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Item No. 3 on the agenda: Reports

(b) Management Report 2008-2013 and Implementation of the Strategic Plan

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Overview of management initiatives taken at UNIDROIT in the period 2008-2013 and measures needed to implement the Strategic Plan</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the Secretary-General's Management Report</i>
<i>Mandate</i>	<i>Governing Council, 88th Session (UNIDROIT 2008 – C.D. (88) 17, Report of the Session, para. 16</i>
<i>Related documents</i>	<i>Strategic Plan – Horizon 2016, UNIDROIT 2004 – C.D. (83) 6; UNIDROIT 2009 – C.D. (88) 9; UNIDROIT 2010 – C.D. (89) 16; UNIDROIT 2010 – C.D. (90) 16 ; UNIDROIT 2012 – C.D. (91) 12</i>

INTRODUCTION

1. This document provides an overview of management initiatives undertaken by the Secretary-General and other organs of UNIDROIT since 2008. It uses as benchmarks, as appropriate, the objectives identified in the Strategic Plan drawn up by the Secretariat in 2003.¹ This document further sets out the Secretary-General's assessment of further measures that may be necessary or desirable to improve the efficiency and the overall functioning of the organisation and to enable UNIDROIT to achieve the objectives stated in the revised Strategic Plan approved by the Governing Council at its 91st session (Rome, 7-9 May 2012) (UNIDROIT 2012 C.D. (91) 12)/UNIDROIT 2012 A.G. (71) INF. 2).

I. INSTITUTIONAL ASPECTS

A. Membership and Governance

1. Accession of new member States

2. In 2008, UNIDROIT had 61 member States: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Germany, Finland, France, Greece, Holy See, Hungary, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Poland, Portugal, Rep. of Korea, Rep. of Serbia, Romania, Russian Federation, San Marino, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Venezuela.

3. Contacts undertaken prior to the period under review led to the accession of two new member States: Indonesia and Saudi Arabia. Contacts continue with a number of countries with a view to their possible accession to the UNIDROIT statute (Morocco, Qatar, Thailand, Vietnam). Consistently with Strategic Objective No. 2, efforts by the Secretariat to broaden membership of the Organisation have focused on the larger economies of the regions that are under-represented in the Institute's membership.

4. The process of acceding to an international organisation is exceedingly complex in nearly all countries, requiring agreement and approvals of various authorities at different levels of Government. Extensive consultations, typically over a number of years, are therefore needed before accession is formalized. Also, the technical, non-operational nature of the work of UNIDROIT is not conducive to attracting the level of political commitment that is required for expediting the process without external encouragement (of the 10 accessions in the last 20 years, eight were a natural consequence of the relevant member State's accession to the European Union). In most cases, these consultations require visits by high-ranking members of the Secretariat and repeated contacts with the country's diplomatic representations abroad.

Evaluation and recommendations

5. *To the extent that the Secretariat can contribute to the accession process, the need to concentrate efforts on the completion of ongoing projects and the lack of resources and personnel are the two main reasons for modest progress in broadening the membership.*

¹ Strategic Plan – Horizon 2016, UNIDROIT 2004 - C.D. (83) 6.

6. *The increase in the travel budget approved by the General Assembly in 2012 should enable the Secretariat to undertake more substantial consultations with potential candidates for accession.*

2. Participation in the work of UNIDROIT

7. Responding to expressions of interest and specific requests for further information on UNIDROIT activities by a number of member States, particular attention was paid during the reporting period to measures intended to stimulate broader participation of member States in the work of UNIDROIT. Formerly, the documents of the Governing Council were not published, and the Council's session reports were not transmitted to member States. The only Governing Council document available to member States were the Council's summary conclusions. Furthermore, the UNIDROIT Regulations were available only upon request, and the Headquarters Agreement was not published. This created a practice inconsistent with today's information flows and transparency culture. At its 90th session (Rome, 9 - 11 May 2011), the Council adopted the Secretary-General's proposal for a critical change in this policy and requested the Secretariat henceforth to make the documentation for sessions of the Governing Council available to all member States prior to the relevant session (see UNIDROIT 2011, C.D. (90) 18, para. 197).

8. As of 2012, all documents of the Governing Council and the General Assembly have been made publicly available through the UNIDROIT web site. Only documents that contain sensitive or personal information (e.g., on appointments or other personnel matters) are not generally available to visitors. The "reserved areas" for Governing Council members and for member States' Governments have been eliminated and all current and past content has been combined and made available through the website. Furthermore, all important institutional documents (UNIDROIT Statute, Regulations, Headquarters Agreement) have been posted on the web site and are publicly available.

9. In addition to enhanced transparency of UNIDROIT proceedings and greater accessibility of programme-related and institutional documentation, steps have been taken to enhance the flow of information between the various organs of UNIDROIT. Since 2012, the Governing Council makes systematic use of the authority given to it by Article 16 of the UNIDROIT Regulations to request representatives of member Governments that have no nationals sitting on the Council to attend its meetings in a consultative capacity. Also, the reports of the Finance Committee are now submitted to the General Assembly, as part of its ordinary documentation.

10. It should be noted, however, that greater involvement of member States, but also of observer organisations, in the work of the Governing Council is potentially hindered, from a practical point of view, by the limited capacity of the UNIDROIT meeting facilities, the largest room in the premises seating a maximum of 60 participants. Any meetings involving larger attendance must, therefore, be held outside the premises and at a cost. Considering the rates currently charged in Rome for suitable facilities, not more than four weeks of meetings can be held in any year, including all institutional meetings. Another limiting factor is the lack of resources to ensure interpretation and translation services during meetings into languages other than English and French. Several countries make use of the larger spectrum of languages available in other international organisations and regard the impossibility for their delegates to express themselves in any of the other major international languages (such as Arabic or Spanish), an obstacle to the effective participation of their government representatives or experts in UNIDROIT meetings. These considerations also underscore the overall limitation of the ability of UNIDROIT to carry out legislative projects.

Evaluation and recommendations

11. *The feedback received from member States and members of the Governing Council on these transparency and accessibility measures has been overwhelmingly positive and the greater accessibility of documents is expected to reflect positively on the image of the organisation.*
12. *It is expected that member States will actually make use of these greater opportunities for direct involvement, in particular in the work of the Governing Council. In 2012, however, only a few member States used the opportunity to attend the Governing Council session.*
13. *The Governing Council and member states are invited to consider co-operation modalities with other international organisations with a view to overcoming the logistic limitations faced by UNIDROIT in its attempts to broaden participation in its work.*

B. Budget and financial management

1. Contributions by member States

14. More than 95% of the UNIDROIT budget is funded through contributions of member States. Ensuring that contributions are set at a level that is both acceptable to member States and adequate to meet the financial needs of the Institute is therefore a matter of constant concern on the part of UNIDROIT.

(a) Revision of the contributions chart

15. In 2008, UNIDROIT had a total budget of € 2,215,003, of which € 1,722,072 in ordinary contributions divided into 726 units of contribution of € 2,372, a host country contribution of € 270,000 and a voluntary contribution by the United Kingdom of € 74,153 (see UNIDROIT 2007 – Budget 2008).

16. The budget approved for the financial year 2013 amounts to € 2,205,050, of which € 2,031,050 in ordinary contributions divided into 829 units of contribution of € 2,450, and a host country contribution of € 100,000 (see UNIDROIT 2012 – Budget 2013). This represents an increase of € 308,978 in ordinary contributions (i.e., 17.94%), as compared to the beginning of the reporting period. This increase was obtained primarily through the reclassification of 16 member States in the contributions chart of the organisation, which was approved by the General Assembly in 2011, with no increase in the value of the contribution unit since 2009. This was the first revision to the UNIDROIT contributions chart in more than seven years. It was also the first time that the reclassification of member States in the contributions chart was effected through the application of the criteria approved by the General Assembly, rather than through bilateral negotiations between the Secretariat and individual member States, as had been the practice in the past.

17. The Secretariat is of the view that the overall increase in contributions obtained through *ad hoc* negotiations in the past (six units of contribution less, or 0.3% budget increase in 1998; 23 units of contribution more, or 3.3% budget increase in 2004) was not commensurate with the time and effort spent by the Secretariat in holding consultations with the various member States concerned. Of course, automatic application of classification criteria, as was decided in 2011, may also lead to loss of units of contribution, but the Secretariat believes that the advantages of administering a predictable process based on a methodology approved by member States outweigh the disadvantages of a contributions system resulting from bilateral negotiations.

Evaluation and recommendations

18. *While the group of reclassifications effected in 2011 was largely successful, the procedure set forth in Article 16 of the UNIDROIT Statute, which allows member States to raise objections to their classification during the year that follows the General Assembly decision on their classification, means that the process as a whole spans a period of two years. The Secretary-General therefore recommends that reclassifications be effected every six years only, and that the General Assembly review and revise, as appropriate, the value of the unit of contribution every two to three years.*

The reclassifications effected in 2011 followed the criteria adopted by the General Assembly in 1998, which have now been properly recorded in Annex I to General Assembly resolution No. 1/2011, of 1 December 2011. The Secretariat has not suggested a revision of the criteria adopted by the General Assembly, the origins of which can be traced back to the systems in force in the Universal Postal Union since the 1920s, even though their application in practice leads to a classification that in many respects is not consistent with the principle of capacity to pay.

19. *The overall level of funding of UNIDROIT remains, however, critically low, when compared to other organisations that carry out a comparable mandate, in particular the Hague Conference on Private International Law and UNCITRAL.*

(b) Stabilisation of the host country's statutory contribution

20. Since the introduction of the system of assessed contributions, in 1964, and until 1984, the amount of the contribution made by the Italian Government to UNIDROIT was expressed in Article 16 of the Statute of UNIDROIT as a fixed sum. During that period, Italy increased its contribution twice (in 1974 and in 1979), through the approval of a specific law by the Italian Parliament. That system was changed with the adoption by the General Assembly, at its 37th session (Rome, 9 November 1984), of the current text of paragraph 1 of Article 16 of the Statute, which was intended to "permit more regular budgeting for the Institute in the future," *inter alia*, by allowing for "a triennial review of the Italian contribution and the provision of a statutory basis for the new system." After obtaining the required number of ratifications, the amendment entered into force on 13 January 1986. Internally, that modification was implemented in Italy by removing the Italian contribution to UNIDROIT from the obligatory expenditures of the Italian State and placing it among the "voluntary expenditure" authorised under the Italian budget.

21. It should be noted that the amendments to Article 16 of the Statute had originally been intended to allow for better financial planning and greater contribution by the host country. In practice, however, those expectations have not been fully met in the recent years due to consequential change in the budgetary treatment of the Italian contribution to UNIDROIT. Apart from a slight increase between the years 2004 and 2006, the share of the host country in the overall budget of UNIDROIT has fallen consistently over the past ten years, reaching a historical low of 5.19% in 2011 (as compared to 15.11% in 2002). In the past three years alone, the Italian contribution fell by 61.24% (from € 258,000 in 2008 to € 100,000 in 2011). This unexpected shortfall of resources meant that the increase in ordinary contributions obtained through the revision of the contributions chart (see above, para. 15) did not translate into a corresponding increase in the resources under the regular budget.

22. For these reasons, the UNIDROIT Governing Council, at its 90th session (Rome, 9-11 May 2011), approved a resolution inviting the President of the Institute “to explore with the Government of Italy the possibility of restoring its contribution to the level at which it was set in the year 2008, of expressing such contribution as a percentage of the total ordinary expenditure of the Institute or as a number of units of contribution to the UNIDROIT budget and of including this expenditure among the obligatory expenses of the budget of the Italian State.” This request was reiterated by the General Assembly in 2011. The Secretariat has since negotiated with the Italian Government an amendment to the Headquarters Agreement that would establish, as a minimum threshold for the Italian contribution, the level of contribution payable by those member States classified in Category I of the UNIDROIT contributions chart. This agreement, which is subject to ratification by the Italian Parliament, does not pre-empt supplementary voluntary contributions by the Italian State and is without prejudice to the continued provision of office and other facilities under the Headquarters Agreement.

