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**MAC Protocol  
Study Group  
2<sup>nd</sup> meeting  
Rome, 8-9 April 2015**

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## **Report**

(Prepared by the UNIDROIT Secretariat)

1. At its 93<sup>rd</sup> session (Rome, 7-10 May 2014) the Governing Council of UNIDROIT agreed to convene a Study Group entrusted with preparing a draft of a potential Fourth Protocol to the Cape Town Convention on International Interests in Mobile Equipment on matters specific to agricultural, construction and mining equipment (the 'MAC Protocol'). The Governing Council decided that the Study Group would be composed of various international experts in secured transactions law and be chaired by Mr Hans Georg Bollweg, member of the UNIDROIT Governing Council.

2. The Study Group's first meeting took place between 15-17 December 2014 at the seat of UNIDROIT in Rome.<sup>1</sup> This document provides a report of the Study Group's second meeting, which took place between 8-9 April 2015, also at the seat of UNIDROIT in Rome.

### **I. Opening**

3. The meeting was opened by Mr José Angelo Estrella Faria, Secretary-General of UNIDROIT. It was decided that the Secretary-General should chair the meeting, as Mr Bollweg was unable to attend. Mr Faria welcomed the participants of the Study Group and representatives from other organisations observing the meeting, and thanked them for their involvement in the project. Mr Faria then invited the Study Group to consider and adopt the Agenda, which was duly adopted (see Annex I for the Agenda and a full list of participants).

### **II. Stakeholder consultation**

4. Mr William Brydie-Watson (Legal Officer at the UNIDROIT Secretariat) updated the Study Group on developments on the projects that had occurred since the first meeting. In particular, Mr Brydie-Watson noted the formation of the MAC Protocol Working Group, responsible for promoting and representing private sector interests in the development of the Protocol. The Study Group welcomed the attendance of Mr Phillip Durham (Partner of Holland and Knight LLP) in his capacity as a member of the Executive Board of the Working Group.

5. Mr Durham informed the Study Group of consultations with the private sector that had taken place in 2015, focusing on manufacturers located in Europe, the United States and Asia. Mr Durham noted that the preliminary list of HS codes previously provided by the private sector

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<sup>1</sup> The report from the first Study Group meeting is available at [UNIDROIT 2015 - Study 72K - Doc. 5](#).

had been further circulated among industry circles. Mr Dubovec (Senior Research Attorney from the National Law Center for Inter-American Free Trade) noted that General Electric Global Mining had taken an interest in the MAC Protocol project, and had suggested the inclusion of an additional 6 HS codes relating to mining equipment.

### **III. The Harmonised Commodity Description and Coding System**

6. Mr Marek Dubovec presented his paper outlining the Harmonised Commodity Description and Coding System (HS System). Mr Dubovec noted that the HS System is broken down into 5,205 6-digit groups, covering 98% of international trade. Mr Dubovec explained to the Study Group the amendment process which occurs every five years, addressing both clarifications and structural reorganisation of the HS System. Mr Dubovec noted that the amendments are generally not radical changes to the system, and 72% of all HS codes have never been changed by any amendment. Mr Dubovec noted that over the last three amendment processes to the HS System which occurred in 2002, 2007 and 2012, only 6 of the 103 suggested HS codes for inclusion under the MAC Protocol were affected by the amendments, and that these changes were structural rather than substantive.

7. Mr Dubovec outlined two possible approaches the MAC Protocol could take in addressing amendments to the HS system: i) automatic adjustments based on future amendments to the HS System itself, or ii) adjustments made independently from the periodic amendments to the HS System. In concluding his presentation, Mr Dubovec highlighted that while there are several other goods classifications that are utilized globally for a variety of purposes, the HS system remains the benchmark and most utilised of all other systems, and is the most appropriate system for establishing the scope of the MAC Protocol.

8. Professor Mooney queried whether the HS codes would serve any other purposes under the MAC Protocol, other than establishing its scope. Mr Dubovec clarified that currently the HS codes would be used solely for setting the scope of the Protocol, and he did not anticipate that they would be useful, for example, as a sole search criteria for an international interest under the International Registry. The Secretary-General concurred with Mr Dubovec, stressing that currently it was not contemplated that the HS codes would be used for registration or search purposes under the International Registry.

9. Mr Forrest (Senior Legal Officer, International Fund for Agricultural Development) queried whether the HS System was used in relation to any other secured transaction systems. Mr Dubovec noted that he was not aware of the HS System being used in relation to other secured transaction systems. The Secretary-General noted that most national secured transaction registries were debtor based rather than asset based, and would not have any need to be linked to the HS System.

### **IV. Preliminary list of HS codes for inclusion under the MAC Protocol**

10. Mr Dubovec introduced the document,<sup>2</sup> noting that it was created in response to difficulties encountered at the first Study Group meeting in understanding the types of equipment that the initial list of HS codes actually covered. Mr Dubovec explained that the table in the document set out a description of the types of equipment covered by each of the 103 suggested HS codes on the preliminary list, as well as examples and pictures of the types of equipment, to give the Study Group members a more concrete sense of what the preliminary list covers. Mr Dubovec also noted that the table includes columns which provide statistical information on the volume of trade for certain countries that import and export the relevant types of equipment covered under the applicable HS code. The statistical information included was sourced from two databases which are both publicly accessible on the Internet and easily searchable (Canada and the European

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<sup>2</sup> Study 72K – SG2 – Doc. 3 - Descriptive summary of the preliminary list of HS codes for inclusion under the MAC Protocol (as suggested by the Private Sector in 2014).

Union). Mr Dubovec explained that the purpose of including these figures was to illustrate how significant international trade is in relation to the identified HS codes. Mr Dubovec noted that under the *International Convention on the Harmonized System* (HS Convention) all contracting states had an obligation to compile data on import and export statistics, however this data for most countries appeared to be incomplete, difficult to search or not publicly available. Mr Dubovec also noted that further work was being conducted to try to ascertain minimum, maximum and average individual unit values for equipment under each HS code on the preliminary list.

11. Professor von Bodungen noted that in negotiating the Luxembourg Rail Protocol, individual unit values was not a crucial element in setting the scope of the Protocol. The Secretary-General concurred, noting that the purpose of using the HS System was to identify a universe of equipment that was inherently high value. Professor Mooney noted that evidence from private industry regarding unit values from major sales may be useful in looking at this issue further.

12. Mr Böger noted that the preliminary list of HS codes appeared to cover parts, which raised complex questions regarding how fixtures and accessions should be treated under the MAC Protocol. Mr Dubovec confirmed that the list did cover parts. The Secretary-General noted that a useful baseline in considering whether the MAC Protocol should cover parts could be to consider whether the parts are independently financeable; an approach utilised under the Space Protocol.

