INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

FINANCE COMMITTEE
72nd session
Rome, 27 September 2012

UNIDROIT 2012
AG/Comm. Finances (72) 10
Original: English
October 2012

REPORT

(prepared by the UNIDROIT Secretariat)

Item No. 1 on the agenda: Opening of the session

1. The 72nd session of the Finance Committee was held on 27 September 2012 at the seat of UNIDROIT, starting at 10.15 a.m. The session was opened by the Secretary General (see Appendix I for a complete list of participants), who also formally welcomed Professor Anna Veneziano as the new deputy Secretary-General of UNIDROIT.

Item No. 2 on the agenda: Appointment of the Chair of the Finance Committee

2. The *Secretary-General* recalled that the Committee should appoint a new Chair following the departure from Rome of the representative of the United States, Mr Keith Heffern, who had chaired the Committee at its 71st session. In line with UNIDROIT practice, which reserved the Chair for the longest-serving member, he proposed that the Committee appoint Ms Katharina Wieser, the representative of Austria.

3. *The Committee agreed to this proposal. Ms Wieser accepted and took office as Chair of the Committee.*

Item No. 3 on the agenda: Adoption of the draft agenda (AG/Comm. Finances (72) 1)

4. *The agenda was adopted as proposed in document AG/Comm. Finances (72) 1.*

Item No. 4 on the agenda: Amendments to the UNIDROIT Regulations on financial matters (AG/Comm. Finances (72) 2) and AG/Comm. Finances (72) 2) Add. 1

5. The *Secretary-General* introduced this item, referring to documents AG/Comm. Finances (72) 2 and AG/Comm. Finances (72) 2 Add. 1 for detail. He briefly traced the history of this item, which had been on the table for some two years, following receipt by the Secretariat of a Note Verbale from the German delegation in connection with the existence, in the Institute, of a gap with regard to a clear distribution of responsibilities and transparency in UNIDROIT's financial matters and that there was a need to clarify certain matters for which its Regulations provided no answer. The matter had been placed on hold in 2011 pending the discussions on the reclassification of member States in the UNIDROIT contributions chart, but the Finance Committee had taken up the matter in 2012, when it was decided to establish an informal working group which met in June and agreed on a set of proposals which were set out in the Annex to document (72) 2). That document had been submitted in writing to the Governing Council after its 2012 session for comment.

6. Comments (details of which were set out in document AG/Comm. Finances (72) 2 Add. 1) had been received from two members, Professor Henry Gabriel and Dr Hans Bollweg, reflecting personal views formed as a the result of consultations with their respective authorities). Most of the proposed amendments were straight-forward matters that stood in no need of any particular discussion by the Finance Committee, which the Secretary-General suggested should, instead, focus on these specific comments with a view to formulating their recommendations to the General Assembly.

7. The comments concerned Articles 26(3), 26(4), 31, 32(b), 33, and 37(2) of the Regulations. Of these, only Article 26(4) might require further discussion by the Committee. The Secretariat saw no difficulty with regard to the suggestions made in connection with Articles 26(3), 31(2), 32(b), 33(1) and (2) and 37(2), some of which were essentially drafting matters. As to Article 26(4), there was a difference of opinion regarding the use and meaning, in the context of the Regulations, of the word "consensus". The Secretary-General accordingly invited the Committee to submit the proposed amendments for approval to the General Assembly, leaving the word "consensus" in square brackets. Every effort would then be made to resolve the impasse in time for the General Assembly in November 2012.

8. The *representative of Germany* having pointed out that there was in fact a German proposal to solve the matter, involving the addition of a new Article 26(5), the *Secretary-General* replied that the position of other member States on this was still unclear and that the square bracket option was probably the most expedient solution at this point in time.

9. The discussion that followed revealed general support for most of the proposed changes in addition to a marked preference for the German position on Article 26(4), notably on the part of the re*presentatives of France, Mexico, Spain and the United Kingdom*. Moreover, the *representative of France* wondered whether the proposal to replace the word "proof" by the term "certify" in Article 32(b) might not complicate the text unnecessarily, since the word "certification" had very precise, and different, meanings in domestic law.

10. The *Secretary-General* concluded that, given the level of support for the German proposal, rather than place the word "consensus" in square brackets it would be best to add a footnote both to the proposal in respect of Article 26(4) and to that referring to the addition of a new Article 26(5), stating that these issues were related and still under discussion. It would then be for the General Assembly to take a final decision, hopefully by consensus. In reply to a procedural query by the *representative of Brazil*, he confirmed that the proposal was for the Finance Committee to forgo a substantive recommendation to the General Assembly, and to indicate that there was strong support for the German proposals.

