada, Commissioner Day, wrote directly in English the sections dealing with commercial matters. On the other hand, for about 20 years now, Common Law has been taught in French at the École de droit of the University of Moncton (which was the first in the world to teach Common Law in French). Since then, a section of Common Law in French at the Faculty of Law of the University of Ottawa has been created and POLAJ (the Program for the Administration of Justice in both official languages) oversees the standardization of the French version of Common Law terms. The Department of Justice of Canada has adopted a policy on bijuralism and has tabled before the House of Commons, in June 1998, a Bill in this respect entitled *A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law* (Bill C-50).

To give you a more concrete and precise idea of the type of problem which arises in these international fora, let me quote, humbly, a passage by Professor Bradley Crawford of Toronto, from the 7th trade law Seminar of the Department of Justice of Canada (October 19th, 1989). He had been the expert for the Department of Justice for a number of years when UNCITRAL finally adopted, in 1987, the draft Convention on *International Bills of Exchange and International Promissory Notes*. I had the privilege to attend, with Professor Crawford, the last annual meeting of UNCITRAL where the draft was finalized before being sent to the General Assembly of the United Nations. UNCITRAL had been working on this project for about 20 years and the delegates were still having difficulty with the concept of *Aval*. Here is what Professor Crawford says :

[...] *There is one significant substantive change law that I think will benefit and impact on banking practice, and that is the incorporation of a fully developed law of "aval." This is the basis, as some of you know, of the whole law of "forfeiting" which is an extremely popular method of inventory or trade financing in Europe and other parts of the world. It is not thought to be possible here because of the relative weakness of our law of guarantee. It is thought to be possible there because of the*

5. The University of Ottawa has just published a very interesting document : *World Legal Systems* by G. Fuentes (LLD) and N. Mariani under the direction of Dean L. Perret and Professor A.F. Bisson, Fall 1998. It shows the number of countries influenced by the Common Law and the Civil Law. According to this document, Civil Law is present in 145 countries and Common Law in 82 (some countries are considered as being of mixed law).

relative strength of their law of aval. The Aval is a "hell or high water" promise to pay. It is typically added to an instrument for the purpose of financing international trade. In that trade, an Aval is added by an international bank of undoubted financial strength and stability. The bank's name and signature alone on the face of the instrument are sufficient to create an Aval. Typically, the usage is for them to add the word Aval.

The party signing an Aval may state the party for which the Aval is given, i.e., the person whose indebtedness is guaranteed. But there is no need to do so and in the absence of any statement the Aval is deemed by the Convention to be for the drawee.

The strength of that may be seen in Article 47. It is the whole basis for non-recourse purchase of commercial paper in the practice of forfaiting. Once the aval for the drawee is given (and note that it is not material whether the drawee has signed yet at this point, or whether he "never" signs), the engagement is to pay the instrument in accordance with its face at maturity. There are very few defences. I will not take the time to try to go through them, but you will see that they distinguish between the defences that are personal to the avaliste, (i.e. the person who gives the aval), and defences that he has by virtue of sheltering under the defences available to the person whose liability he has guaranteed. Because of the distinction between "holder" and "protected holder," Article 47 is quite complex in spelling out the kinds of defences that are available against a "mere holder" by an avaliste, and the kinds of defences that are available against even the "protected holder."

When you look at the Convention – and it takes a bit of reading, because it does not read like a novel – the number of defences available to the avaliste against the "protected holder" come down to really almost nil. If there is fraud on the part of the holder, the avaliste need not pay, but he must establish actual fraud on the part of the protected holder. If there was a failure to observe the due formalities upon maturity – e.g., a failure to present, a failure to protest – he need not pay. If the action is statute barred, he need not pay. That is about it. So the concept of Aval is very strong.

There is one further wrinkle. In the Commission we call this the "Trahan amendment," because the discussions were going virtually nowhere until Anne-Marie Trahan leapt in the fray and began to lecture the whole assembled body of UNCITRAL delegates on the usage of French and English in Canada and how to say what you mean in both languages sequentially.