13. Professor de las Heras noted that the group name of several HS codes on the preliminary list was 'other'. Mr Dubovec clarified that 'other' in this situation referred to types of equipment similar to an earlier listed code that did not meet the specifications of the earlier type of equipment. For example, HS code 842952 refers to 'mechanical shovels, excavators and shovel loaders with a 360 degrees revolving superstructure', whereas HS code 842959 refers to 'mechanical shovels, excavators and shovel loaders - other' covering mechanical shovels, excavators and shovel loaders that did not meet the specifications of the earlier groupings. On this basis, it appeared reasonable to retain HS codes referring to 'other' equipment, as in many instances they likely covered the type of MAC equipment which should fall within the scope of the Protocol.

14. Professor von Bodungen queried whether the current list of HS codes was finalised and definitive. Mr Dubovec clarified that the current list was the result of two rounds of consultations with the largest US manufacturers, and that it is anticipated that additional codes may be added as broader industry across the world are consulted.

15. Mr Forrest queried whether export credit institutions or major international banks may assist in gathering further data. Mr Böger noted that in his experience, banks were reluctant to get provide input until a complete, workable instrument was developed for their consideration. Professor de las Heras cautioned that financing data provided by banks would only reflect current practice, and that the creation of the Protocol will likely have a significant impact on current data trends and facilitate new financing strategies. Professor Mooney noted that Rabobank might be a useful stakeholder to consult, as the entity specialises in agricultural financing. The Secretary-General noted that Rabobank has participated in previous UNIDROIT consultations on other projects and recommended that they be invited to participate in the MAC project.

16. Mr Deschamps noted that in using the HS System for delineating the scope of the MAC Protocol, there is the risk of instances where it was not clear whether a certain type of MAC equipment falls within an HS code covered by the Protocol. Mr Dubovec noted that while such instance is not likely to occur often, as the HS System divides equipment up into categories on quite a clear basis, it should not be left to customs agencies to interpret which HS codes apply to MAC equipment, as this would essentially allow customs agencies to interpret the scope of the MAC Protocol.

17. Professor Riffard queried whether it was necessary to create clear, specific and objective criteria in order to choose what codes will be included in the Protocol. Mr Dubovec noted that some criteria in this regard has already been developed: it has already been decided that in considering whether equipment is MAC equipment, the focus should be the purpose for which the

equipment is designed, rather than its possible or eventual use and that all potential equipment would need to be independently identifiable through manufacturer serial numbers.

18. Professor de las Heras queried how private industry decided which codes to suggest for inclusion in the preliminary list. Mr Dubovec responded that while industry was informed of the three criteria in Article 51 of high value, mobile and unique identifiability, it is probably best to view the current preliminary list as a 'wish list' of equipment that the private industry would like to have covered by the MAC protocol. The Secretary-General noted that the onus would be on the private industry to make a case for inclusion of each HS code, especially in relations to accessions/parts. Mr Deschamps noted the importance of the scope not overreaching so as to exclude too many types of goods from the domestic general secured transactions law of countries.

19. Mr Böger noted that the industry needs to be aware of the legal consequences of including accessions/parts, namely that they will require individual registration and serial numbers.

20. The Secretary-General noted that while the descriptions of equipment for each HS code vary significantly in the level of detail they provide, the preliminary list is useful in indicating the broad categories of MAC equipment that could be covered by the Protocol. The Secretary-General also noted that it was expected that the list would be expanded as consultations with manufacturers continued. For example, it was noted that the preliminary list did not appear to contain any codes that pertained to aquaculture, which could be a valuable additional field of equipment for inclusion.

21. Mr Forrest queried whether alternative approaches to the HS System had been considered to restrict the scope of the Protocol, such as a setting a minimum financial per unit value in the Protocol itself. The Secretary-General noted by way of background that the HS System was proposed by the US Department of Commerce for two reasons: (i) because it can be used to give broad indications of value for certain types of equipment, and (ii) by its nature it covers types of equipment that are being exported, and are therefore internationally mobile and important to the world economy. Professor von Bodungen reiterated that a solution for defining high value could not be found in preparing the Luxembourg Rail Protocol. Mr Dubovec noted that the private sector had indicated that they were not in favour of setting a specific financial per unit value. Mr William Brydie-Watson noted that there were also significant practical difficulties in setting financial per unit values, including currency fluctuations and ascertaining a piece of equipment's true per unit value. Mr Brydie-Watson further noted that setting a specific financial per unit value may also cause unwelcome market distortions, for example manufacturers selling a piece of MAC equipment for 1 million US dollars to qualify for coverage under the Protocol, even though it had been previously sold for 950,000 US dollars.

22. Mr Durham noted that consultations with private industry were now moving into its second stage, which will involve not only MAC equipment manufacturers, but also financiers, leasing companies and law firms involved in these types of international secured transactions. Mr Durham further noted that the Working Group has adopted a global approach to consultations and is working conscientiously to ensure that private industry from all regions are being invited to participate in the process.

23. The Study Group noted the further work conducted by the Secretariat in providing further information on the preliminary list of HS Codes. The Study Group requested that the Secretariat work closely with the Working Group in consulting with the private sector to further refine the preliminary list in advance of the third Study Group meeting.

## **V. Legal Analysis**

24. Mr Brydie-Watson introduced the Legal Analysis<sup>3</sup>, noting that it built upon the outcomes and recommendations from the first Study Group meeting. Mr Brydie-Watson noted that the document first covers outstanding legal issues that the Study Group has not yet reached a

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<sup>3</sup> UNIDROIT 2015 - Study 72K – SG1 – Doc. 4

position on and then provides a summary of legal issues that the Study Group has considered and reached a conclusion on during previous meetings.

### *Use of the Harmonised System*

25. The Study Group concluded that this issue had already been sufficiently discussed earlier in the meeting.

### *Multiple purpose equipment*

26. Mr Brydie-Watson introduced the topic, noting that the first Study Group meeting concluded that, in principle, the Protocol should not cover equipment that is general in nature.<sup>4</sup> The first Study Group meeting suggested that where a type of MAC equipment has the possibility to be listed under more than one of the classes (agriculture, construction and mining), then it should be listed under each class independently. Mr Brydie-Watson invited the Study Group to give the matter further consideration.

27. Mr Forrest queried whether it was necessary to include a mechanism in the Protocol allowing Contracting States to opt out from the application of the Protocol to one of the classes of equipment. Professor von Bodungen noted that the opt out mechanism is likely to be attractive to states, as it provides them with additional flexibility to adopt the Protocol, even where a state cannot apply it to all three classes of equipment.