23. Arguably, the ideal moment for this agreement would have been the years before 2008, when the Italian contribution still represented more than twice the amount paid by member States classified in Category I of the UNIDROIT contributions chart. The Secretary-General submits, however, that the solution that now seems to have been found preserves the UNIDROIT budget from further unilateral cuts in the current uncertain financial climate, while at the same time not precluding additional contributions that the host country might be in a position to make in the future.

24. Furthermore, this agreement is consistent with common practice in relations between international organisations and their host countries. Host countries typically provide, as in the case of UNIDROIT, office accommodations, tax exemptions and similar facilities, but their contributions to the organisation’s regular budget are usually assessed on the basis of the same criteria that are used to assess the contributions of all other member States. Throughout the life of UNIDROIT, Italy has generously assumed a level of financial contribution that largely exceeded the amount it would have been required to pay, had Italy been subject to the same criteria used to classify member States in the contributions chart.

Evaluation and recommendations

25. *The agreement on the host country’s contribution will improve financial planning and stop the consistent downward trend in the amount of the Italian contribution since 1984.*

26. *UNIDROIT should continue to explore other forms of additional support by the host country, such as voluntary funding for specific projects, tax exemption for Italian staff members, regular maintenance works at the seat and assistance in gaining access to larger conference facilities in Rome.*

(c) Extra-budgetary funding

27. In 2008, UNIDROIT received a total of € 220,673 in extra-budgetary contributions from various Governments and private donors (see UNIDROIT 2008 – C.D. (87) 7 INF. 1). In 2012, UNIDROIT had at its disposal a total of € 300,172 in extra-budgetary contributions from various Governments and private donors (i.e., 36% more than at the beginning of the reporting period). The amounts received are accounted for in document (UNIDROIT 2012– A.G. (71) 2, Annex II) submitted to the General Assembly, which breaks down the receipts by the activity to which they have been allocated and accounts for the expenditure of those sums and the residual balance at the end of the financial year.

Evaluation and recommendations

28. *Although the higher level of extra-budgetary contributions available in 2012 has been satisfactory compared to previous years, the Secretariat would not overestimate the likelihood of sustaining or increasing this level of extra-budgetary financial contributions. From the perspective of the strategies typically pursued by private donors and philanthropists, private law harmonisation offers a low return in terms of public recognition and visibility. The Secretariat remains therefore doubtful that extra-budgetary funding, in particular from private sources, can play a sustainable role in financing UNIDROIT activities.*

2. Financial management and accounting

29. Another matter of concern for the Secretariat has been the need to enhance the quality and usefulness of the financial information provided to member States and to clarify and streamline the procedures for the adoption of the budget, the disbursement of funds and the financial accounting of UNIDROIT. The accounts of UNIDROIT have always been regularly audited, and its financial documents kept in proper order by a conscientious and diligent Treasurer. Nevertheless, the format, presentation and detail of the financial documents still did not provide the level of itemized cost information that member States currently expect even from comparably small international organisations. At the same time, regulations on financial matters, most of which were drafted in the 1960s, were silent on many important matters, and were not longer in line with the practice followed by the Secretariat and the financial organs.

(a) Financial information

30. Until 2005, financial documentation consisted essentially of the Secretariat's proposals for the following year's budget, the adjustments to the current year's budget, and information on arrears by member States and the accounts for the previous year. In 2006, the Secretariat provided in its Statement regarding the Institute's Activity in 2006 and Implementation of the Strategic Plan (UNIDROIT 2006 - A.G. (60) 2) some generic information on resources allocated to projects, without quantifying them.² In 2007, in response to a request by the General Assembly "to know in detail the allocation of the expenditure to the projects of the Institute," the Secretariat prepared a document entitled "Information paper on the allocation of the expenditure to the projects and activities of the Institute in 2006-2007" (UNIDROIT 2007 - A.G. (61) INF. 2), which included some additional generic information,³ but still, neither reflected actual expenditure (the figures were taken from the annual budget), nor disclosed the actual aggregate cost (including staffing cost and other overhead items). As for extra-budgetary contributions, the amounts received by the Secretariat were stated in a document prepared for information of the Governing Council that provided neither an aggregate amount nor an account of the way in which those funds were spent (see UNIDROIT 2008 – C.D. (87) 7 INF. 1).

31. The first step taken by the Secretariat respond to demands by member States for information that enables them better to assess the organisation's financial administration was to introduce in the document on the Implementation of the Strategic Plan, in 2008 (UNIDROIT 2008 -

² E.g., for the Space Protocol, "(1) 2.5 officers and clerical support regular budget (AG(60)6, Exp. Ch. 2; Ch. 3); 1.0 officer extra-budgetary funding member States (AG(60)6, § 9); "(2) Printing the Acts and Proceedings: € 18,500 under the regular budget (AG(60)6, Exp. Ch. 5)."

³ E.g., for the line "Governance / Administration": "meetings: € 40,000, technical assistance for meetings: 8,000, official journeys: € 12,000".

A.G. (63) 3) a more detailed activity-by-activity breakdown of costs, including actual staff-related costs.⁴ This practice was continued in the years 2009 and 2010 through the provision of cost estimates in the documents dealing with the triennial work programme (UNIDROIT 2009 - A.G. (65) 3; UNIDROIT 2010 - A.G. (67) 3). Since 2011, the Secretariat has provided estimates of expenditure for each activity of the Institute for the current financial year, including activities funded through extra-budgetary resources, in the annexes to the annual statements on the organisation's activities during the relevant year (UNIDROIT 2011 – A.G. (69) 2 rev.; UNIDROIT 2012 - A.G. (71) 2).

Evaluation and recommendations

32. *The feedback received from member States and members of the Finance Committee on these measures has so far been positive. The greater transparency and accuracy of information and the improved presentation of the documents facilitates the planning of activities under the work programme and enhances the ability of member States to monitor compliance with the mandates of the General Assembly.*

33. *Although the preparation of these documents is time-consuming, the Secretariat is committed to continue presenting them, following the trend toward open and accountable management.*

(b) Budgeting, disbursement and accounting procedures

34. On 19 March 2010, the Secretariat received a Note Verbale from the Embassy of the Federal Republic of Germany in Italy which indicated that the German authorities felt that the few relevant provisions in the UNIDROIT statute and regulations were not sufficient to ensure "a clear distribution of responsibilities and transparency in UNIDROIT's financial matters" and that, to remedy that situation, it would be desirable to introduce "comprehensive financial regulations within UNIDROIT."

35. The amendments proposed by the German Government were initially considered at the Finance Committee in 2010, and again in 2012, in close consultation with the Secretariat. They were submitted to the members of the Governing Council for their comments, re-examined again by the Finance Committee at its 72nd session (Rome, 27 September 2012) and adopted by the General Assembly at its 71st session (Rome, 29 November 2012). The amended regulations endorse the practice introduced in recent years to have a preliminary review of the accounts of the preceding year in place, at the time when the first estimates for the following year's budget are prepared (Article 38, paragraph 1). The new regulations codify and clarify the process for the preparation of the budget (Article 26), the authority to receive extra-budgetary contributions (Article 28) and to administer funds (Articles 29-31), and to authorise expenditure (Articles 32-35). The regulations also establish a revised accounting process (Article 36-37) and, for the first time, establish clear guidelines for dealing with a process for surplus after the close of the financial year (Article 38).

⁴ Thus, for the UNIDROIT Library, the document indicated:

Staffing cost	General services (Ch. 2.1, 3.1)	€ 198,601
Consultation / promotion		0
Documentation	Purchase of books, binding, software (Ch. 9)	113,500
Total		€ 312,101

Evaluation and recommendations

36. *Application of the new regulations on financial matters begins in 2013. To the extent that most of these new regulations were intended merely to clarify and codify existing procedures, the Secretariat does not expect a direct impact on the financial performance of the Secretariat, other than greater clarity and consistency in the internal management and a better understanding by member states and their representatives at the Finance Committee and the General Assembly of the budgetary and financial process of UNIDROIT.*

II. IMPLEMENTATION OF THE WORK PROGRAMME

A. Finalisation of instruments under the work programme 2009-2011

37. At its 63rd session (Rome, 11 December 2008) the General Assembly agreed to assign the highest priority to: (a) the work entailed by the finalisation of the draft Convention on intermediated securities; (b) the finalisation of the additional chapters of the UNIDROIT Principles of International Commercial Contracts then under preparation; and, (c) the finalisation of the Space Protocol to the Cape Town Convention. The General Assembly also agreed to reconsider the triennial work programme at its 64th session (Rome, 18 June 2009), in the light of any recommendations to that effect that the Governing Council and the Secretary-General might submit.

38. At its 65th session (Rome, 2 December 2009), the General Assembly extended the 2006-2008 Work Programme to the triennium 2009-2011. Assigning the highest priority to the topics mentioned in the preceding paragraph, the following instruments were finalised and adopted or are expected to be finalised and adopted during the reporting period. The Assembly also authorised the Secretariat to carry out initial research and conduct the necessary consultations with a view to providing the Governing Council with the information it needed in order to make proposals for a new work programme for the triennium 2011-2013.

39. Apart from the UNIDROIT Model Law on Leasing, which was near completion at the beginning of the reporting period and finalised in November 2008, the remaining legislative projects in the work programme required considerable effort by the Secretariat to complete.

1. Geneva Convention on Substantive Rules for Intermediated Securities and Official Commentary

40. The first steps towards the preparation of what was to become the UNIDROIT Convention on Substantive Rules for Intermediated Securities ("the Geneva Securities Convention") were taken in 2002, when the Secretariat convened a Study Group comprised of eminent scholars and experts on capital markets law. The Study Group held five meetings and extensive consultations with practitioners and scholars in approximately 20 countries, before the UNIDROIT Secretariat submitted the first version of the preliminary draft Convention to member States for consideration. The international negotiation process started in May 2005 with the holding of the first of four sessions of a Committee of Governmental Experts, the last of which took place in Rome from 21 to 25 May 2007. In total, 39 UNIDROIT member States, 2 non-member States and 17 organisations participated in the negotiation process. Very close co-operation with other international organisations, in particular with the European Commission and the European Central Bank, was maintained throughout the process.

41. At its 86th session (Rome, 16-18 April 2007), the Council took note of the progress completed by the Committee of Governmental experts and agreed to take a decision as to the approval of the draft and its transmission to a diplomatic Conference, for adoption, as early as practicable in 2008, depending on the basis of the text as finalised by the Committee and the report at its fourth session (UNIDROIT 2008 – C.D. (86) 22, para. 52). The first session of the diplomatic Conference on the draft Convention was held in Geneva, Switzerland, from 1 to 12 September 2008. A second, final session of the diplomatic Conference was held in Geneva from 5-9 October 2009, which resulted in the adoption of the UNIDROIT Convention on Substantive Rules for Intermediated Securities.

42. The development of the Geneva Securities Convention placed considerable strain on the resources of a Secretariat that had no prior exposure to, and no in-house expertise on, this highly technical area of the law. There was also an unexpected level of controversy on some important aspects of the draft Convention, which explains why the instrument was not finalised at the first diplomatic Conference. Moreover, the first diplomatic Conference decided that a draft Official Commentary to the draft Convention should be prepared by an especially designated committee with the assistance of the Secretariat. No appropriation had been made in the 2009 budget to fund the post of the officer in charge of the project and the Secretary-General had to secure the necessary funds through extra-budgetary contributions obtained at the last minute.

Evaluation and recommendations

43. *The process of drafting, editing, translating and publishing the Official Commentary was not completed until 2011. Apart from the invaluable work done by the editors of the Official Commentary, Messrs Hideki Kanda, Charles Mooney Jr, Luc Thévenoz and Stéphane Béraud, the assistance of Mr Thomas Keijser, Senior Officer and subsequently consultant of UNIDROIT, was indispensable to ensure the timely completion of the commentary, as was the meticulous and accurate translation work done by UNIDROIT Senior Officers Ms Frédérique Mestre and Ms Marina Schneider. A special note of recognition should be placed on record for the hard work and efficiency of the support provided by the Secretary, Ms Isabelle Dubois, throughout this project.*

44. *Opening a new line of work on financial markets law during the time that preceded the reporting period was a far-sighted and ambitious initiative of the then Secretary-General, which greatly contributed to raise the visibility of UNIDROIT in professional circles that were then largely unaware of the Institute's work. This has also created opportunities for co-operation between UNIDROIT and a number of important international organisations (International Monetary Fund, World Bank, European Central Bank, Bank for International Settlements, among others).*

45. *The unfunded and time-consuming mandates from the diplomatic Conference, were completed to the highest standards of the Institute's work. However, completion placed great strain on the Secretariat. As a result, and as required by international best practices, particular care should be taken to ensure that all future projects and mandates can count on sufficient funding, for the expected duration of the project, prior to approval.*

2. UNIDROIT Principles of International Commercial Contracts (3rd ed. 2010)

46. The third edition of the Principles was well advanced at the beginning of the reporting period and was substantially completed in 2010, within the expected timeframe. Editing, translating and publishing also proceeded as expected. In addition to the official English and French versions, the Principles have since been published in Italian and Spanish by outside publishers.

