



EN

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

UNIDROIT 2017
Study 72K – CGE1 – Report
Original: English
April 2017

REPORT

(prepared by the UNIDROIT Secretariat)

| | | |
|-------------------|---|-----------|
| REPORT | | 2 |
| Agenda Item 1 | Opening of the Session and election of the officers | 2 |
| Agenda Item 2 | Adoption of the annotated draft agenda and organisation of the session | 2 |
| Agenda Item 3 | Introduction to the Convention on International Interests in Mobile Equipment and project history of the preliminary draft Protocol to the Convention on international interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment | 2 |
| Agenda Item 4 | Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment | 3 |
| Agenda Item 5 | Future work | 20 |
| Agenda Item 6 | Review of Report | 20 |
| Agenda Item 7 | Any other business | 21 |
| APPENDICES | | 22 |
| Appendix I | Drafting proposal for Article XXXII | 23 |
| Appendix II | Drafting proposal for Articles I and X | 24 |
| Appendix III | Report of the Drafting Committee | 25 |
| Appendix IV | Text of the revised preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment | 53 |
| Appendix V | Agenda and Order of Business | 80 |
| Appendix VI | List of participants | 84 |

REPORT

Agenda Item 1: Opening of the Session and election of the officers

1. Mr José Angelo Estrella-Faria, Secretary-General of UNIDROIT, opened 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 20 March 2017 at 10.07 a.m. He commended the work done by the Study Group on the formulation of the preliminary draft MAC Protocol and emphasised the importance of the Cape Town Convention (hereinafter the “Convention”) in facilitating asset-based financing in countries where it was not readily available.
2. The Secretary-General opened the floor for nominations for Chair of the session. *Mr Dominique D’Allaire (Canada) was elected as Chair of the Committee.*
3. 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.*
4. 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.*
5. The Chair nominated Sir Roy Goode (United Kingdom) for the position of Reporter. He acknowledged the work done by Sir Roy Goode in writing the Official Commentaries to the various Protocols of the Convention. *Sir Roy Goode was appointed by the Committee as Reporter.*
6. The session was attended by 126 representatives from 48 Governments (30 UNIDROIT member States and 18 non-member States), six regional and intergovernmental organisations and four international non-governmental organisations (the List of Participants is reproduced at Appendix VI to this report).

Agenda Item 2: Adoption of the annotated draft agenda and organisation of the session

7. The draft agenda (Study 72K – CGE1 – Doc. 1) was adopted (the Agenda and Order of Business is reproduced at Appendix V of this report).

Agenda Item 3: Introduction to the Convention on International Interests in Mobile Equipment and project history of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment

8. The Chair invited the Reporter to make an introductory presentation on the Convention. The Reporter explained the umbrella nature of the Convention and its application to specific types of assets as provided for by its additional protocols. He then explained several other fundamental concepts, such as the priority afforded to international interests under the Convention, the operation of the international registry, and the Convention’s default and insolvency remedies.

9. The Reporter's presentation was followed by a presentation on the origin of the MAC Protocol project by William Brydie-Watson, Legal Officer at the UNIDROIT Secretariat. He explained the development of the Protocol from its genesis in 2005 up until the first session of the Committee, with particular reference to the work completed by the Study Group.

10. The Secretary-General introduced the various documents prepared for the session.

11. The Chair opened the floor for questions. One observer noted that the private sector had been significantly involved in the development of the preliminary draft Protocol to ensure that its provisions were commercially feasible.

Agenda Item 4: Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment.

12. The Chair urged the Committee to refrain from drafting during the plenary. He noted that a Drafting Committee would be convened later in the week to develop and propose draft provisions addressing issues identified by the Committee.

13. The Chair opened the floor for general comments on the preliminary draft Protocol.

14. An observer noted the potential for the MAC Protocol to broaden access to credit for the financing of high value MAC equipment globally.

Preamble

15. The Chair opened the floor for discussion on the Preamble of the MAC Protocol.

16. One delegation noted that the Preamble referred to the economic benefits related to the MAC Protocol. He queried whether any further work had been done on the possible economic benefits of the MAC Protocol following the analysis conducted by the Center for the Economic Analysis of Law (CEAL) in 2014.

17. The Secretariat explained that the initial economic analysis conducted by CEAL had reached somewhat uncertain conclusions, as the analysis was conducted before the scope of the MAC Protocol had been determined. The Secretariat noted that further work was being done to conduct a more comprehensive economic analysis based on the scope of the preliminary draft Protocol as delineated by the HS codes contained in the Annexes.

18. One delegation directed the attention of the Committee to the economic issues paper produced by the US Department of Commerce (Study 72K - CGE1 - Doc. 10). He explained that the production of MAC equipment was a growing industry, and that the sale of MAC equipment was forecasted to grow at an annual rate of 5.7% globally. He noted that the MAC Protocol would also create jobs in many different areas including aftersales services, the supply chain, administration and law.

19. One delegation queried whether a reference to the criterion of unique identifiability should be added to the Preamble. The suggestion was supported by other delegations. Another delegation proposed that paragraph 3 should make specific reference to how the HS codes listed in the Annexes to the Protocol determined the Protocol's scope.