28. Professor Mooney noted that a large number of HS codes on the preliminary list appeared to cover multiple purpose equipment, and that it may be prudent to give additional scrutiny to types of equipment that have such broad usages that they would need to be included in all three Annexes to the Convention.

29. Mr Deschamps clarified that, in the event that a Contracting State opts out of a particular Annex of equipment (agriculture, construction or mining), where a type of equipment is included on that Annex and another Annex, the type of equipment would continue to be covered by the Protocol in that Contracting State, regardless of its final use. Professor Riffard concurred, noting multiple listing of types of equipment made it very difficult to exclude it from the scope of the Protocol.

30. Mr Böger noted the importance of using terminology consistently, and that class is understood to refer to the three broad areas of equipment (agriculture, construction and mining), often the descriptors 'type' and 'category' were used interchangeably to refer to specific pieces of MAC equipment as covered by an HS code.

31. Mr Brydie-Watson queried whether it was necessary to identify specific criteria for determining the purpose of equipment, such as a dominant purpose test. The Study Group concluded that this was unnecessary to determine a specific formulation at this point of the process.

32. The Study Group confirmed that where a type of MAC equipment has the possibility to be listed under more than one of the classes (agriculture, construction and mining), then it should be listed under each class independently. The Study Group also confirmed that in the event that a Contracting State opts out of a particular Annex of equipment (agriculture, construction or mining), where a type of equipment is included on that Annex and another Annex, the type of equipment would continue to be covered by the Protocol in that Contracting State, regardless of its final use. The Study Group concluded that a cautious approach should be taken to including types of MAC equipment which could be used in all three fields (agriculture, construction and mining) under the scope of the Protocol.

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<sup>4</sup> [UNIDROIT 2015 - Study 72K – SG1 – Doc. 5](#), paragraphs 20-24.

### *Interaction between MAC and Luxembourg Rail Protocols*

33. Mr Brydie-Watson introduced the topic, noting that at the first Study Group meeting it was found that there could be an overlap between the MAC Protocol and the Luxembourg Rail Protocol, due to the broad definition of railway rolling stock contained in the Luxembourg Rail Protocol.<sup>5</sup> The first Study Group meeting suggested two alternative approaches for dealing with the overlap between the two Protocols: (i) limiting the scope of the MAC Protocol or by (ii) inserting a priority rule into the MAC Protocol.

34. Professor von Bodungen noted that the scope of the Luxembourg Rail Protocol deliberately cast a wide net in terms of setting its scope, and it was not contemplated at the time of its creation that it could potentially overlap with subsequent Protocols under the Cape Town Convention. Professor von Bodungen further noted that given the Luxembourg Rail Protocol was likely to enter into force in the near future, it may be prudent to carve out railway rolling stock covered by the Luxembourg Rail Protocol from the scope of the MAC Protocol.

35. Professor Mooney said that given the scope of the Luxembourg Rail Protocol is more certain, it may be desirable for the MAC Protocol to defer to the Luxembourg Rail Protocol. Professor Riffard indicated that the interaction between the MAC and Luxembourg Rail Protocols should be an issue of scope. Conversely, Mr Böger noted a preference for dealing with this issue via a priority rule in the Protocol.

36. The Secretary-General queried whether the scope of the Luxembourg Rail Protocol had an implied transportation objective. Professor von Bodungen clarified that it did not, and that a crane on tracks would be covered under the scope of the Luxembourg Rail Protocol.

37. Mr Brydie-Watson queried whether it was actually possible to exclude all MAC equipment from the scope of the Luxembourg Rail Protocol, noting that while it may be possible to exclude MAC equipment that is manufactured to run on rails, there is the possibility that MAC equipment could subsequently be modified to run on rail after its manufacture, which would bring it within the scope of the Luxembourg Rail Protocol.

38. The Secretary-General queried whether the Cape Town's 'first in time registration' logic could be used, which would provide that where a piece of MAC equipment that could be registered under either the MAC or Luxembourg Rail Protocols, the first registration in time would prevail. Mr Böger noted that under this approach parties who wanted to ensure their interest would retain priority may register the international interest in equipment under both Protocols.

39. Professor de las Heras queried whether railway rolling stock could be carved out of the MAC Protocol scope, by making a specific reference in the Annexes to the Protocol, which would provide 'Agricultural equipment means any types of equipment covered by the HS codes in this annex, that is not "railway rolling stock."<sup>6</sup> Professor Mooney noted that under this approach, MAC equipment subsequently attached to other equipment that would allow it to operate on rail would be treated as an accessions issue.

40. Mr Böger cautioned that the MAC Protocol should only be limited in circumstances where there is a possible competing registration under the Luxembourg Rail Protocol.

41. Mr Deschamps noted that Article 29(7) of the Cape Town Convention does not provide an effective solution for the potential overlap of the Luxembourg Rail and MAC Protocols. Mr Deschamps noted that in applying Article 29(7) to the Rail Protocol, a crane being attached to railway rolling stock would be considered an item, whereas the railway rolling stock itself would be

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<sup>5</sup> UNIDROIT 2015 - Study 72K – SG1 – Doc. 5, paragraph 25.

<sup>6</sup> 'Railway rolling stock' having the same definition is does under Article I(e) of the Luxembourg Rail Protocol: "railway rolling stock" means vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto.

considered an object. Mr Böger noted that Article 29(7) may deal with the circumstance of subsequent attachment of MAC equipment to railway rolling stock.

42. Mr Deschamps reaffirmed that the interaction between the Luxembourg Rail and MAC Protocols should be dealt with as a matter of scope, by excluding any type of equipment from the MAC Protocol that is treated as an object under the Luxembourg Rail Protocol. Mr Deschamps noted that this exclusion should only be triggered where a contracting state is party to both Protocols. The Secretary-General concurred with this approach.

43. The Study Group decided that the Annexes to the MAC Protocol should provide that the MAC Protocol applies to the types of equipment contained in the HS codes in the Annexes, except where they are capable of being considered objects under the Luxembourg Rail Protocol and the Luxembourg Rail Protocol was already in force in the contracting state. The Study Group further concluded that any conflict between subsequent attachment of MAC equipment to railway rolling stock would be dealt with by Article 29(7) of the Cape Town Convention.

### *Insolvency Alternatives*

44. Mr Brydie-Watson introduced the topic, noting that at the first meeting the Study Group tentatively concluded that Insolvency Alternatives A, B and C should be kept in the draft MAC Protocol (as consistent with the Luxembourg Rail Protocol), pending further discussion of this issue at the second meeting.