Evaluation and recommendations

47. *The credit for the timely and successful completion of the third edition goes to the Chairman of the Working Group, Professor M.J. Bonell, to the Working Group's Secretary, Ms Paula Howarth and to the meticulous and accurate work done by Senior Officers Ms Lena Peters in editing the English text and by Senior Officers Ms Frédérique Mestre and Ms Marina Schneider in preparing the French version.*

48. *The success of the 3rd edition of the Principles confirms their importance to contract law and the value for UNIDROIT to continue work on the topic.*

3. Space Protocol to the Cape Town Convention

49. The difficulties encountered by the Secretariat during the negotiations that led to the adoption of the Space Protocol to the Cape Town Convention, and their various causes, are well known to the Governing Council. At the beginning of the reporting period, the Council had just agreed to the Secretariat's proposal to reconvene the Committee of governmental experts, with a view to resuming negotiation of a preliminary draft Protocol, which had been effectively suspended since the second session of the Committee, in 2004.

50. The Secretariat decided that, after the adoption of the Geneva Securities Convention, its next highest priority should be the completion of the Space Protocol. That decision involved a certain level of risk in light of the opposition of some important industry representatives to the project, and indications of efforts to stop the process from moving forward. The Secretariat regarded the third session of the Committee of governmental experts as a decisive test for the feasibility of the project. The successful completion of that session, despite confrontational opposition by representatives of some industry sectors, required the firmest of determination by the Secretariat to carry the project through to completion. In addition to the large amount of work involved in organising a diplomatic Conference, during the latter part of 2011 and up to the eve of the diplomatic Conference, the Secretariat had to respond to various queries and react to numerous difficulties created by detractors of the project on a well-nigh daily basis.

Evaluation and recommendations

51. *The successful completion of the project would not have been possible without the strong commitment of the German Government and its generosity in hosting the diplomatic Conference. The Secretariat was only able to see this project through due to the unflinching efforts of the former Deputy Secretary-General, Mr Martin Stanford, with the support of the former Associate Officer, Mr Daniel Porras. The Secretariat is deeply grateful to Professor Sir Roy Goode, for the meticulous revision of the wording of the Space Protocol and the drafting of its Official Commentary. Among the members of the Secretariat, a special word of recognition should be placed on record for Senior Officers Ms Frédérique Mestre and Ms Marina Schneider, for their meticulous and accurate preparation of the French version of the Protocol and related documentation, and in Ms Schneider's case, during the diplomatic Conference as well. A special note of recognition should also be placed on record for the hard work and efficient support provided by the Secretary, Ms Carla Milani, throughout this project.*

52. *It is expected that the Space Protocol will contribute to facilitate asset-based financing for the acquisition and use of space assets, such as satellites and transponders that move beyond frontiers, thus helping the modernisation of outer space infrastructure, to the benefit, in particular, of emerging markets and developing countries.*

53. *The successful completion of the Space Protocol reassured the Secretariat as to the wisdom of its decision to face the challenge and allocate to this project a level of resources commensurate with its high-priority character.*

B. Finalisation of instruments under the Work Programme 2011-2013

54. At its 67th session (Rome, 1 December 2010), the General Assembly approved a Work Programme for the triennium 2011-2013, which, in addition to the completion of the projects mentioned in the previous Work Programme (see above, paras. 37 and 38), included the following legislative and research activities (in order of priority):

- (a) Preparation of an instrument on the netting of financial instruments;
- (b) Preparation of a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets;
- (c) Study of the feasibility of preparing other Protocols to the Cape Town Convention, in particular on matters specific to agricultural, mining and construction equipment;
- (d) Study of the feasibility of preparing an instrument on third party liability for Global Navigation Satellite System (GNSS) services;
- (e) Development of model legislative provisions on the protection of cultural property;
- (f) Study of the feasibility of work in the area of private law and development, in particular as regards private law aspects of agricultural financing (see UNIDROIT 2010 - A.G. (67)9 rev., para. 39 and Appendix III).

1. UNESCO/UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects

55. At its 88th session (Rome, 20-23 April 2009), the UNIDROIT Governing Council agreed in principle to co-operate with UNESCO in drafting an instrument that would facilitate the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention as well as their ratification by as many States as possible.

56. The UNESCO and UNIDROIT Secretariats accordingly set up a committee of nine experts, composed to ensure both a high level of expertise and adequate geographic representation of all continents, with representatives of the UNIDROIT and UNESCO Secretariats. The Expert Committee met formally on three occasions in Paris (20 September 2010, 14 March 2011 and 29 June 2011). Several exchanges among the members of the Committee also took place via e-mail. The committee essentially completed its work in less than one year.

57. At its 17th session (Paris, July 2011), the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation thanked the expert committee for having finalised the draft Model Provisions and the accompanying explanatory guidelines and requested the UNESCO Secretariat to widely disseminate and make them available to member States, "which could consider them for elaborating or reinforcing their national legislations." The Model Provisions were submitted to the UNIDROIT Governing Council on 13 December 2011 and the final text was transmitted by the Director-General of UNESCO and the Secretary-General of UNIDROIT to all member States of the United Nations on 20 April 2012.

Evaluation and recommendations

58. *The quick and steady progress made by UNIDROIT in the development of this project would not have been possible without the contribution made by the members of the expert committee, in particular by its co-chairs, Dr Jorge Sánchez Cordero (Mexico) and Professor Marc-André Renold (Switzerland) and the efficient support provided by Mr Edouard Planche from the UNESCO Secretariat and UNIDROIT Senior Officer Ms Marina Schneider.*

59. *The success of this project underscores the value of the flexible working methods of UNIDROIT, which allow it to shape the drafting process to the needs of each project and of establishing strategic partnerships with other organisations.*

2. Principles on the Operation of Close-out Netting Provisions

60. Among all the topics referred to in para. 52 above, the General Assembly assigned the highest level of priority to the preparation of an international instrument on netting of financial instruments. A Study Group of experts in the law of international financial markets set up by UNIDROIT met in April and September 2011 to prepare a preliminary set of Draft Principles. In order to ensure a balanced approach towards netting, UNIDROIT invited to this Study Group renowned experts representing regulatory agencies, international organisations, legal practice and the academic world, originating from jurisdictions which represent today's international financial centres as well as developing countries. The Study Group held its third meeting in February 2012, when it finalised the preliminary Draft Principles and requested the Secretariat to submit them to the UNIDROIT Governing Council, with the recommendation that the Draft Principles be transmitted to a Committee of Governmental experts for further discussion and finalisation.

61. At its 91st session (Rome, 7-9 May 2012), the UNIDROIT Governing Council discussed the Draft Principles as prepared by the Study Group and approved the Secretariat's request to convene a Committee of governmental experts to consider them. The UNIDROIT Committee of governmental experts on the enforceability of close-out netting provisions held its first session in Rome from 1 to 5 October 2012 and concluded by requesting the Secretariat to prepare a revised version of the Draft Principles, taking into account the Committee's discussions and comments. The revised version of the Draft Principles was published by the Secretariat in December 2012 and it is expected to be finalised at the second meeting of the Committee, which is scheduled for 4-8 March 2013 in Rome, with a view to adoption of the Principles by the Governing Council at its 92nd session.

62. This project benefits from a voluntary contribution by the German Banking Federation which has made it possible to hire young professionals especially dedicated to work on this project and to cover the costs of meetings of the study group and various other costs associated with the project.

Evaluation and recommendations

63. *The quick and steady progress made by UNIDROIT in the development of this project would not have been possible without the contribution made by the members of the study group, in particular by its rapporteurs, Mr Philipp Paech, of the London School of Economics, and the efficient support provided by the Associate Officers Ms Annick Moiteaux, during the work of the Study Group, and Mr Ole Boeger during the intergovernmental negotiation phase as well as the meticulous and accurate translation work done by UNIDROIT Senior Officers Ms Frédérique Mestre and Ms Marina Schneider.*

64. *The interest shown by practitioners and regulators in this project confirms the importance of financial markets law as a new and promising area of work for UNIDROIT.*

3. Model Clauses for Use of the UNIDROIT Principles of International Commercial Contracts in Transnational Contract and Dispute Resolution Practice

65. At its 91st session (Rome, 7-9 May 2012), the Governing Council endorsed a proposal, not originally contemplated in the work programme, to mandate the Secretariat to develop, with the assistance of experts, a few model clauses, followed by appropriate explanations, to assist parties in incorporating the Principles into the terms of their contract, or in choosing them expressly as the rules of law governing the contract, or a dispute arising from the contract (UNIDROIT 2012 - C.D. (91) 15, para. 29).

66. The Working Group for the preparation of the model clauses met in Rome on 11-12 February 2013, and the model clauses, together with explanations, will be submitted to the Governing Council, for approval, at its 92nd session.

Evaluation and recommendations

67. *The credit for the quick and successful completion of this project goes to Professor M.J. Bonell for his expeditious preparation of the drafts.*

68. *The quick completion of this project underscores the value of the flexible working methods of UNIDROIT, which allow it to shape the drafting process to the needs of each project.*

C. Implementation of instruments

69. The following paragraphs summarize measures taken to make UNIDROIT instruments operational, as well as to promote their ratification and implementation by States.

1. Establishment of the Registry under the Luxembourg Protocol

70. One of the main tasks of the Secretariat in the period under review was the work related to the establishment of a registry under the Luxembourg Protocol to the Cape Town Convention. The Preparatory Commission for the establishment of the international register held its first meeting in July 2007, when it agreed on a timetable for the selection of the registrar. At the second meeting in April 2008, the Commission authorised negotiations with the successful bidder – selected in a competitive tender process conducted under the Commission's authority. Negotiations with the winning bidder were unsuccessful and eventually terminated in October 2008.

71. A new tender process had to be organised, requiring the complete re-evaluation of the business case for the international registry and redrafting of all tender documents during 2009. The revised request for proposals was published on 30 June 2010. After evaluation of all tenders, the Preparatory Commission, at its fourth session (Rome, 26-28 October 2010), authorised negotiations with the bidder selected by the negotiating team acting under the Commission's authority. The Secretariat is pleased to note that the contract negotiations have now been substantially concluded. The formal conclusion of the contract will allow for the establishment of the international registry and open the way for practical implementation of the Luxembourg Protocol.

Evaluation and recommendations

72. *The contract negotiations proved to be considerably more difficult than originally anticipated. The successful conclusion of the second round of negotiations, after the failure of the first tender, was made possible solely due to the commitment of the negotiating team, with the highly professional and competent support of Senior Officer Mr John Atwood, whose departure from UNIDROIT last November is greatly regretted.*

2. Status of ratification of UNIDROIT instruments

73. Annex II to the Annual Report 2008 (UNIDROIT 2009 - Report 2008 – C.D. (88) 2) shows the status of implementation of Conventions drawn up by UNIDROIT and approved at diplomatic Conferences convened by member States of UNIDROIT, on the basis of information available to the Secretariat on 31 December 2008. Annex II to the Annual Report 2012 (UNIDROIT 2013 - Report 2012 – C.D. (91) 2) shows the status of implementation of UNIDROIT conventions as of 31 December 2012.

74. The Cape Town Convention now has 55 States Parties, compared to 26 States Parties in 2008. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects now has 33 States Parties, compared to 29 States Parties in 2008. No changes of status were registered for the other instruments.

