



FINANCE COMMITTEE
65th session
Rome, 25 February 2009

UNIDROIT 2009
F.C. (65) 4
Original: English/French
March 2009

Report

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>For information of the members of the Finance Committee</i>
<i>Action to be taken</i>	<i>None</i>
<i>Related documents</i>	<i>None</i>

1. The 65th session of the Finance Committee took place at the headquarters of UNIDROIT in Rome, on 25 February 2009, starting at 10 a.m. The *Chairman* welcomed the participants (see Appendix I for a complete list of participants).

Item No. 1 on the agenda: Adoption of the draft agenda (F.C. (65) 1 rev)

2. The *Chairman* proposed that the Committee adopt the draft agenda. *The Committee agreed to this proposal.*

Item No. 2 on the agenda: Consideration of the Secretariat's first estimates for the draft budget for 2010 (F.C. (65) 2)

3. The *Secretary-General* made some general remarks. The first concerned the timing of consideration of the first estimates and the timing of the first session of the Finance Committee; he noted that the Committee should consider the usefulness of timing the session so as to have the Accounts for the previous year to hand; although there was a gap between the financial years contemplated by the Accounts and those covered by the First Estimates – the Accounts referred to the year preceding the current year, and the First Estimates referred to the following year –, this could be important for making a comparison and forming a clear idea of the performance of the Institute. He then noted that the document submitted to the Committee showed no project-specific costing, and announced that the Secretariat intended to produce for the Governing Council a document presenting the Secretariat's estimate of the use of resources during the current year, followed at the end of the year by a second document for the General Assembly, thus providing the member States with a performance report showing whether or not the Institute had met the targets submitted to the Governing Council. He stressed that the Secretariat intended to present to

the Governing Council a costing simulation on the financial and economic impact of projects that the Council might wish to include in the Work Programme, and that this required a system that gave an accurate estimate of the time to be spent by staff on these projects. The Secretariat had started to put such a system into place in 2007 but was now developing this more comprehensively.

4. The Secretary-General went on to note that the document on extra-budgetary contributions had been produced in response to a request for greater transparency by the General Assembly, and that this information could be combined with the information on the cost of specific projects.

5. The *Chairman* noted that, with regard to the timing of the first session, it would indeed be interesting to have enough information to discuss the new draft budget but it should also be sufficiently ahead of the convening of the Governing Council for the Finance Committee to be able to give its advice on the draft budget. The question therefore needed further consideration.

6. The *deputy Secretary-General* presented the first estimates for the draft budget. She gave a brief outline of the latest developments that might affect the Institute's financial position. She announced that Saudi Arabia and Indonesia had acceded to the Institute as of 1 January 2009. In November, a joint session of the General Assembly and the Committee of governmental experts had adopted a model law on leasing; the Secretariat was now monitoring its implementation, in particular the preparation of an official commentary, which would involve the organisation of meetings the cost of which would, however, be covered by the budgetary Chapters provided for that purpose. The Secretariat was organising a number of meetings in respect of the Space Protocol to the Cape Town Convention, which were to take place in May but which would be funded by the private sector, whereas a third meeting of the Committee of governmental experts on this topic was planned for the autumn and would be paid for by the Institute. She informed the members of the Finance Committee that there had now been a considerable number of ratifications of and accessions to the Cape Town Convention and its Aircraft Protocol, which was a source of satisfaction to the Secretariat but nevertheless represented a heavy workload for the Depositary. She noted that while the decision taken by the diplomatic Conference to entrust to UNIDROIT the role of Depositary had certainly had budgetary repercussions, it also meant that the system of declarations provided for by the two instruments could be managed in as efficient a manner as possible. The officer acting as Depositary was also following the implementation of the Rail Protocol to the Cape Town Convention, in particular the choice of operator of the International Registry, which meant a great deal of work for the Secretariat, in co-operation with OTIF, and the organisation of further meetings. She then announced that the Swiss Government had now sent out the invitations for the final session of the diplomatic Conference for the adoption of the draft Convention on intermediated securities, which was to be held in Geneva next September. The Secretariat wished to express its gratitude to the Swiss Government for organising the Conference. The deputy Secretary-General went on to announce that a meeting of the drafting committee of the Working Group for the preparation of the third edition of the UNIDROIT Principles of International Commercial Contracts was to take place in Hamburg the following week, at the invitation of the Max-Planck-Institute, and that the meeting would be attended by the *rapporteurs* of the Working Group as well as the Secretary-General and the UNIDROIT Consultant responsible for this project; the Working Group would then be meeting, in Rome this time and financed by the Institute, at the end of May. She stressed that the success of the UNIDROIT Principles was borne out by the number of translations of the text; the Institute was now negotiating their publication in Arabic, the translation and page make-up of which had been completed, while a translation into Portuguese was underway. She specified that the cost of such translations was often borne by the publisher or an institution, but that at other times, the Secretariat paid for the work, recovering its outlay through sales. The Principles of Transnational Civil Procedure had been translated into Farsi and published, while a Spanish translation was underway. The Secretariat had just concluded an