The Trahan amendment distinguishes between forms of undertaking by third parties that may guarantee the instrument, but not as an Aval – not as forcefully as an Aval. There is a current practice in New York and elsewhere of marking instruments "guaranteed," "payment guaranteed," "collection guaranteed," and so on. Those words will not carry the full force of the aval under the Convention. They are a guarantee, but there are more defences available to a person who puts those words on a bill. It is only where the word used is Aval, or where the aval is given by a Bank that you have the absolutely rock firm, hell or high water consequences of the aval

*under the Convention. That is the "Trahan amendment" which I think was very instrumental in getting the whole scheme approved.*⁶

Terminium is another Canadian achievement which is very useful in the jurilinguistical field. It is the "Terminological Data Bank of the Government of Canada." It is part of the Translation Bureau of Public Works and Government Services Canada. *Terminium* contains a section devoted to law where 5,000 Records can be found. These are Records containing standardized terminology for Common Law terms in French, elaborated during the last 20 years under the auspices of POLAJ.⁷ It is expected that access will be given shortly to the Summary Files to support the standardized terminology; they contain an interesting and useful linguistic and legal analysis of the said terms.⁸

It is because of this Canadian specificity that, when Professor Crépeau asked the Canadian Department of Justice for its help with the French version of the Principles (when I was Associate Deputy-Minister, Civil Law and Legislative Services), I immediately said "yes." I saw this as a unique opportunity to place at to the service of the international community Canada's expertise in the field of bilinguism and bijuralism. Thanks to the understanding of the First Legislative Counsel (Peter Johnson), the two jurilinguists of the Department (Alexander Covacs and Bernard Méchin) drew up commentaries which were very useful for the preparation of the French version of the Principles.⁹ Messrs. Covacs and Méchin had already prepared, in 1988, jurilinguistical commentaries which had helped the Drafting Committee of the Diplomatic Conference which adopted the *Ottawa Conventions on International Leasing and International Factoring*.

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6. *Seventh International Trade Law Seminar: Proceedings*, Ottawa, 1989, Communications and Public Affairs, at 32-34.
 7. The Government of Canada provides *Terminium* to the United Nations. One of the UN translators is always reminding me that *Terminium* is a priceless tool for the translation of the legal texts of the United Nations.
 8. The standardized terms of the Law of Property and the Law of Estates are to be found in the *Canadian Dictionary of the Common Law* published by the Canadian Bar Association and Les Éditions Yvon Blais Inc. in 1997. My colleagues of the Governing Council of UNIDROIT, many of which are eminent professors of Comparative Law, consider that this is a unique and precious work. One of them, Pat Brazil, a former Deputy-Minister of Justice of Australia, considers it is a very useful tool for unilingual anglophone lawyers.
 9. Regrettably, still too often on the international scene, international instruments are drafted in only one language (usually English) to then be translated in other languages. It would be worthwhile to follow the Canadian model of co-drafting used in the Department of Justice of Canada. This is the topic of an Article that has been in my head for many years and that I plan to write, one of these days, when my other activities leave me enough time. I think it is essential, when we work with concepts which must be transposed from one language to another, and from one system to another, to work in parallel in at least two languages so that one version enriches the other. How often, when we translate a document, do we see the ambiguities and even the errors of the original version which could have been avoided from the start if the documents had been drafted in two languages. The legislative drafters of the Department have often told me that the technique of co-drafting resulted in an improved version in both languages.

III. INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Professor Cuming will explain to you the important aspects of this project later on. What I would like to emphasize is that it is a Canadian project. At the end of the Diplomatic Conference in Ottawa in 1988, Professor Cuming (who was part of the Canadian Delegation) suggested to the Department of Justice that UNIDROIT follow up on its work on leasing and factoring by looking at the protection of the rights of creditors on mobile equipment and how they could be guaranteed. The Department found this suggestion interesting and I had the honour to present it to the Governing Council in 1989. UNIDROIT has been working on this topic ever since and is getting close to the end. The Working Group has prepared a *draft Convention* of general application and an *Aircraft Protocol* (others Protocols will follow)¹⁰. The *draft Convention* and the *draft Aircraft Protocol* will be sent shortly to governmental experts. A diplomatic conference to adopt the *Convention* and the *draft Protocol* will probably be held in 2000 or 2001.