Evaluation and recommendations

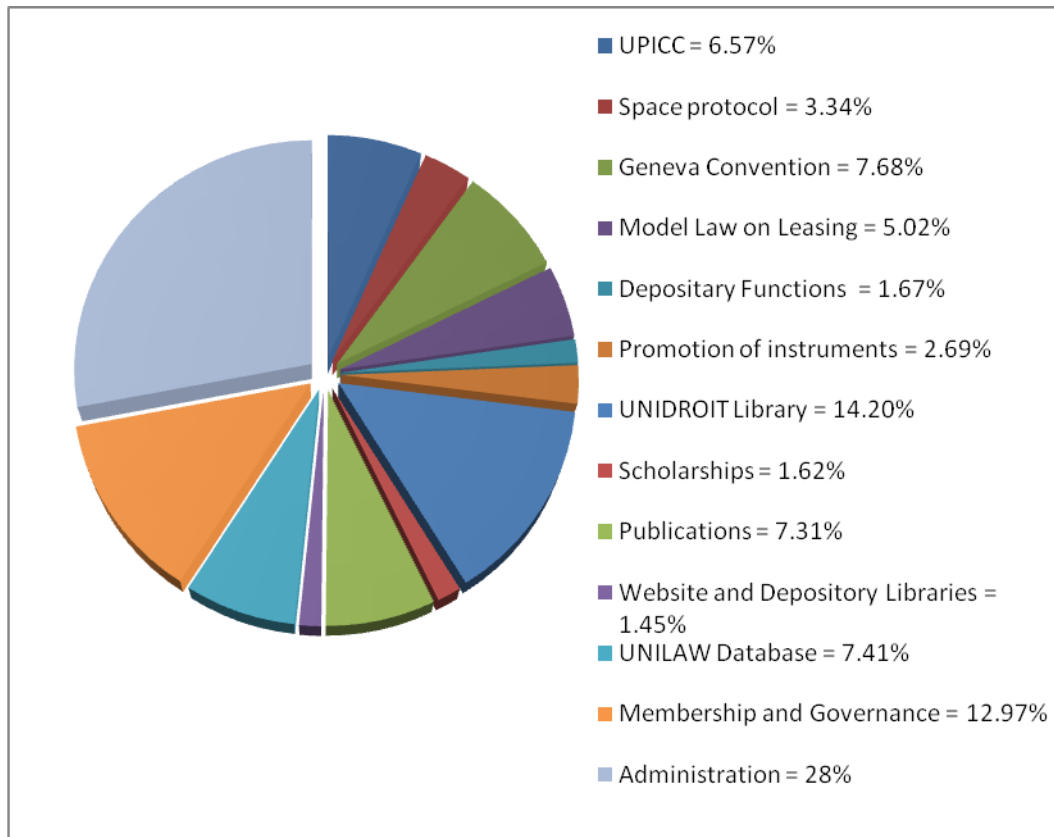
75. *Lack of resources and shortage of personnel are the two main reasons for the modest progress made in promoting UNIDROIT instruments. The progress made in promoting the Cape Town Convention is largely due to the promotion activities of the Aviation Working Group. The progress made in respect of the 1995 Convention is largely attributable largely attributable to the financing provided for by UNESCO for the promotion of such instrument.*

76. *The experience gained with those two instruments confirms the Secretary-General's assessment, as indicated to the Governing Council some time ago, that without the political will of member States to invest in the promotion of the work of UNIDROIT, the Institute should pay even greater attention to potential partners that may promote its future instruments, at the very time of selecting topics for the work programme.*

D. Non-legislative activities

77. UNIDROIT is mainly known for its successful legislative activities. Instruments such as the UNIDROIT Principles, the 1995 Cultural Property Convention and the Cape Town Convention, to name but the most widely known, are the cornerstone of the reputation, authority and visibility of the Institute. However, by 2009, the non-legislative activities absorbed nearly as much of the Institute's resources (i.e., € 655,750, or 28.68% of the expenditure) as its legislative activities (€ 681,900, or 29.83% of the expenditure), exceeding both the resources allocated to the governance of the Institute (€ 352,400, or 15.41% of the expenditure) and to the central administrative and management costs (€ 595,800, or 26.064 % of the expenditure).

CHART 1. ALLOCATION OF RESOURCES BY ACTIVITY - 2008



Source: adapted from UNIDROIT 2008 – A.G. (63)3

78. The relatively high level of resources committed to non-legislative activities, and the perspective of facing further budgetary constraints in the aftermath of the 2008 financial crisis prompted the Secretariat to evaluate each of the Institute's standing non-legislative activities with a view to assessing their effectiveness, identifying possible improvements to be made and introducing corrective measures, where necessary.

1. UNIDROIT Library

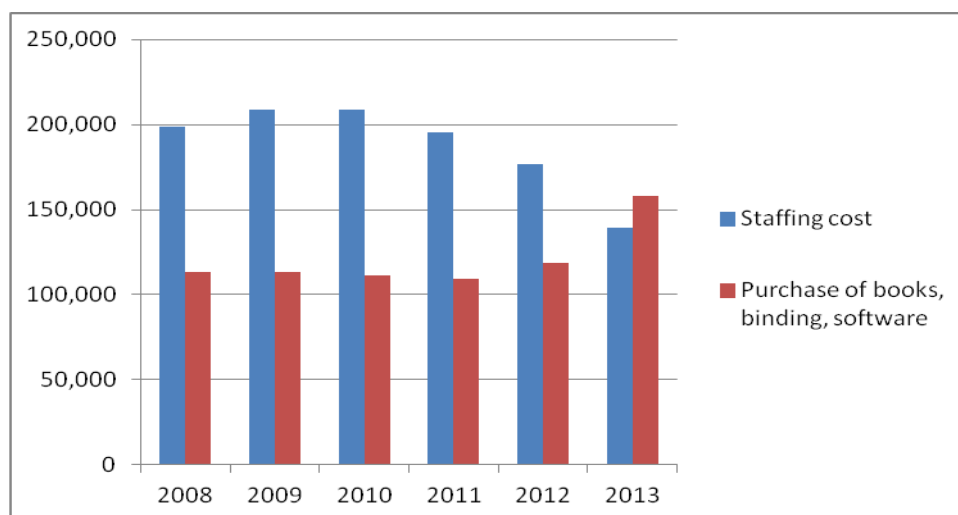
79. UNIDROIT has maintained a specialised library since its early years. There were times in the Institute's history when the UNIDROIT library was regarded as one of the world's leading collections of comparative law, private international law and uniform law. Regrettably, chronic underfunding has meant that the UNIDROIT library has gradually lost its position and no longer compares to better endowed libraries at universities and research centres around the world. However, save for the reclassification of the post of head librarian, the staffing structure of the library has remained essentially unchanged.

80. The chart below shows the evolution of the allocation of resources in the library. It shows a manifest disparity between personnel costs and the investment made in the collection over the years. The unreliability of the organisation's income, mainly due to fluctuations and delay in the payment of contributions, also imposed cuts in the purchase of books and periodicals, particularly in the years 2009 and 2010. Since 2011, the Secretariat has introduced various changes in library procedures and in the job descriptions of library staff. The Secretariat has further effected a thorough review of the subscriptions taken out by the Library with a view to concentrating on those

of more direct impact on the Institute’s legislative and research activities and to freeing resources for purchasing monographs and subscriptions to electronic services.

81. As a result of these measures, the allocation of resources to the library has since evolved as follows:

CHART 2 ALLOCATION OF RESOURCES OF THE UNIDROIT LIBRARY



Source: adapted from UNIDROIT 2008 – A.G. (63) 3; UNIDROIT 2009 – A.G. (653) 3; UNIDROIT 2010 – A.G. (67) 3; UNIDROIT 2011 – A.G. (69) 2; UNIDROIT 2012 – A.G. (71) 3

Evaluation and recommendations

82. *The Secretariat is pleased to note that, as a result of the redistribution of functions following the retirement of a staff member and the donations obtained through the good offices of the President in 2012, it is expected that in 2013, for the first time in several decades, the personnel costs of the library will be lower than the investments made in purchasing books and periodicals. It remains to be seen, however, whether the same level of extra-budgetary contributions can be sustained in the years to come.*

83. *It should be noted that rationalising the cost structure of the library is only one consideration and, from the viewpoint of the UNIDROIT mandate, not the primary one. Finding ways of improving the collection and rendering the library more attractive for research remain two urgent priorities.*

84. *The improvement in the relative allocation of resources to the library was made possible by the efforts of the library staff, now consisting of the Head Librarian, Ms Bettina Maxion and Library Assistants Ms Patricia Lemaire and Mr Reza Zardoshtian, with the part-time assistance of the Meetings and Logistics Assistant, Ms Laura Tikanvaara, which have all contributed to increasing productivity despite personnel reductions.*

2. Legal co-operation

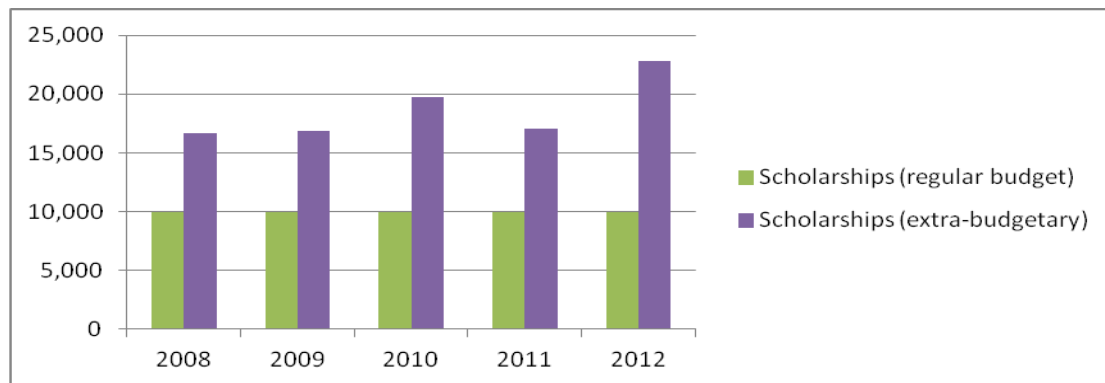
85. The UNIDROIT legal co-operation programme was envisaged as a line of activities essentially consisting of two pillars: technical assistance in drafting national and regional legislation to the benefit of developing countries or regions and countries in economic transition, in particular, also with a view to promoting uniform law in those parts of the world; and a research scholarships

programme, funded largely by outside donors, that enables the UNIDROIT Library to host a certain number of researchers each year.

86. A well-known example of the first pillar was the co-operation between UNIDROIT and the Organisation for the Harmonisation of Business Law in Africa (OHADA), at the request of which organisation UNIDROIT prepared a preliminary draft OHADA Uniform Act on contract law, largely inspired by the UNIDROIT Principles. Apart from advice in connection with accession to UNIDROIT instruments, in particular the Convention on cultural property and the Cape Town Convention, there have been few requests for technical assistance by UNIDROIT during the reporting period.

87. The research scholarships programme, in turn, has been a constant activity since 1993. The programme is financed through a small budgetary allocation (€ 10,000) and a larger share of extra-budgetary contributions from various sources. The Secretariat is pleased to note that, while the total figures have remained modest, there has been a significant increase in the total amount of extra-budgetary contributions received in recent years, as indicated below:

CHART 3 EVOLUTION OF CONTRIBUTIONS TO THE UNIDROIT SCHOLARSHIP PROGRAMME



Source: adapted from UNIDROIT 2008 – A.G. (63) 3; UNIDROIT 2009 – A.G. (65) 3 and A.G. (65) INF.; UNIDROIT 2010 – A.G. (67) 3 and A.G. (67) INF.; UNIDROIT 2011 – A.G. (69) 2; UNIDROIT 2008 – A.G. (71) 3

88. Despite the increase in extra-budgetary contributions, the personnel costs still far exceed the amount disbursed in scholarships.

