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Item No. 17 on the Agenda: Proposal by the Secretary-General of new appointment procedure for Correspondents (2022-2025)

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Presentation of the Secretary-General of the proposed appointment procedure</i>
<i>Action to be taken</i>	<i>For the approval of the Governing Council</i>

I. INTRODUCTION

1. The institution of UNIDROIT *Correspondent* dates back to the 18th session of Governing Council in 1947 following a suggestion by Professor Ernst Rabel. Two North American Correspondents and one Italian were designated in order to obtain information on legal developments in the United States, which had not yet become a Member State of the Institute at the time. The role took on an honorary quality in 1949, which led to the appointment of an increasing number of people according to a combination of different criteria.

2. As the number of Correspondents increased rapidly over the years, the criteria for the selection of Correspondents changed following a motion of the Governing Council in 1994, resulting in a list of functions that was finalised by 1996, applicable to new Correspondents (for a complete history, see [UNIDROIT 2009 - C.D. \(88\) 12](#)) and, for a summary of actions after 2009, see [UNIDROIT 2019 - \(C.D. \(98\) 11](#)).

3. Following the decision of the Governing Council to revitalise the UNIDROIT network of Correspondents in 2006, an in-depth analysis of the issue was undertaken, which was followed by a study of a Sub-Committee appointed to that end, and presided by Professor Henry Gabriel. Several new measures were adopted by the Council in that context, including:

- The establishment of a new category of *institutional Correspondents*
- The establishment of a three-year *time limit to the mandate* of Correspondents
- A clear definition of the functions of Correspondents
- The definition of new rules for the appointment and reappointment of Correspondents
- The creation of two categories of Correspondents: one for active Correspondents and another for Emeritus Correspondents that have greatly contributed to UNIDROIT's work in the past.

4. At that time, UNIDROIT had 175 Correspondents on the list, several of which however were either reported deceased or had not provided updated contact details. The Council therefore directed the Secretariat to write those on the list requesting confirmation that they wished to remain Correspondents stating that failure to reply would exclude them from the list. Following a very low response rate, the Governing Council requested the Secretariat to make one final attempt to reach dormant Correspondents, following which it was to commence “de-selection” and draw up a new list.

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

6. The Governing Council approved the appointment of a new Correspondent both in 2009 and 2010, and as of the latter year there were 103 individual and 2 institutional Correspondents, most with appointments expiring in April 2011. Because these appointments were coming to an end at the same time, the Governing Council discussed the role of Correspondents as part of the strategic plan, therefore appointments were extended for one year due to expire in April 2012.

7. A small Working Group, once again chaired by Professor Gabriel, with the same composition as the one in 2007 was formed in 2013, and, in its [Report](#) based on the great potential impact that a network of active and working Correspondents could have for the Institute, set out the following recommendations for the appointment of Correspondents:

- Appointments are for three year renewable terms.
- To be appointed or reappointed, the Correspondent must state how he or she intends to contribute to the work of UNIDROIT.
- Reappointment is not automatic. Correspondents will be contacted before their terms expire asking whether they wish to be reappointed. They must respond within two months of the request. This should be clarified in the letter from the Institute so that the Correspondents understand the obligation to respond.
- Correspondents who are inactive for a substantial time will not be asked if they would wish to be reappointed, and will not be reappointed.
- Appointment letters should indicate that the Correspondent is expected to remain active, and long term inactivity may result in removal.
- Correspondents will be asked to keep their contact information updated.

8. Furthermore, the Sub-Group proposed that those who were on the list of Correspondents at the time were to be asked if they wished to be reappointed for a term running from May 2013 until April 2016. The Correspondents who remained active during that period were to be deemed eligible for reappointment for subsequent terms.

9. The Governing Council, in 2014, approved the conclusions of the Sub-committee to reappoint the Correspondents that had expressed their interest in staying for a three-year period starting from June 2013, and to classify the others as *Emeritus Correspondents*.