11. *It was so agreed.*

Item No. 5 on the agenda: Final modifications to the Budget and Accounts for the 2011 financial year (AG/Comm. Finances (72) 3 and Accounts 2011)

12. The *Secretary-General* briefly took the Committee through documents AG/Comm. Finances (72) 3 and Accounts 2011, with the central message that no modification of the 2011 budget was being proposed. As was customary, the accounts had been circulated to all member States in the summer (2012). He stated that the typing error in paragraph (1) of the document referring to actual expenditure of € 2,157,725 instead of € 2,137,725 would be corrected in the document submitted for approval to the General Assembly. Briefly, the Secretariat had in 2011 spent € 122,000 less than authorised. Cuts had been made in all but one chapter of the budget. There had, however, also been an overall reduction of receipts in 2011 of € 133,000, which left a technical shortfall at the close of 2011 of € 58,000 that had been charged to the Institute's working capital fund.

13. *The Chair proposed that the Finance Committee recommend that the General Assembly approve the accounts for the 2011 financial year as submitted, with a correction as to the amount of actual expenditure. It was so agreed.*

Item No. 6 on the agenda: Adjustments to the Budget for the 2012 financial year (AG/Comm. Finances (72) 4)

14. The *Secretary-General* indicated that document AG/Comm. Finances (72) 4 reflected expectations of the budget situation by the end of the current year and as such was not a final document. The situation with regard to receipts was not particularly positive since there had been no surplus in 2011 to carry over to the current financial year. Moreover, some € 200,000 less regular income was expected from the member States, owing to the objections of some member States to their upward reclassifications in the contributions chart. Another difference was due to the deficit accrued in the 2011 financial year, as well as the lower actual amount of the contribution of the host State, Italy (€ 100,000 instead of € 150,000). He nevertheless fully expected the Institute to end the 2012 financial year with a level of expenditure significantly lower than that indicated in the budget, largely because of savings made on re-staffing and social security expenditure. All in all, the Secretariat would probably be able to report a slight surplus or a balanced budget at the end of the year. Finally, he noted that a discrepancy in some of the figures in the document would be duly corrected to reflect the correct figure for the savings made (some € 200,000).

15. *The Finance Committee agreed to recommend to the General Assembly that it adopt the proposed 2012 budget as submitted*.

Item No. 7 on the agenda: Information on the extra-budgetary contributions received in 2011 and on their allocation to the activities and projects of the Institute (AG/Comm. Finances (72) 5)

16. The *Secretary-General* recalled that information on the extra-budgetary contributions received by the Institute had been made available in this form for the past two years, including details as to the allocation of these resources and the extent of its consistency with the priorities set by the General Assembly for the Institute's Work Programme. A total of € 300,172 had been available under this heading in 2012. This represented a commendable level of fund-raising activity, in that it amounted to 13% of the level of actual contributions by member States in the regular budget. The largest single contribution had been allocated to the project with the highest priority, *i.e.*, the work on close-out netting of financial instruments. The € 52,000 raised from Italian law firms through the good offices of the UNIDROIT President was to be earmarked essentially for the UNIDROIT Library and for research on one of the UNIDROIT instruments. Finally, the figure for the German voluntary contribution did not include generous contributions in kind, such as the provision of conference facilities.

17. In reply to a query by the *representative of France* as to how legal circles, for example in France, might be motivated to make such voluntary contributions and as to any procedure that might have to be followed vis-à-vis the Secretariat, the *Secretary-General* stated that there were no formal procedures for the acceptance of contributions, as long as the purposes for which they were made were consistent with the aims of the organisations and had a link to its work programme.

18. *The Finance Committee took note, with satisfaction, of the Secretariat memorandum*.

Item No. 8 on the agenda: Arrears in contributions of member States (AG/Comm. Finances (72) 6)

19. The *Secretary-General* recalled that this document was a recurrent feature on the Committee agenda and that the situation had by and large remained unchanged. Although the total figure representing arrears looked like receivables, these were to some extent theoretical since some of them were unlikely ever to be settled, *e.g.*, those of Bolivia, whose position had been the subject of fruitless discussion for many years. Greece had now paid its contribution for 2011 and the Secretariat would accordingly remove it from the list to be submitted to the General Assembly. The only unusual situation concerned Serbia, which was not wont to fall into arrears and would no doubt remedy matters in due course. Most of the other countries listed usually settled up in the end (Pakistan, Iran, Nigeria).

20. *The Finance Committee took note of the Secretariat memorandum.*

Item No. 9 on the agenda: Financial situation of inactive member States (AG/Comm. Finances (72) 7)

21. The *Secretary-General* recalled that the situation of Bolivia went back many years and that no satisfactory solution was in sight. The Finance Committee had, at its meeting in 2011, recommended that the General Assembly should apply to Bolivia the sanctions introduced by a General Assembly resolution in 2004. Bolivia had requested a suspension of that action, but had not been heard of since. Rather than repeat this scenario indefinitely, the Secretariat proposed that the Finance Committee recommend to the General Assembly that Paraguay, which had now paid its outstanding contributions, should recover full membership and replace Bolivia in the budget for practical purposes. Bolivia would then simply revert to its status before 2001, together with three other inactive member States, Iraq, Nicaragua, and Cuba.

