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Item No. 5 on the agenda: International Interests in Mobile Equipment

(b) Fourth Protocol of the Cape Town Convention on matters specific to agricultural, construction and mining equipment

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on activities undertaken by the Secretariat</i>
<i>Action to be taken</i>	<i>Note the activities undertaken by the Study Group in developing an additional Protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment</i>
<i>Mandate</i>	<i>Work Programme 2014-2016</i>
<i>Priority level</i>	<i>Medium</i>
<i>Related documents</i>	<i><u>NLCIFT Report on Secured Financing for Mobile Equipment; UNIDROIT 2015 - Study 72K – SG1 - Doc. 5; UNIDROIT 2015 – Study 72K – SG2 – Doc. 6; UNIDROIT 2015 – Study 72K – SG2 - Doc 7</u></i> ¹

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. The possibility of adopting additional protocols is left open (see Article 51 of the Convention).

Initial work (2005-2006)

2. At its 84th session in 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').

¹ The Study Group preparing a draft fourth Protocol works only in English. As such, the Study Group documents related to this Governing Council paper have not been translated into French.

3. At the 85th session of the Governing Council in 2006, a document was presented on the MAC Protocol, which included an appendix listing categories of agricultural, construction and mining equipment that could be covered by the Protocol.

Questionnaire and draft text (2007-2009)

4. At the 86th session the results of a comprehensive questionnaire on matters relating to the development of the MAC Protocol were presented to the Governing Council. The document for the 86th session also contained a table at Appendix 2, which suggested some possible wording for the MAC Protocol, based on a comparative analysis of the Aircraft Protocol, Railway Rolling Stock Protocol and the draft Space Protocol.

5. A preliminary draft text of the Protocol was presented to the Governing Council at the 88th session in 2009. Ten member States provided comments on the draft (Australia, Austria, Canada, Colombia, Finland, Germany, Latvia, Portugal, Romania and the United States of America).

Consultations with private industry (2010-2012)

6. Germany and the United States subsequently conducted consultations with their domestic private industries. Germany initially contacted 50 stakeholders and held a meeting with six stakeholders, at which there was a general interest in and support for the MAC Protocol. The United States State Department consulted with the Equipment Financing Association (which represents over 600 companies) and reported the responses were positive. The results of these consultations were reported back to the Governing Council at the 89th session in 2010. In 2011, further discussions were held at a forum chaired by Dr Bollweg as part of the UNIDROIT Agricultural Investment Colloquium.

Economic analysis's and issues dialogues (2013-2014)

7. Mr Heywood Fleisig, Director of Research at the Center for the Economic Analysis of Law (CEAL), prepared a paper on the potential economic benefits of the MAC Protocol. The paper was presented to the Governing Council at the 92nd session in 2013 (available [here](#)). The CEAL study noted that the MAC Protocol could facilitate using about \$2 trillion in MAC equipment and would increase the sales of MAC equipment by \$600 billion over five to seven years.

8. As part of the preliminary work aimed at setting the scope of a possible fourth protocol, two Issues Dialogues were organised by the United States State Department and the International Law Institute. The meetings were held in November 2013 and January 2014 in Washington. Subsequently, the National Law Center for the Inter-American Free Trade (NLCIFT) produced a report on the possible benefits of the MAC Protocol (available [here](#)).

CONVENING OF STUDY GROUP

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

10. The first meeting of the Study Group was held at the seat of UNIDROIT in Rome from 15 – 17 December 2014. The meeting was attended by the various international experts in secured transactions law comprising the Study Group, as well as observers from the United Nations Commission on International Trade Law (UNCITRAL) and the National Law Center for Inter-American Free Trade. The Study Group discussed various legal issues surrounding the

creation of the Protocol, the delineation of the Protocol's scope and a preliminary first draft of the Protocol. The Study Group also considered how the Harmonised Commodity Description and Coding System (HS) could be utilised to define the scope of the Protocol. A report of the meeting, including a full list of attendees is available at [UNIDROIT 2015 - Study 72K – SG1 - Doc. 5](#).

11. The second meeting of the Study Group was held at the seat of UNIDROIT in Rome from 8-9 April 2015. The second meeting made further progress on practical matters relating to the use of the Harmonised System to delineate the scope, with a specific focus on a preliminary list of 103 HS codes of agricultural, construction and mining equipment provided by the private sector. The second meeting also gave further consideration to several of the more complex legal issues, including the treatment of fixtures and accessions under the Protocol. A report of the meeting, including a full list of attendees is available at [UNIDROIT 2015 - Study 72K – SG2 - Doc. 6](#). A third iteration of the preliminary draft Protocol, based on the outcomes from the second Study Group meeting, is available at [UNIDROIT 2015 – Study 72K – SG2 – Doc. 7](#).

12. It is anticipated that the Study Group will meet once more (tentatively scheduled for October 2015) before submitting a draft of the MAC Protocol to the Governing Council at its 95th session in 2016.

CREATION OF THE WORKING GROUP

13. As consistent with the established practice for the other Protocols to the Cape Town Convention, leading private stakeholders were invited by the Secretary-General to form a MAC Protocol Working Group. The MAC Protocol Working Group is responsible for encouraging private sector participation in developing the Protocol, as well as communicating and representing private sector interests during the drafting process. It is an independent body outside the purview of UNIDROIT.

14. Due to the diversity of equipment used in agriculture, construction and mining, and the different regions involved in the production of such equipment, it was decided that the MAC Protocol Working Group should be led by an Executive Board comprising of several industry representatives, rather than just a solitary Chairperson. Currently, the Executive Board of the MAC Protocol Working Group is comprised of the industry leaders listed below. It is anticipated that membership of the Executive Board will expand once suitable leaders representing other relevant industries and regions are identified.

Philip de Leon: Mr de Leon is the Director of International and Federal Affairs at AGCO (a major US exporter of agriculture equipment). He attended the first MAC Protocol Issues Dialogue in Washington DC in November 2013. AGCO has been a long term supporter of the MAC Protocol. Throughout 2014 Mr de Leon was involved in contacting MAC private sector stakeholders in the US to encourage their involvement in the Project, and has been successful in getting responses from several major manufacturers.

Phillip Durham: Mr Durham is a partner in the Structured Finance Group of Law Firm Holland and Knight in New York. He attended both the first and second Issues Dialogues in Washington. Mr Durham has a high degree of expertise in mobile asset financing, especially in relation to aircraft. In 2014 Mr Durham was involved in contacting legal partners in various regions of the world to gather support for the project.

ACTION TO BE TAKEN

15. *The Governing Council is invited to note the activities undertaken by the Study Group and the Working Group in order to present a first draft of a fourth Protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment to the Governing Council at its 95th session.*