45. Professor von Bodungen voiced his preference for keeping Alternatives A, B and C in the MAC Protocol, noting that Alternative A is difficult for European Countries to implement, whereas Alternative B is unattractive due to its drafting. Professor Mooney agreed with Professor von Bodungen's preference for including Alternatives A, B and C.

46. Professor de las Heras queried whether it was necessary to include all three Alternatives, and whether it would be possible to exclude Alternative A or Alternative B in order to include Alternative C. Professor Mooney noted that Alternative A cannot be excluded, as vast majority of Contracting States of the Aircraft Protocol have implemented Alternative A. Professor von Bodungen noted that there was benefit in including Alternative B, as it has been included in all three prior Protocols.

47. Mr Durham noted that the industry perspective will be very pragmatic, and that the success of Alternative A is due to the OECD discount associated with its implementation. Mr Durham recommended that the MAC Protocol approach remains consistent with previous Protocols.

48. The Study Group concluded that Alternatives A, B and C should be included in the MAC Protocol.

### *Special Insolvency Regimes*

49. Mr Dubovec introduced the topic, noting that special insolvency-agricultural regimes do exist in the legislation of many States. However, the deviations from the general insolvency law relate primarily to: the (priority) claims of farmers against bankrupt customers; exemption of certain farming equipment from the pool of assets available for distribution (however these exemptions do not affect secured creditors and are limited in value); protection of the farmers' right to land; stays of actions against assets (i.e., collateral owned by farmers); access to a public fund to facilitate the restructuring of debts; and limitation as to the ability to file an involuntary insolvency petition against the farmer.

50. The Secretary-General noted two areas that may require further attention: (i) special domestic legislative regimes that exempt certain enterprises from insolvency enforcement remedies, which would require them to opt out of the application of the MAC Protocol in relation to that industry (whether it be agriculture, construction or mining), and (ii) stays of enforcement.

51. Mr Durham noted that contracting states retain the ability to preserve domestic insolvency law as the applicable law under the Protocol, which would mean those countries with

special insolvency regimes would not necessarily need to opt out of the MAC Protocol's application to certain industries.

52. Mr Deschamps noted that a distinction should be made between large scale corporations involved in agricultural enterprises, and non-commercial family farmers, and that large-scale commercial enterprises should not enjoy special insolvency protections.

53. Professor von Bodungen noted that Article XXV of the Luxembourg Rail Protocol might provide some guidance on this issue. The Secretary-General noted that it might not be prudent to base analysis of this issue on the public service exception of the Luxembourg Rail Protocol, as it is a substantively different issue. Article XXV of the Luxembourg Rail Protocol was designed to protect the provision of important public services, whereas special insolvency regimes are designed to protect a specific group of agricultural farmers.

54. Professor Mooney noted that it might be necessary to look at all the insolvency and default provisions in their entirety to consider developing new declarations for agricultural equipment that could be covered by special domestic insolvency regimes. The Secretary-General agreed with Professor Mooney.

55. The Study Group requested that the Secretariat:

- (i) Review the Cape Town Convention and existing Protocols for provisions that may conflict with special insolvency regimes for farmers.
- (ii) Conduct further research on domestic regimes that limit enforcement remedies against farmers outside insolvency proceedings.
- (iii) Draft a provision for insertion into the Protocol that would allow Contracting States at the time of ratification to declare that the insolvency remedies under the Protocol will not apply to equipment in Annex 1 (agricultural equipment) in relation to special categories of farmers.

### *Fixtures*

56. Mr Brydie-Watson introduced the topic, noting that the first Study Group meeting considered this issue in some depth,<sup>7</sup> and that two potential solutions were identified at the first meeting:

- (a) Exclude all items capable of being affixed from the scope of the MAC Protocol.
- (b) Create a mechanism in the Protocol that defers to domestic law governing security interests over immovable property, and that this could be drafted alongside a model domestic law that properly facilitates priority between an international interest in affixed/attached mobile equipment and a domestic interest in immovable property.

57. Mr Brydie-Watson noted that there were several types of equipment detailed in the preliminary list of HS codes for inclusion under the MAC Protocol (Study 72K – SG2 – Doc. 3) that may require some degree of affixation to immovable property in order to operate.<sup>8</sup> Mr Brydie-Watson suggested that, given the broad range of equipment that may require affixation, it might not be desirable for the MAC Protocol to simply exclude all types of affixable equipment.

58. Professor Riffard noted that it might be desirable to avoid using the term 'fixture', as in some civil law jurisdictions this term has broad application under which all equipment merely

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<sup>7</sup> [UNIDROIT 2015 - Study 72K – SG1 – Doc. 5](#), paragraphs 37-43.

<sup>8</sup> E.g. 820713 – Rock drilling or earth boring tools, 841350 – Other reciprocating positive displacement pumps, 842620 – Tower Cranes, 842649—Derricks etc self-propelled not on tires, 842720 – hydraulic power units, 843010 – pile drivers, 843039 – coal or rock cutters, 843610 – machinery for preparing animal feeds, 847989 – trash compactors.

placed on land could be considered a fixture. Professor Riffard suggested that the term 'attachment' to describe MAC Protocol equipment requiring physical attachment to immovable property. Professor Mooney noted that the term 'attachment' also has a specific legal meaning in some common law jurisdictions and may be similarly undesirable.

59. The Study Group discussed whether the treatment of installations under Article 29(7) of the Cape Town Convention might provide some guidance as to how to resolve the treatment of fixtures under the MAC Protocol. Article 29(7) provides that the installation of an item not covered by the Convention onto an object which is covered by the Convention does not affect pre-existing rights, if they are preserved by the applicable law.

60. Mr Böger queried whether Article 29(7) was an appropriate mechanism to deal with fixtures. Professor Mooney noted that Article 29(7) was very controversial at the time it was negotiated, and queried its use as a model for dealing with fixtures. Professor von Bodungen noted that an approach based on Article 29(7) that preserved the priority of prior domestic immovable property security interests over an international interest under the Cape Town Convention would change the priority rules of the entire system in an undesirable way. Professor de las Heras concurred, noting that a clear, reasonable solution consistent with the existing priority provisions in the Convention would be to have international interests under the MAC Protocol to prevail over domestic immovable property interests, without reference to domestic national law. Professor de las Heras further cautioned that allowing a domestic immovable property interest to prevail over an international interest under the MAC Protocol would create uncertainty and significantly undermine effectiveness of the Protocol. Mr Dubovec noted that an international interest in a piece of MAC equipment should not be extinguished by virtue of its subsequent affixation to immovable property.