agreement, at no cost to the Institute, concerning the translation into Korean of the second edition of the Franchising Guide. The cultural property Convention continued to arouse great interest; the Secretariat had received a great many invitations to a wide range of events, in which it participated wherever possible, generally at no cost to the Institute. The interns and scholarships programme was much in demand; the Secretariat had to be selective but the level of interest bore witness to the vitality of the Institute. As to the Library, important donations had been received, which went some way to offsetting the fact that the budget position for the acquisition of new titles had been frozen for some time now.

7. The deputy Secretary-General stressed that these first estimates showed no increases in expenditure for 2010, since the Secretariat intended to make savings in several areas: for example, documents were to be transmitted by e-mail, which would save on printing and postal charges. As to the Chapters on salaries, some staff re-organisation would offset the increases built into staff contracts and the Regulations.

8. Turning to receipts, the deputy Secretary-General pointed out that the accession of two new member States would help to contain the forecast increase in member States' contributions to 1%; however, she was pleased to inform the members of the Committee that the Secretary-General had just received a letter from the British member of the Governing Council offering one last contribution of £ 50,000, to be paid for out of the budget of the United Kingdom Government's Department of Business, Enterprise and Regulatory Reform, to fund the position of deputy Secretary-General in charge of administrative matters in the Institute. The Secretariat had not had time to amend its accounts accordingly, but suggested that the first estimates be adjusted to allow for this contribution, which must be used to pay for the deputy Secretary-General's salary, and for which the Secretariat wished to express its gratitude to the Government of the United Kingdom.

9. She then noted that the situation in respect of member States' arrears in contributions had improved significantly, and that the Secretariat wished to draw the Committee's attention to its satisfaction at this state of affairs.

10. The *Chairman* thanked the deputy Secretary-General for her presentation, and expressed his gratitude to the Government of the United Kingdom, also on behalf of the other Committee members, for this extra-statutory contribution. He added that even though this donation was not intended to reduce the contributions of the other member States, it would nevertheless make it possible to adjust the first estimates so as to rule out further increases.

11. The Chairman, in his capacity as *representative of Germany*, set out his Government's position. The German Government was prepared to accept the first estimates, but wished to know why a 1% increase was being proposed when expenditure was to remain stationary.

12. The *deputy Secretary-General* explained that these first estimates had been prepared without allowing for the extra-statutory contribution made by the United Kingdom which had, however, been included in the 2009 budget receipts, and that the contributions of the new member States, Saudi Arabia and Indonesia, would enable part of that sum to be recovered, but that in order to cover its expenditure, the Secretariat had been compelled to propose a 1% increase, amounting to roughly € 20,000.

13. The *Secretary-General* thanked the Committee on behalf of the Secretariat for accepting the principle that, in respect of the current financial year, the contributions of the new member States would be added to those provided for in the budget. He stressed how important it was for the Institute to have some reserves to cope with any contingencies that might arise in the lifetime of a project. He expressed his gratitude on behalf of the Secretariat for the extra-statutory contribution made by the United Kingdom and stated that, since this contribution might be regarded as an unforeseen receipt, the Secretariat would ask the Committee to allow it to be used for the purpose for which it had been made and to re-allocate the resources in the relevant chapter to make up a

reserve to cover any contingencies that might arise in finalising certain projects. He recalled that such a situation had in fact arisen just as he took up his post as Secretary-General of UNIDROIT, and that it had been thanks to the generous support offered by the Swiss Government that a solution had been found.