22. *The Finance Committee took note of the Secretariat memorandum and authorised the Secretariat to proceed on the basis outlined with regard to Bolivia and Paraguay*.

Item No. 10 on the agenda: Classification of member States in the UNIDROIT Contributions Chart (AG/Comm. Finances (72) 8)

23. The *Secretary-General* noted that three member States had raised objections of varying nature to their re-classification, in accordance with Article 16 of the UNIDROIT Statute (reproduced in Annex I to document (72 8). The Secretariat had, in the light of these objections, prepared a draft resolution for consideration by the Finance Committee that would (a) postpone the re-classification of Colombia until 2013, (b) suspend the re-classification of Portugal and Spain, and (c) confirm the adoption of the revised contributions chart as adopted in 2012. No mention was made in the document of the proposed duration of the suspension for Spain and Portugal, but in principle a review should occur every three years, so the issue ought to be taken up again in 2014, on the basis of the scale of assessment of the United Nations obtaining at that time. The other 13 countries concerned by re-classification had not so far raised objections, but could still do so prior to the General Assembly session on 29 November 2012.

24. The *representative of Romania* declared that the Romanian authorities were still considering the issue of re-classification and she accordingly reserved her country's position on the draft Resolution.

25. The *representative of Mexico* voiced his support for the draft Resolution as submitted.

26. The *representative of China* felt that he was unable to support the draft Resolution, without further explanation, since it differed significantly from the resolution passed by the General Assembly at its 69th session (Resolution 1/2011). In particular, he felt that the member States requesting suspension of their re-classification should be invited to clarify when exactly they might be able to implement Resolution 1/2011. As to paragraph (4) in draft Resolution 1/2012 proposing a review of the current classification methodology, he wondered when a discussion might be put in train on ways of introducing a stable methodology with strict, transparent rules.

27. In reply to the first point raised by the representative of China, the *Secretary-General* reiterated his statement that the suspension requested by Portugal and Spain would necessarily apply for three years counting 2012, until the issue of their re-classification was taken up again in 2014, on the basis of the revised United Nations assessment scale. As to methodology, he recalled that General Assembly Resolution 1/2011 had confirmed the applicability of the current methodology. It was with a view to perfecting that methodology that the paragraph in question had been added. The Secretariat could look at ways of refining the methodology and making it more fair, transparent and equitable, if requested to do so by the Finance Committee.

28. The *representative of Spain* specified that the position outlined by the Secretary-General as to the timeframe for the suspension of her country's re-classification was the position as it was understood by Spain, and that her country would not object to a specification of that nature being included in the text of

the draft Resolution. She also thanked the Secretariat for its constructive approach to the problems faced by Spain in respect of its re-classification.

29. The *representative of Canada* stated that Canada accepted the suspension in principle, but advocated including a precise date for a review of the current methodology, substituting "2014" for "in due course" in paragraph (4) of the draft Resolution, to emphasise that the chart should be reviewed every three years, as was Institute practice. He added that his country would not wish to see the rates of the contribution units go up in the future to off-set structural deficits into the budget due to deficiencies in its chart of contributions. Canada would therefore prefer to see the date included as well as some wording, possibly in the final preambular paragraphs, to the effect that this would be without prejudice to the future methodology. The *representative of the United Kingdom* agreed with the latter point, and also voiced her country's support, in principle, for the draft Resolution.

30. The *Chair* suggested that reference be made in the relevant text indicating the need for a review of the application of the current system in 2014, implying that the suspension was valid until the time of that review. There was also the question as to whether a parallel review should be undertaken of the methodology used, either in 2014 or at some unspecified point of time in the future.

31. The *representative of Brazil* objected that, if the rules and procedures already included a reference to the contributions chart being reviewed every three years but not to a similar review of the methodology, to include the date in the draft Resolution would pre-judge the fact of a three-year methodology review. She agreed with the proposals regarding the duration of the suspension accorded Portugal and Spain, but reserved her position on a review of the methodology in 2014.

32. The *Chair* suggested that the wording: "consider" a review might solve that problem.

33. The *representative of Canada* having sought further clarification as to whether the reference to Article 16 of the Statute referred to a periodic review, or simply to updating the chart of contributions in accordance with existing methodology, the *Secretary-General* recalled that Article 16(3) read: "The number of categories, the number of units corresponding to each category, the amount of each unit, and the classification of each Government in a category, shall be determined by a resolution of the General Assembly adopted by a majority […], while Article 16(4) went on: "Decisions adopted by the General Assembly in accordance with paragraph 3 of this Article may be revised, every three years by a further resolution of the General Assembly […]. The Statute was sufficiently open to cover both, or it might simply indicate that the mechanical application of whatever methodology was developed should occur every three years. In essence, this had been the representative of China's point, *i.e.*, that matters should not be left too vague and that the Finance Committee should discuss this at some future time.