20. *The Committee referred the matter to the Drafting Committee, with the suggestion that any changes be placed in square brackets for future consideration.*

Article I

21. The Chair opened the floor for discussion of Article I. One delegation proposed that the definitions of agricultural, construction and mining equipment contained in Article I(2)(a),(b) and (h) be amended to cover accessories, parts or data, manuals and records. The proposal was supported by several other delegations.

22. *The Chair concluded that the definitions of agricultural, construction and mining equipment in Article I(2)(a)(b) and (h) should be amended to cover parts, components, data and manuals. The Committee referred the matter to the Drafting Committee.*

23. One delegation proposed that the Harmonised System (hereinafter “HS”) codes listed in the Annexes to the preliminary draft Protocol be moved from the Annexes to a resolution of the Diplomatic Conference, and that the process for their amendment be provided for by the regulations. The delegation noted that this approach would avoid treaty law issues and make amending the HS codes an easier process.

24. One observer noted the definition of “immovable-associated equipment” contained in Article I(2)(f) of the preliminary draft Protocol. He noted that many jurisdictions subordinated interests in movable assets to land mortgages where the movable asset became physically connected to land. He suggested that the definition be amended to require physical affixation. One delegation and another observer cautioned against this approach, on the basis that some jurisdictions allowed interests in immovable property to extend to movable assets used on the immovable property, even where there was no physical affixation.

25. *The Chair concluded that the definition of “immovable associated equipment” should be revisited during the discussion of Article VII.*

26. One delegation suggested that the term “agricultural, construction and mining equipment” used throughout the preliminary draft Protocol be simplified. Other delegations opposed the suggestion on the basis that it might cause problems in relation to a States’ ability to opt out of the Protocol’s application to all three categories of equipment.

27. *The Committee agreed that application of the preliminary draft MAC Protocol should be defined with reference to HS codes. The Committee noted that this approach would assist in confining the application of the Protocol to high value mobile equipment.*

Article II

28. The Chair opened the floor for discussion of Article II.

29. One delegation noted that the wording of paragraph 3 was unclear in achieving the policy objective of allowing Contracting States to exclude the application of the Convention to an entire Annex. The intervention was supported by another delegation.

30. *The Committee agreed to refer the matter to the Drafting Committee to ensure that the preliminary draft Protocol adequately reflected this objective.*

31. The Committee discussed whether the preliminary draft Protocol appropriately dealt with inventory.

32. *The Committee agreed that the preliminary draft Protocol as currently drafted could apply to MAC equipment held as inventory, however further input from the private sector was needed to determine whether the current approach was commercially operable.*

Article III

33. The Chair opened the floor for discussion of Article III.

34. A delegation noted that the Article was based upon the drafting of Article III of the Luxembourg Rail Protocol which allowed derogation from only subsections (3)-(4) of the Article governing “modification of default remedy provisions”. It was queried why this approach differed from the Aircraft Protocol, which at Article IV(3) allowed for derogation from subsections (2)-(4) of the Article governing “modification of default remedy provisions”. *The matter was referred to the Drafting Committee.*

35. *The Committee adopted Article III as proposed in the preliminary draft Protocol, aside from the matter referred to the Drafting Committee.*

Article IV

36. *The Committee adopted Article IV as proposed in the preliminary draft Protocol.*

Article V

37. *The Committee adopted Article V as proposed in the preliminary draft Protocol.*

Article VI

38. *The Committee adopted Article VI as proposed in the preliminary draft Protocol.*

Article VII

39. The Reporter introduced the Article. The Chair opened the floor for discussion of Article VII.

40. Several delegations noted that Paragraph 1 was overly deferential to the immovable property law of non-Contracting States. Some delegations queried whether paragraph 1 was necessary at all. Other delegations were of the view that the paragraph adopted a balanced and appropriate approach to resolving the situation whereby MAC equipment subject to an international interest became associated with immovable property in a non-Contracting State.

41. Some delegations queried whether States should be allowed to choose different Alternatives under Article VII to apply to different Annexes to the Protocol. Many delegations pointed out the benefits of an approach that required States to apply the same to all Annexes. It was noted that allowing States to choose different Alternatives to apply to different Annexes would cause problems where HS codes were listed in multiple Annexes.

42. *The Committee agreed that a Contracting State’s declaration applying an Alternative under Article VII should apply to all Annexes that would be applicable in that State. The matter was referred to the Drafting Committee.*

43. *The Committee endorsed the policy rationale reflected in paragraph 14 (paragraph 16 in the French version) of the Explanatory Report (UNIDROIT 2017 – Study 72K – CGE1 – Doc. 3 corr) which provided that where a Contracting State opted out of one Annex which covers a certain HS code, where that HS code is listed in a separate Annex which the Contracting State has not opted out of, the Protocol would continue to apply to MAC equipment under the HS code in the Contracting State, regardless of the end use of the equipment.*

44. Some delegations adopted the view that the number of alternatives should be reduced, or that association with immovable property should be governed by one single provision without allowing for declarations. Other delegations argued that providing three alternatives was desirable.

45. *The Committee agreed that the overall number of Alternatives to Article VII should be revisited at a later stage, and that each Alternative as contained in the preliminary draft Protocol should be considered on its own merit.*

Alternative A

46. Several delegations and observers took the view that Alternative A should be adopted in its present form, whereas other delegations favoured its removal altogether.