There is another reason why it is a Canadian Project. In English, the expression "interest in mobile equipment" does not correspond to any Common Law concept. As well, in French, the expression "garantie portant sur des matériels d'équipement mobile" does not correspond to anything in the Civil Code. It is deliberate that the experts, at the suggestion of the Governing Council based on a proposal I had made, have used terms that relate neither to the Common Law nor to the Civil Law, in order to make sure that jurists from the Common Law tradition would not be upset by the words "security" or "surety," which would otherwise have been used, and which could make them think of American or British concepts, and that those of Civil Law tradition (other than Quebec) would not be upset by the expression "hypothèque mobilière," which does not exist in the *Civil Codes* of Europe, Africa or Latin America. Indeed, Quebec and therefore Canada¹¹ are the only jurisdictions to have a concept of "hypothèque mobilière" (chattel mortgage).

10. Two Canadian lawyers, Me Philippe Lortie of the Department of Justice of Canada and Me France Allard from the Quebec Research Centre of Private and Comparative Law at McGill University.

11. Inasmuch as the Quebec Civil Law is the suppletive law in case of silence in the Federal legislation.

CONCLUSION

In closing, I would like to remind those of us who are judges, that, in international matters, it is important to interpret international instruments in accordance with the international principles the "International Legislator" wanted to put forward. A concrete example of this are the problems created by a "national interpretation" of the CISG by the Supreme Court of Hungary, as analysed by Me Delphine Lecossois in an Article entitled "La détermination du prix dans la Convention de Vienne, le U.C.C. et le droit français : critique de la première décision relative aux articles 14 et 55 de la Convention de Vienne" ("The Determination of the Price in the Vienna Convention, the UCC and French Law : Critic of the first decision relative to Articles 14 and 55 of the Vienna Convention"),¹² The summary of her Article reads as follows :

In this case comment, the author analyzes one of the first judgments rendered under the Vienna Convention on the International Sale of Goods. Pratt & Whitney v. Malev Hungarian Airlines was, in fact, the first judgment to interpret the apparent contradiction between articles 14 and 55 of the Convention. The author first examines the problem posed by this case and the solution offered by the Hungarian court.

She, then, critically assesses the decision in light of the spirit of the Convention and affirms that the law of individual states should not influence the interpretation of the international document. In order to develop her thesis, the author imagines the case as it would have been decided by both U.S. and French courts. In the first analysis, the author considers interpretations of the Uniform Commercial Code in an attempt to determine how they would influence the application of the Convention. The author, then, attempts to anticipate the interpretation a French court would give to the Convention. She concludes that the two interpretations would differ significantly and criticizes this potential lack of uniformity.

In conclusion, the author predicts that the future of the Convention is compromised if judges do not modify the approach of according excessive importance to their own domestic, national law in interpreting an international convention.

To conclude, let me insist, once again, on the fact that bodies such as UNIDROIT, play an important role on the international scene in this, the end of the XXth century. Their role will be even greater during the XXIst since, unless there is a complete reversal of things, exchanges will go on increasing as well as the necessity to harmonize and unify the law, in order to facilitate exchanges and to make them more efficient.

12. D. Lecossois, "La détermination du prix dans la Convention de Vienne, le U.C.C. et le droit français : critique de la première décision relative aux articles 14 et 55 de la Convention de Vienne" (1996) 41 *McGill L. J.* 513.

