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Item No. 13 on the agenda:– UNIDROIT Strategic Plan -
Comments received by the Secretariat

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the comments received by the Secretariat on the Strategic Plan</i>
<i>Action to be taken</i>	<i>To take note of the comments</i>
<i>Mandate</i>	<i>Decision taken by the General Assembly at its 71st session (29 November 2012)</i>
<i>Related document</i>	<i>UNIDROIT 2012 – A.G. (71) INF 2</i>

1. At the 71st session of the General Assembly of UNIDROIT (29 November 2012), the Secretariat submitted a revised version of the Strategic Plan 2012-2018, drawn up by a special working group of the Governing Council with the involvement of the Secretariat (UNIDROIT 2012 – A.G. (71) INF 2). The General Assembly requested the Secretariat to give it wide circulation among the member States and to enable particularly those member States that had no nationals sitting on the Governing Council to consider the matter and to submit comments. In particular, the Governing Council suggested that member States consider the challenges posed by the current environment, the long-term needs for the independence of the Organisation and the scope for enhancing workable working relationship between the Institute and other bodies, making the best use of comparative advantages.

2. In accordance with this decision, the Secretariat transmitted to its Member Governments the revised Plan by Note Verbale (refce: MS/49) dated 17 January 2013 (Annex I). 4 Governments replied by 10 April 2013: China, Colombia, Portugal and the United States of America. Their comments are reproduced in Annex II to this document.

3. *The Governing Council is invited to take note of the comments received by the Secretariat.*

ANNEX I

Our refce.: MS/49

NOTE VERBALE

The International Institute for the Unification of Private Law (UNIDROIT) presents its compliments to the Embassy of XXX in Italy and has the honour to recall that member States and the Governing Council mandated the Secretariat to review the Strategic Plan adopted in 2003 and draw up a revised plan for the Organisation's medium-term future. This document, which covers the years 2012-2018, was drawn up by a special working group of the Governing Council with the involvement of the Secretariat and was presented to the General Assembly at its 71st session (Rome, 29 November 2012).

UNIDROIT would further like to point out to the Embassy of XXX in Italy that, on this occasion, the General Assembly commended the Secretary-General and the Governing Council for having drawn up such a revised Strategic Plan for UNIDROIT and requested the Secretariat to give it wide circulation among the member States and to enable particularly those member States that had no nationals sitting on the Governing Council to consider the matter and to submit comments. In particular, the Governing Council suggests that member States consider the challenges posed by the current environment, the long-term needs for the independence of the Organisation and the scope for enhancing workable working relationship between the Institute and other bodies, making the best use of comparative advantages.

UNIDROIT therefore has the honour to communicate herewith to the Embassy of XXX in Italy the document containing the Strategic Plan submitted to the General Assembly (UNIDROIT 2012 – A.G. (71) INF 2) which can also be found on the UNIDROIT web site, at the following page: <http://www.unidroit.org/english/governments/assemblydocuments/2012-71session/ag71-inf02-e.pdf>. UNIDROIT hereby invites the Government of XXX to kindly formulate such comments on the Strategic Plan as it may see fit with a view to their consideration at the next session of the Governing Council (Rome, 8 to 10 May 2013). UNIDROIT would invite the Embassy of XXX in Italy kindly to let it have any such comments (at info@unidroit.org) by 29 March 2013.

UNIDROIT would be grateful if the Embassy of XXX in Italy would kindly bring the contents of this Note Verbale as well as its enclosure to the attention of the competent Authorities of its Government.

Rome, 17 January 2013

To the Embassy of XXX in Italy
ROME

ANNEX II**Comments received from Member States on the UNIDROIT Strategic Plan****CHINA***General comments:*

The Strategic Plan describes and analyses the identity, market, challenges, and the measures UNIDROIT will take to achieve its objectives. It is beneficial for the developments of UNIDROIT in the future.