14. The *representative of Mexico* thanked the Secretariat for its presentation and the additional explanations, which had already answered several of the questions he had been intending to put. He expressed his Government's appreciation of the efforts made by the Secretariat to provide greater clarity in the budgetary procedure. As to the remarks made by the Secretary-General, he would reserve his Government's position for the next sessions; as to the contingency reserve, this should be clearly expressed.

15. The *representative of the United States of America* pointed out that his Government was aiming at zero nominal growth in contributions, but that it would nevertheless be prepared to agree to a modest increase. He agreed that the Secretary-General should not be required to spend time on small fund-raising to cover contingencies.

16. The *representative of Canada* wished to thank the Secretariat for preparing the first estimates for the draft budget for 2010. Canada especially appreciated the Secretariat's efforts to provide more specific information on the experts' meetings and publications planned for 2010, and encouraged the Secretariat to extend this approach to other items of the draft budget. Canada also welcomed the information provided by the Secretariat on the extra-budgetary contributions received by UNIDROIT in the years 2008/2009, and on their allocation to the activities and projects of the Institute. Canada felt that obtaining clear and precise information on financial matters, including sources of revenue, allowed Member States to meet their responsibilities with respect to the approval of the Institute's annual budget. In Canada's opinion, the Secretariat's proposal not to foresee an increase of the expenditures for 2010 constituted a prudent approach, given the potentially negative impact which the current global economic context could have on the Institute's receipts. As 2009 unfolded, the Secretary-General would be in a better position to forecast the Institute's financial situation for 2010, such that, at the fall meeting, the Committee might consider the need further to limit expenditures for 2010. Canada would encourage the Governing Council when it met in April to consider a Work Programme that took into account possible financial restrictions for the Institute. In this current economic climate, Canada would also strongly urge the Governing Council carefully to review the objectives of the Strategic Plan, which must include consideration of means to achieving stable and adequate funding for the Institute. Canada wished to thank the United Kingdom again for its extra-budgetary contribution to UNIDROIT's budget. Turning to the future, Canada would encourage the Governing Council and the Secretary-General to look strategically at the salary budget in the context of succession planning and appropriate allocation of human resources to the Institute's projects.

17. The *representative of the United Kingdom* thanked the Secretariat for its first estimates, expressed its satisfaction at the new accessions and welcomed the fact that expenditure had been contained to within current levels. The United Kingdom was offering a £ 50,000 contribution to fund the post of deputy Secretary-General, although this would be the last time it did so. She stressed her Government's opinion that staff salaries should be incorporated into the main budget and hoped that from 2011 this would be the case. The Government of the United Kingdom also welcomed the comments made by the Secretary-General at the General Assembly meeting and at this session about considering ways of incorporating project costing into the budget presentation.

18. The *representative of Switzerland* thanked the United Kingdom for its generous extra-budgetary contribution for 2010. She reiterated her Government's full support for UNIDROIT's work, and confirmed that Switzerland was happy to organise the second session of the diplomatic Conference for the adoption of the draft Convention on intermediated securities, in Geneva. She thanked the Secretariat for its first budget estimates. Having only just been informed that the

United Kingdom had made a further extra-statutory contribution, she stated that some of the comments made by her Government with regard to the budget no longer applied to the 2010 budget and would be submitted anew with regard to the 2011 budget. Her Government wished to know whether the post of deputy Secretary-General, which had again been included in the regular budget, was still to be officially confirmed, and if so, by which body, and noted that staff salaries should not have had repercussions on the amounts intended for specific UNIDROIT projects.

19. The *representative of the Russian Federation* stated that his Government regarded the draft budget as transparent and well-balanced, having been kept as low as possible, and that it could recommend its adoption. He recalled that he was personally very well acquainted with the Institute and felt that it ought to be able to count on reserves, also for the Library.