47. Some delegations raised their concerns with the drafting of Alternative A. It was noted that it would be problematic to allow the holder of an international interest in equipment associated with immovable property to assert the priority of their interest under Alternative A and remove it from immovable property where its removal would cause damage. Other delegations noted that such action would not be permissible as Article VIII(3) of the preliminary draft Protocol required remedies to be exercised in a commercially reasonable manner.

48. One delegation proposed that Alternative A should only apply to “registered” international interests.

49. Some delegations queried whether Alternative A should apply where MAC equipment lost its legal identity. Other delegations responded that the timing of the association of the equipment with immovable property was relevant in determining the matter. It was noted that where MAC equipment was already associated with immovable associated equipment to the extent that it had lost its individual legal identity, an international interest could not be constituted in the equipment because Article 7 of the Convention required the chargor, conditional seller or lessor to have the power to dispose of the equipment.

50. The outcome was less clear where MAC equipment already subject to an international interest subsequently became associated with immovable property to the extent that the equipment lost its individual legal identity. The Reporter noted that in his view, once an asset was no longer mobile due to its affixation to an immovable, it was no longer capable of being subject to an international interest under the Protocol. One delegation proposed compensation for parties unfairly affected by the application of Article VII in relation to the subordination of their interest in MAC equipment.

51. *The Chair concluded that no consensus could be reached on whether Alternative A should be retained or removed. Similarly, no consensus could be reached on whether Alternative A should be limited to circumstances under which its application would allow creditors to remove immovable associated equipment only where its removal did not cause serious damage to the immovable property. There was also no consensus as to what would happen to an international interest in MAC equipment that subsequently became so associated with immovable property to the extent that the equipment lost its individual legal identity. The Committee referred Alternative A to the Drafting Committee for further consideration.*

Alternative B

52. Several delegations explained that in most civil law jurisdictions mobile equipment could become associated with immovable property even without any degree of physical annexation if it was operated to derive an economic benefit from the immovable. One example cited was a combine harvester operating on a farm.

53. Many delegations debated whether the loss of individual legal identity was a question of fact or a question of law. The Secretary-General explained that the Study Group carefully avoided the use of physical affixation as a factor in determining whether an interest in immovable property had extended to MAC equipment. He noted that the use of the term “association” accommodated this drafting policy, and that the determination of whether MAC equipment had become associated with immovable property was a matter of law as determined by the State in which the immovable was located.

54. The Reporter explained that once an asset lost its individual legal identity, any international interest in the equipment would be extinguished.

55. One delegation noted that paragraph 1 referred to the domestic immovable property law to determine whether MAC equipment had become immovable-associated equipment, whereas Alternative B could be referring, depending on the circumstances of the case, to domestic movable property law to determine the same matter. It was queried whether there was a need to redraft the provisions to provide consistency on the matter.

56. *The Chair concluded that no consensus could be reached on whether Alternative B should be retained or removed. The Committee agreed that the loss of legal identity of MAC equipment under Alternative B was a legal question which called for a rule to be identified under the applicable law. It was noted that under the current draft, the identification of the applicable rule was left to the application of private international law rules. It was noted that such an approach could lead to the application of the private international law rules for movable property or immovable property, depending on the jurisdiction and this could result in different outcomes. The Committee requested that the Drafting Committee revise paragraph 3 of Alternative B to ensure that it referred to the lex situs of the immovable property in all cases. This approach was found to be consistent with the rule found in the definition of “immovable-associated equipment” in Article I(2)(f).*

Alternative C

57. One delegation requested that other delegations indicate whether Alternative C was a provision that they would consider choosing in ratifying the future MAC Protocol. Several delegations noted that they would consider Alternative C useful in ratifying the Protocol. One delegation noted that if a State was to choose Alternative C, it was possible that it would in effect actually be choosing Alternative B, if that State’s domestic law reflected the provisions contained in Alternative B.

58. *The Chair concluded that there was no desire to amend the text of Alternative C.*

Article VIII

59. The Reporter introduced the Article. The Chair opened the floor for discussion of Article VIII.

60. Several delegations questioned whether Article VIII had any practical importance. Several delegations suggested that the term “administrative authorities” and the scope of the actions required of the administrative authorities were too broad and ill-defined.

61. An observer stressed the importance of such an Article, with particular reference to cases requiring export authorisations and abolishment of local licenses.

62. Another delegation suggested that Article VIII (5) should be deleted in its entirety and that disputes between creditors and debtors should be left to arbitration bodies and courts.

63. Many delegations voiced their support to keep Article VIII (5) in its present form. One delegation suggested that it conveyed an important message to Member States that administrative authorities should assist creditors in exercising their rights under the Protocol.

64. *The Committee requested that the Secretariat further review Article VIII to more clearly determine the types of circumstances that it would apply to, and to what extent domestic administrative authorities would need to cooperate and assist creditors in exercising their rights. The Committee requested that the Secretariat consult private industry in reviewing the matter.*

Article IX

65. *The Committee adopted Article IX as proposed in the preliminary draft Protocol, and noted that Article IX (6) would be affected by the same issues discussed under Article VIII.*

Article X

66. The Reporter introduced the Article, and emphasised its importance as one of the fundamental articles underpinning the success of the Cape Town System. The Chair opened the floor for discussion of Article X.