Specific comments:

1. On the issue of "Funding", we suggest to describe the situation of donation that UNIDROIT received from some Member States or other entities.
2. Regarding as "to preserve our continued independence" in Chapter III, to highlight the importance of independence, the Plan needs one or more paragraphs on the significance of independence.
3. The phrase of "high-quality uniform rules" appears several times in the Plan, there is no any specific interpretation on it however. To explain the objectives more clearly, it is better to clarify the phrase of "high-quality".
4. According to the Plan, UNIDROIT will extend its cooperation with industry. It is better to illustrate the measures that UNIDROIT is taking and will take to ensure the cooperation, and the measures except greater transparency to keep its independence meanwhile.

We are glad to receive any feedback for the Secretariat and Member States.

COLOMBIA¹

Despite being part of UNIDROIT for nearly 30 years, Colombia has not been very active. Currently, Colombia has only acquired international commitments with relation to the 1995 Convention on Stolen or Illegally Exported Cultural Objects and the 2001 Cape Town Convention on International Interests in Mobile Equipment. As a result, the Ministry of Foreign Affairs began a program to promote UNIDROIT and approach stakeholders interested in its work beginning last year.

In this context, the Strategic Plan for the period 2012 - 2018 includes a range of topics of interest to Colombia, which warrant comment. Consequently, the Economic Affairs Coordination of the Economic, Social and Environmental Department and the Cultural Affairs Coordination, of the Ministry of Foreign Affairs, and the Ministry of Justice and Law, in response to UNIDROIT's Note Verbale MS/49 UNIDROIT of January 17, 2013, have the following comments:

Comments and recommendations on the UNIDROIT Strategic Plan 2012-2018

First, and in relation to the membership of UNIDROIT, the Government of Colombia considers it of importance to strengthen and promote the entry of new States, by adapting the institution to new areas and new entrants, making it more inclusive and participatory. Consequently, the

¹ Translation done by the UNIDROIT Secretariat.

Government of Colombia proposes consideration for greater participation by other bodies with similar subject-matter and consideration of positions different than the Eurocentric proposal in the development of the future Work Programme, as is the case in UNIDROIT'S concern to incorporate principles for the development of uniform rules of civil procedure.

The harmonization of procedural tools can facilitate international negotiations, as well as provide a common framework for settling disputes between jurisdictions. However, it is observed, on this point, the proposal formulated in the 2014-2016 Work Programme, part of a Eurocentric system, which may not be adequate enough for purposes of establishing an international standard. Indeed, jurisdictional procedures must take into account the local situation of each country, which may result in the existence of different barriers to access, at the geographic, budgetary, technological, cultural and even political levels.

With great certainty, the procedural reality of a country in Latin America like Colombia, with high levels of litigiousness and proliferation of legal offices, a culture of worship toward form and accustomed to a setting that clearly favours things in writing, is a completely different setting than the setting in Europe or North America. This prevents a proposal tending towards international unification of civil proceedings from going into detail regarding individual actions.

Notwithstanding the above, procedural principles may focus on the stages and minimum components which must share procedural contact in different judicial systems, in development of law and in the fundamental principle of due process.

Additionally, other initiatives should not be ignored, advancing on procedural issues in a non-European environment, such as the General Code of Procedure developed by the Ibero-American Institute of Procedural Law, which has been adopted by the Republic of Uruguay. Likewise, developments on procedural issues have taken place in other countries, such as a recent reform in Colombia which led to the approval of the General Code of Procedure,² and should be taken into account.

A second aspect with regard to participation in the work of UNIDROIT, the Colombian Government views it as a positive that the Governing Council is composed of elected members participating in their professional capacity, not as delegates from government. It is precisely this characteristic that provides independence to the Organisation. However, Colombia believes there should be greater clarity of the work done by the Governing Council and the General Assembly, in which government representatives participate, achieving greater synergies in the process of unification of private law.

Regarding the strengthening of the process of cooperation with the private sector, Colombia urges UNIDROIT to promote closer cooperation and collaboration with the private sector, to exchange ideas through the use of consultation processes, as it is the private sector which is the regulated beneficiary of the unification of international rules achieved by UNIDROIT. Ultimately UNIDROIT is the international organisation called to be a forum for discussion on issues related to private international law and therefore must engage the greatest number of actors in the implementation of its rules.

