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Item No. 10 of the agenda: Correspondents

(Memorandum prepared by the Secretariat
and the Sub-Committee of the Governing Council on UNIDROIT Correspondents)

<i>Summary</i>	<i>Report and recommendations of the Governing Council Sub-Committee on UNIDROIT Correspondents on appointment and reappointment and latest consultation of the correspondents</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to examine the report and recommendations of the Sub-Committee</i>
<i>Related document</i>	<i>UNIDROIT 2013 – C.D. (92) 13 Add.</i>

1. At its 91st session (2012), the Governing Council established a Sub-Committee – whose members are Prof. Gabriel, Govey and Soltysinski – to reconsider ways of revitalising the correspondents system and to report back to the Council at its next session. The report of the Sub-Committee, containing Guiding Principles and rules on appointment and reappointment, appears in Annex I to this document.

2. In accordance with UNIDROIT's usual practice, correspondents were informed about the status of all items on the current and proposals for the future triennial Work Programme and invited to comment on them. As of 15 April 2013, nine of the Institute's correspondents submitted comments: Mr Boutin (Panama), Ms Chiavarelli (Italy), Mr de Nova (Italy), Mr Finn (Australia), Mr Furnston (United Kingdom), Mr Kozuka (Japan), Mr Kramer (Switzerland), Mr Morán Bovio (Spain), Mr Zimmermann (Germany) as well as one institutional correspondent, the Max-Planck-Institut für ausländisches und internationales Privatrecht. Those comments are reproduced in Annex IV of document C.D. (92) 13 Add.

3. A table showing the distribution of the correspondents of the Institute by region and country appears in Annex II to this document.

ANNEX I**Report and Recommendation to the 92nd Meeting of the Governing Council from the Governing Council Sub-Committee on UNIDROIT Correspondents**

BACKGROUND

At the last meeting of the Governing Council in May 2012, at the request of the President of UNIDROIT, the Governing Council appointed a sub-committee to re-examine the Council's policy regarding the appointment and duties of the Institute's correspondents. The Sub-Committee presents this report and recommendation.

The Sub-Committee notes that in 2006 at the 85th session of the Council, the Council, having noted "the rather dismal situation of the Institute's correspondents, appointed a Sub-Committee to make recommendations regarding the correspondents. At the 2007 Governing Council Meeting, The Sub-Committee proposed that the present and future correspondents be appointed for a set term, subject to renewal.¹ After a discussion of this proposal, the Council unanimously agreed that correspondents were to be appointed for a period of three years. At that time, the Governing Council also set out the functions of the correspondents:

1. To participate, upon the invitation of the President, in UNIDROIT study groups;
2. to supply, at the request of the Secretariat, information on national law, on developments at the international (and regional) level in the areas of interest to UNIDROIT and on any legal instruments under preparation, and to suggest new topics for future study;

¹ The Sub-Committee proposed the following letter to be sent to the correspondents:

Dear ,

In your capacity of one of UNIDROIT's correspondents you receive certain documents. Moreover, every three years the Secretariat comes to you asking for your advice with respect to the Institute's Work Programme. We are, of course, aware, of your many commitments and would not wish to add to the burden you have shouldered over the years in the interest of the stakeholders of our work. The Governing Council has asked me, therefore, that I contact you with a view to finding out whether you might prefer to be taken off the list of addressees of the aforementioned material and requests.

Moreover, the Governing Council is now considering to restructure the entire system. The most likely outcome of the review will be that correspondents will be appointed for a term of [two/three/five] years. Would you be kind enough to indicate whether you are interested to be reappointed for the next cycle? Your advice regarding the triennial Work Programme will continue to be a priority for us. But we would obviously also welcome any input on any of the projects that are currently under preparation.

If you do not reply by [*deadline two months*] the Council and the Secretariat would interpret such silence as an indication that you would wish us to take your name off the list and relieve you from your duties as a correspondent.

Looking forward to hearing from you, I am,

With all best wishes,

Yours sincerely,"

3. to promote UNIDROIT instruments in business, professional and academic circles by means of the publication of articles in the press and by organizing or participating in meetings intended to disseminate the work of the Institute, both past and present;
4. to contribute to the *Uniform Law Review* (articles, case law, news on congresses, book reviews, etc.) and to supply input for the UNIDROIT database on uniform law;
5. as regards correspondents from non-member States, to act as go-betweens with their Governments.²

At that time, UNIDROIT had 175 correspondents on the list, but it was noted in several cases the correspondents had died and in other cases the contact list for the correspondents was inaccurate. The Council directed the Secretariat to write those on the list and ask them whether they wished to remain correspondents. Furthermore the letter to those on the list suggested that a failure to respond would be interpreted as an indicating that the person no longer wished to serve as a correspondent. The Secretariat wrote those on the list, but only ten correspondents responded.³ The Governing Council requested the Secretariat to make one final attempt to reach dormant correspondents, following which it was to commence “de-selection” and draw up a new list.