67. Delegations supported retaining the three Alternatives in Article X. One delegation enquired about how Article X resolved the circumstance in which multiple secured creditors each having registered international interests in MAC equipment were simultaneously seeking relief from an insolvent debtor.

68. One delegation noted that as consistent with the policy approach in Article VII, the Alternatives in Article X should also only be available on a holistic basis as opposed to an Annex by-Annex basis. The Chair suggested that this policy may already be implied in the draft, however it would be advisable for the Drafting Committee to further consider the issue.

69. *The Committee agreed that Article X should retain all three Alternatives, and that the application of an Alternative should apply to all Annexes applied by a Contracting State in their entirety, without allowing Contracting States to apply different insolvency Alternatives to different Annexes. The Committee referred the matter to the Drafting Committee.*

Article XI

70. *The Committee adopted Article XI as proposed in the preliminary draft Protocol.*

Article XII

71. *The Committee adopted Article XII as proposed in the preliminary draft Protocol.*

Article XIII

72. The Chair opened the floor for discussion of Article XIII.

73. The Committee discussed the application of privileges and immunities to the Supervisory Authority.

74. 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.

75. 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.

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

Article XIV

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

Article XV

78. 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

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

80. 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.

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

82. 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.

83. *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.*

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

85. 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.

86. 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.

87. *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

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

Article XVIII

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

90. 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.

91. 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.

92. *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

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

Article XX

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

95. 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.

96. 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.

97. 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

98. 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.

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

100. 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

101. 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.

102. 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.

103. 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 suggested that the issues be divided up into several subjects and that the Committee should first consider the relationship between Article XXV and Article XXXII (6). He explained that Article XXXII paragraph 6 protected the position of the holder of an international interest in MAC equipment where the

Harmonised System (HS) code covering the equipment was removed from the Annexes to the Protocol. The Chair suggested that the Committee debate the merits of adding a paragraph 7 to Article XXXII which indicated whether the transitional periods specified in Article XXV (as applied by a Contracting State making a declaration under Article 60 of the Convention) would restart when new HS codes were added to the Annexes.

104. One delegation identified three scenarios under which the transitional provisions in Article 60 of the Convention could apply to the MAC Protocol: (i) the date of entry into force of the MAC Protocol in a Contracting State; (ii) the implications of new HS codes being added to the Annexes where the Protocol was already in force for a Contracting State; and (iii) where a Contracting State chose to subsequently adopt an additional Annex after the Protocol had already entered into force in that State in relation to other Annexes. Several delegations agreed with this formulation of the issues posed by Article XXV.

105. Some delegations suggested that these issues could be addressed by introducing an amendment to Article XXV that amended the definitions found in Article 60 (2)(a) of the Convention. Other delegations voiced their support for the Chair's suggestion to add an additional paragraph to Article XXXII. Delegations disagreed on whether a Contracting State should be bound by the same transitional period in all three circumstances. Some delegations were concerned that allowing for the use of new transitional periods to apply in relation to the addition of new HS codes to the Annexes would add an unnecessary element of complexity to the Protocol.

106. One delegation suggested that a compromise solution could be reached by adding the phrase "renews automatically unless a State determines otherwise" to Article XXV.

107. *The Chair summarised the discussion. He noted that there was consensus that where a new HS code was added to the Annexes to the MAC Protocol, the transitional period referred to in Article XXV would begin again. He further noted that there was consensus that the transitional period related to the addition of additional HS codes to the Annexes should be the same transitional period applied in relation to entry into force of the Protocol. The matter was referred to the Drafting Committee for further consideration.*

108. The Chair then queried whether the effective date of the Protocol should also reflect the fact that some Annexes could be adopted at a time in the future, which would be the effective date of the additional Annexes.

109. One delegation noted its support for such an approach, which was consistent with the previous comments as well as the decision in relation to the transitional period just made by the Committee.

110. *The Chair summarised the discussion by referring the matter to the Drafting Committee, and indicated that the transitional provisions should also reflect the need for a new effective date in specific circumstances.*

Article XXVI

111. The Chair opened the floor for discussion of Article XXVI.

112. One delegation recalled the Committee's conclusion in relation to the approach proposed on the first day of the session whereby declarations under Articles VII and X should not be permitted on an Annex-by-Annex basis.

113. *The Committee agreed with this policy and referred the matter to the Drafting Committee.*

Article XXVII

114. The Chair opened the floor for discussion of Article XXVII.

115. One delegation queried whether Article XXVII allowed Contracting States to make different declarations under the Convention and the Protocol in relation to territorial units. He noted that such an approach could lead to uncertainty in the application of the Convention and Protocol to territorial units within a federal state. The Chair noted the issue, however he responded that the Committee should not address issues of public international law at this time and should instead focus on substantive issues of legal policy.

116. *The Committee adopted Article XXVII as proposed in the preliminary draft Protocol.*

Article XXVIII

117. The Chair opened the floor for discussion of Article XXVIII.

118. One delegation noted that Article XXVIII contained an erroneous reference to “Article XXXIX” (a non-existent provision in the preliminary draft Protocol), and should instead refer to Article XXIX. *The matter was referred to the Drafting Committee.*

119. One delegation asked the Reporter to clarify what the practice was in previous Protocols in relation to this Article. The Reporter responded that Article XXVIII was a standard provision contained in all three previous Protocols. The Secretary-General noted where the corresponding provisions were located in the previous Protocols.

