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Item No. 13 on the agenda: Draft Triennial Work Programme 2014-2016 –

Comments received by the Secretariat

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Consideration of the further comments received by the Secretariat on the draft Work Programme for the 2014-2016 triennium</i>
<i>Action to be taken</i>	<i>To take note of the comments</i>
<i>Related documents</i>	<i>UNIDROIT 2013 -C.D (92) 13</i>

1. After the publication of documents C.D.(92) 13 Add. and Add. 2 containing comments submitted by member Governments and correspondents of UNIDROIT on the draft Work Programme for the triennium 2014-2016 (cf. UNIDROIT 2013 – C.D.(92) 13), the UNIDROIT Secretariat received comments from another correspondent which comments are reproduced in the Annex to this document.

2. The Secretariat received other letters – addressed to members of the Governing Council – indicating support to the possible preparation of a new Protocol to the Cape Town Convention on agricultural, mining and construction equipment parent companies of AGCO Corporation (cf. UNIDROIT 2013 – C.D. (92) 13 Add.).¹ Copies of these letters may be provided to members of the Governing Council upon request.

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

¹ The Secretariat received copies of such letters from AGCO Corporation, AGCO Mexico S de R.L. de CV, AGCO International GmbH, AGCO Argentina S.A. and AGCO S.A.

ANNEX

**Comments received from Ms Lyndel Prott, UNIDROIT correspondent, on the future
UNIDROIT Work Programme
(2014 – 2016)**

Lyndel Prott (Australia)

I appreciate and thank UNIDROIT for the invitation, as correspondent, to comment on the Draft Work Programme and will limit my observations to the "Implementation and promotion of UNIDROIT instruments", and in particular to Item 2(c): **UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) and UNESCO-UNIDROIT Model Provisions on State ownership of undiscovered cultural objects 2011**

I have been working with UNIDROIT since 1983 when a Committee of Experts appointed by UNESCO examined the problems raised by a number of Member States with ratification of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. This ground-breaking Convention required a substantial number of the States with large numbers of collectors and major art-trading markets to join if it was to have an real impact on the illicit trade. As Rapporteur of that 1983 Committee I prepared the report which recommended that significant issues of private law needed to be dealt with in order to facilitate more ratifications. UNESCO then invited UNIDROIT, because of its special expertise in private international law, to prepare a supplementary convention to deal with special areas such as the rules on limitations, good faith acquisition and recognition of rules of inalienability and export prohibitions. After two specialist preparatory documents, three meetings of experts appointed in their individual capacities, four meetings of experts nominated by their governments and a diplomatic conference, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was adopted in 1995.

This Convention, dealing with very difficult issues of private law, reached a compromise which has gradually been accepted. Indeed, the rate of ratification in relation to the number of Members of UNIDROIT is parallel to that of ratifications of the 1970 UNESCO Convention in relation to the number of UNESCO Member States. Such Conventions are not ratified by States rapidly compared to those Conventions which state general principles or where there are no conflicts between national legislations. It has taken UNESCO over 40 years to persuade all the major market States to ratify the 1970 Convention which now has 121 States Parties.

Recent ratifications of the 1970 Convention over the past 15 years have been by France, the United Kingdom, Japan, Sweden, Switzerland, Germany, Belgium and the Netherlands, thus creating, with the United States which ratified in 1983, the substantial body of States with a high art trade which renders the 1970 Convention the significant legal framework for the world. This vital development has led to important moves to strengthen (e.g. through the 2011 rules) and better apply the Convention. However, the ground-breaking work of the 1995 UNIDROIT Convention is more than ever significant and must be implemented to achieve better control. UNESCO continues to work closely with UNIDROIT, and it is cooperating fully with it to ensure the implementation and ratification of the UNIDROIT Convention.

I would strongly recommend that UNIDROIT broaden its range of explanatory material. It should also enhance its existing programme to encourage ratification. The experience of the Committee of the Red Cross in Geneva shows how this can be done. It has been able to get near universal ratification of its humanitarian conventions by persistent visits by a dedicated representative of the Red Cross to Foreign Ministries around the world to present the case of ratification, request information on progress and to follow-up consistently, often in yearly visits. While correspondence is of course possible, the number of international accords that State bureaucracies and parliaments are now required to study in any one year means that some are only cursorily considered and many, even where considered, relegated to future action. Face to face contact can be much more effective. Organisations closely cooperating with UNIDROIT to deal with problems of illicit traffic, such as UNESCO, INTERPOL and the European Union, might be requested to assist in these approaches, for example when they themselves will have a representative visiting a State which has not yet ratified the 1995 UNIDROIT Convention. Other representatives deeply concerned with this Convention might also be appointed by UNIDROIT.

The 1995 Convention was for many developing States their introduction to UNIDROIT and it remains, for many of them, by far the most significant UNIDROIT Convention. I regard this Convention as an essential part of the current international system to control illicit traffic in cultural objects, but, as many of your correspondents are experts in other areas of UNIDROIT activity, I am anxious to urge that work on this Convention be given high priority for the 2014-2016 Work Programme.