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Item No. 4 on the agenda: International Interests in Mobile Equipment

(b) Preliminary draft Protocol to the Cape Town Convention on Matters Specific to Agricultural, Construction and Mining Equipment

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on the first session of the MAC Protocol Committee of Governmental Experts</i>
<i>Action to be taken</i>	<i>Note the progress made by the Committee of Governmental Experts at its first session</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	UNIDROIT 2017 - Study 72K - CGE1 - Report

INTRODUCTION

1. The *Convention on International Interests in Mobile Equipment* was opened for signature on 16 November 2001. Article 2(3) of the Convention provides that the initial three protocols, adopted respectively in 2001, 2007 and 2012, should cover aircraft, railway rolling stock and space assets. Article 51(2) of the Convention specifically contemplates the possibility of adopting additional protocols, which cover other categories of equipment.

2. At its 84th session (Rome, 2005), the UNIDROIT Governing Council decided to include in the 2006 – 2008 Work Programme of the Institute the preparation of a fourth Protocol to the 2001 Cape Town Convention on International Interests in Mobile Equipment on matters specific to agricultural, construction and mining equipment (the 'MAC Protocol'). Between 2005 and 2012 a range of background research activities were conducted in relation to the project, including a questionnaire distributed to Member States, consultations with private industry and a preliminary economic analysis (for further information on the background of the project, see document [UNIDROIT 2015 – C.D.\(94\) 5\(b\)](#)).

3. At its 93rd session (Rome, 2014) the Governing Council agreed to convene a Study Group entrusted with preparing a first draft of the MAC Protocol prior to its 95th session. The Study Group was composed of various international experts¹ in secured transactions law and was chaired by Dr Hans Georg Bollweg, member of the UNIDROIT Governing Council.

4. The Study Group met four times (15-17 December 2014, 8-9 April 2015, 19-21 October 2015 and 7-9 March 2016) to consider legal issues associated with the preparation of the MAC Protocol and to prepare a preliminary draft text. In addition to the members of the Study Group, the meetings were attended by observers from various international organisations and academic institutions, including the United Nations Commission on International Trade Law (UNCITRAL), the International Finance Corporation (IFC), the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the World Customs Organization (WCO) and the National Law Center for Inter-American Free Trade (NLCFT). Several out-of-session teleconferences were also held to further work on specific issues relating to the Protocol.

5. At the conclusion of the fourth Study Group meeting on 8 March 2016, the Study Group decided that the preliminary draft Protocol should be submitted to the Governing Council with a recommendation that a Committee of Governmental Experts be convened. At its 95th session (Rome, 18-20 May 2016), the Governing Council considered the draft text produced by the Study Group, and decided that it was sufficiently developed to warrant the convening of a Committee of Governmental Experts 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 (the Committee of Governmental Experts).

6. In advance of the first session of the Committee of Governmental Experts, on Friday 2 December 2016 UNIDROIT invited member States and States parties to the Cape Town Convention to attend a half-day symposium to discuss key aspects of the project. The symposium was attended by delegations from 16 States.

I. FIRST SESSION OF THE COMMITTEE OF GOVERNMENTAL EXPERTS

7. The first session of the UNIDROIT Committee of Governmental Experts was held at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome in the Green Room, from 20 to 24 March 2017. The session was attended by 126 representatives from 48 Governments (30 UNIDROIT member States and 18 non-member States), six regional and intergovernmental organisations and four international non-governmental organisations.

8. The Committee made good progress in reviewing the preliminary draft text provided by the Study Group. The most hotly debated issues were (i) the scope of the Protocol in relation to MAC equipment; (ii) how the Protocol should address interests arising out of the association of MAC equipment with immovable property; and (iii) the amendment procedure for the Protocol, with particular regard to the Harmonized System codes (HS codes) contained in the Annexes to the preliminary draft Protocol.

9. Majority of the text proposed by the Study Group was adopted by the Committee. On most of the challenging issues, there was consensus on many aspects. For example, the Committee agreed that the scope of the Protocol should be defined through the use of HS codes listed in the Annexes

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to the Protocol. The Committee also agreed with the general formulation of the three Alternatives in relation to the treatment of immovable property rights.

10. The Committee agreed that there should be separate processes for amending the text of the Protocol and the Annexes to the Protocol. However, differences emerged in relation to the process to add new HS codes to the Annexes and to amend the HS codes in the Annexes due to changes to the HS system made by the World Customs Organization. Some delegations favoured a system that prioritised a flexible and efficient amendment mechanism, whereas others preferred a mechanism that gave Contracting States better control. During the first session, a Working Group was established to give further consideration to the process for amending the Protocol. The Working Group proposed a new Article XXXII governing the amendment process, which was considered by the Drafting Committee and subsequently adopted by the Plenary.

11. The Report for the meeting, which includes information on the deliberations of the Committee in relation to each Article, the Report of the Drafting Committee, the amended text to the preliminary draft Protocol and the list of participants is available on the UNIDROIT website and at this [link](#).

II. SECOND SESSION AND FUTURE WORK

12. The second session of the UNIDROIT Committee of Governmental Experts will be held at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome from 2 to 6 October 2017. As consistent with Article 51 of the Cape Town Convention, the Secretariat has invited States Parties to the Cape Town Convention, member States of UNIDROIT, member States of the United Nations and relevant intergovernmental organisations to participate in the second session. Non-governmental organisations have also been invited to attend as observers.

13. At its first session the Committee also decided to establish an Intersessional Working Group on Registration Criteria. The Committee decided that the Intersessional Working Group should additionally consider potential measures to improve the preliminary draft Protocol's transparency in portraying the types of MAC equipment it applied to. The Intersessional Working Group is chaired by Germany with the Secretariat providing administrative support. The Intersessional Working Group will communicate via email and teleconference as necessary and will report back to the Committee at its second session in October.

14. On the basis that deliberations continue to proceed in a positive manner at the second session, it is envisaged that a Diplomatic Conference to adopt the MAC Protocol could be convened in the second half of 2018.

ACTION TO BE TAKEN

15. *The Governing Council is invited to note the progress made by the Committee of Governmental Experts for the preparation of a draft MAC Protocol at its first session in March 2017.*