APPENDIX

INTERNATIONAL INSTITUTE FOR THE UNIFICATION
OF PRIVATE LAW

UNIDROIT*

I. PURPOSE	335
II. ORIGINS	335
III. MEMBERSHIP	335
IV. FUNDING	335
V. STRUCTURE	335
VI. LANGUAGES	336
VII. LEGISLATIVE POLICY	336
A. Nature of uniform rules drawn up by <i>Unidroit</i>	336
B. Technical approach to unification favoured by <i>Unidroit</i>	336
C. Factors determining eligibility of subjects for uniform law treatment	336
D. Factors determining choice of instrument to be prepared	337
VIII. WORKING METHODS	337
A. Preliminary stage : use of study groups	337
B. Intergovernmental negotiation stage	337
C. Co-operation with other international Organisations	338
D. Network of correspondents	338
IX. ACHIEVEMENTS	339

* Via Panisperna 28, 00184 Rome (Italy) — Tel. (39/06) 69941372 — Fax (39/06) 69941394
— e-mail : unidroit.rome@unidroit.org — <http://www.unidroit.org>.

X. SUBSIDIARY ACTIVITIES	340
A. Library	340
B. Publications	340
C. Congresses, meetings and seminars	341
D. Legal co-operation	341
E. Data base on uniform law (UNILAW)	341
UNIDROIT UPDATE — JANUARY 1st, 1999	342
I. WORK PROGRAMME FOR THE 1999-2001 TRIENNIUM	342
A. Priority topics	342
1. International interests in mobile equipment	342
2. Principles of international commercial contracts	343
II. OTHER TOPICS UNDER CONSIDERATION	343
A. Model law on franchising	343
B. Transnational rules of civil procedure	344
C. Model law on leasing	344
D. Uniform rules applicable to transport	344

UNIDROIT – Organisation, Structure and Working Methods

I. PURPOSE

The International Institute for the Unification of Private Law (*Unidroit*) is an independent intergovernmental Organisation with its seat in Rome. Its purpose is to examine ways of harmonising and co-ordinating the private law of States and groups of States, and to prepare gradually for the adoption by States of uniform rules of private law.

II. ORIGINS

Set up in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the demise of the League, re-established in 1940 on the basis of a multilateral agreement, the *Unidroit Statute*.

III. MEMBERSHIP

Membership of *Unidroit* is restricted to States acceding to the *Unidroit Statute*. *Unidroit*'s member States are drawn from the five continents and represent a variety of different legal, economic and political systems.

IV. FUNDING

The Institute is financed by annual contributions from its member States which are fixed by the General Assembly as well as a basic annual contribution from the Italian Government.

V. STRUCTURE

Unidroit has an essentially three-tiered structure, made up of a Secretariat, a Governing Council and a General Assembly.

The *Secretariat* is the executive organ of *Unidroit* responsible for the day-to-day carrying out of its Work Programme. It is run by a Secretary-General, who is appointed by the Governing Council on the nomination of the President of the Institute. The Secretary-General is assisted by a staff of international civil servants and various ancillary staff.

The *Governing Council* supervises all policy aspects of the means by which the Institute's statutory objectives are to be attained and in particular the Secretariat's carrying out of the Work Programme, the drawing up of which is its responsibility. It is made up of one *ex officio* member, the President of the Institute, who is appointed by the Italian

Government, and 25 elected members, typically eminent judges, academics and civil servants.

The *General Assembly* is the ultimate decision-making organ of *Unidroit* : it votes the Institute's budget each year; it approves the Work Programme every three years; it elects the Governing Council every five years. It is made up of one representative from each member Government; all Governments other than the host Government are typically represented by their diplomatic representatives accredited to the Italian Government.

VI. LANGUAGES

While the official languages of *Unidroit* are English, French, German, Italian and Spanish, its working languages are English and French.

VII. LEGISLATIVE POLICY

A. Nature of uniform rules drawn up by *Unidroit*

Unidroit's basic statutory objective is to prepare uniform rules of "private" law. However, experience has demonstrated the necessity of permitting occasional incursions into public law, especially in areas of law where hard and fast lines of demarcation are difficult to draw. Uniform rules prepared by *Unidroit* are concerned with the unification of *substantive* law rules; they will only include uniform conflict of law rules incidentally.

B. Technical approach to unification favoured by *Unidroit*

Unidroit's independent status amongst intergovernmental Organisations has enabled it to pursue working methods which have made it a particularly suitable forum for tackling more technical and correspondingly less political issues.