At the 2008 Governing Council, the Secretariat submitted a new list and suggested these members be appointed for a three year period from May 2008 until April 2011. The Governing Council agreed with this recommendation, and the Secretariat proceeded to make another attempt at compiling a list of active members.

In 2009, the Governing Council approved the appointment of a new correspondent.⁴ The Governing Council also appointed a new correspondent in 2010.⁵ As of 2010, there were 103 individual and 2 institutional correspondents, most with appointments expiring in April 2011.⁶

Because these appointments were coming to an end at the same time the Governing Council was discussing the role of correspondents as part of the strategic plan,⁷ the appointments were extended for one year,⁸ thereby coming to an end in April 2012.

² The Sub-Committee notes that this is precisely the functions set out by the Governing Council at its 75th meeting in 1996.

³ Although the Governing Council was seeking some assurances from the correspondents that they wished to remain on the list, the sub-committee notes that the letter sent to the correspondents may have not clearly expressed the need to the correspondents to respond. The text of the letter stated:

In your capacity of one of UNIDROIT’s correspondents you receive certain documents. Moreover, every three years the Secretariat comes to you asking for your advice with respect to the Institute’s Work Programme. We are, of course, aware, of your many commitments and would not wish to add to the burden you have shouldered over the years in the interest of the stakeholders of our work. The Governing Council has asked me, therefore, that I contact you with a view to finding out whether you might prefer to be taken off the list of addressees of the aforementioned material and requests.

⁴ The recommendation was made in UNIDROIT 2009 – C.D. (88) 12.

⁵ The recommendation was made in UNIDROIT 2009 – C.D. (89) 10 Add.

⁶ UNIDROIT 2010 – C.D. 89(10).

⁷ As part of the Strategic Plan, the Governing Council noted (C.D. 90 (16), para. 18-22):

18. UNIDROIT correspondents should be involved more actively. In order to achieve that target, someone in the Secretariat –or elsewhere– should be in charge of asking the correspondents the information or material they must deliver and the deadlines.

19. The role of correspondents must be to work for the Institute. In other words, the mechanism of correspondents is useful and may really work adequately, as far as it is properly organized. That requires special attention from the Secretariat. A periodical revision of the correspondents’ list should be done by the Secretariat, on the basis of the response of each one of them to its requirements. Correspondents should collaborate with the Institute in this kind of task, but always at the Institutes request and under its guidelines.

At the 2012 Governing Council meeting, it was pointed out that work demands and time constraints had prevented the Secretariat from following the procedure of asking correspondents whether they wished to be reappointed for another three year term.⁹ Rather than take final action on how to proceed in the future, the President appointed a Sub-Committee to consider the matter and to report back to the Governing Council at its 92nd session.¹⁰

RECOMMENDATIONS:

i. Guiding Principles

The recommendations of the Sub-Committee are informed by the observations of the Governing Council at its 91st session:

1. The correspondents are potentially very important for UNIDROIT.
2. The position of correspondent should be a working one and not a mere honour.
3. The Institute is entitled to some commitment from the correspondents.
4. One task of the correspondent is to make UNIDROIT better known.

ii. Appointment and Reappointment

1. Appointments are for three year renewable terms.
2. To be appointed or reappointed, the correspondent must state how he or she intends to contribute to the work of UNIDROIT.¹¹

20. The Informal Working Group agrees to "consider ways in which the network of correspondents might be revitalized, giving priority to the establishment of institutional links between UNIDROIT and research institutions, *in addition to* individuals.

UNIDROIT 2011 – C.D. (90) 16 5.