61. Professor Riffard noted that the issue may be a question of definition, in that a piece of MAC equipment that becomes permanently affixed to immovable property should no longer remain capable of being separately identified (as consistent with the approach under the UNCITRAL Legislative Guide). Mr Durham noted that this might be a factual question that can be answered by looking at which types of MAC equipment required permanent affixation to immovable property. Professor Mooney noted that if this approach was taken, this issue could be addressed in the Official Commentary, providing that where a piece of MAC equipment no longer remains mobile by virtue of its permanent affixation to immovable property, the international interest could be extinguished under national law.

62. Mr Deschamps queried this 'definitional approach', noting that in financing mining equipment in Canada, security interests in pieces of mining equipment are often constituted after they have already become affixed to immovable property. Professor de las Heras noted that this approach might also be problematic in the Spanish context, as under traditional Roman law principles, interests in affixable property may also be extinguished. Professor de las Heras reiterated that the Protocol should not defer to national law to determine whether an object is immovable, and there was a need for a clear provision in the Protocol to clarify the issue.

63. Professor Riffard noted that a provision preserving the priority of an international interest in affixed property over a domestic immovable property interest could result in unfairness in circumstances where the equipment was already affixed to the immovable property at the time the international interest was created, and a mortgagee had reasonably created a domestic immovable property interest over the land, including the already affixed MAC equipment.

64. Mr Durham clarified that any pre-existing right in a Contracting State pre-ratification of the Convention and Protocol would continue to have priority by virtue of Article 60.

65. Professor Riffard clarified that the most important aspect of the UNCITRAL approach is that in order for a piece of equipment to become affixed, it must lose its individual identity, meaning it cannot be removed.

66. Professor Mooney noted that a priority rule putting an international interest in affixable MAC equipment above a national immovable property interest could be qualified in the

following basis: that the MAC equipment has some relationship with the immovable property, however it retains its individual identity to some extent.

67. The Secretary-General queried whether the MAC Protocol needed to create a specific rule to state this principle in the Protocol.

68. Professor Mooney noted that, on the basis that some states allow national law to extinguish interests in affixable equipment, even where it retains its individual identity, it would be necessary to include a provision in the Protocol to counteract such domestic practice. Mr Deschamps agreed with Professor Mooney.

69. The Secretary-General noted that such a provision could provide the following: MAC equipment listed in Annexes 1, 2 or 3 which becomes attached/fixed to immovable property, but retains its individual identity should retain its priority over domestic secured interests. Professor Mooney noted that this could be achieved by adding an additional phrase to the definition.

70. The Secretary-General queried whether the provision allowing international interests in affixable MAC equipment retaining its individual identity to have priority over domestic secured interests should apply to equipment both pre-attachment and post-attachment. The Secretary-General noted that it might be necessary to only apply the provision to MAC equipment that has not yet been attached to immovable property (i.e. only MAC equipment that has not yet been attached to immovable property is capable of being the object of an international interest which takes priority over domestic secured interests).

71. Professor Mooney noted that such an approach might curtail the flexibility of financing the equipment, as over the course of the use of the attached MAC equipment there may be new transactions and new financing arrangements.

72. The Study Group decided to provisionally insert a provision into the draft MAC Protocol which allows MAC equipment listed in Annexes 1, 2 or 3 which becomes attached/fixed to immovable property, but retains its individual identity to retain its priority over domestic secured interests. The Study Group requested that the Secretariat conduct further research on how priority between interests in mobile affixable property and domestic interests in immovable property is currently resolved under domestic legal regimes, and report back at the next Study Group meeting.

### *Application to Sales*

73. Mr Brydie-Watson introduced the topic, noting that it was provisionally decided at the first Study Group meeting that the approach in Article XVII of the Luxembourg Rail Protocol should be adopted in the MAC Protocol. Article XVII of the Luxembourg Rail Protocol allows for the registration in the International Registry of notices of sale covering railway rolling stock. However, such registration of a notice of sale is for information purposes only and does not have any legal effect under the Convention or Protocol. The first Study Group meeting noted that the benefits of this approach were that it allowed for more accessible information on the sales of equipment to be provided, and it will generate additional fees for the International Registry.

74. The first Study Group meeting also requested that the Secretariat conduct further research on how such notices of sale affect domestic law priority rules. Mr Brydie-Watson noted that given the relatively short time between the first and second Study Group meetings, the Secretariat was unable to undertake sufficient research to address this issue at the second meeting, and that the Secretariat will conduct additional research and report back to the Study Group at its third session.

75. Mr Deschamps argued that the Article XVI of the Luxembourg Rail Protocol approach should not be followed for the MAC Protocol, as knowledge of a previous unregistered interest is irrelevant in determining the effectiveness of an international interest under the Protocol, so it would not be appropriate for the MAC Protocol to allow registration of notices of sale, which could impact priority rules under domestic law.

76. Professor Mooney noted that while knowledge of a prior interest may be relevant for domestic regimes outside the Cape Town Convention, allowing for the registration for notices of sale with no legal effect would provide useful information to markets, and unless it can be demonstrated that the Luxembourg Rail Protocol approach will do harm, it should be followed. Professor Mooney also noted that allowing registration of notices of sale without direct legal effect could also serve as a useful anti-fraud mechanism.

77. Professor de las Heras queried whether registration of sales is common practice in the agricultural, construction and mining sectors. Professor de las Heras noted that in Spain, registries for interests are available for movables, and only certain transactions can be registered.

78. Mr Deschamps queried how the registration of a notice of sale interacts with Article 29(3) of the Cape Town Convention, which provides that 'the buyer of an object acquires an interest in it (a) subject to an interest registered at the time of its acquisition of that interest; and (b) free from an unregistered interest even if it has actual knowledge of such an interest.' Mr Deschamps further noted that in the Aircraft and Space Protocols, a registration of sale is allowed and recommended because there is a title registry. Mr Deschamps noted that the Aircraft Protocol operates like a title registry or a land registry, where there is no distinction between a title transfer and a mortgagee, and the first in time registration has priority, whereas the MAC Protocol should not allow registration of sales, so it should not operate like a title registry.

79. Professor von Bodungen noted that there was no conflict between Article XVII (Notices of sale) of the Luxembourg Rail Protocol and Article 29(3) of the Cape Town Convention, as the buyer's position is not protected under the Luxembourg Rail Protocol, and Article XVII of the Luxembourg Rail Protocol was not meant to prevail or otherwise interact with Article 29(3).

