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Committee of Governmental Experts
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**DAILY REPORT
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(prepared by the UNIDROIT Secretariat)

Agenda Item 1: Opening of the session and election of the officers

1. Ms Anna Veneziano, Secretary-General a.i. of UNIDROIT, opened the second session of the Committee of Governmental Experts (hereinafter the "Committee") for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment (hereinafter the "MAC Protocol") at the Headquarters of the Food and Agriculture Organisation of the United Nations in Rome, on 2 October 2017 at 10.13 a.m. She emphasised the importance of the Cape Town Convention (hereinafter the "Convention") in facilitating asset-based financing in countries where it is not readily available. She thanked the Intersessional Working Group on Registration Criteria and Transparency (IWGRC) for completing its work over the preceding six months, and also thanked all other parties that participated in intersessional work. She thanked the former UNIDROIT Secretary-General Mr José Angelo Estrella Faria for his strong support and guidance in the development of the MAC Protocol over preceding years. The Secretary-General noted that the progress accomplished had been very substantial, which raised the question whether the next step should be the convening of a Diplomatic Conference. She concluded by noting that the MAC Protocol project had great promise, which was reflected by the continued interest from the private sector and the increased number of delegations that had registered to attend the session.

2. *The Secretary-General a.i. invited Mr Dominique D'Allaire (Canada) to resume his position as the Chair of the Committee.*

3. *The Chair invited Sir Roy Goode (United Kingdom) to resume his position as Reporter.*

Agenda Item 2: Adoption of the annotated draft agenda and organisation of the session

4. The Chair introduced the draft agenda (UNIDROIT Study 72K – CGE2 – Doc. 1). He suggested that in addition to the consideration of the report by the IWGRC, all intersessional work undertaken by delegations and observers should be considered under Item 3 of the draft agenda.

5. *The draft agenda (UNIDROIT Study 72K – CGE2 – Doc. 1) was adopted.*

Agenda Item 3: Report on intersessional work

6. The Chair noted that the IWGRC had been given two mandates by the Committee during its first session: (i) consideration of the criteria required for registration of equipment in the International Registry under Article XVI of the MAC Protocol, and (ii) transparency with regards to the applicability and use of the Harmonised System (hereinafter 'HS') codes for defining the scope of the MAC Protocol.

7. The Chair invited the Chair of the IWGRC to present his report to the Committee.

8. The Chair of the IWGRC began by thanking the 10 delegations that had participated in the IWGRC. He further thanked the Secretariat for providing assistance to the IWGRC. He noted that the formal report of the IWGRC (UNIDROIT 2017 - Study 72K - CGE2 - Doc. 11) had been made available to delegations on the UNIDROIT website.

9. He explained that the IWGRC had collectively felt that the registration criteria issue should be considered in detail, whereas the transparency issue could be addressed by the UNIDROIT Secretariat and individual IWGRC members. He elaborated upon why it was important to have defined registration criteria in the MAC Protocol, and that such criteria should be clear and unambiguous to allow assets to be easily searchable in the international registry. He noted that MAC equipment was not subject to one universal system of identification. However, most manufacturers had a practice of putting alphanumeric serial numbers on their equipment. Many manufacturers also followed the guidelines of the International Organisation for Standardisation (ISO) when serialising their equipment.

10. The Chair of the IWGRC explained that the conclusion reached by the IWGRC was that the primary registration criterion in the MAC Protocol should be the manufacturer-issued serial number, as supplemented by additional information to ensure uniqueness (to be set out in the regulations of the International Registry). He also explained alternative solutions that the IWGRC had ultimately rejected in coming to their recommendation. He concluded that the IWGRC had also prepared drafting suggestions to achieve their policy goal, which were set out in their written report.

11. One delegation queried the circumstances under which a registration would be rendered invalid. The Chair of the IWGRC noted that the registration would be rendered ineffective where there were errors in the indication of the manufacturer's serial number or where the additional information was seriously misleading. As an example, he noted that where an asset was registered under a correct serial number but provided incorrect additional information which clearly referred to a different asset, the registration would be seriously misleading.

12. The Chair of the session thanked the Chair of the IWGRC for his presentation and further thanked all participants in the group for their contributions.

