

on specific legal issues involved in drafting domestic legislation on this subject.

VI. United Nations Industrial Development Organisation (UNIDO)

Pursuant to resolution (2152-XXI) of the UN General Assembly, the United Nations Industrial Development Organisation (UNIDO) was established as its subsidiary body in 1966. Subsequently in 1979, it became an autonomous organisation and started functioning as a specialised agency from August 1985. The primary objective of UNIDO is the 'promotion and acceleration of the industrial development in the developing countries with a view to assisting in the establishment of anew international economic order.

The work programme of UNIDO in the area of international trade law appears to be focused on the preparation of guidelines, manuals and checklists of contractual clauses so as to assist parties from the developing countries in concluding industrial contracts. These may be enumerated as below:

- (1) Guidelines on the purchase, maintenance and operation of basic insurance coverage for processing plants in developing countries;
- (2) UNIDO model form of agreement for the licensing of patents and know-how in the petrochemical industry, including annexes, an integrated commentary and alternative texts of some clauses;
- (3) Items which could be included in contractual arrangements for the setting up of a turnkey plant for the production of bulk drugs (pharmaceutical chemicals) or intermediaries included in the UNIDO list;
- (4) UNIDO model form of licensing and engineering services agreement for the construction of a fertiliser plant;
- (5) UNIDO Model form of turnkey lump-sum contract for the construction of a fertiliser plant;

- (6) UNIDO Model form of semi-turnkey contract for the construction of a fertiliser plant;
- (7) UNIDO Model form of cost-reimbursable contract for the construction of a fertiliser plant;
- (8) Guidelines for Infrastructure through Build-Operate-Transfer Projects: The BOT Guidelines prepared by UNIDO cover the entire spectrum of financial and legal issues faced by government authorities and project managers in the development of BOT projects, while offering developing countries the basic orientation needed to design effective BOT strategies. The Guidelines *inter alia* contain chapters on the following aspects: introduction to the BOT concepts; the government's role in providing for successful BOT projects; transfer of technology and capability building; procurement issues and selection of sponsors; financial structuring of BOT project; and standard forms of agreements relating to construction, operation and maintenance.
- (9) The UNIDO Manual on Technology Transfer Negotiations: This Manual, is primarily intended to serve the purpose of a teaching tool for technology transfer negotiation courses for enhancing the negotiation skills of the developing countries.

IV. International Institute for the Unification of Private Law (UNIDROIT)

The 77th Session of the Governing Council of the UNIDROIT met at the seat of the Institute from 16th to 20th February 1998. In recent years the Governing Council had embarked upon an exercise of pruning the Work Programme so as to reduce it to manageable proportions commensurate with the resources of the Institute.

The Work Programme as approved by the Governing Council for the 1999-2001 triennial period is as follows:

Preparation of Uniform Law Instruments

A. Priority Items

1. International interests in mobile equipment;
2. The Unidroit Principles of International Commercial Contracts.

B. Other items under consideration, subject to the identification of external funding.

1. Model Law on disclosure (Franchising);
2. Model Law on Leasing;
3. Transnational rules of civil procedure;
4. Uniform rules applicable to (road) transport.

C. Items placed on a reserve list pending further work.

1. Secured transaction in general;
2. Civil liability in connection with the carrying out of dangerous activities;
3. Contracts for services.

This part of the Report would, however provide an overview of the developments relating to the following aspects:

- i. Draft convention on international interests in mobile equipment;
- ii. Unidroit Principles on International Commercial Contracts;
- iii. Franchising: Model Law on Disclosure; and
- iv. Model Law on Leasing.

(i) Draft Convention on International interests in mobile equipment

The purpose of the Convention is to establish an international legal regime for security and related interests in equipment of a kind normally moving from one State to another in the normal course of business – for example, aircraft and railway rolling stock, satellites and other space objects. This ambitious project resulted from a proposal by Mr. T.B. Smith QC, the Canadian Member of the Governing Council of UNIDROIT, in 1988. An exploratory working group convened by UNIDROIT in 1992 concluded that the legal uncertainty resulting from the application of the *lex rei sitae* rule tended to deter banks and financial institutions from extending secured financing facilities in respect of the aforementioned high-value mobile equipment.

