



**MAC Protocol  
Committee of Governmental Experts  
First session  
Rome, 20 – 24 March 2017**

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*(prepared by the UNIDROIT Secretariat)*

**Opening the Session**

1. The Chair opened the third day of the first 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 22 March 2017 at 9:10 a.m.
2. The Chair opened the floor for nominations for the role of Vice Chair for the Asia region. One delegation nominated Mr Liu Keyi from the delegation of the People's Republic of China. *The Committee confirmed Mr Liu Keyi as Vice Chair for the Asia region.*
3. The Chair opened the floor for nominations for the role of Vice Chair for the Africa region. One delegation nominated the delegate of South Africa. In turn, the South African delegate nominated Ms Jennifer Wanjiru Nganga from the Republic of Kenya. *The Committee confirmed Ms Wanjiru Nganga as Vice Chair for the Africa region.*
4. The Chair summarised his conclusions from the first day of the session.

**Agenda Item 4: Consideration of the preliminary draft Protocol (continued)**

Article XIII

5. The Chair opened the floor for discussion of Article XIII.
6. The Committee discussed the application of privileges and immunities to the Supervisory Authority.
7. One delegation queried what the phrase "the rules applicable to them as an international entity or otherwise" was intended to cover. The Secretary-General indicated that the phrase intended to cover both privileges and immunities enjoyed by international organisations under the law of international organisations, as well as privileges and immunities resulting from an organisation's headquarters agreement.

8. The Secretary-General further explained that different approaches were taken in the preceding Protocols for the identification of the Supervisory Authority. It was explained that under the Aircraft Protocol, an existing international organisation (the International Civil Aviation Organisation) was chosen as the Supervisory Authority. For the Luxembourg Rail Protocol, a new international organisation was established to perform the role of Supervisory Authority, which had been a difficult process. In relation to the Space Protocol, the International Telecommunication Union (ITU) has expressed an interest in performing the role of Supervisory Authority, however the matter had not yet been resolved. The Secretary-General concluded that due to the diverse nature of MAC equipment, it was difficult to identify one existing international organisation that could perform the role of Supervisory Authority under the MAC Protocol, and that the Secretariat continued to work on the issue.

9. *The Committee adopted Article XIII as proposed in the preliminary draft Protocol.*

#### Article XIV

10. The Reporter introduced the Article. *The Committee adopted Article XIV as proposed in the preliminary draft Protocol.*

#### Article XV

11. The Reporter introduced the Article and noted that it was based upon Article XIX of the Aircraft Protocol. *The Committee adopted Article XV as proposed in the preliminary draft Protocol.*

#### Article XVI

12. The Chair opened the floor for discussion of Article XVI.

13. One delegation noted that the structure and language of the Article could be improved. The same delegation questioned how the international registry would deal with manufacturers that changed their name.

14. *Article XVI was referred to the Drafting Committee for consideration and review.*

15. A delegation queried whether Article XVI narrowed Article 18 of the Convention to the effect that Article XVI only allowed the regulations to adjust the registration criteria identified in Article XVI “to supplement uniqueness”. It was suggested that agricultural, construction and mining equipment was manufactured by thousands of different companies and there might be value in allowing the regulations the flexibility to also adjust the manufacturer-related identification criteria for registration purposes. Several delegations agreed that the text of Article XVI could be interpreted to unduly narrow Article 18 of the Convention.

16. *The Committee supported amending Article XVI to allow regulations to be adopted that adjust the manufacturer-related identification criteria for registration purposes. The matter was referred to the Drafting Committee.*

17. One delegation proposed that an intersessional working group be established to further consider the registration criteria issue.

18. A participant raised concerns about the expansive scope of the MAC Protocol and noted that the current preliminary draft could apply to equipment that was not high value, mobile and uniquely identifiable. He suggested that if the scope of the MAC Protocol was not restricted to the criteria of

“high value, mobile and uniquely identifiable” as set out in Article 51 of the Convention, then it risked overlapping with other international legal instruments developed by other organisations.

