UNIDROIT: Current Work Programme and Future Challenges

HERBERT KRONKE*

I. Introduction

Next to the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) is the oldest intergovernmental Organisation working in the area of harmonisation and modernisation of private and commercial law. Set up in 1926 as an auxiliary organ of the League of Nations, UNIDROIT today is an independent intergovernmental organisation funded by annual contributions from its currently 58 member States which are drawn from the five continents and represent a variety of different legal, economic and political systems. The General Assembly, made up of one representative from each member Government, approves the work programme every three years, elects the Governing Council (the supervisory and policy-shaping body) every five years and votes the Institute’s budget each year.

II. Current Work Programme

1. Contracts

Following the overwhelming success of the UNIDROIT Principles of International Commercial Contracts in both contract drafting and commercial arbitration practice as well as their frequent use as a model by legislators in the Americas, Asia and Europe, a new working group is currently busy drafting Part II of the Principles, dealing with agency, assignment, third parties’ rights, set-off, limitation of actions and waiver. Furthermore, the group is looking into issues raised by the advent of e-commerce. At the end of this process (so far, three working sessions have been held in Rome, Bolzano and Cairo) we shall have an almost complete general part of rules regarding contractual obligations.

A model law on disclosure and the consequences of insufficient disclosure in franchising will pass from a study group to the governmental consultation process later this year.

2. Credit, Finance, Capital Markets

The two 1988 UNIDROIT Conventions on Financial Leasing and Factoring are in force and have been ratified by major trading countries. They have recently attracted

* Secretary General, International Institute for the Unification of Private Law (UNIDROIT), Rome (Italy). Professor of Law and Director, Institute of Foreign and International Private and Commercial Law, University of Heidelberg (Germany) (on leave).

1 http://www.unidroit.org
considerable attention in Latin America, Eastern Europe and Asia. In particular, more ratifications of the Leasing Convention as well as its use as a model for domestic law reform are expected for the near future.

Currently, the most ambitious and time-consuming project is the draft Convention on International Interests in Mobile Equipment (in commercial circles dubbed the asset-backed finance convention), providing for a new international regime of secured transactions geared at reducing credit costs for high-value mobile infrastructure such as aircraft, space objects (in particular, telecommunications and meteorological satellites) and railway rolling stock. Some observers in both the practitioners’ and the academic communities envisage extension of the new regime to other categories of high-value mobile equipment such as oilrigs or even ships at a later stage.

The draft Convention, together with a draft Protocol on Matters Specific to Aircraft Equipment, has been approved by the UNIDROIT Governing Council and will be submitted to a Diplomatic Conference in 2001 to be held in South Africa. Protocols on Matters specific to Railway Rolling Stock and to Space Property are under preparation. The former will be submitted to a Governmental Experts Committee later this year. While the intergovernmental process on the texts as related to aircraft equipment is co-sponsored by UNIDROIT and the International Civil Aviation Organization (ICAO) the texts regarding railway rolling stock will be reviewed by intergovernmental bodies co-sponsored by UNIDROIT and the International Rail Transport Organisation (OTIF).

As soon as this centre piece of a broader effort to modernise the law of asset-based finance, which was given priority by governments, will be in place, work on a model law on secured transactions will resume.

In the medium and long-term perspective the law of transactions on transnational capital markets will be the centre of gravity of our activities. The problem areas have been identified and range from cross-border take-overs to issues raised by ECNs and other reasons for the increasing delocalisation and disintermediation of markets to clearing and settlement rules, manipulation of share prices and the privatisation of retirement pension systems. Currently, consultations with stock exchanges, regulating agencies, the financial intermediaries as well as the bar are being held.

3. Protection of Cultural Heritage

The 1995 UNIDROIT Convention on the Restitution of Stolen and Illegally Exported Cultural Objects is experiencing considerable success in some countries and encounters bitter opposition from certain quarters, in particular advocates of unlimited freedom for art commerce. Further promotion efforts and a stronger