10. At its 94th session (2015), the Governing Council (1) approved the renewal of active and institutional Correspondents on the basis on the new rules; (2) appointed four new active Correspondents for a three year term; and (3) decided that the renewal of the active and institutional Correspondents would coincide with proposals for new nominations every 3 years (UNIDROIT 2016 – C.D. (95) 10).

11. At its 98th session (2019), the Governing Council took stock of its network of active individual and institutional Correspondents and of the results of the feedback that the Secretariat had received from the Institute’s letters concerning reappointment. Based on the results and the proposal by the

Secretary-General that a new strategy was to be elaborated for the Council's consideration, the Governing Council ruled to not reappoint any new Correspondents for the time being and to renew the mandates of active Correspondents as per the current procedure.

II. STATUS QUO AND NEED FOR ACTION

12. As of 20 July 2021, the network of Correspondents of the Institute consisted of only 30 active members and two institutional members (see the list in **ANNEXE I** and the distribution by region and by country in **ANNEXE II**). As may be apparent to Governing Council Members, the current list is mostly composed of international experts who have a very active collaboration with the Institute either in ongoing projects of the current Work Programme or in the dissemination and implementation of the UNIDROIT's instruments. In short, the list is in good part formed by international experts who would be likely to collaborate with the Institute even if they were not Correspondents. Moreover, the current list is very short and far from enough to achieve the general aims of the programme.

13. The current distribution of Correspondents is also suboptimal in terms of diversity. Europe and the Americas have thirteen Correspondents each, however the countries of origin of the said correspondents are only eight, in the former case (out of 36 UNIDROIT Member States from the region), and seven in the latter (out of 13 UNIDROIT Member States from the region). The Asia Pacific region only provides three members on the list, from two different countries (out of 10 UNIDROIT Member States in the region), and Africa only one Correspondent. Furthermore, only seven Correspondents are women (23%).

14. In light of the unsatisfactory situation of the programme, consideration ought to be given to its revision and the adoption of measures apt to revive it. As described in the introduction to this document, several attempts have been made to bring the programme to its full potential and the current situation is a testament to the difficulty of the task. The Secretariat is therefore convinced that strengthening the programme is a task that requires time and careful, ad hoc action, bespoke to the needs of the different contexts of UNIDROIT's member jurisdictions and beyond. The following section illustrates a proposal formulated to seek constant, incremental action, with a view to reach an optimal level of Correspondents by the time the Institute reaches the celebration of its 100th anniversary in 2026.

III. PROPOSAL

15. *Functions.*- In line with previous revisions, Correspondents would act as source of information on national law for the Secretariat, as an expert counsel on matters of transnational law, and as an informal ambassador of UNIDROIT in a given country, concerning both missions and events organised in the jurisdiction and relations with local governments and institutions. In light of this, the main functions expected to be performed by correspondants are the following:

- (a) Correspondents are expected to provide information requested by the UNIDROIT Secretariat on matters related to the Institute's instruments and projects included in the Work Programme concerning the correspondent's jurisdiction/region.
- (b) Correspondents may be expected to provide their expert opinion upon the UNIDROIT Secretariat's request, on matters related to the Institute's instruments and projects included in the Work Programme, regardless of the status of the subject matter in the correspondent's jurisdiction.
- (c) Correspondents are expected to update the UNIDROIT Secretariat on legal reform and legal developments in general pertaining to the Institute's instruments and Work Programme, as and when they occur.

- (d) Correspondents are expected to provide input on the proposals for new topics to be included in the Institute's Work Programme.
- (e) Correspondents may present proposals for new topics to be included in the Work Programme.
- (f) Correspondents are expected to assist in raising awareness on the Institute and in the dissemination of its instruments in their jurisdiction. In this vein, Correspondents will be given priority to participate as experts in events organised or supported by UNIDROIT in their jurisdiction.
- (g) As informal "ambassadors" of UNIDROIT in their jurisdiction, Correspondents will be expected to assist the Secretariat in the preparation of missions to their country, including, but not limited to, the identification of additional local experts for meetings and events, and, in the case of Correspondents of non Member States, in the relationship with the relevant government entity/agency.