Evaluation and recommendations

89. *The Secretariat is doubtful about the feasibility of expanding its legal co-operation activities into the area of technical assistance without a substantial investment by member States, both in terms of new staff and other resources (funds for travel, consultancy fees, organisation of meetings and seminars, etc.). However, the Secretariat should continue to provide or mobilise advice to States wishing to implement any UNIDROIT instruments, ideally in co-operation with other organisations or entities.*

90. *The scholarships programme, despite its modest scale, continues to contribute to raising awareness about UNIDROIT and its work and to reaching out to Government circles and academic institutions in developing and emerging countries, in particular countries that are not yet member States of UNIDROIT. By offering young lawyers the possibility to conduct research in the UNIDROIT library, the scholarships programme is a logical and useful complement to the investment made by member States in the library itself.*

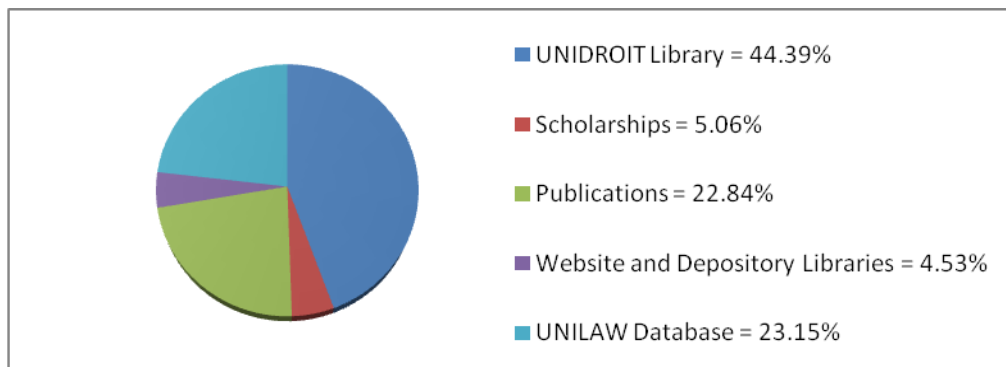
91. *Nevertheless, the programme still involves a level of overhead that far exceeds the total amount of scholarships granted, but relatively low involvement of the Secretariat in the actual research activities. The Secretariat intends to conduct a thorough review of procedures related to the processing of scholarships applications and the assistance provided to scholars, both with administrative matters (finding accommodation, meeting visa requirements, payment of scholarships) as well as with support to research, with a view to achieving a more balanced allocation of resources.*

3. UNILAW database and website

92. Originally launched in 1995, the UNILAW database became operational with a tailor-made software in 2001. It was part of an ambitious project aimed at positioning UNIDROIT as a “centre of excellence”, a focal point for uniform law concentrating information on how uniform law instruments are applied in practice. The idea was to develop a database encompassing all uniform law instruments, which offered text search, case law, bibliographical information and various additional features.

93. By 2008, the UNILAW database was the non-legislative activity that consumed the largest amount of resources after the UNIDROIT library.

CHART 4. ALLOCATION OF RESOURCES AMONG NON-LEGISLATIVE ACTIVITIES (2008)



Source: adapted from UNIDROIT 2008 – A.G. (63) 3

94. Despite the investment made in developing the software and the considerable time invested in collecting cases, preparing, editing and indexing summaries, the progress made by the database over the years was modest, partly due to the elaborate process required to enter the data in the required format, and partly due to the low level of resources that the Secretariat had been able to secure for the project. In an implicit reference to the database, the 2003 Strategic Plan noted that whenever “a project turns out to be manifestly over-ambitious, wrongly tailored or unlikely for any other reason to be brought to fruition, to abandon it may be the only responsible action unless special stakeholders provide (extra-budgetary) support for its completion.”⁵ By 2006, the Secretariat indicated that, to develop more quickly, the database would require more resources to be found “outside the Institute,” (UNIDROIT 2006 – C.D.(85) 16, para. 6) and invited the Governing Council to reconsider “the priority status of work on the database in light of the staffing and budget implications.”

⁵ Strategic Plan, *supra*, note 1, para. 93.

95. A thorough review of the objectives and structure of the database, the methodology used for collecting and inserting information and the resources available for that purpose was conducted by the Secretariat in 2009. As a first step to avoid dispersion of resources, the Secretariat decided that the full treatment of instruments should be reserved for instruments prepared by UNIDROIT or on the basis of work carried out by UNIDROIT (such as the Convention on the Contract for the International Carriage of Goods by Road, "CMR"). The Council approved those measures at its 89th session (Rome, 10 - 12 May 2010) (see UNIDROIT 2010 – C.D. (89) 17, para. 191). At its 90th session (Rome, 9-11 May 2011), the Council went a step further and agreed that the level of information to be provided on instruments adopted by other organisations on the basis of work carried out by UNIDROIT (such as the CMR) needed to be reconsidered and that, in view of its limited resources, UNIDROIT should no longer maintain the case law section in respect of the CMR (UNIDROIT 2011 – C.D. (90) 18, para. 180). In 2012, an agreement for the transfer of the responsibility for maintaining the CMR section of the UNIDROIT database was reached with the *Institut du droit international des transports* (IDIT) in Rouen (France), again with the approval of the Governing Council (UNIDROIT 2012 – C.D. (91) 15, para. 130).

96. Since then, the database, as a separate UNIDROIT activity, has effectively ceased to exist. Its structure, however, is being incorporated into the UNIDROIT web site, and the level of information originally envisaged to be provided by the database on the entire body of uniform law (i.e., text search, case law and bibliographical information) will in the future be limited to instruments prepared by the Institute.

97. The UNIDROIT website, in turn, which was developed during the 1990s, is currently being restructured and expanded, with a view to offering a more up-to-date and user-friendly presentation, eliminating duplication of information and better integrating its various features.

Evaluation and recommendations

98. *The UNILAW database was an activity that from the outset, suffered from a serious imbalance between its ambitious goals and the resources available for its implementation. By the time of the Secretariat's evaluation in 2009, the potential gains for the visibility and reputation of UNIDROIT were far outstripped by the investment needed to eliminate the backlog in case law and other information on all instruments supposed to be covered, and the cost of developing a less work-intensive method using state-of-the art database technology.*

99. *The Secretariat has been able to re-direct the resources so far invested by private donors, mainly the Uniform Law Foundation, to support the insertion of data in the database, in particular to re-designing and restructuring the UNIDROIT web site and to the purchase of publications for the Library.*

100. *Personnel resources that until 2009 were almost exclusively devoted to work on the databases have since been re-assigned to work in other activities including both non-legislative (transition from the in-house publication of the Uniform Law Review to publishing with Oxford University Press) and legislative projects (finalising the text of the comments to the 3rd edition of the UNIDROIT Principles, and the preparation of reports on meetings).*

4. UNIDROIT publications

101. In recent years, UNIDROIT publications have consisted of yearly publications of its institutional papers and studies (Papers and proceedings) and of the instruments it has adopted, and of the quarterly publication of the *Uniform Law Review / Revue de droit uniforme*. Taken together, the cost of the preparation, printing and distribution of all UNIDROIT publications has consistently absorbed some 7% of the Institute's resources, or nearly half as much as the entire cost of running the UNIDROIT library. The Secretariat has therefore given particular attention, in the

reporting period, to an evaluation of the manner in which these resources are allocated. In that respect, a distinction must be drawn between the publication of instruments, on the one hand, and other publications, in particular the *Uniform Law Review*, on the other hand.

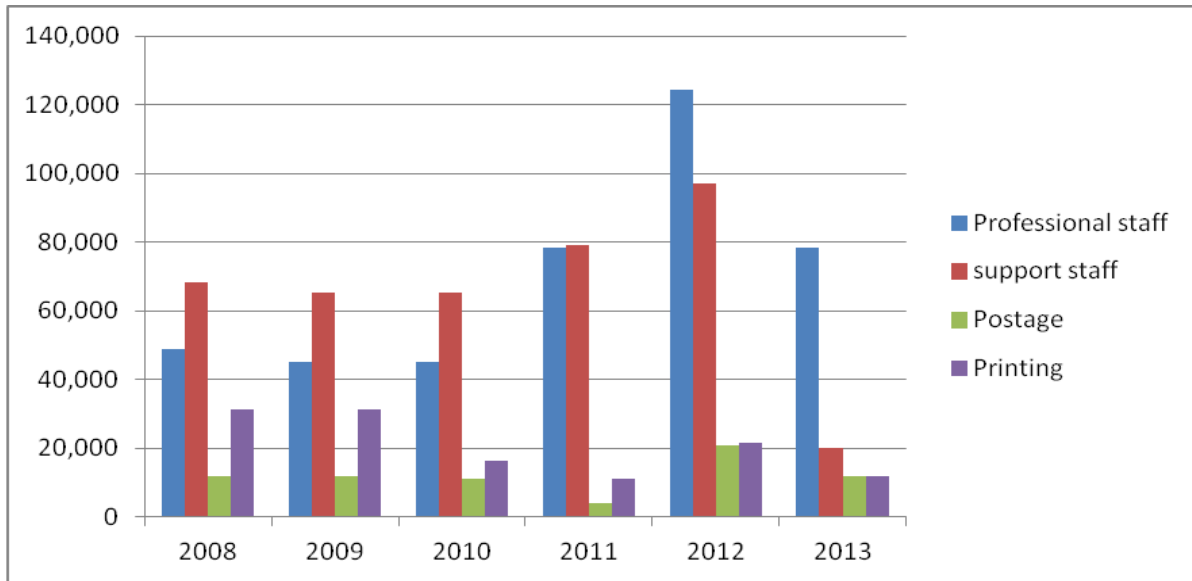
102. The total cost of preparing and distributing publications of conventions, model laws, principles and official commentaries is negligible when compared to the total cost incurred over the years by the Organisation and its member States for the development and adoption of those instruments. The relatively small investment made in the publication of instruments and their dissemination is therefore money well spent and should be regarded as a necessary complement to the legislative activities of UNIDROIT. The Secretariat believes that, even if rationalisation and cost control are generally welcome, it would be a mistake to evaluate the Institute's publications activities merely from the point of view of cost-recovery and income generation. It would indeed be contradictory for member States to accept to shoulder the cost of producing, for instance, a new international convention and then to undermine its promotion by insisting on commercial publication of the final text. The Secretariat, therefore, favours maintaining control of the production and distribution of the final texts adopted by UNIDROIT or developed under its auspices. This should not necessarily preclude recourse to outside commercial publishers, where it can be expected that outside publication may improve quality or ensure wider distribution. However, care should be taken to avoid that a publisher's pricing, copyright or distribution policy become an obstacle to the widest possible dissemination of UNIDROIT instruments.

103. However, the production of other publications may certainly be assessed in economic terms – indeed, it should. The *Uniform Law Review* has a long tradition, and its contribution to disseminating information on the work of UNIDROIT, and on uniform law generally, is well known. The Review has appeared quarterly since 1996, when it was also decided to include a section on articles on uniform law and comparative law articles, changing the character of the Review into a more scholarly journal. While the quality of the Review and its importance as a public information tool are not in question, its production, editing and distribution are extremely time-consuming and have required the establishment of a nearly full-time general service position in the Secretariat and considerable attention by one of the Senior Officers, in addition to the resources needed for mailing, billing and accounting of proceeds. While the Review has generated an average revenue of some € 24,000 in recent years, the overall production cost has been several times higher.

104. It is against that background that the Secretariat decided to consider an unsolicited offer, received on 1 July 2011, from Oxford University Press to publish the *Uniform Law Review*. The offer was not only for distribution, but also for editing and type-setting of the Review. The proposed duration of the initial agreement was five years. UNIDROIT and OUP have agreed on a joint editorial board to be assisted by an advisory board of distinguished scholars, and the introduction of a peer-review system for approving materials for publication. The bilingual nature of the Review will be maintained, as OUP already publishes multi-lingual reviews (English-French-Spanish). OUP has agreed to provide UNIDROIT with 130 free copies and accepted the reproduction of articles published in the Review for educational purposes (e.g., in university course materials), as well as the posting of selected articles on the UNIDROIT website.

105. Arrangements for publication by OUP, the establishment of the advisory board and the design of editorial procedures and guidelines required considerable effort by the Secretariat in 2012 (as shown in chart 5). The lower, but still relatively high allocation of resources in 2011 was the result of the simultaneous preparation of two publications in English and French during that year, the 3rd edition of the UNIDROIT Principles and the Official Commentary to the Geneva Securities Convention. It is expected, however, that, starting in 2013, the overhead costs of the publications programme will decline considerably, and that the time devoted by professional staff to publications will be essentially limited to translations, when done in-house, and ensuring the quality of materials and editorial line of the *Uniform Law Review*.