² 1564 ACT OF 2012, partially in force since July 12, 2012. The other articles will enter into force on the first (1st) of January two thousand and fourteen (2014), gradually, to the extent the training programs for officers and employees will be executed and that there will be the physical infrastructure and technology, the number of required daily judicial offices, and other elements necessary for the functioning of the oral proceedings and hearings, as determined by the Supreme Judicial Council, and within a maximum of three (3) years, after which the law will take effect in all judicial districts. (Number 6 art. 627).

Similarly, Colombia considers that UNIDROIT should continue with its orientation as a quasi-academic institution, a vision adopted since its creation. Consequently, the various discussions on the unification of private international law should be promoted from within the Organisation and the member States, according to the Institute's mission. In this context, we support the work of the Secretariat and the Governing Council to revive correspondence networks with academic institutions in member States, as well as with persons of great expertise, in future processes proposed in the 2014-2016 Work Programme.

It is for this reason that the Government of Colombia welcomes the holding of various forums on the Institute in the Member States, as was the case in Colombia on 6 and 7 November 2012, as well as updating of the website to make it more accessible to users, as proposed in the Work Programme 2014-2016. However, the Colombian Government urges the Institute to continue its promotional work, not only in member States, but also in non-member States, so as to increase the visibility and level of income and interest by other States, in the important work done by UNIDROIT.

In terms of legal cooperation, Colombia welcomes the intention to cooperate with legislators and the judiciary in developing countries, not only in the implementation of regulatory harmonisation, but also in the development of national legal systems, in a manner consistent with its work of harmonisation and regulatory convergence. The Colombian Government strongly agrees with the assessment made by the Secretariat that this cooperation strategy will contribute to increased visibility of the Institute.

Finally, the Government of Colombia considers it vital to engage in cooperation with other international organisations involved in similar activities to the Institute, such as UNCITRAL, to avoid duplication of efforts, and encourages it to follow the precedent set by the joint meetings and joint follow-up work for the 1995 Rome Convention on Stolen or Illegally Exported Cultural Objects and the 1970 UNESCO Convention.

PORTUGAL

Having had the opportunity of reading the revised version of the Strategic Plan as prepared by the Secretariat, it is with pleasure that the Portuguese Securities Market Commission (CMVM) notes the focus on the quality of the legislative work, the activity that most relates to the CMVM's own activities.

In particular, the CMVM acknowledges the work relating to close-out netting provisions, which it has been accompanying attentively.

The CMVM would also like to commend the choice of the other Strategic Objectives, in particular to render more efficient its administrative policies and procedures, given the present context in which a large number of member States face financial difficulties.

Therefore, the greater investment in the promotion of UNIDROIT instruments (Strategic Objective no. 6) should not involve an increase of the contributions from member States, but rather derive from the contributions of new members, more efficient work procedures and the collection of contributions from private entities, as referred to in Chapter IV.

UNITED STATES OF AMERICA

The United States of America appreciates the opportunity to comment on the UNIDROIT strategic plan. We would like to commend the Secretariat for its efforts to encourage a discussion of UNIDROIT's organizational goals and working methods; explicit analysis of these strategic issues is important for ensuring the organization's long-term success. After consideration of the issues raised in the strategic plan, we believe that UNIDROIT could take several steps to maximize the impact of its work program despite resource limitations.

We also believe that the strategic plan itself should be expanded to provide more detailed guidance on key issues. While the strategic plan identifies opportunities for improving the organization, the United States encourages the Secretariat to be more specific in proposing priorities and suggesting how the concepts in the plan can be realized. Ideally, any strategic plan should include specific, measurable goals that are ambitious but attainable, along with a timeline, milestones for measuring success, and assignments of responsibility to particular officers or bodies.