Article XXIX

120. The Chair opened the floor for discussion of Article XXIX.

121. One delegation suggested that by preventing subsequent declarations under Article 60 of the Convention, Article XXIX(1) could preclude the policy position adopted by the Committee in relation to Article XXV. Several other delegations agreed with this interpretation of Article XXIX.

122. *The Committee agreed that Article XXIX should not restrict the amendment of Article XXV and XXXII. The matter was referred to the Drafting Committee.*

Article XXX

123. The Chair opened the floor for discussion of Article XXX.

124. The delegation noted that Article XXX contained a similar restriction in relation to declarations under Article 60 of the Convention to that which had just been considered in relation to Article XXIX. The Chair responded that the same policy concern that related to the restriction of subsequent amendments under Article XXIX did not apply to restrictions of withdrawals under Article XXX.

125. *The Committee adopted Article XXX as proposed in the preliminary draft Protocol.*

Article XXXII

126. The Reporter explained the operation of Article XXXII. The Chair opened the floor for discussion of Article XXXII.

127. One delegation proposed that paragraph 3 be amended to provide that Contracting States that had opted out of the application of the Protocol to a certain Annex would not have the power to vote on an amendment to that Annex.

128. One delegation proposed that the wording “other than the Annex” in paragraph 3 should be removed. This intervention was supported by another delegation.

129. An observer noted that the HS codes listed in the Annexes to the preliminary draft Protocol were based upon the 2012 addition of the HS, and that the 2017 edition of the HS had entered into force on 1 January 2017. He explained that the majority of the codes listed in the Annexes were unaffected by the changes made to the 2017 edition. He illustrated how the amendments system as provided in Article XXXII would apply to those codes affected by changes in the HS.

130. Several delegations queried whether the word “may” in paragraph 4 gave the Depository discretionary powers as to whether it would abide by recommendations made in the annual reports provided for in paragraph 1. Delegations also queried whether annual reports were actually required, as changes to the HS only occurred every five years. The Chair noted that yearly reporting may not be an onerous task where little action had occurred that required reporting on.

131. The Secretary-General explained the different amendment processes provided for in Article XXXII, depending on the type of amendment being considered. He noted that the Study Group had envisioned three different amendment processes, depending on the nature of the provision being amended. He explained that paragraph 3 reflected the normal formal treaty amendment process for changes to the text of the Protocol itself, as consistent with the amendment procedures in the previous three Protocols. He then explained that paragraph 4 provided a more expeditious amendment process which would allow amendment to the Annexes to the Protocol to include new HS codes covering MAC equipment that was “materially similar” to MAC equipment covered in HS codes already contained in the Annexes. Finally, he noted that paragraph 5 provided for a more efficient mechanism for amending the Annexes to the Protocol, where such amendments would not have any effect on the scope of the Protocol, but would realign the HS codes in the Annexes to reflect numbering changes to the HS itself.

132. The Committee extensively debated the proposed provisions in the preliminary draft Protocol. One delegation proposed that the HS codes to which the MAC Protocol applied should be listed in the regulations to the Protocol, rather than listed in Annexes to the Protocol itself. The delegation expressed its intention to provide a textual proposal to that effect for the consideration of the Committee.

133. One delegation queried how paragraph 6 operated, and whether it was intended that a domestic law interest constituted in MAC equipment covered by an HS code which subsequently became listed in an Annex to the MAC Protocol would lose priority against a later registered international interest. The Committee discussed whether Article 60 of the Convention would protect the domestic interest in this scenario. It was explained that paragraph 6 was initially drafted by the Study Group to protect international interests in MAC equipment that was covered by an HS code which was subsequently removed from the Annexes, however the counterfactual scenario had not been considered.

134. *The Committee reached consensus that the procedure for amending the provisions of the Protocol itself was adequate. The Committee did not reach consensus on the procedure for amending the Annexes to the Protocol. The Committee decided that it was necessary to identify a procedure that properly balanced flexibility and innovation in amending the Annexes with acceptable treaty practice.*

Proposal on Article XXXII (Study 72K – CGE1 – W.P. 3)

135. On the submission of an alternative drafting proposal from one delegation, the Chair reopened discussion on Article XXXII (the drafting proposal is reproduced at Appendix I of this Report). The alternative drafting proposal amended the definitions of agricultural, construction and mining equipment in Article I of the preliminary draft Protocol by referring to HS codes contained in the Regulations to the Protocol, as identified initially in a Resolution to the Diplomatic Conference and subsequently through the addition of “materially similar” HS codes. Additionally, the proposal suggested the removal of Article XXXII (4) from the preliminary draft Protocol and the amendment of Article XXXII (5) to provide for technical changes in the HS Codes.

136. The proposal attracted a variety of views from different delegations. Many delegations welcomed the suggestion that a flexible mechanism could be used to update the HS codes to which the Protocol would apply, but expressed doubts as to whether the new proposal was an adequate alternative. In particular, there were concerns regarding the precise meaning of “materially similar equipment”, the lack of oversight from Contracting States in the addition of new HS codes, the absence of a mechanism for addressing disagreements by States as to whether an HS code sufficiently covered materially similar equipment and how Contracting States would be notified of such changes to the HS codes to which the Protocol applied. Many delegations also objected to the amount of discretion the proposal gave to the Depositary and the Supervisory Authority to determine the scope of the Protocol, and cautioned against removing that role from Contracting States. In response, other States noted that Contracting States could be represented to some extent through the Supervisory Authority, which would allow Contracting States to maintain control over the amendment process, while not requiring a formal treaty process to amend the HS codes to which the MAC Protocol would apply.