CHART 5 ALLOCATION OF RESOURCES FOR THE PRODUCTION AND HANDLING OF UNIDROIT PUBLICATIONS



Source: adapted from UNIDROIT 2008 – A.G. (63) 3; UNIDROIT 2009 – A.G. (653) 3; UNIDROIT 2010 – A.G. (67) 3; UNIDROIT 2011 – A.G. (69) 2; UNIDROIT 2012 – A.G. (71) 3

Evaluation and recommendations

106. *The Secretariat recommends to maintain control over the preparation and distribution of the final texts of UNIDROIT instruments and, to the extent possible, to expand their dissemination. The Secretariat also recommends a liberal policy as regards the accessibility of instruments through the UNIDROIT website.*

107. *The Secretariat believes that the professional support of OUP with the preparation of the Review, its world-wide marketing network, and the availability of the journal in electronic form, will ensure high-quality and broad distribution, allowing UNIDROIT to focus entirely on offering its readers the highest standard of content and information, selected through a "peer review" system assisted by an advisory board comprised of experts of world renown.*

III. OPERATION OF THE SECRETARIAT

108. UNIDROIT can look back on a remarkable record of achievements in its long history. The fact that those achievements were at all possible despite the chronically low level of resources available to the Secretariat can only be explained by the devotion of its staff and the ability of UNIDROIT to engage, in its projects, outstanding scholars and experts of world renown, whose intellectual imprint is a distinctive mark of the work of UNIDROIT. Yet the financial constraints on the Secretariat, more acutely felt since the financial crisis of 2008, have demanded an even greater effort by the Secretariat to ensure the highest possible level of efficiency and economy in the use of its human and financial resources. Indeed, in a rapidly changing environment, UNIDROIT faces greater challenges to ensure that it operates as a dynamic organisation with a clear vision and efficient allocation of functions, that uses its resources judiciously, and that organises its work with the efficiency necessary to achieve its legislative, institutional and operational goals.

109. Against that background, and with those objectives in mind, the Secretariat has undertaken a number of measures to enhance financial controls within the Secretariat, to rationalise and modernise its operations and to improve its structure and the management of its human resources.

A. Financial management

110. The Secretariat's day-to-day financial transactions involve relatively modest amounts and the procedures in place for their handling were already largely satisfactory at the beginning of the reporting period. Nevertheless, where appropriate, the Secretariat has attempted to improve matters further, for instance, by reviewing the financial terms of the most significant contracts, negotiating better rates where possible (postage, courier services and telecommunications) and changing suppliers where alternative sources offered better value-for-money (printing contract). As a result of these measures, the Secretariat was able to maintain the relevant lines of the budget at substantially the same levels during the entire reporting period (even though the accumulated inflation during the period has already reached 8%).

111. With a view to controlling costs, the Secretariat now monitors the telecommunications traffic of each of its telephone extensions and has introduced a system for the itemized recording of postage of all its publications. The Secretariat has also considerably reduced the list of recipients of free publications, and has virtually eliminated postage of official documents in paper form, which is only maintained at the express request of member States.

112. For the purpose of improving programme planning, support staff has been encouraged to generate spreadsheets to record the costs of each meeting separately. An updated chart showing the inflow of statutory contributions by member States is now kept in the UNIDROIT server so as to allow the Secretary-General to verify the level of payments and the state of arrears at any moment.

IMAGE 1

	B	C	E	F	K	L	M	N	O	P	Q	R	S
10			France	50	€ 122,500	€ 122,500	€ 122,500		July		€ 0	€ 0	€ 0
11	I	3% +	Germany	50	€ 122,500	€ 122,500	€ 122,500		January		€ 0	€ 0	€ 0
12			Japan	50	€ 122,500	€ 122,500	€ 122,500		April		€ 0	€ 0	€ 0
13			United Kingdom	50	€ 122,500	€ 122,500	€ 122,500	€ 122,500	January	January	€ 0	€ 0	€ 0
14			United States	50	€ 122,500	€ 122,500	€ 122,500		May		€ 0	€ 0	€ 0
15			Canada	22	€ 122,500	€ 122,500	€ 122,500		January		€ 0	€ 0	€ 0
16	II	2%-3%	China	22	€ 122,500	€ 122,500	€ 122,500		December		€ 0	€ 0	€ 0
17			Russian Federation	22	€ 53,900	€ 53,900	€ 53,900		January		€ 0	€ 0	€ 0
18			Spain	22	€ 122,500	€ 53,900	€ 122,500		May		€ 0	€ 68,600	€ 68,600
19			Australia	18	€ 44,100	€ 44,100	€ 44,100	€ 44,100	February	December 2012	€ 0	€ 0	€ 0
20	III	1%-2%	Belgium	18	€ 44,100	€ 44,100	€ 44,100		July		€ 0	€ 0	€ 0
21			Netherlands	18	€ 44,100	€ 44,100	€ 44,100		February		€ 0	€ 0	€ 0
22			Republic of Korea	18	€ 53,900	€ 53,900	€ 53,900		July		€ 0	€ 0	€ 0
23			Sweden	18	€ 44,100	€ 44,100	€ 44,100		January		€ 0	€ 0	€ 0
24			Switzerland	18	€ 44,100	€ 44,100	€ 44,100		February		€ 0	€ 0	€ 0
25	IV	0.960%-0.99%	Brazil	13	€ 44,100	€ 34,656	€ 44,100		?		€ 0	-€ 9,444	-€ 9,444
26			Argentina	11	€ 19,600	€ 19,600	€ 19,600		?		€ 0	€ 0	€ 0
27			Austria	11	€ 26,950	€ 26,950	€ 26,950		January		€ 0	€ 0	€ 0
28	V		Denmark	11	€ 26,950	€ 26,950	€ 26,950		February		€ 0	€ 0	€ 0
29			Finland	11	€ 26,950	€ 26,950	€ 26,950		January		€ 0	€ 0	€ 0
30		0.5%-0.959%	Greece	11	€ 26,950	€ 26,950	€ 26,950		?		€ 0	-€ 26,950	-€ 26,950
31			Mexico	11	€ 31,850	€ 31,850	€ 31,850		May		€ 0	-€ 31,850	-€ 31,850
32			Norway	11	€ 26,950	€ 26,950	€ 26,950		February		€ 0	€ 0	€ 0
33			Saudi Arabia	11	€ 26,950	€ 26,950	€ 26,950		March		€ 0	€ 0	€ 0
34			Poland	9	€ 26,950	€ 26,950	€ 26,950	€ 26,950	January		€ 0	€ 0	€ 0
35	VI	0.450%-0.499%	Portugal	9	€ 22,050	€ 22,050	€ 22,050		July		€ 44,100	-€ 44,100	€ 0
36			South Africa	9	€ 22,050	€ 22,050	€ 22,050		January		€ 0	€ 0	€ 0
37			Czech Republic	8	€ 19,600	€ 19,600	€ 19,600		January		€ 0	€ 0	€ 0
38			Hungary	8	€ 19,600	€ 19,600	€ 19,600		March		€ 0	-€ 19,600	-€ 19,600
39	VII		India	8	€ 22,050	€ 22,050	€ 22,050		January		€ 0	€ 0	€ 0
40		0.115%-0.449%	Indonesia	8	€ 19,600	€ 19,600	€ 19,600		April		€ 0	€ 0	€ 0
41			Ireland	8	€ 22,050	€ 22,050	€ 22,050		January		€ 0	€ 0	€ 0
42			Israel	8	€ 19,600	€ 39,200	€ 19,600		?		€ 0	€ 0	€ 0
43			Turkey	8	€ 22,050	€ 22,050	€ 22,050		January		€ 0	€ 0	€ 0

B. Office operations

113. One of the Secretariat-s priorities during the reporting period has been the modernisation and rationalisation of office procedures with a view to increasing productivity and lowering costs. An assessment made at the beginning of the reporting period indicated that, as of 1 October 2008, the Secretariat was at least ten years behind current standards of office technology and working methods. At that time, the following shortcomings, in particular, could be identified:

(a) Incoming and outgoing correspondence were still registered by hand in a log book, and contact addresses were still recorded on paper cards;

(b) Staff members created and saved files on their own desktop personal computers, with a minimum local area network (LAN) connectivity;

(c) Meetings and appointments were recorded manually on individual paper calendars;

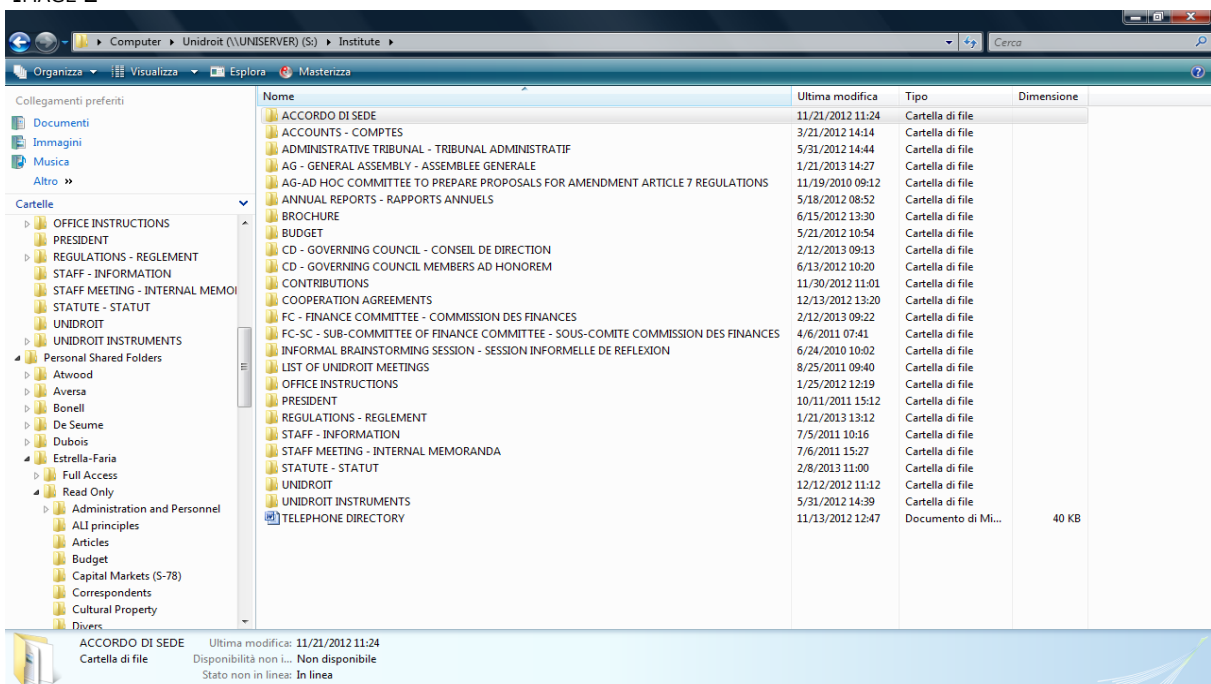
(d) Several staff members did not possess valid software licenses and most did not have current standard software on their computers;

(e) There was no means of sharing files other than by exchanging them as e-mail attachments and no mechanism for systematic back-up of information.

114. This situation was particularly problematic since the Strategic Plan drawn up by the Secretariat in 2003 had already stressed the need to update office procedures and to invest in the development of electronic document management and record-keeping systems, aiming at achieving a significant improvement by the year 2006.⁶

115. Several improvements have since been introduced. The backbone of the modernisation of office procedures has been the full integration of all working stations into an office network supported by a server that allows for information storage and sharing and ensures automatic back-up of data.

IMAGE 2



⁶ *Supra*, note 5, paras 58-65 (objectives 8 to 10).

116. Furthermore, the entire correspondence of the Secretariat is now registered and filed electronically in a database, accessible to all staff members, that allows for searches using various criteria and offers links to scanned versions of the incoming and outgoing correspondence or to the actual messages, when exchanged electronically.