Partnering with UNCITRAL

First, in light of the limited resources available for carrying out UNIDROIT's mission, we recommend further efforts to partner with outside organizations in order to maximize the number of projects that can be developed and promoted. In particular, the United States believes that collaboration with UNCITRAL on substantive programmatic work is vital and should be a top priority of the Secretariat. Collaboration should not be limited to attendance of Secretariat staff at meetings of the other organization. Rather, we recommend that the two organizations seek to identify projects that could be developed jointly, in ways that maximize the comparative advantages of each organization. UNIDROIT may not have the resources to move forward on some worthwhile projects in the draft 2014-2016 work program; thus, we propose that the Governing Council approve a plan under which the Secretariat can work with UNCITRAL to advance one or more such projects via a partnership. For example, UNIDROIT could request that UNCITRAL host a colloquium on one of the proposed topics, after which UNIDROIT could form a study group to develop the first draft of an instrument. This draft could then be the subject of intergovernmental negotiations hosted by UNCITRAL. At all stages of such a project, both Secretariats would be substantively engaged as equal partners, with the goal of developing a joint product. Such a process would benefit from UNCITRAL's budgetary resources as well as UNIDROIT's greater flexibility in developing the early stages of an instrument. After one or two projects have been completed using such an approach, the organizations could formalize a framework to facilitate ongoing cooperation.

Other Partnerships

With regard to Strategic Objective No. 3, the United States encourages the Secretariat to add a fourth area of concentration: "areas where there is an unmet demand and appropriate industry support and willingness to engage and contribute to the program of work." Identifying areas of work that will encourage outside organizations to contribute resources could allow UNIDROIT to handle more areas of work simultaneously. Paragraph 70 of the strategic plan notes that UNIDROIT's capacity for mobilizing private sector support is not comparable to certain non-governmental bodies; we would appreciate more detail from the Secretariat regarding why such a disadvantage is believed to exist, and what could be done to remedy it.

We fully support UNIDROIT's existing efforts to develop additional mechanisms for cooperation with individual states and with other organizations. For example, efforts to host meetings outside of Rome can reduce the budgetary strain on UNIDROIT while simultaneously making attendance easier for representatives from regions other than Europe. A 2012 meeting in Brazil (for the Emerging

Markets Committee) and a 2008 meeting in Oman (for the model law on leasing) are prime examples of events that broadened the organization's regional visibility while simultaneously bringing cost-sharing benefits. Further efforts to partner with governments or non-governmental organizations to provide alternative venues for meetings should be encouraged.

The efforts to collaborate with FAO and IFAD on agricultural financing topics are very promising and could be the basis for long-term partnerships. These efforts, if continued, can be the best programmatic example of how Strategic Objectives No. 4 and No. 6 can be reached. The Secretariat should incorporate into its project planning a strategy to identify target countries that would benefit from the resulting products (e.g., the in-progress legal guide on contract farming), as well as development institutions that are best positioned to promote the products and provide the necessary technical assistance for their use. Further, on Strategic Objective No. 6, the United States encourages the Secretariat to provide more detailed proposals regarding how UNIDROIT can reach its stated goal of doubling the resources available for promotion activities. At the same time, we encourage further efforts to work with other intergovernmental organizations to find opportunities to promote UNIDROIT instruments outside of project-specific collaboration. In particular, we encourage outreach to regional intergovernmental organizations whose meetings could provide useful fora for raising awareness, and encouraging use, of existing UNIDROIT instruments.

Raising awareness of UNIDROIT's mission and work program would also assist in creating new opportunities for partnerships with other organizations—particularly those that might be in a position to contribute resources. Paragraphs 87 through 89 of the strategic plan relate to UNIDROIT's visibility; we would appreciate further thoughts from the Secretariat regarding the components of a plan to ensure that UNIDROIT is more widely recognized and accessible to a broader audience, particularly trade and development groups. The strategic plan itself should include more details regarding the organization's communications and outreach strategies. Additionally, the United States thanks the Secretariat for its efforts to work toward observer status at the UN, and encourages the Secretariat to continue seeking such recognition, which would assist in increasing the visibility of UNIDROIT, leading in turn to more opportunities for fruitful partnerships.

Broadening Participation

With regard to Strategic Objective No. 2, broadening membership in UNIDROIT—and encouraging more active participation among existing member states—should be seen as a priority. We see it as vital for UNIDROIT to take further steps to ensure that a more diverse set of views is taken into account in formulating the organization's work program. Attracting additional states to become members would have such an effect, and would have the added benefit of improving UNIDROIT's financial situation. Yet participation short of membership should also be explored. We encourage the Secretariat to develop a list of individual non-member states to target for engagement, along with a plan for encouraging them to join or otherwise participate in UNIDROIT. We would also encourage the same to be done for institutions (such as the OECD, APEC, and the OIC) that could be targeted for engagement with UNIDROIT.

