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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>See paragraphs 10, 11 and 17</i>
<i>Related documents</i>	<i>Report of the 68th session of the Finance Committee (UNIDROIT 2010 – AG/Comm. Finances (68) 6); Report of the 70th session of the Finance Committee (UNIDROIT 2011 – AG/Comm. Finances (70) 9)</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 General Assembly, at its 53rd session in 1999, approved a special solution to enable one such member State (Bolivia) to regularise its position by accepting payment of a symbolic sum to cover arrears, in return for that member State's formal recognition of its obligation to make an annual contribution, starting in the year 2000, and to pay a sum representing one quarter of its annual contribution into the Working Capital Fund of the Institute, as is customary for new member States (see the report of the session, document AG (53) 10, pp. 10-14).

4. Thereafter, Bolivia paid its annual contributions for 2000 and 2001, as well as most of the sum due to the Working Capital Fund. Regrettably, within less than two years from the approval of the special arrangement by the General Assembly, Bolivia ceased paying its contributions so that, as of this date, the contributions for the financial years 2002 (€ 10.859), 2003 (€ 11.000), 2004 (€ 11.195), 2005 (€ 11.380), 2006 (€ 11.525), 2007 (€ 11.825), 2008 (€ 11.860), 2009 (€ 12.250) and 2010 (€ 12.250) are still outstanding, so that the total sum now due to UNIDROIT from the Government of the Plurinational State of Bolivia, including its contribution for the 2011 financial year, amounts to € 116,394.

5. At its 58th session (Rome, 26 November 2004), the General Assembly, noting the alarming level of arrears that had been accumulated by a number of member States, including Bolivia, approved a resolution setting forth sanctions to be applied to 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 years (see UNIDROIT 2004 – A.G. (58) 10, Appendix IV, reproduced in Annex hereto). However, the sanctions contemplated in the resolution have not been applied to any member State.

6. Since 2002, various attempts to solve the problem of the Bolivian indebtedness have been made, unfortunately without yielding any results. By the same token, none of the enquiries made from time to time by Bolivian authorities as to their financial standing with UNIDROIT, the last of which by means of a Note Verbale dated 28 September 2010, has led to the formulation of concrete proposals by Bolivia to settle its arrears.

7. The Finance Committee has been following the situation of the Bolivian indebtedness with growing concern for a number of years. At its 68th session (Rome, 13 October 2010), the Committee concluded that the failure by Bolivia to pay its statutory contribution was distorting the information contained in the Institute's budget papers, since the Bolivian contribution continued to be taken into account as a receipt in the preparation of the draft Budget, even though for many years UNIDROIT had not been able to count on receiving it (see UNIDROIT 2010 - AG/Comm. Finances (68) 6, paragraphs 13 and 16-29).

8. The Secretariat has recently written to the Embassy of Bolivia in Italy reminding the authorities of Bolivia of the alarming level of that country's indebtedness to UNIDROIT, informing the Embassy of Bolivia in Italy about the current state of the deliberations of the Finance Committee concerning the situation of Bolivia to UNIDROIT and advising the Embassy of Bolivia in Italy about the likely recommendation to be made by the Finance Committee that the General Assembly apply the sanctions provided for in resolution 58(1) to Bolivia, thus treating that country, in the future, for all practical purposes as having abandoned the Institute.

9. At its 70th session held on 29 September 2011, the Finance Committee took note of the information provided by the Secretariat and recommended the general Assembly to implement the sanctions provided by the Resolution 58(1) adopted in 2004 and to instruct the Secretariat to cease taking into account of Bolivia in the future budgets of the Organisation.

10. *In the light of the foregoing concerning Bolivia, the General Assembly is invited, unless the Secretariat and Bolivia managed to reach agreement as to the settlement of Bolivia's arrears in instalments, to suspend, in application of Resolution 58(1), 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.*

11. *The General Assembly is further invited to instruct the Secretariat no longer to take account of the contributions that would be owed by Bolivia in the preparation of draft budgets in future financial years.*

B. Paraguay

12. As reported by the Secretary-General to the Finance Committee, at its 65th session (Rome, 25 February 2009), in 2008 the Secretary-General was approached by the Government of Paraguay, a country in a situation similar to that of Bolivia prior to the 1999 settlement. At that time, Paraguay expressed the wish to resume its ties with the Institute and take active part in its life. To that end, Paraguay proposed a settlement similar to the one agreed with Bolivia in 1999. Moreover, Paraguay unexpectedly paid a sum roughly equivalent to what its contribution would have been in 2008. The Secretary-General advised the representative of Paraguay at the time that he had no power to agree to any settlement, which needed to be approved by the General Assembly, following positive recommendation by the Finance Committee (UNIDROIT 2009 –F.C. (65) 3, para. 27).

13. The Finance Committee established a sub-Committee to examine the questions raised by the situation of the so-called "inactive" member States and make appropriate recommendations to the Finance Committee proposing parameters for handling requests for regularisation of their situation in the future (F.C. (65) 3, para. 27). In the light of the deliberations of the sub-Committee, which met in Rome on 10 June 2009 (see F.C. (65) 3 Add. 1), the Finance Committee, at 66th session (Rome, 30 September 2009), agreed on the following principles:

"[The] Secretary-General should be requested to convey to the member State concerned that the negative experience with the application of the arrangements introduced at the 53rd session of the General Assembly to regularize the position of Bolivia upon that country's request (see A.G. (53) 10) had led the Finance Committee to insist henceforth on the need for a member State wishing to regularise its situation to signify both its interest for the Institute, by offering a greater payment towards its outstanding contributions (not less than two years of assessed contributions), and its firm commitment to meet its financial obligations for the future, by only recovering its full membership and reacquiring all its rights, including the right of vote at the General Assembly, after four consecutive years of regular payment of its statutory contributions" (AG/Comm. Finances (66) 6, paras. 22 and 23).

14. The General Assembly approved those recommendations at its 65th session (Rome, 2 December 2009), when it took note of the steps which the Secretary-General intended to follow to carry them out (A.G. (65) 10, paras. 35-37)

15. The Secretary-General has since held consultations with the Government of Paraguay, which has indicated its agreement to the solution recommended by the Finance Committee. 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, 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.

16. At its 70th session held on 29 September 2011, the Finance Committee took note of the positive developments in respect of Paraguay.

17. At the light of the foregoing, the General Assembly is invited to take note of these positive developments and declare, upon receipt of a formal request by Paraguay in line with the Finance Committee's recommendations, that Paraguay has settled its arrears up to the year 2011 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.

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.