Against this backdrop, the Governing Council UNIDROIT at its 71st Session (1992) authorised the President to convene a study group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment. The Study Group held four sessions in Rome (1993, 1996, January 1997 and November 1997 respectively). Distinct Working Groups representative of the aviation, rail and space industries, furthermore provided vital input regarding the likely impact of the Study Group's work in relation to aircraft equipment (the Aviation Working Group), railway rolling stock (the Rail Working Group) and space property (the Space Working Group) respectively. At the conclusion of its fourth session, the Study Group adopted the text of a preliminary draft Unidroit Convention on International Interests in Mobile Equipment.

As work on the Convention progressed it became clear that it would be impossible to devise rules that would be equally suitable for all types of equipment. At the Third Session of the Study Group, the International Air Transport Association (I.A.T.A.) and the Aviation Working Group

suggested that the proposed Convention be split into a framework Convention and separate Protocols. The framework Convention was to contain the rules applicable to all the different categories of equipment covered by its sphere of application, and separate Protocols for each such category, setting forth such additional equipment - specific rules as deemed necessary. The Study Group accepted this proposal and invited Mr. J. Wool, Co-ordinator of the Aviation Working Group to organise a working group to prepare a preliminary draft Protocol on matters specific to aircraft equipment. Accordingly, in November 1997, the Aircraft Protocol Group adopted the preliminary draft Protocol on Matters Specific to Aircraft Equipment.

The aforementioned texts of the preliminary draft Unidroit Convention and preliminary draft Protocol were presented to the Unidroit Governing Council at its 77th Session (1998), for advice on further course of action to be adopted. The Council noted with appreciation the accomplishments of the Study Group and the Aircraft Protocol Group, and decided that the texts needed to be further refined by a Steering and Revisions Committee, before they could be transmitted to governmental experts.

Following are, in brief, the salient features of the draft Unidroit Convention on International Interests in Mobile Equipment*:-

- (i) The draft Convention embodies a number of innovative techniques in treaty making. The most striking is the concept of a 'framework convention' supplemented by a series of equipment-specific protocols. The equipment-specific protocol would contain provisions specific to

* For more details on the draft convention, see Roy Goode, "Transcending the Boundaries of Earth and Space: the Preliminary Draft UNIDROIT Convention on International Interests in Mobile Equipment", *Uniform Law Review*, 1998-I, pp.52-74.

that type of equipment, which would add to or vary the generic provisions of the Convention.

- (ii) The draft Convention has four primary objectives:
 - (a) to give international protection to security interests in high-value, uniquely identifiable mobile equipment;
 - (b) to provide the holders of such interests with a basic range of default remedies that can be expeditiously exercised;
 - (c) to provide a regime by which those interests can be perfected by registration, thereby enabling third parties to discover their existence; and
 - (d) to lay down rules for the recognition and priority of those interests, both within and outside the debtor's bankruptcy.
- (iii) The sphere of application of the convention is determined by reference to four key factors:-
 - (a) The Convention is focussed on consensual interests within one of three categories: that granted by the charger under a security agreement; that vested in a person who is the seller under a conditional sale agreement; and that vested in a person who is the owner under a leasing agreement.
 - (b) The Convention will be restricted to mobile equipment of a uniquely identifiable kind and of high unit-value.
 - (c) The Convention will be confined to equipment in existence at the time of the security agreement.
 - (d) There will need to be an appropriate connection to a Contracting State.
- (iv) Central to the Convention are the provisions for the creation of autonomous international interests in mobile equipment, an interest constituted by the Convention itself

and not derived from or dependent on national law. This interest, when created in accordance with the requisite formalities prescribed by the Convention, will be enforceable against the debtor, whether or to the interest has been registered.

- (v) Central to the operation of the Convention is the "International Registry" in which it would be recorded international interests and prospective international interests and assignments. There would be established and overseen, and each Registrar would be designated, by an Intergovernmental Regulator and would be administered by the Registrar and operated by a duly appointed operator.
- (vi) As regards the ordering of priorities of competing security interests, the draft Convention stipulates that a 'registered interest' has priority over any other interest subsequently registered and over an unregistered interest. In order to avoid factual disputes, this priority is given even where the 'registered interest' was acquired or registered with actual knowledge of an earlier unregistered interest.

Other issues dealt by the draft Convention include: bankruptcy of the debtor; jurisdiction; assignments and rights of subrogation; non-consensual rights and interests; and the relationship of the draft Convention with other existing Conventions.

In accordance with the decision of the 77th Session of the Governing Council, the Steering and Revisions Committee met in Rome in June 1998 to finalise the texts of the draft Convention. The preliminary draft Unidroit Convention on International Interests in Mobile Equipment and the preliminary aircraft Equipment will be considered at a first session of governmental experts, to be convened jointly by UNIDROIT and ICAO in Rome, in February 1999.