21. At present, the Governing Council for, has adopted term appointments of three years UNIDROIT correspondents, with the possibility of continued reappointment indefinitely. As has been discussed at prior Governing Council meetings, it may useful to write the present (and future correspondents) about their desire to remain on the list. There is a need to establish a policy of specifying to our correspondents how they may contribute to the Institute. This, for example, could include collecting cases and doing summaries for our UNILAW database

22. In accordance with Article 5 of the UNIDROIT Statute, the Work Programme is decided by the Governing Council, and then adopted by the General Assembly every three years. Proposals for new items to be included in the Work Programme may come from the Governing Council, from member States or from the Secretariat. UNIDROIT correspondents are often asked to comment on these proposals before they are submitted to the Governing Council. Therefore, the Informal Working Group proposes that there should be a system for contacting the correspondents on Work Programme issues systematically.

C.D. (90) 16, paras. 18-22.

⁸ The Governing Council adopted the suggestion made by the Secretariat in C.D. (90) 11. See C.D. (91) 9.

⁹ C.D. (91) 15, para. 105.

¹⁰ As of April 2012, there were 102 individual and 2 institutional correspondents. C.D. (91) 9.

¹¹ The letter asking candidates whether they wish to be appointed or reappointed should state the potential duties of correspondents:

1. to participate, upon the invitation of the President, in UNIDROIT study groups;
2. to supply, at the request of the Secretariat, information on national law, on developments at the international (and regional) level in the areas of interest to UNIDROIT and on any legal instruments under preparation, and to suggest new topics for future study;

3. Reappointment is not automatic. Correspondents will be contacted before their terms expire asking whether they wish to be reappointed. They must respond within two months of the request. This should be clarified in the letter from the Institute so that the correspondents understand the obligation to respond.
4. Correspondents who are inactive for a substantial time will not be asked if they would wish to be reappointed, and will not be reappointed.
5. Appointment letters should indicate that the correspondent is expected to remain active, and long term inactivity may result in removal.
6. Correspondents will be asked to keep their contact information updated.
7. Those who are presently on the list of correspondents will be asked if they wish to be reappointed for a term running from May 2013 until April 2016. Those correspondents who are active during that period are eligible for reappointment for subsequent terms.

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3. to promote UNIDROIT instruments in business, professional and academic circles by means of the publication of articles in the press and by organizing or participating in conferences and other meetings intended to disseminate the work of the Institute, both past and present;
 4. to contribute to the Uniform Law Review (articles, case law, news on congresses, book reviews, etc.) and to supply input for the UNIDROIT database on uniform law;
 5. as regards correspondents from non-member States, to act as go-betweens with their Governments in promoting awareness of UNIDROIT's work and the value of membership.

ANNEX II

DISTRIBUTION OF CORRESPONDENTS OF THE INSTITUTE BY REGION AND BY COUNTRY
– as of 15 April 2013 –

Non-member States of UNIDROIT are shown in italic script

	2013		2013		2013
Africa	12	Europe	49	Asia/Pacific	10
<i>Angola</i>	0	Austria	1	Australia	4
<i>Burkina Faso</i>	1	Belgium	1	China	1
<i>Cameroon</i>	0	Bulgaria	0	India	0
<i>Côte d'Ivoire</i>	0	Croatia	0	Indonesia	1
Egypt	2	Cyprus	0	Iran	1
<i>Ghana</i>	1	Czech Rep.	0	Iraq	0
<i>Kenya</i>	0	Denmark	1	Japan	3
<i>Madagascar</i>	0	Estonia	0	<i>New Zealand</i>	0
<i>Mali</i>	1	Finland	1	Pakistan	0
<i>Morocco</i>	2	France	7	<i>Philippines</i>	0
Nigeria	1	Germany	9	Rep. of Korea	0
<i>Central African Rep.</i>	0	Greece	1	Saudi Arabia	0
<i>Senegal</i>	1	Holy See	0	<i>Singapore</i>	0
South Africa	0	Hungary	0	<i>Thailand</i>	0
Tunisia	3	Ireland	0		
		Israel	0		
		Italy	6		
		Latvia	1		
Americas	35	Lithuania	0		
		Luxembourg	0		
Argentina	4	Malta	1		
Bolivia	0	The Netherlands	1		
Brazil	0	Norway	1		
Canada	5	Poland	1		
Chile	1	Portugal	1		
Colombia	3	Rep. of Serbia	0		
Cuba	0	Romania	0		
<i>Guatemala</i>	1	Russian Federation	1		
Mexico	3	San Marino	0		
Nicaragua	0	Slovakia	1		
<i>Panama</i>	1	Slovenia	0		
Paraguay	0	Spain	3		
<i>Peru</i>	0	Sweden	1		
United States of America	15	Switzerland	3		
Uruguay	1	Turkey	1		
Venezuela	1	United Kingdom	6		