Other steps to encourage greater input from member states and other organizations—should also be pursued. As the strategic plan notes, the work program has been “perceived as not catering for the needs of legal systems in developing countries.” Appointing more correspondents from developing countries would be one helpful step toward remedying this perception. We fully support the recent discussions aimed at revitalizing the correspondent system, and believe that those efforts would be complemented by increasing the geographic diversity of the correspondents. Even beyond the correspondent system, more private sector input for Governing Council deliberations should be encouraged. Furthermore, the United States continues to support several measures that it has advocated in previous years in order to create additional opportunities for input from developing countries. For example, the United States commends the Secretariat for its recent efforts to open up

Governing Council meetings to attendees from all member states. Follow-up steps should, we believe, include explicitly permitting additional attendees from states that do have nationals on the Governing Council, as well as inviting potential member states to attend sessions as observers. Providing documents to all member states well in advance of the meetings, and allowing them to comment before and during the meetings, will provide greater opportunity for input from varied perspectives. Similarly, further steps to ensure broader representation on the Governing Council (e.g., by ensuring that every region has at least two or three representatives) would similarly help bolster the organization's vitality and broaden its appeal.

Using Resources More Efficiently

With regard to Strategic Objective No. 7, the United States encourages the Secretariat to develop a specific plan of action to modernize its administrative policies and procedures, including consulting with outside experts to provide recommendations. The issues raised in paragraph 120 of the strategic plan are very important to the organization's future, and we would appreciate more detailed information from the Secretariat regarding these goals.

UNIDROIT should make further efforts to maximize the impact of its existing resources. Budget allocations should recognize that UNIDROIT's primary value to the world community is in creating and promoting instruments such as treaties, model laws, principles, and legal guides in areas of law that no other intergovernmental organization can address with similar expertise. Accordingly, these activities should receive as much of the organization's resources as possible, while other ancillary functions should be examined for further cost reductions. For example, while the strategic plan correctly notes that the UNIDROIT statute requires the organization to maintain a library, that task should not consume almost 10% of the organization's resources (between expenses and personnel). We would like to encourage a strategic review of the library, particularly in light of the continuous evolution toward use of online sources. We encourage the Secretariat to provide a report to the Governing Council and member states, focused on the four sub-topics listed in paragraph 53, to provide concrete options for modernizing its approach to resource management. As noted in paragraph 71, the analysis should take into account UNIDROIT's "clear disadvantage" with respect to other organizations offering similar non-legislative services.

Pro Bono Services

We recommend that the discussion of personnel utilization include an effort to develop potential resources outside of the personnel directly employed by UNIDROIT. In particular, the legal profession in some UNIDROIT member states includes a strong ethic of providing pro bono legal services. Lawyers practicing in certain commercial law areas (outside of litigation) often have difficulty finding ways in which they can contribute volunteer services within their areas of expertise. The Secretariat should reach out to law firms and other entities to seek volunteer services that could supplement the efforts of the UNIDROIT permanent staff. Lawyers who would accept UNIDROIT as a pro bono client would have a different relationship with the institution than do the other outside experts who work on projects for the organization; they would owe to UNIDROIT the same ethical duties as they owe to other clients, including that their advice should be based on the best interests of UNIDROIT rather than potentially being motivated by other factors. In terms of the tasks that could be undertaken, outside counsel could develop a first draft of a preliminary study on a topic under consideration for future work, or provide assistance in the context of a study group's work. The Secretariat and Governing Council could retain control over the projects and could choose whether (and how) to use the documents developed by outside counsel. Yet by allowing some work to be done by outside counsel rather than internally, UNIDROIT would enable itself to tackle a wider range of projects at any given time. Member states could, of course, assist the Secretariat in reaching out to law firms.

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The United States continues to be a strong supporter of UNIDROIT and its mission. Despite its resource challenges, the organization continues to be an outstanding example of what a flexible and nimble intergovernmental organization can accomplish. We believe that the steps outlined above — none of which would require a change to the UNIDROIT statute — would further strengthen the organization. We look forward to further discussion of these issues with you and with our fellow member states, as we seek ways to maximize UNIDROIT's effectiveness and ensure a strong future for the organization.