C. Factors determining eligibility of subjects for uniform law treatment

The eligibility of a subject for unification will to a large extent be conditional on the perception of States being willing to accept change to their municipal law rules in favour of a new international solution on that subject. Legal and other arguments in favour of unification on a subject have accordingly to be weighed carefully against these considerations. Similar considerations will also tend to determine the most appropriate sphere of application to be given to uniform rules, that is whether they should be restricted to truly cross-border situations or relations or extended to cover also purely internal situations or relations.

D. Factors determining choice of instrument to be prepared

The uniform rules drawn up by *Unidroit* have, in keeping with its intergovernmental structure, traditionally tended to take the form of *International Conventions*, designed to apply automatically in preference to a State's municipal law upon completion of all the formal requirements of that State's domestic law for their entry into force. However, the low priority which tends to be accorded by Governments to the implementation of such *Conventions* and the time it therefore tends to take for them to enter into force have led to the increasing popularity of alternative forms of unification in areas where a binding instrument is not felt to be essential. Such alternatives include "model laws" which States may take into consideration when drafting domestic legislation on the subject covered or "general principles" addressed directly to judges, arbitrators and contracting parties who are however left free to decide whether to use them or not. Another alternative, considered in recent years where the subject is not judged ripe for the drawing up of uniform rules, consists in the preparation of "legal guides," typically on new business techniques designed for the use of professional parties in countries unfamiliar with the emerging contractual practice on such subjects.

VIII. WORKING METHODS

A. Preliminary stage : use of study groups

Once a subject has been entered on *Unidroit's* Work Programme, the Secretariat, where necessary assisted by an expert in the field, will draw up a *preliminary comparative law report* designed to ascertain the desirability and feasibility, typically on the basis of a comparative law survey, of *Unidroit's* preparation of uniform rules. Such a report, may on occasions include a first rough draft of such uniform rules. This report will then be laid before the Governing Council which, if satisfied that a case has been made out for the preparation of uniform rules, will typically ask the Secretariat to convene a "study group," traditionally chaired by a member of the Council, for the preparation of a *preliminary draft Convention* or one of the alternatives mentioned above. The membership of such study groups, made up of eminent experts sitting in their personal capacity and therefore not as representatives of their Governments, is a matter for the Secretariat, which seeks to ensure as balanced a representation as possible of the world's different legal and economic systems and geographic regions. Where a subject is considered by the Council to be ready for consideration by governmental experts without the need first to go through the study group stage, the Council may ask the Secretariat directly to convene a "committee of governmental experts" for the preparation of a *draft Convention*.

B. Intergovernmental negotiation stage

A *preliminary draft instrument Convention* (or one of the alternatives mentioned above) established by a study group will upon completion be laid before the Governing Council for approval and advice as to the most appropriate further steps to be taken. Typically, in the case of a *preliminary draft Convention*, these will consist in its asking the Secretariat to convene a "committee of governmental experts" for the finalisation of

a *draft Convention* capable of submission for adoption to a diplomatic Conference. In the case of one of the alternatives to a preliminary draft Convention not suitable by virtue of its nature for transmission to a committee of governmental experts, the Council will be called upon to authorise its publication and dissemination by *Unidroit* in the circles for which it has been prepared.

Full participation in *Unidroit* committees of governmental experts is open to representatives of all *Unidroit* member States. The Secretariat may in addition invite such other States as it deems appropriate, notably in view of the subject-matter concerned, and the relevant international Organisations and professional associations to participate as observers. A *draft Convention* finalised by a committee of governmental experts will then be laid before the Governing Council for approval and advice as to the most appropriate further steps to be taken. Typically, where it judges that the *draft Convention* reflects a consensus as between the States which have participated in the committee of governmental experts and that it accordingly stands a good chance of adoption at a diplomatic Conference, these steps will consist in its authorisation of the *draft Convention's* transmission to a "diplomatic Conference" for adoption as an *international Convention*. Such a Conference will be convened by one of *Unidroit's* member States. (Publication of *Unidroit* working material, c.f. Publication, *infra*).