80. Professor Mooney noted that when a notice of sale is entered into the registry, regardless of whether the buyer may or may not have an interest in the object, such an interest would be an unregistered interest. Professor Mooney recommended that if the Luxembourg Rail Protocol approach is adopted in the MAC Protocol, then it should also clarify that national law that allows certain buyers to take free of or subject to an interest should prevail, otherwise secondary buyers could rely on 29(3) to take free of an interest even if they would not qualify for such priority under the domestic law.

81. The Study Group concluded that the Luxembourg Rail Protocol approach should be adopted. The Study Group requested that the Secretariat conduct further research on the interaction with Article 29(3)(b) of the Cape Town Convention, consult private industry on whether allowing registration of notices of sale would be useful and draft an additional provision for inclusion in the draft MAC Protocol addressing the Article 29(3)(b) issue.

### *Severability*

82. Mr Brydie-Watson introduced the topic, noting that at the first Study Group meeting it was concluded that the Protocol should be maintained as a single protocol, while allowing states to opt out of any of the three classes (agricultural, construction and mining) of equipment.<sup>9</sup>

83. Professor Mooney noted that severance of one class of equipment from the Protocol should only be contemplated if, later in the process, it becomes clear that one or more of the classes of equipment is radically different and it proves very difficult to deal with the classes together. The Secretary-General noted that this meeting has identified a possible divergence in the treatment of agricultural equipment in relation to insolvency, however currently this divergence did not appear to be significant enough to warrant severing agricultural equipment from the draft Protocol.

### *Accessions*

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<sup>9</sup> [UNIDROIT 2015 - Study 72K - SG1 - Doc. 5](#), paragraph 19.

84. Mr Brydie-Watson introduced the topic, noting that the first Study Group meeting concluded that unless there was widespread commercial practice of separate financing of accessions to MAC equipment, then accessions would not be separately registerable under the MAC Protocol. Noting that the preliminary list of 103 HS codes covers 22 codes that cover engines and 25 codes that cover parts, Mr Brydie-Watson invited the Study Group to give this issue further consideration.

85. Mr Dubovec noted that it was important to draw a distinction between accessions, which are objects installed as part of another object (such as an engine), and implements which are simply connected to other objects in a temporary and limited fashion, such as connecting a plough to a tractor. The Secretary-General agreed with this distinction.

86. Professor von Bodungen noted that the central issue is whether the MAC Protocol should allow an international interest in an accession (such as an engine) to continue to exist independently once installed in another object. Under the definition of railway rolling stock in Article I(e) of the Luxembourg Rail Protocol, engines installed in a train are covered as components of the car, but are not independent objects for the purposes of the Protocol.

87. Professor Mooney noted that it is clear that accessions (parts) become part of the object itself, so the question is whether the MAC Protocol should allow for the creation of separate international interests in accessions which would have priority over a later-in-time international interest encumbering the entire object on which the accession was installed. Professor Mooney noted the approach of the Aircraft Convention in response to engines, which were of significantly high value and separately financed, and were accordingly considered an exception to the rule. Professor Mooney distinguished this from other minor parts, noting that planes are constantly updated and modified by changing parts; however, the international interest remains over the entire plane.

88. Professor de las Heras noted that if implements are to be included under the MAC Protocol, it might be necessary to distinguish their treatment as separate from accessions in the Annexes defining the scope of the Protocol. Professor Mooney concurred, noting that it may be necessary for the Protocol to clarify how an accession becomes 'installed' on another object.

89. The Study Group concluded that for accessions to be included under the MAC Protocol, private industry would have to make a strong argument that they were of sufficiently high value and were in practice separately financed. The Study Group further concluded that a distinction should be drawn between accessions and implements, and that this distinction should be reflected in the Annex to the Protocol if the Protocol does ultimately end up covering both accessions and implements.

## **VI. Practical and drafting issues**

90. The Study Group discussed the second draft of the MAC Protocol prepared by the Secretariat.

### *Preamble*

91. The Study Group discussed whether the MAC Protocol should adopt a longer preamble, as consistent with the Space Protocol, or utilise the more concise wording of the Aircraft and Luxembourg Rail Protocols. The Secretary-General noted that the longer preamble in the Space Protocol was in part due to the involvement of the United Nations Committee on the Peaceful Use of Space, who favoured a longer preamble as consistent with most UN instruments. The Secretary-General noted that conciseness should be preferred, however left it open for additional wording to be added if there was merit in doing so.

92. Professor Mooney noted that it might be useful to add some wording to the preamble relating to the scope of the Protocol. Professor de las Heras was in favour of including additional wording to the preamble on the basis that further justification for its creation was

required as compared with the previous additional Protocols to the Cape Town Convention. Mr Brydie-Watson queried whether it might be beneficial to add some wording noting the Protocol's particular relevance to developing countries which are more reliant on primary industries such as agriculture and mining. Mr Dubovec and Mr Deschamps noted that further economic analysis was required to provide the evidence that the Protocol would be particularly beneficial for developing countries.

93. The Study Group decided that limited additional wording should be added to the preamble, and asked the Secretariat to produce some draft wording in the third draft.

#### *Article I – Defined terms*

94. The Study Group discussed how agricultural, construction and mining equipment should be defined in the Protocol. The Study Group agreed that the Annexes containing the lists of HS codes should be Annexes to the Protocol, not Annexes to the Regulations, as provided in the current draft. In adopting such an approach, future decisions by the Authority to modify the Annexes (both substantive and in response to HS System amendments) would have to operate as an addendum to the Protocol, as the Annex itself could only be changed by a formal treaty amendment process. The Annex itself would provide that it would need to be read in conjunction with the addendum, which could itself only be amended to realign the Annexes with the HS System following amendments to the HS System, or to include new HS codes that were substantively similar to types of equipment covered by HS codes already included on the list. The Study Group concluded that while this approach may be slightly unwieldy, it would allay any concerns that the scope was too uncertain or easily expanded.

95. The Study Group also decided that the scope and accession issues should be dealt with separately, and the Protocol's approach to accessions should not be dealt with in Article I and instead should be dealt with in the Annexes themselves.

#### *Article II – Application of the Convention*

96. The Study Group noted that the references to the 'Annexes to the Regulations of the International Registry' should be changed to references to 'Annexes to the Protocol'.

97. The Study Group decided to amend the language of subparagraph 3 to provide that 'A Contracting State, may at the time of ratification, acceptance approval of, or accession to this Protocol, declare that it is excluding the application of the Protocol to one or more classes of equipment listed in the Annexes to the Protocol.'

