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**DIPLOMATIC CONFERENCE FOR THE ADOPTION OF
THE DRAFT PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO MINING,
AGRICULTURAL AND CONSTRUCTION EQUIPMENT
(THE "MAC PROTOCOL")**

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UNIDROIT AND DEPOSITARY FUNCTIONS

1. The Commission of the Whole discussed in detail Article XVIII of the draft MAC Protocol. In part, the discussion focused on the language in brackets of paragraph 3 of Article XVIII. The text of the entire paragraph reads as follows:

"The fees referred to in Article 17(2)(h) ¹ of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry [, and] the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention [and the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 62 of the Convention]".

2. One delegation raised concerns that the text would seem too general and shared its view that, in order to adopt an informed decision, the Commission would benefit from having a clear sense of the type of duties to be performed as a depositary. The following paragraphs include a brief description of the said tasks.

**I. UNIDROIT IS CURRENTLY DEPOSITARY OF THE FOLLOWING FIVE 5
INTERNATIONAL CONVENTIONS**

• *Cape Town System*

- 2001 Convention on International Interests in Mobile Equipment (**in force**)
- 2001 Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (**in force**)
- 2007 Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (**not yet in force**)
- 2012 Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (**not yet in force**)

¹ Article 17(2)(h) of the Convention states: "The Supervisory Authority shall:[...] (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry".

- *Other*

2009 UNIDROIT Convention on Substantive Rules for Intermediated Securities (not yet in force)

II. MAIN DEPOSITARY DUTIES

- (a) *correspondence* with States requesting information in view of becoming a Party (discuss technical and economic aspects of the instrument, advantages, procedure of signature/ ratification/accession, answer questions on status and other related issues, ...)
- (b) creation and update the *Depositary page of the UNIDROIT website* (also preparation of informational documents in English and French, working languages of UNIDROIT)
- (c) preparation and organisation of the *ceremony of signature and/or deposit of instruments* of ratification or accession
- (d) *supervision of the clerical work* involved in the procedure

beyond the aforementioned tasks, most of the duties are indicated in the article of the Final Clauses of the instrument under "*Depositary and its functions*" (see below for the Cape Town system).

III. ADDITIONAL DUTIES PLACED ON UNIDROIT BY THE CAPE TOWN SYSTEM

- (a) *Languages*: The text of the Cape Town Convention and its Aircraft Protocol has 6 authentic versions (Arab, Chinese, English, French, Russian and Spanish) and the Rail Protocol has 3 authentic versions (English, German and French) because they were elaborated together with ICAO (CTC and Aircraft Protocol) and OTIF (Rail Protocol).

Given that Contracting States' declarations under the Convention and its Protocols play an essential part in the operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a Contracting State's precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. This is why the UNIDROIT the General Assembly of UNIDROIT Member States (December 2002) adopted a resolution to urge Contracting States to the Convention and the Aircraft Protocol (extensible to other Protocols) to ensure that, when they submit declarations under the Convention or the Aircraft Protocol, that they do so in one or other of the Institute's working languages, English and French.

The Depositary continues to receive instruments and declarations in other languages and has to follow up asking for official translations (which takes time and postpone the acceptance of the instruments).

- (b) *Rectification of text*: it has been necessary to go through the rectification procedure of some linguistic versions in accordance to Article 79 of the 1969 Vienna Convention on the Law of treaties (in 2014 for the Spanish text of the Convention, and in 2015 for the Arab, French and Spanish text of the Convention and for the Arabic and French text of the Annex to the Aircraft Protocol).
- (c) Checking the compatibilities between declarations (Convention, Aircraft and Rail Protocols for the time being): UNIDROIT requests clarification and any corrections necessary
- (d) *Cooperation with the Supervisory Authority*: UNIDROIT informs the Supervisory Authority of all signature/ratification/accession, deposit/amendment/withdrawal of declarations; it also relies on the reports of the Supervisory Authority concerning the functioning of the international registration system to prepare the Report of the Depositary in accordance with Article 61 of the Convention and Article XXXVI of the Aircraft Protocol

(e) *Cooperation with the Registrar:* UNIDROIT informs the Registrar of all signature/ratification/ accession, deposit/amendment/withdrawal of declarations; it also extensively assisted the Registrar in organising the new system of information to appear on the Contracting State Search Certificates and preparing all data to be uploaded into their new system.

IV. FUTURE ADDITIONAL DUTIES PLACED ON UNIDROIT BY THE MAC PROTOCOL

As Depositary under the MAC Protocol, in addition to performing the duties listed above in relation to the Cape Town Convention (for example, liaising with and assisting States in making declarations under the Protocol), UNIDROIT would further be responsible for undertaking various functions associated with the revision of the HS codes listed in the MAC Annexes. These may include:

- (a) Upon the occurrence of an HS revision, the Depositary shall consult the World Customs Organization and Supervisory Authority in relation to any Harmonized System codes listed in the Annexes that might have been affected by the revision
- (b) Notify Contracting States of an HS revision and, where necessary, propose adjustments to the MAC Protocol Annexes to ensure that the Annexes remain aligned with the Harmonized System and that minimise changes to the application of the Protocol to equipment resulting from the revision of the Harmonized System codes
- (c) Facilitate approval process (receiving objections from Contracting States)
- (d) If necessary, facilitate Meeting process (in relation to adjustments opposed by Contracting States)
- (e) Working with Contracting States exercising temporary extensions or opting-out of adjustments and undertaking necessary actions (for example, informing other Contracting States of such actions and providing relevant information to the Supervisory Authority and Registry)
- (f) Providing relevant information on the adjustment process(es) and its outcome to the Supervisory Authority and Registry.

Language skills:

English and French.