137. The proposing delegation thanked the other delegations for their feedback on the proposal, and noted that they believed that the proposal could be revised to address the majority of the concerns being raised.

138. *The Chair concluded that the proposal in its current form was not acceptable to the Committee. However, he also noted that the Committee supported consideration of an amendment procedure that provided a fair balance between formal treaty amendment procedures and the need for a more flexible procedure for updating the HS codes. For example, it was pointed out that convening a Review Conference or proceeding with formal treaty amendment procedures might be too burdensome as it related to changes to the HS codes covered by the Protocol. On the other hand, other delegations were of the view that proceeding with changes to the list of HS codes in the Annexes could be seen as a modification of the scope of the Protocol which should not be done through a simplified procedure.*

139. *The Committee agreed to refer this issue to an open-ended informal Working Group for further discussion.*

Report by the Working Group on Amendment Provisions

140. The Chair asked the delegations which participated in the Working Group on Amendments (hereinafter the “Amendments Working Group”) to present a report on the progress made at its meeting on 22 March.

141. The Chair of the Amendments Working Group explained the progress made by the Working Group to the Committee. She explained that the Working Group set out to identify certain policy concerns and then consequently find solutions to address them.

142. She explained that two policy decisions that framed the discussions of the Working Group: (i) the scope of the MAC Protocol should be determined solely by the HS codes contained in the Annexes to the Protocol and (ii) selection of HS codes for inclusion in the Annexes should be conducted with reference to the Article 51 criteria of high value, mobile and uniquely identifiable.

143. The Chair of the Amendments Working Group then identified three issues in Article XXXII that required consideration: (i) that changes in the Harmonised System made by the World Customs Organization (WCO) could affect the scope of the MAC Protocol; (ii) that Contracting States were not afforded sufficient control over changes to the HS codes made by the WCO that affected the scope of the Protocol and (iii) that Article XXXII as currently drafted allowed for the expansion of the scope of the MAC Protocol in relation to the addition of new HS codes that covered equipment that may not satisfy the Article 51 criteria of high value, mobile and uniquely identifiable.

144. The Chair of the Amendments Working Group then explained that a new provision had been drafted to replace Article XXXII. She explained that the Working Group decided that paragraphs 1 and 2 of Article XXXII did not require redrafting, although paragraph 2(e) should be removed.

145. She explained that the proposed provision would provide for a new process following a revision of the HS by the WCO as they occurred every five years (or other such times as the circumstances may require) whereby the Depository would present to Contracting States possible amendments to the Annexes which either: (i) reflected changes to the HS codes already contained in the Annexes and also changed the scope of the MAC Protocol, (ii) reflected technical changes to the HS codes already contained in the Annexes that did not change the scope of the Annexes, or (iii) inserted new HS codes covering new types of MAC equipment into the Annexes. Each proposed amendment to the Annexes would require approval by a two-thirds majority of Contracting States to become effective. Additionally, Contracting States could choose to opt-out of individual amendments that passed the two-thirds majority threshold, if they related to: (i) changes to the HS codes already contained in the Annexes that changed the scope of the MAC Protocol or (ii) inserted new HS codes covering new types of MAC equipment into the Annexes. Technical changes to the HS codes already contained in the Annexes could not be opted-out of if they passed the two-thirds majority threshold required to become effective.

146. One delegation praised the efforts of the Amendments Working Group and noted that it had made good progress towards ensuring the amendment procedure for the HS Codes in the Annexes to the MAC Protocol were both nimble and compliant with general principles of treaty law. Another delegation congratulated the Amendments Working Group on ensuring that States had better control over the scope of the MAC protocol.

147. The Chair posed two questions to the Committee in relation to the new Article governing amendments proposed by the Amendments Working Group: (i) whether the Committee was satisfied with the text of the proposal, keeping in mind that it would be further polished by the Drafting Committee; and (ii) should the text replace the current Article XXXII or be kept as an alternative for debate at the second session of the Committee of Governmental Experts.

148. Many delegations expressed their support for the Article proposed by the Amendments Working Group. Several delegations indicated a preference for the new Article to replace the existing Article XXXII in the preliminary draft Protocol.

149. *The Committee approved the text of the Article proposed by the Amendments Working Group, subject to its consideration by the Drafting Committee. The Committee agreed that the Article proposed by the Amendments Working Group replace Article XXXII in the preliminary draft Protocol.*

Article XXXIII

150. The Chair opened the floor for discussion of Article XXXIII.

151. The Secretary-General explained that the role of UNIDROIT as the Depository under the Cape Town Convention was becoming an ever-increasing cost burden for the Institute. He noted that in contrast to the right of the Supervisory Authority to recover costs associated with its role under the Convention, the Depository had no such right to cost recovery. He noted that the role of Depository encompassed the duties of receiving instruments of ratification, assessing ratifications to ensure all mandatory declarations were made, advising States on requirements related to the deposit of an instrument of ratification and liaising with Embassies. He concluded that the role was occupying approximately one-third of the time of a Senior Officer at the Institute.