(ii) **Unidroit Principle of International Commercial Contracts**

The work on this project was completed in 1994 with the adoption of the final text of the Unidroit Principles of International Commercial Contracts. The Principles consists of a preamble and 119 articles divided into seven chapters (General Provisions; Formation; Validity; Interpretation; Content; Performance; and Non-performance). Each article is accompanied by a commentary, including illustrations, which form an integral part of the Principles. As such, the Principles constitute system of rules of contract law specifically adapted to the special requirements of modern commercial practice. The Principles have been published in the five official languages of UNIDROIT (English, French, German, Italian and Spanish). At the same time, the institute has authorised the preparation by leading scholars of translations of the Principles into other language versions such as Arabic, Bulgarian, Chinese, Japanese, Dutch, Russian, Hungarian, Portuguese, Serbian and Slovakian.

To enable wider dissemination of these Principles, at the 75th Session (1996) the General Council of the Institute requested the Secretariat to conduct an inquiry as to the use of the Principles in actual practice and prepare a paper containing proposals for new topics to be dealt in the second enlarged edition. As a follow-up to this request, the Secretariat prepared a questionnaire which was circulated to around 1000 individuals who had shown a keen interest in the Unidroit Principles. The questionnaire met with an overwhelming response as 226 replies were received from forty countries of the world in a short period of time.

Appreciating the good response received, the Governing Council at its 76th Session (1997), decided that work be resumed towards the publication of a second enlarged edition of the Principles on a priority basis; and that a Working Group

be convened and a smaller drafting committee be appointed to prepare the preliminary draft.

The Working Group met for the first time in Rome from 16 to 19 March 1998. Discussion centred on the revision of the text of the Principles, the new topics to be dealt with in the second enlarged edition, as well as the working methods. The Working Group decided to give priority to the following topics: agency, limitation of action (extinctive prescription), assignment of contractual rights and duties, contracts for the benefit of a third party, set-off and waiver. The Working Group will meet again in February 1999.

(iii) Franchising: Model Law on Disclosure:-

The subject has been on the agenda of the Institute since the 65th Session (1986) of the Governing Council. At its 72nd Session in June 1993, the Governing Council decided to set up a Study Group on Franchising to examine the different aspects of franchising and in particular disclosure of information between the parties before and after a franchise contract has been concluded and the effect of a master franchise agreement on sub-franchise agreements.

The Study Group, recommended to the Governing Council that a 'legal guide' to international franchising, with particular reference to master franchise arrangements, be prepared. The recommendations were endorsed by the Governing Council at its 74th Session (1995).

Following the successful completion of the work on the Guide to International Master Franchise Arrangements, the Governing Council of the 77th Session (1998) authorised the publication of the Guide. Accordingly, the English version was published in September 1998, and the French version is to be published in early 1999.

At this session, the Governing Council examined a proposal by the Unidroit Secretariat to proceed with the preparation of a Model Law on Franchising. Owing to the feeling that a number of franchise laws that have recently been adopted demonstrate a certain lack of understanding of the franchise process, a model law prepared by Unidroit would reflect and set forth internationally recognised standards and also serve as the basis for adoption of national legislations.

In consideration of these advantages, the Governing Council decided to endorse the proposal put forward by the Secretariat and authorised the Study Group on Franchising to proceed with the preparation of a model law on franchising.

iv) Model Law on Leasing

The Unidroit Convention on International Financial Leasing is now in force as between five States - France, Hungary, Italy, Nigeria and Panama. It is understood that the United States and Russia propose to shortly ratify and accede to the Convention respectively. This, in the view of UNIDROIT has given a major fillip to the implementation process in a considerable number of countries.

Over the past one year the UNIDROIT Secretariat has observed that many law reform efforts concerning leasing are commissioned in countries in transition and developing economies, by both universal and regional development. It is significant in this context to note the importance increasingly attached by universal and regional development banks to the use of law reform as a tool for the enhancement of investment opportunities, and in particular the role recognised to leasing in this respect.

Based on the aforementioned developments, it was felt that there exists ample scope for the rationalisation of the diverse efforts currently being attempted as regards law reform. Hence the Governing Council gave favourable

consideration to this proposal for the preparation of a model law, founded on the principles of the UNIDROIT Convention. This, is expected to encourage further acceptance of that Convention and to avoid the potential for duplication of effort implicit in the various domestic law reform efforts referred to above.