19. Most other delegations, however, voiced their support of the use of HS codes to restrict the application of the MAC Protocol to high value, mobile and uniquely identifiable equipment. An observer responded that the use of the 6 digit HS codes in the Annexes to the Protocol had the effect of narrowing the scope of the MAC Protocol so that it would apply to high value equipment. Another delegation suggested that in reviewing the HS codes for potential inclusion in the Annexes, the focus should not solely be on the value of equipment per item but also on the overall value of an import/export transaction.

20. *The Committee reaffirmed that the scope of the MAC Protocol should be determined by the use of HS codes. Nonetheless, the Committee stressed that the MAC Protocol should be limited in its application to high value, mobile and uniquely identifiable equipment, as consistent with Article 51 of the Convention. The Committee debated whether the preliminary draft Protocol should explicitly note the use of the Article 51 criteria in identifying HS codes for inclusion in the Annexes to the Protocol. The matter was referred to the Drafting Committee.*

#### Article XVII

21. *The Committee adopted Article XVII as proposed in the preliminary draft Protocol.*

#### Article XVIII

22. The Reporter introduced the Article. The Chair opened the floor for discussion of Article XVIII.

23. The Committee discussed whether there was the need for a provision on notices of sale, as contracts of sale were not covered by the Protocol. One delegation questioned the utility and use of the provision and proposed its deletion.

24. Several other delegations noted that the provision had beneficial effects under their domestic law rules and should be retained. One delegation noted that because notices of sale would be registered in the international registry, the retention of the Article would increase registrations in the international registry and thus strengthen its economic position.

25. *The Chair concluded that the proposal to delete the Article did not have sufficient support, and that it should be retained in the preliminary draft Protocol. The Committee agreed that the registration of a notification of sale in the international registry would not affect rights and interests under the Protocol, but could have effects under domestic law. Members of the Committee were requested to further consider the Article in light of whether the registration of notices of sale in the international registry would have positive or negative effects under their domestic law.*

#### Article XIX

26. *The Committee adopted Article XIX as proposed in the preliminary draft Protocol.*

#### Article XX

27. The Chair opened the floor for discussion of Article XX.

28. One participant questioned the relationship between Article 45 bis of the Convention and the Protocol. He explained that Article 45 bis provided that the Convention prevailed over the 2001 United Nations Convention on the Assignment of Receivables in International Trade, in relation to the

assignment of receivables as associated rights related to international interests in aircraft objects, railway rolling stock and space assets. He noted that MAC equipment was not covered by Article 45 bis.

29. A delegation responded that Article 45 bis was required because the Cape Town Convention was adopted before the Receivables Convention, and thus an express provision was needed to displace the public international law norm that a later in time treaty prevails over an earlier treaty. He concluded that this would not be a problem for the MAC Protocol, which would be created after the Receivables Convention and as such would not be affected by the same issue.

30. Several delegations queried the drafting of Article XX. It was noted that the title used for the MAC Protocol in Article XX differed from its official title in Article II(2). *The issue was referred to the Drafting Committee.*

#### Article XXIII

31. The Chair opened the floor for discussion of Article XX. One delegation queried which approach the MAC Protocol should adopt in relation to the number of Contacting States required for it to be eligible for entry into force.

32. *The Committee decided that the word "fifth" (instrument of ratification) in subparagraph 1(a) should be put in square brackets for further consideration.*

33. Another delegation suggested that the word "Secretariat" in subparagraph 1(b) should be changed to Supervisory Authority, as the reference to Secretariat was erroneously adopted from the Luxembourg Protocol. *The matter was referred to the Drafting Committee.*

#### Article XXV

34. The Reporter introduced the Article and described it as the most complex provision of the preliminary draft Protocol. The Chair opened the floor for discussion of Article XXV.

35. Some delegations drew the link between pre-existing interests mentioned in Article XXXII (6) of the MAC Protocol and Article XXV. Questions were raised by delegations and observers as to how the relationship between these Articles and declarations made by States under Article 60 of the Convention operated.

36. *The Chair concluded that before Article XXV could be referred to the Drafting Committee, it was necessary for the Plenary to determine policy matters associated with the Article. He noted that the discussion of Article XXV would continue at the next Plenary session.*

37. The Chair explained that there would be a working group convened later in the afternoon to develop an adequate amendment mechanism for the annexes and the scope of the Protocol. He noted that the working group would then report its conclusions to the Plenary the following morning.

38. The Chair concluded the session at 12:30 p.m.