16. *General requirements.*- The requirements already in place to appoint a person as a Correspondent would seem adequate and fully consistent with the effective execution of the functions listed above. There is therefore no need to propose any change in this regard. It would be, however, relevant to stress the importance of a pre-existing relationship of the candidate with UNIDROIT, or at least a strong professional link with the activities of the Institute. This means that a Correspondent must either have experience as an expert on one of the instruments or projects of UNIDROIT, with proven knowledge of the Institute's work on the given subject matter or, preferably, have a firsthand relationship with the Institute (e.g., as a member of any of its study/working groups, as a participant in events organised or sponsored by UNIDROIT, or focused on our instruments/projects, or as a visiting academic or researcher in our Seat). This pre-existing link should help reduce cases of inactive or dormant Correspondents.

17. *What is offered.*- Apart from the obvious reputational component/ honour of the appointment, a number of rights must be offered. By way of example, we would propose the following:

- (a) To attend, as observers, at their request, study groups/working groups, when they justify sufficient expertise on the subject matter;
- (b) To be given priority to participate as local expert in events, training and technical assistance organised/sponsored by UNIDROIT in their jurisdiction;
- (c) To be given priority to participate as local expert in projects organised/sponsored by UNIDROIT in their jurisdiction to implement/disseminate the Institute's instruments;
- (d) To be granted priority to translate, or organise the translation of, UNIDROIT's instrument in the language of their country of origin (other than English and French), at their request, when they justify sufficient expertise on the subject matter, and subject to any different agreement stipulated with co-sponsoring organisations;
- (e) To have priority access to the Library premises and, subject to availability of resources, to obtain assistance in accessing bibliographical information on matters linked with the instruments or the ongoing projects of UNIDROIT;
- (f) To receive an e-copy of publications of the Secretariat, as well as of UNIDROIT's instruments;
- (g) To receive an e-Newsletter on the activities of the Institute (to be linked with the *Alumni* programme);
- (h) To be given use of an email account with a UNIDROIT related domain name (different from that used by members of the Secretariat).

18. *What is required.*- As stated in the conclusions of the special committees appointed to review the Correspondents programme in 2007 and 2013, being a Correspondent is not merely an honorary appointment and ought to bring about a commitment to proactively pursue the functions of the institution. Inactive Correspondents should not be renewed at the end of the appointment period,

unless they express a firm commitment to resume active duty. Inactivity must be established following a careful review on a case by case basis. The Secretariat would propose that the recommendations regarding reappointment determined in 2015 be maintained, with the following adjustments:

(a) To limit the scope of the requirement that “[T]o be reappointed, the correspondent must state how he or she intends to contribute to the work of UNIDROIT”, only to cases where, following an assessment of her/his activity over the previous three-year period, it is found that the Correspondent has not been sufficiently active. In other cases, asking for an additional commitment would seem unnecessary, and, at times, not easy to comply with.

(b) To eliminate the rule according to which “Correspondents who are inactive for a substantial time will not be asked if they would wish to be reappointed, and will not be reappointed”. As an individual assessment would be conducted for each correspondent every three years in any case, the period of inactivity would never be longer by design. In these cases, in application of the rule mentioned in the previous paragraph, the inactive correspondent would be asked to provide a plan of activities. In the absence of any response, the Correspondent would not be reappointed.

19. In exceptional cases, Correspondents who have served the Institute for many years, or whose activity regarding the Institute’s instruments is especially relevant, should be kept on as such, even in case of inactivity. This would be the case which currently corresponds with the category of Emeritus Correspondents. In the absence of any difference in terms of rights for this type of correspondent, we would suggest eliminating the distinction.