20. The *representative of Japan* stated that her Government could accept the draft budget, and that it appreciated the efforts made by the Secretariat to avoid increases. Her Government encouraged the Secretariat to observe the strictest budgetary discipline.

21. The *representative of Spain* thanked the Secretariat for the documents and explanations; his Government appreciated the Secretariat's efforts to avoid spending increases, being aware of the difficulties this involved. As to receipts, Spain would like to see 2009 levels maintained without further increases. With regard to the contingency reserve, he was able to go along with this in principle but would have to inform his Government.

22. The *Secretary-General*, referring to the observation made by the Swiss representative, recalled that there was a provision in the regulations requiring the General Assembly to approve the Institute's organigramme annually and that this was a practice he intended to resume in the shape of an annexe to the budget which the General Assembly would be called upon to approve. As to the comment made by the representative of Canada, this had a financial dimension as well as an impact on the delivery of projects. He suggested that the Finance Committee encourage the Governing Council to bear in mind these two aspects and noted that the new General Council session should start discussing a long-term staffing structure, both for the day-to-day functioning of the Institute and for its projects, which latter might include the use of fixed-term contracts. In time, this discussion might lead to a long-term sustainable plan that could then be discussed also by the other organs of the Institute. With regard to the comments made by the representative of the United States, the Secretary-General's recommendation to the Governing Council would be for the Institute not to undertake any project not covered by the regular budget unless there was the necessary long-term funding of the project itself. He explained that his intention was not to create a reserve in the proper sense but rather to take advantage of the fact that the United Kingdom's extra-statutory contribution was allowing a certain amount to be freed in the budget that might be used to cover any contingencies that might arise in delivering a project – not least bearing in mind that some of the Institute's ongoing projects were not completely covered by the budget. What he had in mind was, therefore, a very particular situation and confined to such circumstances alone. In the years to come, proper project planning from the financial point of view would no doubt supply the answer.

23. The *Chairman* shared the Secretary-General's view that it would be opportune for the Governing Council to take account of the financial implications of new projects, also in terms of human resources. Long-term planning accompanying the draft budget could only lead to even greater transparency than that already achieved by the Secretariat. As to the first estimates and the United Kingdom's offer of a further extra-statutory contribution, of which the Committee had just learned, he proposed that the Secretariat use part of that sum to avoid increasing the member States' contributions, and that the remainder be used to make up a contingency reserve as suggested by the Secretary-General.

24. The *Chairman* announced that the Committee would draft a recommendation for submission to the Governing Council; he proposed to circulate a draft text to this effect to the Committee

members via e-mail, for subsequent transmission to the Secretariat for inclusion in the Governing Council documents. *He concluded item No. 2 on the agenda by recalling that once the information and consultation procedures were complete, the Committee would be able to express its opinion, and that the entire process should be complete by mid-March 2009.*

25. The Chairman carried out this consultation procedure with the Committee members in the days following the Committee session, and upon its completion drafted the recommendation of the Finance Committee, which is to be transmitted to the Governing Council, as follows:

"The Finance Committee had a detailed discussion of the draft budget for 2010 put forward by the UNIDROIT Secretariat. It also warmly welcomed and thanked for the extra-statutory contribution of the UK for another and final year, as announced by the British member of the Finance Committee and the Secretary-General. The Finance Committee highly appreciates the efforts undertaken by the Secretariat to aim for zero increase in expenditures and is convinced that it will be possible even to achieve a zero increase regarding the contribution of member States, given the accession of two new member States and the special contribution of the British Government. Furthermore, the Committee would also support the recommendation of the Secretary-General that the Governing Council should bear in mind the financial and human resources of UNIDROIT when discussing the strategic programme and eventual new projects."