13. *The Committee accepted the report of the IWGRC. The drafting suggestions made by the IWGRC were referred to the Drafting Committee for further consideration.*

14. An observer that had participated in the IWGRC presented on the transparency issue. The observer described the operation of the HS and explained how it was utilised to delineate the scope of the MAC Protocol. He further explained the HS rules of interpretation and the process for revising the HS Codes.

15. A delegation asked why the same HS codes were contained in different Annexes to the MAC Protocol. An observer responded that equipment that was used in more than one of the agricultural, construction and mining sectors had been listed in more than one Annex.

16. Another delegation queried how the HS codes would be updated in the Protocol. The Chair responded that the procedure for amending the HS codes in the Annexes to the Protocol was located in Article XXXII.

17. A representative of the Secretariat presented on the development of the MAC Protocol project. He explained the documentation that had been prepared for the session. In particular, he noted that on request by the Committee at its first session, the Secretariat had commissioned a group of independent economists to prepare an economic impact assessment for the MAC Protocol.

18. The Chair then invited a group of observers to present the MAC Protocol preliminary economic impact assessment. The observers reviewed the initial economic analysis conducted by the Center for the Economic Analysis for Law (CEAL) in 2013, and concluded that it had overstated the projected economic benefits of the Protocol. The observers explained their analytical methodology in refining the assumptions made in the CEAL assessment. They stated that after replicating the CEAL analysis with more realistic assumptions, the estimated annual global benefit of the MAC Protocol was \$32 – 48 billion for developing countries and \$36 - \$50 billion for developed countries. The observers cautioned that their findings were only preliminary, and that a final economic assessment would be delivered towards the end of 2017.

19. The Chair opened the floor for questions and comments regarding the preliminary economic assessment of the MAC Protocol.

20. One delegation noted that practical realities in developing countries often contributed to the lack of finance available in those jurisdictions. He queried whether such practical realities had been considered in conducting the preliminary economic assessment. The same delegation also questioned whether the impact on individuals had also been taken into account. The observers responded that the problems found in many developing countries with respect to access to finance were due to domestic political and/or economic factors beyond the control and scope of the MAC Protocol. They explained, however, that in certain circumstances the MAC Protocol would allow for easier access to finance being provided by international financial institutions and foreign financial institutions which would lead to the improvement of local economies. They also noted that the impact on local communities was considered in the preliminary economic assessment, and that the MAC Protocol would be expected to have a positive impact on local markets, job creation, wages and economic conditions in developing countries.

21. Several delegations enquired about the methodology used in assessing the economic impact of the Protocol. The observers explained that for low income countries the assessment was primarily based on the valuation of the increase in production output that would be created by the acquisition of new MAC equipment.

22. One delegation questioned whether the economic assessment should take into account the impact of the MAC Protocol on local manufacturers of MAC equipment. They expressed concern that with greater access to international markets for large multinational manufacturers, the local manufacturers would lose market share of MAC equipment. The observers noted that better access to international finance would not necessarily lead to higher importation of MAC equipment, as local users of MAC equipment could use international finance to purchase domestically-produced equipment. The observers added that in terms of overall economic impact, the potentially negative impact on local manufacturers would be less than the overall benefit of the MAC Protocol for a given jurisdiction, including consumers.

23. One delegation enquired whether the economic benefits provided by the MAC Protocol could be achieved through domestic law reforms of secured transactions law. According to the observers, there would be certain “network benefits” created by international law reform that would not be

replicated through complementary domestic law reform. Further, they noted that international law reform acted as a catalyst for national law reform.

24. Another delegation questioned whether the final economic assessment would take into account the various insolvency alternatives available to States under the Protocol. The observers noted that it would base its conclusions on the assumption that most States would opt for Alternative A, as consistent with the almost uniform practice under the Aircraft Protocol.

25. A delegation queried whether declarations under the Cape Town Convention disapplying it to domestic transactions were considered in the preliminary economic assessment. The observers noted that it was an issue that would be given further consideration in the final economic assessment.

26. One delegation queried whether the economic assessment considered environmental sustainability within the MAC industries. The Secretariat clarified that Article XXXII of the MAC Protocol contained a mechanism that would enable MAC equipment based on new technology, including environmentally friendly technology, to be added to the scope of the Protocol.