C. Co-operation with other international Organisations

Unidroit maintains close ties of co-operation with its sister international Organisations, both intergovernmental and non-governmental, which in many cases take the form of co-operation agreements concluded at inter-Secretariat level.

By reason of its expertise in the international unification of law, *Unidroit* is moreover frequently commissioned by such other Organisations to prepare comparative law studies and/or draft Conventions designed to serve as the basis for the preparation and/or finalisation of international instruments in those Organisations.

D. Network of correspondents

Unidroit's ability to obtain up-to-date information on the state of the law in all the various countries is essential to the pursuit of its statutory objectives. This information is sometimes often particularly difficult to obtain and in respect of the law of non-member States. To obviate this need *Unidroit* therefore maintains a network of "correspondents" in both member and non-member States, who are appointed, typically amongst academic and practising lawyers, by the Governing Council.

IX. ACHIEVEMENTS

Unidroit has over the years prepared over seventy studies and drafts. Many of these have resulted in international instruments, including the following *international Conventions*, all in force unless otherwise indicated, drawn up by *Unidroit* and adopted at diplomatic Conferences convened by member States of *Unidroit* :

- 1964 *Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods* (adopted in The Hague);
- 1964 *Convention relating to a Uniform Law on the International Sale of Goods* (The Hague);
- 1970 *International Convention on the Travel Contract* (Brussels);
- 1973 *Convention providing a Uniform Law on the Form of an International Will* (Washington);
- 1983 *Convention on Agency in the International Sale of Goods* (Geneva) not yet in force)
- 1988 *Unidroit Convention on International Financial Leasing* (Ottawa);
- 1988 *Unidroit Convention on International Factoring* (Ottawa);
- 1995 *Unidroit Convention on Stolen or Illegally Exported Cultural Objects* (Rome).

In addition, *Unidroit* has published the *Principles of International Commercial Contracts* in 1994 and the *Guide to International Master Franchise Arrangements* in 1998.

Unidroit work has also served as the basis for a number of international instruments adopted under the auspices of other international Organisations which are already in force. These include :

- 1954 *Convention for the Protection of Cultural Property in Case of War* (adopted under the auspices of UNESCO);
- 1955 *European Convention on Establishment* (Council of Europe);
- 1955 *Benelux Treaty on compulsory insurance against civil liability in respect of motor vehicles*;
- 1956 *Convention on the Contract for the International Carriage of Goods by Road* (CMR) (UN/ECE);

- 1958 *Convention on the recognition and enforcement of decisions involving obligations support minor children* (Hague Conference on Private International Law);
- 1959 *European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles* (Council of Europe);
- 1961 *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (ILO/UNESCO/WIPO);
- 1962 *European Convention on the Liability of Hotel-keepers concerning the Property of their Guests* (Council of Europe);
- *Protocol No. 1 concerning rights in rem in inland navigation vessels and Protocol No. 2 on attachment and forced sale of inland navigation vessels annexed to the 1965 Convention on the Registration of Inland Navigation Vessels* (UN/ECE);
- 1980 *United Nations Convention on Contracts for the International Sale of Goods* (UNCITRAL).

X. SUBSIDIARY ACTIVITIES

Essential support for *Unidroit's* core activity of the drawing up of uniform rules is provided by its maintenance of a world renowned library, by its preparation of a number of specialist publications in the field of the unification of law, its legal co-operation programme, its project for a uniform law data base and by its periodic organisation of congresses, meetings and seminars.

A. Library

The *Unidroit* library is one of the leading documentation centres in its field in the world and is consulted by researchers from all over the world. Its holdings include over 230,000 books and 390 current periodicals covering both a wide range of countries and all the different branches of private law, in particular commercial law, as well as private international law and comparative law. With a view to making information relating to these holdings accessible on line in due course, the library catalogue is in the process of being computerised.