98. The Study Group discussed the drafting of paragraph four, which dealt with the interaction between the Luxembourg Rail and MAC Protocols. As consistent with the discussion in paragraphs 33 – 43 above, the Study Group decided that the Annexes to the MAC Protocol should provide that the MAC Protocol applies to the types of equipment contained in the HS codes in the Annexes, except where they are capable of being considered objects under the Luxembourg Rail Protocol and the Luxembourg Rail Protocol was already in force in the contracting state. As such, the Study Group concluded that paragraph 4 should be removed.

#### *Article III – Derogation from the application of Protocol*

99. The Study Group agreed with the drafting of the provision.

#### *Article IV – Representative capacities*

100. The Study Group agreed with the drafting of the provision.

#### *Article V – Identification of agricultural, mining or construction equipment*

101. The Study Group agreed with the drafting of the provision, noting that the reference to Article XV(2) in paragraph 1 should actually be a reference to the Article dealing with waivers of sovereign immunity (Article XVIII(2)).

#### *Article VI – Choice of law*

102. The Study Group agreed with the drafting of the provision, deferring discussion in relation to the making of declarations to Article XXIV.

#### *Article VII – Modification of default remedies provisions*

103. The Study Group agreed with the drafting of the provision, noting that paragraph 4 should provide 'a chargee giving fourteen or more calendar days' prior written notice *of a proposed sale or lease*', as consistent with the text of Article VII of the Luxembourg Rail Protocol.

104. The Study Group discussed whether the term 'notice' should be explicitly defined. The Secretary-General noted that the UNIDROIT Principles of International Commercial Contracts rule should be adopted<sup>10</sup>, which could be provided for in the official commentary.

#### *Article VIII – Modification of provisions regarding relief pending final determination*

105. The Study Group discussed whether the Protocol should define the word 'speedy'. The Secretary-General noted that this could be a particularly difficult and fraught issue. Professor Mooney noted that it would be very difficult to define it precisely, as Parliaments in some countries do not have the power to bind the courts, in the context of how quickly they must provide relief. Professor von Bodungen agreed, noting it would not be appropriate to define 'speedy'. The Secretary-General noted that it was not mandatory for Contracting States to make a declaration in relation to specifying the time period for 'speedy' relief, however if they do choose to make a declaration, they must specify the time period.

106. The Study Group deferred discussion in relation to the making of declarations to Article XXIV.

#### *Article IX – Remedies on insolvency*

107. The Study Group agreed to the drafting of the provision, as consistent with the earlier decision to include insolvency remedy Alternatives A, B and C, deferring discussion in relation to the making of declarations to Article XXIV.

108. The Study Group discussed whether a non-consensual creditor can obtain an injunction to prevent the creditor from enforcing its right to export an object under Article IX. The Secretary-General noted this is a very difficult question that is not addressed in the Official Commentaries to the previous Protocols. The Secretary-General noted that it might be difficult to even address this in the future Official Commentary of the MAC Protocol.

#### *Article X – Insolvency Assistance*

109. The Study Group agreed with the drafting of the provision, deferring discussion in relation to the making of declarations to Article XXIV.

#### *Article XI – Debtor Provisions*

110. The Study Group agreed with the drafting of the provision.

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<sup>10</sup> Article 1.10 of the Contract Principles provide that 'a notice is effective when it reaches the person to whom it is given.' This approach reflects the 'receipt principle'; notice is not effective unless and until it reaches the person to whom it is given. The principles also note that the parties are of course always free to expressly stipulate the application of the 'dispatch principle' to a contract, which provides that notice is given once it has been sent from one party to the other, regardless of whether it has been received.

### *Article XII – The Supervisory Authority and the Registrar*

111. The Study Group discussed which organisations could be candidates for Supervisory Authority. The Secretary-General pointed out that there is no organisation that covers all three classes of equipment, noting if it covered only agricultural machinery, then the United Nations Food and Agriculture Organisation (FAO) would be a strong candidate. The International Finance Corporation (IFC) has shown interest in the project, however acting as the Supervisory Authority may not sit comfortably with their usual operating structure. The Secretary-General also noted that the United Nations Conference on Trade and Development was sufficiently large and broad to possibly fulfil the role. The World Bank, World Trade Organisation and the United Nations Commission for International Trade Law were also discussed as possible candidates. The Secretary-General indicated a preference for the IFC over the World Bank, on the basis that the IFC has a clearer and more specific mandate that more closely relates to the Cape Town Convention system.

112. The Secretary-General noted that the Luxembourg Rail Protocol adopted additional paragraphs in its corresponding Supervisory Authority Article because the Protocol itself was establishing a new body to act as the Supervisory Authority, which is an approach the MAC Protocol would not be adopting.

113. The Study Group agreed with the drafting of the provisions, noting minor wording changes in paragraph 4 (the first Registrar of the International Registry *shall be appointed* for a period of five years from the date of entry into force of this Protocol), as adapted from Article XII(11) of the Luxembourg Rail Protocol.

### *Article XIII – The First regulations*

114. The Study The Study Group agreed with the drafting of the provision.

### *Article XIV – Designated entry points*

115. The Study Group agreed with the drafting of the provision, noting that its position had been moved up from the previous draft, as consistent with the previous Protocols.

### *Article XV – Identification of Agricultural, Mining and Construction Equipment for registration purposes*

116. The Study Group discussed whether this Article, modelled on Article XIV of the Luxembourg Rail Protocol, needed to be altered. Professor von Bodungen noted that the drafting was taken directly from the Luxembourg Rail Protocol, and urged the Study Group not to diverge from the suggested approach. Mr Böger suggested that subparagraphs 1(a) and 1(b) should be combined into one paragraph. The Secretary-General indicated a preference for the current drafting.

117. Professor Mooney noted that the approach should be determined by whether there are types of MAC equipment that should be covered by the Protocol, but do not have unique individual manufacturer serial numbers. Mr Dubovec noted that consultations from private industry had indicated that the complete pieces (not accessions) of MAC equipment initially suggested for inclusion do have serial numbers. Professor Mooney noted that most high-end equipment, for the purposes of warranties, was likely to ubiquitously have unique serial numbers. Professor von Bodungen noted that the Luxembourg Rail Protocol approach was adopted because not all railway rolling stock has unique individual manufacturer serial numbers.

118. Mr Kuemlangan noted that the FAO are currently looking at creating a unique identification register for maritime vessels of less than 300 metric tonnes (which are generally used for fishing), and suggested that the Regulations could establish how serial numbers are created and assigned.

119. Professor Riffard noted that a simple solution could be to exclude from the scope all equipment that does not have a unique manufacturer's number. Professor Mooney suggested a compromise solution, under which the Regulations would provide that after a certain date,

registrations may only be made over equipment with a unique manufacturer's serial number. Professor Mooney queried how the Registrar could be satisfied that the Registry issued serial number is affixed to the correct object, under the Luxembourg Rail Protocol approach. The Secretary-General noted that this issue has yet to be fully resolved, but it will be dealt with in the Supervisory Authority's procedures.