Item No. 3 on the agenda: Financial situation of inactive member States (F.C. (65) 3)

26. The *Secretary-General*, in introducing this item, pointed out that the document described the situation concerning inactive member States, concerning which the General Assembly had given its opinion in 1999 in connection with Bolivia. Some Latin American member States had joined the Institute very early on, when Italy was practically funding the Institute single-handed. The statute was amended in 1964 to introduce a system of contributions; these countries never ratified that amendment and dropped out of the life of the Institute. The position of these inactive member States was therefore quite different to that of those active member States that fell into arrears from time to time. When Bolivia applied to regularise its position, the General Assembly approved a solution providing for payment of a symbolic sum (not the full arrears which amounted to 35 years' contributions) and a undertaking on the part of the Bolivian Government to pay its dues regularly in the future. Another of these countries had now applied for its membership to be re-activated and in December 2008 had offered a sum to the Secretariat roughly equivalent to what its contribution would have been in 2008. The Secretariat had accepted that payment, specifying in a Note Verbale that it had no authority to regularise anyone's position and that a final decision to that effect must be taken by the General Assembly, acting upon the advice of the Finance Committee. The Secretary-General stated that he himself took the view that while such matters required the utmost caution, a precedent had been set in 1999. He asked the Committee to lay down criteria for the Secretariat to follow in its dealings with the member State in question.

27. The *Chairman* expressed his Government's gratitude for the efforts made by the Secretariat to reduce arrears. He recalled that when the Governing Council was elected, it was found that some member States, while formally members of the Institute, had not participated in the life of UNIDROIT since the decision was taken in 1964 to amend the Statute and introduce a system of contributions. After the case of Bolivia in 1999, which unfortunately fell into arrears again immediately, a second country was now applying to re-activate its membership, and this was good news.

28. The *representative of Mexico* stressed the need for the utmost caution in this very delicate matter. There were three issues at stake: what to do with inactive member States; how to regularise States that wanted to be active; and what to do with countries in arrears. The

Committee should address these three issues separately. He added that the fact that Bolivia had fallen into arrears again did not mean that another country would do likewise.

29. The *representative of Switzerland* recalled the Institute's adverse experience with one member State which had lapsed into inactivity again after having its position regularised. She stated that her Government proposed that for a member State to have its arrears wiped out, it should first meet the deadlines for payment of the annual contribution set by UNIDROIT. Since no vote was to be taken for the next four years, that left ample time to make sure that the member State in question really intended to take an active part in UNIDROIT'S work, and a decision to cancel its arrears could then be taken at the end of that period.

30. The *representative of the United States of America* agreed with his Mexican colleague. Bolivia's performance had nothing to do with the case before the Committee now. He suggested that the Secretariat put forward a proposal for that country, for submission to the organs of the Institute. The proposal made by the representative of Switzerland seemed a clever idea which might provide a basis for discussion.

31. The *representative of Mexico* stated that he was in favour of a concrete proposal and shared the opinion of the representative of the United States of America that the Swiss proposal was a good basis for discussion. He requested further details of the actual position of inactive member States.

32. The *representative of Canada* endorsed the proposals made by the representatives of Mexico, the United States of America and Switzerland. He felt that the Swiss proposal to set some criterion was a wise one. He suggested that a small group of Committee members be set up to examine this tricky question and to come up with a proposal. He also suggested that the Chairman write to those countries that were in arrears, asking them to meet their obligations, and that it was important to tackle this issue without further delay.

33. The *representative of Spain* noted that there were several options open to solve this issue, and that his Government would welcome a proposal by the Secretariat that could be used as a basis for discussion by the organs of the Institute.

34. The *Secretary-General* thanked the representative of Mexico for making this clear distinction between the different situations. He stressed that the State that had approached the Secretariat had never accepted the 1964 amendment that introduced a system of contributions. It was difficult to assess the extent of the inactivity of a dormant member in the life of the Institute since neither accession to its instruments, which was open to all States, members and non-members alike, nor its involvement in the Institute's other activities such as scholarships, which were also granted to nationals of all States, were sound parameters. From an institutional point of view it was clear, however, that such States took no part in the General Assembly or in any of its other organs, and had never proposed candidates for the Governing Council. He stated that the Secretariat would gladly prepare a proposal, but that it would be useful if the Committee were to come up with some parameters. The proposal made by the Swiss representative was very interesting, and the establishment of a small sub-committee of the Finance Committee might be useful in providing the Secretariat with such criteria before getting in touch with the State in question.

35. The *representative of the Russian Federation* stated that this issue should be dealt with globally rather than singly, and that a solution should be found that could be applied to all similar cases in future.