B. Publications

From its earliest days *Unidroit* has put out a number of publications. Foremost among these is the *Uniform Law Review / Revue de droit uniforme* (ISSN 1124-3694). This is the successor publication to the two series *Unification of Law* and *Uniform Law Cases* which appeared up until 1971. The *Uniform Law Review* is published on a quarterly basis since 1996. It is published by *Unidroit* and distributed by Giuffrè in Italy and by

Kluwer Law International in the rest of the world. It is a bilingual publication in English and French. It comprises the following six sections : feature articles; international activities (including a periodical review of *Unidroit's* own activities); texts of new uniform law instruments; implementation of existing uniform law instruments; summaries of new case-law involving the application and interpretation of such instruments; book reviews and uniform law bibliography.

Unidroit also edits the *Digest of Legal Activities of International Organizations and other Institutions* (ISBN 0-379-00525-5). This is a loose-leaf publication which is regularly updated, approximately every two years (the latest edition of this work is the 11th edition published by Oceana Publications Inc., New York in 1996). It sets out to give an overall view of all the current activities underway within the many different international Organisations active in the unification of law field.

In addition, the *Unidroit* publishes, in *Unidroit Proceedings and Papers*, annual collections of all its working materials.

C. Congresses, meetings and seminars

Unidroit periodically organises international congresses, meetings and seminars designed to discuss topical aspects of the unification of law, such as methodology and its practical applications, whether to specific projects or in general. These events bring together, according to the occasion, eminent judges, arbitrators, academics and practising lawyers as well as national and international civil servants, both from national administrations and international Organisations.

D. Legal co-operation

Unidroit sees its role in the area of legal co-operation broadly as consisting in the supplying of information and training regarding uniform private law for well qualified lawyers. In particular, a programme of scholarships, funded essentially from voluntary contributions, was set up in 1992 for lawyers from developing countries and countries engaged in economic transition. Since its inception, this programme has enabled the Institute to welcome between twelve and fifteen researchers each year.

E. Data base on uniform law (UNILAW)

In 1993, *Unidroit* decided to establish a data base to permit ready access by Governments, judges, arbitrators, practising lawyers and scholars to up-to-date information regarding uniform law conventions and other instruments, in both English and French. It was agreed to fund the project exclusively from sources external to the regular *Unidroit* budget, and the Secretariat is now prospecting potential donors using a prototype focusing on one of the clauses of a transport law convention.

UNIDROIT UPDATE — JANUARY 1st, 1999

Unidroit has 58 member States. These are : Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Holy See, Hungary, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Luxembourg, Malta, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Poland, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia (former Federative Socialist Republic of).

I. WORK PROGRAMME FOR THE 1999-2001 TRIENNIUM

As approved by the General Assembly at its 52nd session — Rome, November 27, 1998 — on the understanding that the Secretary-General is free to engage in the preliminary study of other topics and to propose their inclusion in the next Work Programme.

A. Priority topics

1. International interests in mobile equipment

The Canadian Government in June 1988 proposed that *Unidroit* launch an effort designed to extend the principle of a lessor's real rights being enforceable against its lessee's trustee in bankruptcy and unsecured creditors, enshrined in the *Unidroit Convention on International Financial Leasing*, to the field of security rights in mobile equipment in general. In the light of a comparative law report and the responses to a questionnaire, a restricted working group of experts, meeting in Rome in March 1992, decided that it would be both useful and feasible for *Unidroit* to prepare uniform international rules on security rights in high-value mobile equipment typically moving regularly across national frontiers in the ordinary course of business. Study group, chaired by Professor R.M. Goode (University of Oxford) and on which experts from the worlds of law and practice served established, in December 1997, a *preliminary draft Unidroit Convention on International Interests in Mobile Equipment*. The essential purpose of the future *Convention* is to provide for the constitution and effects of a new international interest in mobile equipment, defined so as to embrace not only classic security interests but also what is increasingly recognised as their functional equivalent, namely the lessor's interest under a leasing agreement. The efficacy of the international interest would be conditional upon its registration in an international register to be established under the future *Convention*. The latter is intended to be supplemented by *Protocols* for each of the different categories of equipment encompassed by its sphere of application. Each *Protocol* is intended to contain those equipment-specific rules necessary to adapt the rules of the *Convention* to fit the special pattern of financing in respect of the relevant category. The *preliminary draft Convention*, together with a *preliminary draft Protocol on Matters Specific to Aircraft Equipment*, was submitted to the Unidroit Governing Council in