152. *The Committee adopted Article XXXIII as proposed in the preliminary draft Protocol.*

Annexes 1, 2 and 3

153. The Chair opened the floor for discussion of Annexes 1, 2 and 3.

154. *The Committee adopted the Annexes as proposed in the preliminary draft Protocol.*

Proposal on Articles I and X (Study 72K – CGE – W.P. 5)

155. A delegation submitted proposed amendments to Articles I and X for the consideration of the Committee (the drafting proposal is reproduced at Appendix II of this Report). The delegation explained that the amendments to Article I related to better describing the equipment that the Protocol applied to. In relation to Article X, it was explained that the proposed provision was designed to protect creditor's rights where MAC equipment subject to an Article X insolvency proceeding had become associated with immovable property. The Committee thanked the delegation for their proposed amendments.

156. One delegation queried whether the phrase "object used in activities related to agricultural production" in the proposed amendments to Article I had the effect of requiring MAC equipment to be considered on an object-by-object basis in determining whether it was used in activities related to agricultural production, or whether the phrase required the consideration of whether a particular type of equipment was used in agricultural production. The delegation that made the proposal explained that the phrase contemplated an object-by-object consideration, but was open to a change in that position.

157. Several delegations emphasised that the scope of the preliminary draft Protocol should be defined solely by reference to the HS codes listed in the Annexes. It was queried whether the proposed change to Article I intended to affect the scope of the Protocol. The proposing delegation responded that the proposed amendment did not intend to displace the use of HS codes to define the scope of the Protocol, it merely intended to give more clarity in describing the equipment that the Protocol applied to in a general sense.

158. Several delegations noted that the proposed amendments to Article X were controversial in balancing the interests of creditors and the interests of owners of immovable property in relation to insolvency proceedings.

159. One delegation noted that while it was clear that the scope of the Protocol was defined with reference to the HS codes contained in the Annexes, it was not clear what criteria the Study Group and the private sector Working Group had established to determine which HS codes should be

included in the Annexes to the preliminary draft Protocol. One observer responded that the 36 HS codes contained in the Annexes were the product of 2 years of extensive research, data gathering and consultation with private industry groups. He noted that over 100 HS codes were initially proposed by the private sector, and that the Study Group had significantly narrowed that original list to the 36 HS codes now contained in the Annexes by applying the Article 51 criteria of high value, mobile and uniquely identifiable.

160. One participant noted that the Cape Town Convention was a specialised regime which applied to narrow and specific categories of equipment that satisfied the Article 51 criteria. He explained that the Convention and its Protocols should not undermine the general secured transaction laws of States. He noted that he did not believe that the HS codes listed in the Annexes to the preliminary draft Protocol achieved their purpose of narrowing the scope of the MAC Protocol to high value, mobile and uniquely identifiable equipment. Several delegations responded that they were confident that the use of the HS codes appropriately restricted the scope of the preliminary draft Protocol to high value, mobile and uniquely identifiable equipment.

161. *The Chair concluded that the proposed amendments to Article I intended to increase the transparency of the Protocol by describing the types of MAC equipment it covered, but did not intend to alter the use of the HS codes contained in the Annexes to the Protocol to define the scope of the Protocol. He noted that there was consensus that the HS codes should be the sole criteria for determining the scope of application of the Protocol to MAC equipment. He noted that intersessional work should be done on improving how the Protocol generally described its application to MAC equipment, as an issue of transparency rather than scope. He concluded that the proposed amendments to Article I in their current form were not agreed to by the Committee.*

162. *The Chair concluded that the proposed amendment to Article X raised important issues in relation to the interaction between Articles X and VII of the Protocol, however it was not agreed to by the Committee in its current form.*

Interpretative rules applying to Harmonised System codes

163. The Reporter noted that the international agreement that established the HS contained its own system for the interpretation of HS codes and had its own process for determining whether an HS code applied to a certain type of equipment.

164. *The Chair noted that it was implicitly understood that the interpretive rules applying to the HS codes contained in the Annexes to the Protocol were those contained in the international agreement establishing the HS. He requested that the Committee further consider whether the issue should be expressly provided for in the text of the preliminary draft Protocol.*

Proposal for the creation of an intersessional Working Group on registration criteria

165. The Chair noted that in comments submitted on the preliminary draft Protocol, one delegation had proposed that an intersessional Working Group be created to consider issues related to the criteria for the registration of MAC equipment in the international registry. The proposing delegation explained that the Working Group would communicate via email and teleconference as necessary.

166. The Secretary-General noted that the Secretariat would be willing to provide organisational and administrative support for the intersessional Working Group, should it be established.

167. *The Committee agreed to establish an intersessional Working Group on registration criteria. The Committee requested that the Secretariat provide administrative support to the Working Group. The Chair noted that delegations interested in joining the Working Group should indicate their interest*

to the Secretariat. The Committee decided that the Intersessional Working Group on Registration Criteria should additionally consider potential measures to improve the preliminary draft Protocol's transparency in portraying the types of MAC equipment it applied to.