20. Currently, only two “institutional Correspondents” remain, and one of them is inactive. It is proposed that the existence of “institutional Correspondents” be reconsidered. Instead, the Secretariat plans to present a proposal on “Associated Partners”, with a broader scope, at the next Governing Council session in 2022. If/until the new programme is approved, institutional Correspondents would continue to exist.

21. *Objective for the programme.*- There is a need to substantially increase the number of Correspondents. In order to create a sufficiently dense network of Correspondents to comply with the many functions of the programme, it is estimated that a target number of 100 would be reasonable. In order not to overburden Correspondents, a minimum of two Correspondents per Member State should be appointed. This rule should be handled with flexibility, since some countries, due to their size and relevance for UNIDROIT’s activities, would warrant more members. Experience shows, however, that exclusivity is a strong driver for interest and involvement in international organisations, so setting a maximum number per jurisdiction would seem an adequate measure.

22. The Secretariat considers the programme a potentially very relevant tool for the intensification of the Institute’s presence in Member States from which there are no Governing Council Members, as well as -especially- an instrument to increase membership. The strategy for appointments should therefore also aim to find Correspondents in jurisdictions with no Governing Council Members and in countries that are not Institute members. Given our current constituency, a special focus in Africa and Asia would seem warranted. In seeking Correspondents from non Member States, her/his potential to facilitate membership by the candidate’s jurisdiction is to be considered an additional criterion for eligibility.

23. *Measures to be adopted.*- One of the reasons for the constant decline in the number of Correspondents over the years may be a lack of periodical institutional contact. In order to remedy this situation, a stable infrastructure for the Correspondents programme is to be set up. These are proposed measures for the consideration of Governing Council Members:

(a) *An office for Correspondents* would be created within the Secretariat. A Legal Officer will be responsible for Correspondents from each of the four regions of UNIDROIT. This *Liaison* Officer will be tasked with channelling institutional communication and requesting technical information with Correspondents, concerning the different instruments and projects (e.g. the Liaison Officer would send all Correspondents in the Americas a request for information on enforcement matters for security rights, following a petition by the legal officer in charge of the Best Practices on Effective Enforcement project). This Liaison Officer will also be an intermediary between Correspondents, the Library, and the staff tasked with the organisation of events.

(b) A separate section for Correspondents would be created in the Institute's website. This section would include an updated list of Correspondents, and events involving UNIDROIT instruments where Correspondents have participated will be publicised in this section.

(c) *A Permanent Committee for Correspondents* would be created within the Governing Council. This would be an informal sub-committee, composed of one member for each region and a Chair. Members would rotate every three years. The main tasks of the Committee would be to supervise the functioning of the programme, and to inform the proposals for appointments and reappointments made by the Secretariat or by other Governing Council Members, before the decision is put before the Governing Council.

24. *Next steps.*- In order to kickstart the revision of the programme, it is proposed that an exercise to identify possible candidates be conducted. The Secretariat will draft a list with possible candidates. The Liaison Officers will individually contact each Member of the Governing Council to consult and identify possible candidates from their own jurisdictions, which would be included in the list. The list would be presented to the Permanent Committee for Correspondents for their comments, suggestions and recommendations. Following informal contacts with candidates, the revised list will be presented to the Governing Council at its next session in 2022.

IV. ACTION TO BE TAKEN

25. *The Governing Council is invited to consider and approve the plan proposed by the Secretary-General.*

