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Item No. 9 on the Agenda: Financial situation of inactive member States

(Memorandum of the Secretariat)

<i>Summary</i>	<i>Background information and update on the financial situation of inactive member States</i>
<i>Action to be taken</i>	<i>To consider the appropriate course of action in connection with the financial standing of inactive member States</i>
<i>Related documents</i>	<i>Report of the 68th session of the Finance Committee (UNIDROIT 2010 – AG/Comm. Finances (68) 6); UNIDROIT 2011 – AG/Comm. Finances (70) 9; UNIDROIT 2011 – A.G. (69) 11</i>

Introduction

1. During the period 1940–1963, membership of UNIDROIT entailed no obligation on the part of member States to make any financial contribution to the Institute. Such contributions were made mandatory on 1 January 1964, when the amendment to Article 16 of the Statute, adopted at the 10th session of the General Assembly (Rome, 15 November 1961), entered into force.

2. A few States, however, without formally renouncing their status as member States of UNIDROIT, never ratified the amendment to Article 16 of the Statute, and have since neither paid any contributions, nor participated in the work of the Institute; they have neither sought election for any position, nor attended the sessions of the General Assembly.¹ UNIDROIT sets great store by the prospect of re-establishing relations with those member States with a view to their full participation in the activities of the Institute. Regrettably, the size of the debt accumulated by them since 1964 and the difficulty for those States to settle their arrears in full, has been a significant obstacle. This report deals with the situation of two of those member States: Bolivia and Paraguay.

¹ The Secretariat refers to those States as “inactive member States”, to distinguish them from member States in arrear in the payment of their contribution, but otherwise taking full part in the Institute’s life.

A. Bolivia

3. The Finance Committee has been following the situation of the Bolivian indebtedness with growing concern for a number of years. At its 70th session (Rome, 29 September 2011), the Committee made the following recommendation:

“In respect of the situation of Bolivia, the Finance Committee recommended that, unless the Secretariat and Bolivia managed to reach agreement as to the settlement of Bolivia’s arrears in instalments, the General Assembly suspend Bolivia’s right to be invited to participate in the sessions of the General Assembly and the governmental expert committees convened by Unidroit, as well as in the diplomatic Conferences convened under UNIDROIT auspices, until such time as Bolivia had regularised its position. The Committee also recommended that the General Assembly instruct the Secretariat no longer to take account of the contributions owed by Bolivia in drawing up the budget for future financial years.” (see UNIDROIT 2011 - AG/Comm. Finances (70) 9, paragraph 16).

4. Thereafter, the Embassy of Bolivia in Italy addressed a Note Verbale to the Secretariat indicating that the matter had been submitted for consideration to the authorities in La Paz and requesting that the General Assembly defer any action until a reply had been received from the Bolivian. On the basis of that information, the General Assembly, at its 69th session (Rome, 1 December 2011), decided as follows:

“The General Assembly agreed to accede to the Government of Bolivia’s request for the deferral of any action leading to its suspension from the incidents of membership of the Institute under Resolution (58) 1 so as to give that Government an opportunity to review the matter.

“The General Assembly, however, decided that the Secretariat should no longer take account in the preparation of future Budgets of the contributions to the Institute’s Budget owed by the Government of Bolivia.” (UNIDROIT 2011 – A.G. (69) 11, paragraphs 30-31).

5. The Secretariat has not received any further communication from the Government of Bolivia on this matter since that date. The draft budget for the financial year 2013 does not anticipate any contribution payment by Bolivia.

6. At its 72nd session (Rome, 27 September 2012), the Finance Committee took note of the above information and recommended no further action on this matter to the General Assembly (UNIDROIT 2012 - AG/Comm. Finances (72) 10, para. 22).

7. *The General Assembly may wish to take note of this information and consider which action, if any, it should take in this respect.*

B. Paraguay

8. At its 70th session, the Finance committee was informed by the Secretary-General of the outcome of consultations held with the Government of Paraguay with a view to regularising that country’s position in the Institute. The General Assembly, at its 69th session (Rome, 1 December 2011), decided as follows:

“The General Assembly took note of the Government of Paraguay’s stated intention fully to abide by its financial obligations toward the Institute with a view to reacquiring its rights as a member of UNIDROIT once it had settled its contribution to the UNIDROIT Budget for four consecutive years.

“The General Assembly further decided that the Government of Paraguay’s contribution should replace that of the Government of Bolivia in the UNIDROIT contributions chart. (UNIDROIT 2011 – A.G. (69) 11, paragraphs 32-33).

9. On 27 July 2010 the Secretariat received a payment from Paraguay in an amount roughly equivalent to what the contribution of Paraguay would have been in the years 2009 and 2010. On 5 July 2012 the Secretariat received a payment from Paraguay in an amount roughly equivalent to what the contribution of Paraguay would have been in the years 2011 and 2012, thus completing the minimum payment required by the Finance Committee (not less than two years of outstanding contributions). The Secretary-General has been informed that a formal communication indicating the firm commitment of Paraguay to meet its financial obligations for the future will be submitted shortly.

10. At its 72nd session (Rome, 27 September 2012), the Finance Committee took note of the above information and was satisfied that Paraguay had substantively complied with the material conditions set forth in the recommendation adopted at its 66th session (UNIDROIT 2012 - AG/Comm. Finances (72) 10, para. 22).

11. *The General Assembly may wish to take note of these positive developments and declare that Paraguay has settled its arrears up to the year 2012 and that Paraguay will recover its full membership and reacquire all its rights, including the right of vote at the General Assembly, after four consecutive years of regular payment of its statutory contributions, in 2013.*

ANNEX**RESOLUTION (58) 1****as passed by the General Assembly of UNIDROIT member States at its 58th session**

(Rome, 26 November 2004)

THE GENERAL ASSEMBLY,

MINDFUL of the ever more serious financial difficulties caused to the Institute by the failure over a number of years of certain member States to settle their contributions and of the distortions thereby created in the calculation of the annual receipts of the Institute,

CONSCIOUS of the fact that the measures so far adopted by the General Assembly, in its Resolutions (38) 1, (40) 1, (42) 1, (42) 2, (42) 4, (45) 2 and (47) 1, have failed to provide a satisfactory remedy to the situation created by the existence of longstanding arrears in the settlement by certain member States of their contributions,

CONVINCED that the best means of resolving the problems created by the accumulation of such longstanding arrears, in addition to the sanction provided under Article 16(7) of the Statute, is by progressively suspending the essential privileges of membership in the case of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the three, four or five immediately preceding years,

HAS DECIDED:

1. subject to any agreement that may be reached between the Secretariat and member States having accumulated arrears in the settlement of their contributions for the settlement of such arrears by instalments, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the three immediately preceding years to present candidates for the awarding of research scholarships and to access the UNIDROIT Library until such time as they have regularised their situation;

2. subject to any agreement referred to in clause 1, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the four immediately preceding years to receive UNIDROIT documentation until such time as they have regularised their situation;

3. subject to any agreement referred to in clause 1, to suspend the right of member States having accumulated arrears in the settlement of their contributions the amount of which is in excess of the aggregate of their assessed contributions for the five immediately preceding years to receive invitations to participate in sessions of the General Assembly and committees of governmental experts convened by, and diplomatic Conferences convened under the auspices of UNIDROIT until such time as they have regularised their situation.