IMAGE 3

Code	Counted	Arrived	Sent	Sender	Addressee	Copy to	Subject	Enclosures	Handled by	Reply	Reply date	E-mail	See file	See reply	Comments
DCSDEP	51	1/18/2013		M. Maurice Badilla			h à la Convention du Cap		MS	MS	1/18/2013		See file	See reply	
S80A	52		1/18/2013		Mr Brekau, Monheim ar		tion to W/G on contract fa		FM	Mr Brekau	1/21/2013		See file	See reply	
S80A	53		1/18/2013		Ms Tracy Gerzle		Contract farming		FM				See file	See reply	
S80A	54		1/18/2013		Mr Tim Schnabel		Contract farming		FM				See file	See reply	
DCSDEP	55	1/18/2013		M. Maurice Badilla			on au Protocole du Cap -		MS	MS	1/18/2013		See file	See reply	
S78C	56	1/21/2013		Ms Satoko Koike			inese delegation - 2nd se		DB	ID	1/21/2013		See file	See reply	
S78C	57		1/22/2013		in Callemer du Fena		sur l'applicabilité des cla		JAEF				See file	See reply	
AG	58		1/23/2013		Indroit member State		port of the 71st session of		JAEF				See file	See reply	
S80	59		1/23/2013		bcyr de Agular Vieira,		collaboration avec Unidro		JAEF				See file	See reply	
MSc	60	1/21/2013		Department of Jus			contribution 2013		PA				See file	See reply	
IGO	61	1/18/2013		Ms Marlyne VIGN			list member of staff		JAEF	FG	1/22/2013		See file	See reply	
S80A	62		1/21/2013		juhast Joshi, Bayer, I		ation in Unidroit W/G on c		FM				See file	See reply	
IGO	63	1/18/2013		Mr Michelet, OECE			ment of a pension schema		JAEF	JAEF	1/23/2013		See file	See reply	
MS	64		1/23/2013		Itoro, Embassy of Ind		nessian scholars and Uns		FM				See file	See reply	

117. All staff members now use up-to-date standard office software and can access the organisation's calendar of meetings and appointments, including those of the Secretary-General, from their individual workstations.

118. To this end, the Secretariat invested in the purchase of new computer equipment and office software, as well as in special software for control of staff attendance and automatic recording of staff absences. These improvements were made without any request for supplementary funding by member States and did not require hiring outside technical services. They were further made possible by redefining the duties of a staff member from Assistant Librarian into Information Technology Assistant and by investing in upgrading the staff member's computer skills. This means that, by 2009-2010, the Secretariat had finally achieved Objective No. 10 of the 2003 Strategic Plan, namely "to achieve autonomy with respect to the provision and maintenance of information technology by retaining in-house IT-expertise."⁷

119. It should be noted, however, that computer skills alone are not sufficient and that the complete migration from a paper-based recording system into a fully electronic system would not have been possible without the additional effort put in by the Secretariat staff, and the energy and perseverance with which they carried out this task.

Evaluation and recommendations

120. *The improvements in financial management and daily office operations of the Secretariat over the reporting period have gone a long way to rationalising procedures, facilitating the flow of information and increasing the Secretariat's productivity.*

⁷ *Supra*, note 1, paras. 64-65.

121. *The entire staff of categories B and C of the Institute, namely, the Head Librarian, Ms Bettina Maxion, the Treasurer, Mr Paolo Aversa, the Secretaries Ms Carla Milani, Françoise Ghin, and Isabelle Dubois, and the Translation and Publications Assistant, Ms Patricia de Seume, contributed to this collective effort. A special note of recognition is owed to the Information Technology Assistant, Mr Stefano Muscatello, who oversaw all technical aspects of the process.*

C. Human resources management

122. Salaries and social security contributions typically represent the single largest budget line for most policy-making international organisations (i.e., organisations that are primarily devoted to servicing meetings and developing standards, rather than to operational activities). UNIDROIT is no exception. However, given its small budget, the fact that the aggregate cost of salaries and social security contributions consistently absorbs more than 70% of that budget requires constant attention in order to maintain an adequate allocation of resources to the various activities and keep costs under control. This is particularly important given the Institute's limited ability to contain some core elements of its personnel costs.

1. Re-assessing the allocation of resources among UNIDROIT activities

123. In the area of human resources management, the priority action during the reporting period has been the gradual re-allocation of resources: from overhead and administrative activities, to legislative activities and project delivery.⁸ In order to more accurately account for resource expenditures, since 2008 the annual reports of the Secretariat to the General Assembly show expenditure estimates under the regular budget for the current financial year, broken down by line of activity, including allocation of staff resources.⁹

124. The first such report, issued in 2008, indicated that, by the year 2008, the aggregate cost of administration, support services and buildings management (28% of the regular budget) was *higher than the combined cost of all legislative activities*, which form the core of the UNIDROIT mandate (27.01% of the regular budget). That report rendered visible the high concentration of resources in non-legislative activities, mainly the day-to-day administration of the organisation, the latter absorbing a large share of the regular budget, among other reasons because of the number of positions exclusively devoted to administrative matters, including a high-level post of a "chief administrator".

125. The measures since introduced to correct this imbalance included the following: re-allocation of several administrative tasks from professional to support staff, re-distribution of tasks

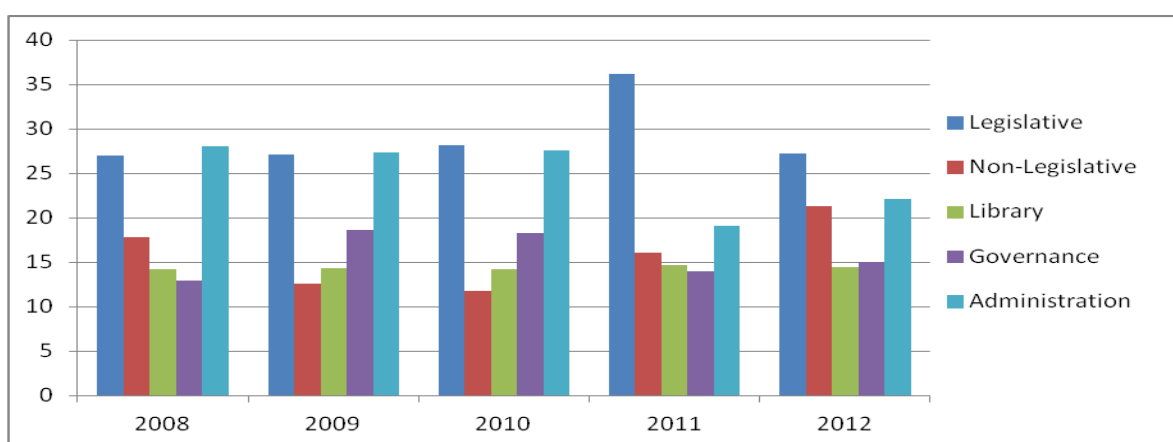
⁸ The 2003 Strategic Plan (supra, note 1) noted, with concern, that, already at that time, "professional staff are being overwhelmed by administrative tasks" (para. 83) and that "their ever-waning involvement in actual preparatory research may indeed be characterised as creeping de-qualification" (para. 82). The situation had not changed at the beginning of the reporting period.

⁹ It should be noted that the document containing information on the organisation's activity is prepared annually, a few months before the General Assembly session (which is usually held in late November or early December) and reflects the Secretariat's estimate for the total expenditure during the current financial year, while the accounts of UNIDROIT are closed on 28 February of the following year. Therefore, the exact figures, as shown in the accounts, usually differ from the estimates submitted to the Assembly, albeit marginally: € 2,223,936.67 actual expenditure in 2008, as compared to € 2,196,401 in the General Assembly estimates (1.25% difference); € 2,255,628.25 actual expenditure in 2009, as compared to € 2,240,545 in the General Assembly estimates (0.6% difference); € 2,226,078.03 actual expenditure in 2010, as compared to € 2,258,706 in the General Assembly estimates (-1.44% difference); € 2,040,390.13 actual expenditure in 2011, as compared to € 2,077,733 in the General Assembly estimates (-1.79% difference); € 2,079,171.29 actual expenditure in 2012, as compared to € 2,090,667.53 in the General Assembly estimates (-0.54% difference).

upon the departure of staff members without automatic filling of vacancies, re-definition of job descriptions before advertising open positions and banding grade/per post thresholds to increase flexibility at entry-level appointment.

126. A graphic representation of the evolution of the share of each of the larger blocks of activities (legislative, non legislative, library, governance and administration) over the reporting period shows a consistent shift of resources from administration to legislative activities. Reallocation has become more visible since 2011 for two reasons: the high priority given to the finalisation of the Space Protocol to the Cape Town Convention during 2011, the vacancy of the post of Deputy Secretary-General during that year, and the reclassification and re-definition of the functions related to that post before recruitment of the current incumbent in 2012.

CHART 6 EVOLUTION OF ALLOCATION OF RESOURCES BY MAIN BLOCKS OF ACTIVITY (2008-2012)



Source: adapted from UNIDROIT 2008 – A.G. (63) 3; UNIDROIT 2009 – A.G. (653) 3; UNIDROIT 2010 – A.G. (67) 3; UNIDROIT 2011 – A.G. (69) 2; UNIDROIT 2012 – A.G. (71) 3.

127. The greater availability of professional staff for project-related work during the reporting period has also translated, particularly in the years 2009-2010, in a slightly higher number of meetings organised by the Secretariat in connection with the work programme (30 days of meetings, as compared to an average of 23.5 meetings in 2003-2007).

Evaluation and recommendations

128. *The efficiency gains attendant on the improved allocation of resources, while not dramatic, are nevertheless tangible to the extent that they translate into greater availability of staff members to the delivery of services to member States rather than overhead functions. Moreover, with the resources resulting from the retirement of staff members, the Secretariat is now in a position to outsource some tasks capable of being performed by independent contractors and service providers, in particular translation, editing and similar services, at lower cost to the Institute.*

129. *The Secretariat's ability to handle a greater number of projects and meetings increases not only the workload of professional staff members, but also of staff members in the B and C categories, in particular those directly involved with making travel arrangements and organising catering events, the Meetings and Logistics Assistant Ms Laura Tikanvaara, and also those responsible for setting up the rooms, producing and distributing documents and ushering delegates and experts, Administrative Assistants Messrs Alfredo Pannoni, Reza Zardoshtian and Daniele Sallustri.*

2. Structure of the Secretariat

130. A second focus of attention by the Permanent Committee and the Secretary-General concerns the structure of the Secretariat as such.

131. The professional staff of UNIDROIT is relatively small, but structured in a top-heavy hierarchy (in 2008: one Secretary-General, two Deputy Secretaries-General, one senior consultant and four senior officers). From a purely financial point of view, the lack of junior professional staff at the beginning of the reporting period meant that the tasks assigned to professional staff were performed at a relatively high cost, making the need for an ongoing review of working methods and the entire allocation of functions even more crucial. To the extent that this situation was the result of career and salary progressions of long-serving staff members, in accordance with the regulations in force, there was limited scope for correcting the cost imbalance. With a view, however, to limiting the prospective impact of automatic personnel costs increases, the following measures have been introduced:

(a) In 2010, the General Assembly approved an amendment to the Regulations to permit the appointment and remuneration of junior professionals recruited to work on projects financed through extra-budgetary contributions funds in accordance with the salary scales that apply to Category B of the staffing table, instead of Category A;

(b) In 2011, the General Assembly approved an amendment to the list of budgetary posts in the Secretariat contained in Annex III of the Regulations for the purpose of banding all posts of Category A staff members, thus providing the Governing Council (as appointing authority of the Secretary-General and the Deputy Secretary-General) and the Permanent Committee (as appointing authority of all other category A staff members) with the desirable level of flexibility for the purpose of fixing an adequate level of remuneration of any newly appointed staff member.

Evaluation and recommendations

132. These measures taken to limit the automatic impact of personnel cost increases have provided a legal basis for the flexibility required by the Secretariat to adapt the grade and level of new appointments to the experience of the new staff member, the level of resources available under the budget and the level of remuneration prevailing in the market at the time of the appointment.

3. Staff salaries and entitlements

133. According to the UNIDROIT Regulations, the remuneration of Category A officials is determined by the Permanent Committee at the time of their appointment within the limits set out in the staffing table contained in Annex III to the Regulations for vacant budgetary posts, and "with reference to the "Monthly Salary Scales" of the Coordinated Organisations published periodically by the OECD as applied by the General Assembly." The salaries of officials and employees of Categories A, B and C are adjusted periodically by the General Assembly in accordance with the modifications to the aforementioned "Monthly Salary Scales" published by the OECD.