120. The Study Group decided that this Article should be redrafted, using Article VII (Description of aircraft objects) of the Aircraft Protocol as a model, under which a reference to the manufacturer's serial number is required. It was envisaged that a second paragraph could be added under which it would be allowed – until a certain date – to make registrations also for equipment without a unique manufacturer's serial number, providing for a procedure under which a unique identification number would instead be issued by the Registrar.

#### *Article XVI – Additional modifications to Registry provisions*

121. The Study Group decided that Article XVI would generally adopt the approach of Article XX of the Aircraft Protocol (Option 1), with alterations allowing for registrations of equipment without a unique manufacturer's serial number, as had been discussed in relation to Article XV. The Study Group decided to add a footnote to paragraph 2, noting that the Regulations could contain a sunset provision that would sunset the ability to register equipment without a unique manufacturer's serial number.

122. The Study Group decided to adopt paragraph four from Article XV(4) of the Luxembourg Rail Protocol, and allow the second sentence relating to the operational hours of entry points to be covered in Article XIV (designated entry points).

123. In setting the liability of the registrar, the Secretary-General noted that it might be prudent not to refer to the value of MAC equipment, giving the likely huge variety in the individual financial values of the equipment. The Study Group did not settle on an approach to this issue.

#### *Article XVII – Notices of sale*

124. The Study Group agreed with the drafting of the provision, noting that the reference to 'railway rolling stock' should be changed to a reference to MAC equipment.

#### *Article XVIII – Waivers of sovereign immunity*

125. The Study Group agreed with the drafting of the provision, noting that the reference to Article VII in paragraph 2 should be changed to a reference to Article V (identification of agricultural, mining and construction equipment).

#### *Article XIX – Relationship with the UNIDROIT Convention on International Financial Leasing*

126. The Study Group agreed with the drafting of the provision.

#### *Article XX – Signature, ratification, acceptance, approval or accession*

127. The Study Group agreed with the drafting of the provision.

#### *Article XXI – Regional Economic Integration Organisations*

128. The Study Group agreed with the drafting of the provision.

#### *Article XXII – Entry into Force*

129. The Study Group discussed entry into force of the Protocol, noting that at the first Study Group meeting it was concluded that the MAC Protocol should enter into force for each specific class of equipment separately, once that class had received four ratifications and the Registry was operational.

130. Professor von Bodungen queried whether the Article should allow the International Registry to have the ability to declare the registry operational separately for each class of equipment, which would give additional flexibility in deciding when the Protocol enters into force. The Secretary-General cautioned against this, noting that the International Registry was likely to be substantively the same for all three classes of equipment, so it would be difficult to justify why it would be ready for one class of equipment and not another.

131. The Secretary-General queried whether this staggered entry into force approach was actually necessary, noting that it may be adding additional complication without great benefit. The Secretary-General further noted that it would be very burdensome to negotiate three Registry contracts for three different entries into force. The Study Group agreed that the staggered approach should not be adopted, and the Protocol should enter into force once five states have ratified the Protocol, and the International Registry is fully operational.

#### *Article XXIII – Territorial units*

132. The Study Group agreed with the drafting of the provision.

#### *Article XXIV – Declarations*

133. Mr Brydie-Watson introduced the Article, highlighting the significant overhaul in the Protocol's approach to declarations. Mr Brydie-Watson noted that the changes were proposed on the recommendation of the first Study Group to simplify the approach to the making of declarations under the Protocol, as the approach to declarations uniformly adopted across the three previous protocols was unnecessarily complicated.

134. Professor von Bodungen noted that this issue was also discussed in the preparation of the Luxembourg Rail Protocol, however it was ultimately decided that consistency with the status quo should prevail.

135. Mr Deschamps noted that this is an issue of whether an established status quo which is functional, if not efficient or desirable, should be displaced by a better, yet divergent approach. Mr Deschamps noted that if it was a matter of legal policy, there should be a strong presumption to adopt the status quo. Mr Deschamps further noted that this, however, was a matter of drafting and was wholly procedural, and as such, there was merit in improving the drafting. Professor de las Heras concurred, noting her approval of the new approach. Professor Mooney noted that the new approach was indeed better, but was happy to leave the matter as to whether it should be changed to the Committee of Intergovernmental Experts.

136. The Study Group decided to leave both the new approach to declarations and the status quo in the draft, and defer the issue to the Committee of Intergovernmental Experts.

#### *Article XXV - Denunciations*

137. The Study Group agreed with the drafting of the provision, and the insertion of paragraph 4, noting that the reference to the 'Annexes to the Regulations of the International Registry' in paragraph 4 should be changed to a reference to 'Annexes to the Protocol'.

#### *Article XXVI – Review conferences, amendments and related matters*

138. The Study Group agreed with the drafting of the provision.

#### *Article XXVIIs – Depository and its functions*

139. The Study Group agreed with the drafting of the provision.

**VII. Other items**

140. The Secretary-General invited the Study Group to raise any items for additional consideration. Professor Mooney noted that it is important to draft the Annexes to the Protocol, as their format and wording have become of significant importance to the operation of the Protocol.

141. The Study Group requested that the Secretariat prioritise drafting the report, amending the draft Protocol and creating a first draft of the Annexes for submission to the Governing Council at its 94<sup>th</sup> session in May 2015.

**VIII. Next meeting**

142. The Study Group discussed possible dates and locations for the next Study Group meeting. The Study Group tentatively identified 19-21 October as possible dates for the third Study Group meeting, noting that the UNCITRAL Secured Transactions Working Group meeting is scheduled for 12-16 October in Vienna. The Study Group decided that the Secretariat should confer with the Chair Mr Bollweg in confirming arrangements for the next meeting.

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## **AGENDA**

- I. Opening of meeting and introductory remarks
- II. Adoption of the agenda and organisation of the meeting (see “Annotations” below)
- III. Overview of recent stakeholder consultation
- IV. Detailed overview of the Harmonised System
- V. Use of the Harmonised System for the MAC Protocol
- VI. Legal Analysis
  - (a) Use of the Harmonised System
  - (b) Multiple purpose equipment
  - (c) Interaction between the MAC and Luxembourg Rail Protocols
  - (d) Insolvency
  - (e) Fixtures
  - (f) Application to sales
- VII. Review of the second draft Protocol
- VIII. Organisation of the third meeting of the Study Group
- IX. Closing of meeting