February 1998. The *preliminary draft Protocol* had been prepared, at the invitation of *Unidroit*, by a working group the core membership of which had been provided by the International Civil Aviation Organization, the International Air Transport Association and an aviation working group, organised jointly by Airbus Industrie and The Boeing Company. The two texts were further refined following a decision of the Governing Council before being transmitted to Governments in August 1998 with a view to the first session of governmental experts, to be held in Rome from 1 to 12 February 1999. The intergovernmental consultation process on these texts will be co-sponsored by *Unidroit* and I.C.A.O.

2. Principles of international commercial contracts

Following the great success in both contract and arbitration practice which greeted the publication in 1994 of the *Unidroit Principles of International Commercial Contracts*, the Governing Council in April 1997 decided that the working group responsible for their preparation should be reconvened with a view to the preparation of a second edition, to cover a number of subjects which were not dealt with in the first edition. The Working Group, chaired by Professor M.J. Bonell (University of Rome I), is made up of 17 experts and two international organisations have observer status.

At its first meeting held in March 1998, the Working Group decided that the following subjects should be dealt with as a matter of priority : agency, limitation of actions, assignment of contractual rights and duties, contracts for the benefit of a third party, set-off and waivers. The Rapporteurs for the different subjects were appointed on that occasion. The second session of the Working Group will be held in Bolzano, Italy from February 20-26, 1999.

In a parallel development, *Unidroit* has commenced work, together with the Centre for Comparative and Foreign Law Studies (Rome), on the compilation of case law handed down by national courts and arbitral tribunals in which reference is made to the *Unidroit Principles*.

II. OTHER TOPICS UNDER CONSIDERATION

A. Model law on franchising

The first stage of the preparation of uniform rules for international franchising having been completed with the publication of the *Guide to International Master Franchise Arrangements*, the next step will be the preparation of a model law on franchising to serve as a basis for the drafting of domestic laws in this field.

The Governing Council decided at its February 1998 session to endorse the Secretariat's proposal that the franchising study group commence work on a draft model law on franchising, it being understood that members will participate in the preparatory meetings at their own expense. The group is due to hold its first meeting in October 1999 to discuss a first draft prepared by a drafting committee appointed from within its own ranks.

B. Transnational rules of civil procedure

The decision to include this item in the Work Programme was taken pursuant to a proposal by the American Law Institute (LI) to prepare uniform rules of procedure (including, if appropriate, provisional measures) applicable to transnational disputes once the question of jurisdiction has been settled but before the question of recognition and enforcement of the judgment arises. The Governing Council resolved to appoint an independent expert to prepare a feasibility study on the basis of which a decision would be taken as to the work to be carried out. If it were decided to form an expert committee, it was understood that the two institutes would be represented equally and the greater part of expenses borne by ALI.

C. Model law on leasing

The Governing Council voted the inclusion in the Institute's Work Programme of the preparation of a model law on leasing, drawing on the expertise already gained by *Unidroit* in this field (the 1988 *Unidroit Convention on International Leasing* is currently in force between eight States), with a view to formulating a coherent response to the requirements of those developing countries and countries in economic transition currently engaged upon the reform of their domestic leasing laws as sponsored by both regional and universal development banks. Preliminary research carried out by the Secretariat has shown that external sources of funding are likely to be found to help finance the preparation of such a model law.

D. Uniform rules applicable to transport

The Governing Council decided to include the preparation of uniform rules for transport in the Work programme to provide assistance and co-operation to all those wishing to renew their transport laws. Collaboration with all the interested organisations was felt to be vital, as was the need for further thought as to the exact form which the *Unidroit* initiative was to take. The inclusion of this item was in any case subject to the identification of sources of funding outside the *Unidroit* budget.