34. Summing up, the *Secretary-General* noted that the representative of Spain had now, like Portugal, confirmed its intention to suspend re-classification for the entire period for which it had been re-classified, *i.e.*, the triennium 2012-2014. At the end of that triennial cycle, the General Assembly would be required to review the situation, in the light of the revised assessment chart of the United Nations. Paragraph (2) might then be worded: "suspends the re-classification of Portugal and Spain in the contributions chart until such time as the General Assembly reviews the current contributions chart in accordance with Article 16 of the Statute." As to a methodology review, there was nothing to prevent reference being made to a particular date for the Finance Committee to start discussing that issue. However, the Committee was under no obligation to do so nor indeed to change the *status quo* if any discussions it did have failed to produce an improved methodology.

35. *The Finance Committee mandated the Secretary-General to re-draft paragraphs (2) and (4) in the light of the comments made and to circulate the proposed texts to the members of the Committee by mail for comment.*

Item No. 11 on the agenda: Draft Budget 2013 (AG/Comm. Finances (72) 9)

36. The *Secretary-General* referred to document AG/Comm. Finances (72) 9 for detail. While the draft budget for 2013 was lower than the 2012 budget, this was only because the current budget had

anticipated a higher level of income that had not materialised. The units of contribution had not been increased, for the third consecutive year, but that situation could not be expected to continue indefinitely. In terms of efficiency savings, the Secretariat had now probably reached the limit of its re-structuring and re-organisation potential. On the expenditure side, he specified that the increases in some chapters had been made possible by re-arranging other chapters. More money was being allocated to Chapter 1 (reimbursement of expenses), which was the operational chapter of the Secretariat's budget, mainly at the expense of the chapters on salaries and social security (where decreases were attributable to non-replacement of retirees, outsourcing, and so on). Some increases were beyond the Secretariat's control (*e.g.*, interpreters' fees, maintenance costs for the Institute's premises, and the like). No increase was proposed for the Library despite the recommendations of an expert from the Max Planck Institute in Hamburg, but fund-raising efforts would be continued to allow the Library to top up its acquisitions. Promotion of UNIDROIT instruments was an incontrovertible duty that fell squarely on the Secretariat, and it should be borne in mind that two new instruments had now been added to the list. The working capital fund continued to stand at a comfortable € 367,000 for 2013.

37. The *representatives of Canada, France, Italy, Mexico, Spain and Switzerland* all commended the Secretariat for its achievements in containing expenditure, and expressed their support for the draft budget 2013. The *representative of Italy* expressed his own personal commitment and that of the Italian Foreign Office to solving the issue of the Italian contribution within a reasonable time frame, even though no assurances could be made for the future at this juncture.

38. In reply to a query by the *Chair* as to the structure of Chapters 2 and 3 (Salaries and Allowances, and Social Security Charges), which still made up 75% of the budget despite staff reductions, the *Secretary-General* briefly outlined the history of the Institute's personnel curve. UNIDROIT applied different payments schemes for professional staff (based on the scales applying in other coordinated agencies such as the OECD) and for local, general purpose staff, as well as a mix of social security schemes which added to the general complexity. Eventually, that issue might have to be addressed and a tailor-made system worked out for the Institute. However, it should be borne in mind that staff costs in all Organisations, whatever their system, also generally hovered around the 70% mark.

39. *The Finance Committee took note of the proposals for the budget for the 2013 financial year and recommended its approval by the General Assembly at its 71st session.*

Item No. 12 on the agenda: Any other business

40. *No other matters having been raised, the Chairman closed the meeting at 12.00 a.m.*

APPENDIX I

List of participants

Ms Katharina WIESER	(Austria)
Ms Gilda MOTTA SANTOS NEVES	(Brazil)
Mr Craig WEICHEL	(Canada)
Mr WU Cong	(China)
Ms Amélie DURANTON	(France)
Mr Marco ACQUATICCI	(Germany)
Mr Fernando PALLINI ONETO DI SAN LORENZO	(Italy)
Ms Satoko KOIKE	(Japan)
Mr Alan ROMERO ZAVALA	(Mexico)
Ms Alina POPESCU	(Romania)
Mr Evgeny EGOROV	(Russian Federation)
Ms Lorea ARRIBALZAGA	(Spain)
Ms Teresa DI VITO	(Switzerland)
Ms Claudia GIUNCHIGLIA	(United Kingdom)
Mr Stetson A. SANDERS	(United States of America)

UNIDROIT Secretariat

Mr José Angelo ESTRELLA FARIA	(Secretary-General)