134. Even though it has, for several decades now, been the established practice of the General Assembly to approve budget proposals that automatically incorporate a 20% reduction in the salary increases proposed by the OECD, as authorised by Article 41(3) of the Regulations, the fact remains that the level of salary increments is largely outside the control of UNIDROIT. A combination of long service and the "top heavy" structure of the Secretariat means that at present, eight

Category A staff members absorb about 70% of the entire staffing cost of the Institute. Even though the budgetary impact of pay raises in recent years has been modest owing to low rates of increase promulgated by the Co-ordinated organisations, the automatic nature of salary increases, if not accompanied by matching supplementary contributions by member States, carry the risk of gradually depleting the UNIDROIT budget and depriving the organisation of the means needed to sustain its output.

135. Nevertheless, it was possible, in respect of one limited aspect, to address the long-term cost of the current entitlement system for Category A staff, namely as regards the payment of expatriation allowances. Although not expressly provided for in the UNIDROIT Regulations, it has been the long-standing practice of UNIDROIT to pay expatriation allowances to professional staff members, other than those recruited locally, at the rates and on essentially the same terms as those applied by the Co-ordinated organisations.

136. Most organisations of the United Nations Common System have in the meantime abolished the payment of expatriation allowances and replaced them with more tailor-made benefits packages the better to compensate staff for the increased cost of expatriation. In 2011, anticipating a move in that direction by the Co-ordinated organisations, the largest group of international organisations, apart from the European Union, that still maintained the payment of expatriation allowances,¹⁰ the Secretariat proposed, and the General Assembly approved, a number of amendments to Articles 44 and 67 of the Regulations to the effect of subjecting the amount of expatriation allowances payable to staff members appointed after 1 January 2008 (among the current staff this applies automatically only to the incumbent Secretary-General and to one newly appointed Senior Officer) to increasing deductions beginning in the first month of the fourth year of receipt of the allowance. The entitlement to expatriation allowance of staff members ceases after the end of the seventh year of service with the Institute.

Evaluation and recommendations

137. The effect of the above-mentioned amendments to the Regulations is essentially to offset the impact of automatic step-in-grade increases of the incumbent Secretary-General and of any newly appointed Category A staff member starting in the fourth year after appointment.

138. The savings indicated above are obviously modest. The only sustainable long-term solution for the problem raised by the overall staffing cost of UNIDROIT would be the migration of the entire staff to a different salary scheme. This might also provide an opportunity for eliminating the different payment standards for Category A staff, on the one hand, and staff in categories B and C, on the other, which has long been a source of grievances. This might also help contain costs, at least for future recruitments, but the legal and financial implications would need to be considered carefully. However, the Secretary-General has no mandate so far to undertake a study of any of these options.

4. Staff mobility

139. Article 50 of the regulations provides that UNIDROIT “shall cover its officials and employees by insurance policies (life, accidents, sickness) at the time of their permanent appointment,” which “may be replaced, at the request of the official or employee concerned, by a disability and old-age insurance entered into with the *“Istituto Nazionale per la Previdenza Sociale”* in compliance with

¹⁰ See, for background information, UNIDROIT 2011 – A.G. (69) 9, paras. 2-7.

the provisions of the laws in force in Italy.” The Headquarters Agreement with Italy, in turn, has a provision worded differently,¹¹ but which also seems to allow for alternative social security systems, as long as they offer a coverage substantially equivalent to that of the UN social security package.

140. UNIDROIT does not seem to have explored the possibility of offering an alternative social security scheme to its staff or to join any existing social security scheme maintained by other international organisations. With the exception of those staff members who continue to contribute to the social security scheme in which they participated at the time of appointment, all staff members are currently enrolled in the Italian social security system. Apart from its relatively high cost (37% of payroll), the system has a certain number of features that make it less suitable for an international organisation. Firstly, the age of retirement under the Italian social security system (currently 67 years) is set independently and therefore does not coincide with the maximum age of service authorised by Article 49(2) of the UNIDROIT Regulations (normally 60 years, 65 as an absolute maximum). Secondly, the Italian social security system is not portable, as it does not offer the possibility of a withdrawal benefit. Thirdly, save for transfer to another system with which the Italian social security system has a transfer agreement, or validation of prior service with any such system, a minimum of 20 years of continuous contribution is needed in order for a participant to accrue a right to a retirement benefit (for comparison, the pension scheme of the Co-ordinated organisations requires 10 years and the UN pension fund only five years of contributions).

141. The combined effect of those features is to severely limit the attractiveness of the benefits package offered by UNIDROIT and to hinder mobility. Without pinpointing in particular the negative aspects of participation in the Italian social security scheme, the 2003 Strategic Plan alluded generally to the difficulties that result from the fact that *“since UNIDROIT is not part of a wider system such as the UN family, there are no openings for facilitated transfer to a sister agency.”*¹² Unfortunately, the Secretariat has failed to explore viable alternatives in the past.

142. At present, there are two main obstacles to providing for an alternative benefits package. The first obstacle are the limited alternatives, other than life insurance and similar financial products, which have recently performed rather poorly in the aftermath of the financial crisis, and low interest rates in most developed countries. Publicly-sponsored retirement schemes (such as those supported by international organisations), in turn, usually operate on a large scale and are seldom interested in incurring additional administrative costs by admitting small international organisations as new members. Where they are admitted, it is nevertheless expected that the entire staff would migrate to the new pension system. This leads to the second main obstacle, namely the cost of enrolling current staff under an alternative retirement scheme. In the case of UNIDROIT, this would mean either waiting until all staff enrolled in the Italian social security system has accrued a right to a retirement benefit, so that past contributions are not lost, or validating their entire previous period of service by making a corresponding lump-sum contribution on behalf of these staff members into the new system.

¹¹ Article 9 (a): “The personnel of the Institute shall be mandatorily covered by health and social security insurance taken with entities or funds of the Italian State or of another State, the regulations of which are brought to the attention of the Italian authorities.”

¹² *Ibid.*, para. 82.

Evaluation and recommendations

143. *The Secretariat should continue its efforts to find a lasting, reasonable alternative to the Italian social security system in order to improve the mobility of its staff and better equip the organisation to welcome young lawyers for limited periods of service with the Institute.*

5. Staff administration and development

144. An organisation as small as UNIDROIT does not need an extensive set of administrative rules. Nevertheless, the UNIDROIT Regulations are silent about some basic elements of an orderly staff administration system, which has led to both uncertainty and inconsistency in handling various staffing situations.

145. Rules on working hours and duration of journey and breaks have been issued and an electronic attendance recording system has been installed. Clarification on the amount of annual leave accrual by part-time staff has been made, and limits for the amount of annual leave that can be accrued and carried forward by staff members have been set. An office instruction circulated in 2011 declares the entire villa Aldobrandini a smoke-free space, except for especially designated spaces outside the building. Another office instruction issued in the same year sets out procedures for archiving and discarding office records and correspondence, and clarifies the authorised uses of office equipment and communication technology.

146. One particularly important, but also sensitive, area concerns the need to continue developing the pool of individual skills among support and administrative staff. With respect to administrative support and technical staff, the 2003 Strategic Plan deplored *"the lack of opportunities for continuing qualification (e.g. language courses, enhancement of IT capabilities, etc.)"* and advocated that as *"[a]s to support staff, at least some modest skill development should be aimed and budgeted for."*¹³ Unfortunately, the Secretariat has not had the resources to develop a continuous learning or training plan, and the average language skills and computer software knowledge of staff members in the B and C categories has not yet realised the vision of the 2003 Strategic Plan, according to which *"[t]he general trend ought to be to give higher qualified staff priority over less qualified staff and to privilege, where possible, raising the level of staffing in terms of units over salary increases"*.¹⁴

147. In the reporting period, the Secretariat has provided some formal training for the staff member currently in charge of IT matters in the Secretariat, releasing him from clerical functions in the library which were re-assigned to another staff member currently in category C. The Permanent Committee and the Secretary-General have also agreed on a policy of not granting full-time employment to new staff that cannot prove proficiency in English. Measures to encourage individual learning, in the absence of language courses funded by the Secretariat, are being considered.

¹³ *Supra*, note 1, para. 84.

¹⁴ *Ibid.*, para. 108.

Evaluation and recommendations

148. *UNIDROIT must invest in the development of the skills of its staff through a policy of continued learning and the application of stringent recruitment requirements in the future.*

4. Regularisation of appointments

149. The 2003 Strategic Plan aimed at achieving a significant increase in the regular staff of the Institute and greater openness towards seconded staff or staff paid directly by outside sources.¹⁵ Not having been able to obtain the additional resources expected, and facing growing needs under an expanded work programme, the Secretariat, at that time, opted instead to make greater use of the possibility given by Article 48 of the Regulations to "*avail itself, for a given period of time, of the collaboration of persons not belonging to its staff*" under conditions of service and remuneration to be set forth in the "document of appointment".

150. At the beginning of the reporting period, there was one staff member in the professional category whose post was largely funded by extra-statutory contributions; one junior officer had a "fellowship" contract funded by private donations, while two other professional "collaborators" had no social security coverage for the duration of their contracts. In the support services category, there were three service providers working daily on Institute premises without written contracts, while one secretary had a part-time post under a contract with the Uniform Law Foundation. The multitude of *ad hoc* arrangements was not only complex to administer, but also a source of grievances.

151. The Permanent Committee and the Secretary-General agreed, in 2009, on the need to streamline all employment arrangements. As of the date of this writing, all staff members of UNIDROIT are working under letters of appointment issued in accordance with the Regulations, and have been enrolled in the social security scheme of their choice. Of course, these measures have entailed higher social security payments and, as such, have not lowered the *per capita* staffing cost.

Evaluation and recommendations

152. *The Secretary-General recommends that "collaboration" contracts under Article 50 of the Regulations be reserved for hiring consultants or other professionals or workers providing services for specific tasks and remunerated by task or assignment and should not be used for individuals working daily on the premises, in a relationship of subordination and receiving a periodic payment calculated on a monthly basis.*

¹⁵ "With regard to professional staff and absent any substantial increase in units or integration in a system, *remedies* are regular secondments from member State Governments or private stakeholders on two-to-five-year assignments" (Strategic Plan, *supra* note 1, paras. 83-84). A concrete example was given later: "However, in an effort to respond to the demand by Governments and industry for rapid progress in the area of the capital-markets project, one officer whose contract expires at the end of 2004 is being funded by the German Banking Federation, while one session of the Study Group was funded by an Italian Bank" (*ibid.*, para. 110).

IV. CONCLUSION

153. *The reporting period has not been one of changes in the Organisation's general orientation, nor has it witnessed a dramatic expansion of its work programme, which has remained generally within the sound boundaries set before the beginning of the reporting period. Save for the opening of a new line of work on private law and agricultural investment, which was primarily aimed at exploring synergies with other Rome-based organisations, the main objective has been to consolidate the achievements of previous years (completion of instruments under the Cape Town system and continued work on financial markets law) and to strengthen the ability of UNIDROIT to carry out its mandates.*

154. *Financial constraints placed on the Secretariat in recent years (see above, paras. 20-22), however, have prompted a series of vital management and financial reforms, to improve efficiency, increase productivity and ensure the sustainability of the Organisation. During this period, the Secretariat has evolved, through the measures outlined in this report, into a more cost-efficient and recast structure, committed to its mandate, committed to its member States, and committed to its future. And although the Secretariat has retained its ability to deliver services despite significant funding constraints and the proliferation of unfunded mandates, the Secretariat submits that it has now completely exhausted the scope for further efficiency savings within existing resources.*

155. *Several challenges still lie ahead, in particular that of solving some of the structural problems that have developed over the years. It is unlikely that a sustainable long-term solution for those problems, namely the lack of adequate conference facilities (see para. 10-12), and the provision of a social security and health insurance package that promotes staff mobility (see above, paras. 139-143) will be addressed without additional financial resources from member States. If the value, impact and continued presence of UNIDROIT as an independent international organisation is to be preserved, member States, in concert with the Secretariat, must demonstrate their resolve to invest in its long-term sustainability.*