36. The *representative of the United States* stated that a small group might be useful to frame parameters to guide the Secretariat in formulating a proposal. He recalled that there was a precedent, and that Bolivia's subsequent falling into arrears was irrelevant.

37. The *Secretary-General* recalled that the question was a matter for the General Assembly; the Secretariat could draft a proposal on the basis of criteria set by the sub-committee of the Finance Committee, for submission to that Committee's next session. The matter could either be solved in the manner employed for Bolivia, or else further conditions might be set.

38. The *Chairman* stressed that since the decision had to be taken by the General Assembly, the Finance Committee's advice would be very useful. He suggested that the Secretariat draft a document dealing with the matter, incorporating the proposals made by the representative of Switzerland and some other options, and that a small group could meet, if this were more convenient, to prepare a document for the Committee's next session and subsequent submission to the General Assembly.

39. The *representative of Switzerland* agreed with the observations made by the representatives of the United States of America and Mexico. Her own proposal was intended to assess the extent to which the country in question was prepared to commit itself, but also to take some account of the past and to combine these two elements by providing for payment of a certain percentage of the amount of the arrears and proof of commitment for the future.

40. The *Chairman* noted that the Secretariat would be contacting the country in question, and asked whether the Committee would consider setting up a sub-committee.

41. The *representative of the United States of America* volunteered to sit on such a sub-committee and proposed that the Swiss and Mexican representatives be invited to take part as well. The Swiss and Mexican representative agreed to this.

42. The *representative of Canada* suggested that a form of regional representation on the sub-committee might be appropriate.

43. The *representative of the Russian Federation* stated his willingness to participate in the sub-committee to represent Asia.

44. The *Chairman* offered himself as the fifth member of the sub-committee. *He wound up the agenda item by noting that the Committee had decided to set up a sub-committee made up of the representatives of the United States of America, the Russian Federation, Mexico, Switzerland and himself. The Chairman requested the Secretariat to prepare a document for the members of the sub-committee, which would meet in a few weeks' time.*

Item No. 4 on the agenda: Any other business

45. The *deputy Secretary-General* stated that since the diplomatic Conference in Geneva would be taking place in the first week of October, which was when the Committee was wont to meet, she suggested that the Committee bring its 66th session forward to Wednesday, 30 September. *The members of the Finance Committee agreed to this proposal.*

46. The *Chairman* recalled the proposal of the Canadian representative to write to States in payment arrears. He asked the Secretary-General what would be the practice of the Institute in such matters.

47. The *deputy Secretary-General* recalled that in a few cases in the past, the Presidents of the General Assembly have offered their good offices and contacted the member States in arrears. She explained the position of those States that were currently in arrears, pointing out that these were mostly one-off situations, and that the Secretariat was in touch with the Embassies of the States in question. She expressed as her personal point of view that the position of Bolivia caused the most concern and that in its case, an initiative by someone other than the Secretariat might be of benefit.

48. The *Chairman* noted that, for the time being, the matter might be left in the hands of the Secretariat, since for most of the member States in arrears, the problem was essentially a practical one.

49. There being no further business, the *Chairman* closed the meeting at 12.15 p.m.

APPENDIX I**LIST OF PARTICIPANTS**

Mr Peter EGYED	(Canada)
Mr Peter ADAMEK (<i>Chairman</i>)	(Germany)
Mr Sebastian DÖTTERL	(Germany)
Mr R.N. KAJLA	(India)
Ms Claire VILLAUME	(Italy)
Ms Yukako OCHI	(Japan)
Mr Diego Alonso SIMANCAS GUTIÉRREZ	(Mexico)
Ms Alina CATANA	(Romania)
MR V. FEDCHUK	(Russian Federation)
Mr Emilio PIN GODOS	(Spain)
Ms Manuela LEIMGRUBER	(Switzerland)
Ms Claudia GIUNCHIGLIA	(United Kingdom)
Mr Leslie DEGRAFFENRIED	(United States of America)
UNIDROIT Secretariat:	
Mr José Angelo ESTRELLA FARIA	Secretary-General
Ms Alessandra ZANOBETTI	Deputy Secretary-General