ANNEXE I

**DISTRIBUTION OF ACTIVE CORRESPONDENTS OF THE INSTITUTE BY REGION
AND BY COUNTRY**
- 2019 / 2022 -

**RÉPARTITION DES CORRESPONDANTS ACTIFS DE L'INSTITUT PAR RÉGION ET
PAR PAYS**
- 2019 / 2022 -

Non-members States of UNIDROIT are shown in italic script

Les États non membres d'UNIDROIT figurent en italiques

	2016-2019	2019-2022		2016-2019	2019 -2022
Africa / Afrique	2	1	Europe	23	13
			Austria / Autriche	1	1
<i>Burkina Faso</i>	1	1	Belgium / Belgique	1	1
Nigeria	1	0	Denmark / Danemark	1	0
			Finland / Finlande	1	0
			France	3	2
			Germany / Allemagne	3	2
			Italy / Italie	3	2
			Portugal	1	0
Americas / Amériques	17	13	Spain / Espagne	3	3
			Sweden / Suède	1	0
Argentina / Argentine	3	2	Switzerland / Suisse	1	0
Brazil / Brésil	1	1	Turkey / Turquie	1	1
Canada	2	2	United Kingdom / Royaume-Uni	3	1
Chile / Chili	1	1			
Colombia / Colombie	2	0	Asia/Pacific / Asie/Pacifique	5	3
Mexico / Mexique	1	1			
<i>Panama</i>	1	0	Australia / Australie	2	1
United States of America / États-Unis d'Amérique	5	5	Iran	1	0
Uruguay	1	1	Japan / Japon	2	2

ANNEXE II**ACTIVE AND INSTITUTIONAL CORRESPONDENTS OF THE INSTITUTE RENEWED
IN 2019****CORRESPONDANTS ACTIFS ET INSTITUTIONNELS DE L'INSTITUT RENOUVELÉS
EN 2019**

June/Juin 2019 – May/Mai 2022

	Name / Nom	Country / Pays
1	CAFAGGI Fabrizio	Italy / <i>Italie</i>
2	COHEN Neil	United States of America / <i>États-Unis d'Amérique</i>
3	DARANKOUM Sibidi Emmanuel	Burkina Faso
4	DESCHAMPS Michel	Canada
5	FAUVARQUE-COSSON Bénédicte	France
6	FERRAND Frédérique	France
7	FONTAINE Marcel	Belgium / <i>Belgique</i>
8	FRESNEDO DE AGUIRRE Cecilia	Uruguay
9	GAMA Jr. Lauro	Brazil / <i>Brésil</i>
10	GARCÍA PUJOL Ignacio	Chile / <i>Chili</i>
11	GARRO Alejandro	Argentina / <i>Argentine</i>
12	KOZUKA Souichirou	Japan / <i>Japon</i>
13	LEFEBVRE Guy	Canada
14	MARCHISIO Sergio	Italy / <i>Italie</i>
15	MOONEY Charles W., Jr.	United States of America / <i>États-Unis d'Amérique</i>
16	MORAN BOVIO David	Spain / <i>Espagne</i>
17	ÖZSUNAY Ergun	Turkey / <i>Turquie</i>
18	PERALES VISCASILLAS Pilar	Spain / <i>Espagne</i>
19	PROTT Lyndel V.	Australia / <i>Australie</i>
20	REICHELTE Gerte	Austria / <i>Autriche</i>
21	RIVERA Julio César	Argentina / <i>Argentine</i>
22	ROSEN Howard	United Kingdom / <i>Royaume-Uni</i>
23	SÁNCHEZ-GAMBORINO Francisco José	Spain / <i>Espagne</i>
24	SONO Hiroo	Japan / <i>Japon</i>
25	STÜRNER Rolf	Germany / <i>Allemagne</i>
26	VEYTIA Hernany	Mexico / <i>Mexique</i>
27	WALLACE Don, Jr.	United States of America / <i>États-Unis d'Amérique</i>
28	WINSHIP Peter	United States of America / <i>États-Unis d'Amérique</i>
29	WOOL Jeffrey	United States of America / <i>États-Unis d'Amérique</i>
30	ZIMMERMANN Reinhard	Germany / <i>Allemagne</i>

Institutional Correspondents / *Correspondants institutionnels*

1	Max-Planck Institut für ausländisches und internationales Privatrecht – Hambourg	Germany / <i>Allemagne</i>
2	Institut hellénique de droit international et étranger	Greece / <i>Grèce</i>