27. One delegation questioned whether the MAC Protocol would create a parallel reduction in the availability of financing for immovable property, and whether such effects were considered in the preliminary economic analysis. The observers noted that the issue would be given further consideration.

28. *The Committee noted the preliminary economic assessment of the MAC Protocol.*

29. The Chair opened the floor for any other comments on intersessional work.

30. A representative of the MAC Working Group explained the intersessional work undertaken by the private sector. He noted that there had been two multilateral private sector meetings in the intersessional period to ensure that the MAC Protocol was in line with the expectations of manufacturers, financiers and end-users. He noted that the private sector had financially supported the preparation of the preliminary economic assessment. He encouraged all delegations to invite their domestic private domestic stakeholders to join the MAC Working Group to ensure a plurality of views would be taken into account.

Agenda Item 4: Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment.

31. The Chair invited the Reporter to present the MAC Protocol. The Reporter introduced each Article of the Protocol, with a particular focus on Articles I, II, VII, X and XXXII. He concluded by differentiating between the meaning of the terms “contracting States” and “States party to the Convention”.

32. One delegation queried what obligations the MAC Protocol would place on Contracting States. The Chair explained that Contracting States would normally be required to make reforms to their domestic law to give effect to the Articles of the Protocol. The Secretary-General a.i. further explained that in its capacity as Depositary, UNIDROIT would be able to assist Contracting States in their implementation of the MAC Protocol.

33. The same delegation further queried whether Arabic would be an official language of the MAC Protocol. The Secretary-General a.i. responded that as consistent with the working languages of UNIDROIT, the preliminary draft MAC Protocol had been prepared in English and French, however further languages could be contemplated at the Diplomatic Conference.

34. The Chair thanked the Reporter for his summary of the operation of the MAC Protocol and then opened the floor for discussion of the text of the preliminary draft Protocol.

Title

35. One delegation noted that the title of the Protocol listed the industries it applied to in alphabetical order (the “AMC Protocol”), despite the Protocol widely being known as the “MAC Protocol”. The delegation proposed that the Protocol be renamed the “Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agriculture and Construction Equipment”. They noted that this would prevent confusion in the future.

36. The Secretariat noted that MAC was an acronym commonly used in the digital sphere in reference to ‘Medium Access Control Protocol’. The Secretariat sought clarification on whether the proposal by the delegation would also entail a reorder of the Annexes to the Protocol, which were in alphabetical order.

37. Several delegations expressed their support for changing the official title of the MAC Protocol. One delegation raised an objection and proposed the alphabetical order be kept and the acronym be changed to ‘ACM’ as opposed to ‘MAC’.

38. The Chair suggested that the issue be revisited later in the session.

Preamble

39. Several delegations suggested that the reference to developing countries should be removed from paragraph 5 of the preamble, on the basis that the Protocol would be globally beneficial.

40. *The Committee agreed to remove the reference to developing countries from the preamble.*

41. One delegation suggested merging paragraphs 2 and 5 as they covered the same ideas. This suggestion was not adopted after discussions.

Article I

42. One delegation proposed adding a definition for the term “equipment” which would encompass the phrase “mining, agriculture or construction equipment” throughout the Protocol. A number of delegations voiced support for this proposal as it simplified the drafting of the Protocol. Other delegations opposed it, on the basis that the phrase “agriculture, construction or mining equipment” might have different meanings in different contexts, and in certain circumstances the Protocol instead used the phrase “agriculture, construction and mining equipment”.

43. *The Chair concluded that no consensus had been reached on the issue and requested that the Secretariat provide additional information on the issue.*

44. One delegation proposed that “judicial interpretation” be defined in Article I of the Protocol, as it was used in Article XXXII(3). She explained that “judicial interpretation” was a concept which was treated differently across different jurisdictions.

45. One delegation proposed the inclusion of “natural or legal” within the definition of “guarantor” in Article I(2)(d). This was opposed by another delegation which noted that such an inclusion would exclude unincorporated entities and would lead to the exclusion of certain parties from the definition of “guarantor”.

46. The Chair concluded the session at 16:59 PM.