168. *On nomination by the Chair, a delegation accepted the role of Chair of the Intersessional Working Group on Registration Criteria.*

Potential candidates for the role of Supervisory Authority of the MAC Protocol

169. The Chair opened the floor for discussion regarding international organisations that could be potential candidates to perform the role of Supervisory Authority of the MAC Protocol.

170. One delegation queried whether the World Bank Group could be considered as a possible candidate for Supervisory Authority. He suggested that should the World Bank Group have any interest in the possibility, it could consider the matter further and report back to the Committee at its second session.

171. A participant noted that the organisation had a strong interest in the MAC Protocol project, as it had the potential to significantly improve access to credit in the agricultural, construction and mining sectors in developing countries. He noted that the possibility of the organisation performing the role of Supervisory Authority was not a matter that could be currently commented upon, however it would be discussed further and reported on at the Committee's second session.

172. An observer expressed support for the consideration of the Work Bank Group for the role of Supervisory Authority. It was noted that the private sector would be willing to assist the World Bank Group to further explore the possibility.

173. One delegation suggested that further research be undertaken to identify other potential candidates for the role of Supervisory Authority. He noted that the research should focus on existing international bodies involved in the agricultural, construction and mining sectors.

174. *The Committee requested that the Secretariat undertake further research to identify appropriate international organisations that could perform the role of Supervisory Authority for the MAC Protocol. In addition, the Committee invited the World Bank Group to further consider the possibility of it performing the role of Supervisory Authority and to report back to the Committee at its second session.*

Number of Contracting States required for entry into force of the Protocol

175. The Chair noted that the consideration of this issue had been deferred during the discussion of Articles XXIII and XXXII. The Chair recalled that the Secretary-General had previously explained that due to a variety of factors, the Convention and each of its Protocols required different numbers of Contracting States for entry into force (the Convention itself required three, the Aircraft Protocol required eight, the Luxembourg Rail Protocol required four and the Space Protocol required ten).

176. The Secretary-General noted that this matter was discussed by the Study Group. He noted that five Contracting States for entry into force was initially chosen due to the ability for Contracting States to opt-out of the application of the MAC Protocol in relation to specific Annexes. He explained that if a lower number had been chosen and Contracting States exercised their right to opt-out of specific Annexes, it could have allowed the MAC Protocol to potentially enter into force even though each Annex had only one Contracting State. The Secretariat further explained that the Study Group had decided against allowing different entry into force dates for different Annexes in the preliminary draft Protocol, as such an approach would have created significant complexity.

177. *The Committee agreed to further discuss the number of Contracting States required for entry into force of the MAC Protocol at the Committee's second session. The Committee decided to put the word "fifth" in Articles XXIII and XXXII in square brackets to denote the issue.*

Report of the Drafting Committee (Study 72K – CGE1 – W.P. 7)

178. The Co-Chairs of the Drafting Committee introduced the Report of the Drafting Committee (the Report of the Drafting Committee is reproduced at Appendix III of this Report). They explained that, as consistent with the referrals made by the Committee of Governmental Experts, the Drafting Committee made two types of changes; (i) substantive; and (ii) grammatical. The Co-Chairs then explained the changes made to the preliminary draft Protocol, as tracked in the Report of the Drafting Committee.

179. One delegation queried whether the proposed amendments to Article XXV (c) were designed to apply where new HS codes were added to the Annexes under the procedure contained in Article XXXII (4).

180. *The Committee decided to defer further consideration of the issue until its second session.*

181. Several delegations note their concern with the 75% threshold required to prevent a change to the Annexes becoming effective under Article XXXII (4).

182. *The Committee agreed to replace [75%] with [XX] in Article XXXII (4) and to put the entirety of Paragraphs 4 and 5 of Article XXXII in square brackets for further consideration at the second session of the Committee.*

183. *The Report of the Drafting Committee was adopted by the Committee. The Committee decided that the changes to the preliminary draft Protocol made by the Drafting Committee would form the basis of the preliminary draft Protocol to be considered at the second session of the Committee of Governmental Experts (the revised preliminary draft Protocol as approved by the Committee is reproduced at Appendix IV of this Report).*

Agenda Item 5: Future Work

184. The Secretary-General proposed that the next session of the Committee be held from 2 – 6 October 2017 at the headquarters of the Food and Agriculture Organisation in Rome.

185. *The Committee agreed that the second session of the Committee of Governmental Experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Agricultural, Construction and Mining equipment would take place from 2 – 6 October 2017 in Rome, Italy.*

Agenda Item 6: Review of Report

186. The Reporter introduced the draft Report, as reflected in the Daily Reports (Study 72K – CGE1 - W.P. 2, Study 72K – CGE1 - W.P. 4, Study 72K – CGE1 - W.P. 6 and Study 72K – CGE1 - W.P. 8).

187. *The Committee reviewed and adopted the Daily Reports.*

188. *The Committee authorised the Secretariat to make minor spelling, grammatical and formatting changes to the Report and the preliminary draft Protocol as required.*

Agenda Item 7: Any Other Business

189. *No other business was raised.*

190. The Chair closed the first session of the Committee of Governmental Experts on 24 March 2017 at 12:14 p.m.

EN

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

UNIDROIT 2017
Study 72K – CGE1 – Report
Original: English
April 2017

APPENDICES

APPENDIX I**DRAFTING PROPOSAL FOR ARTICLE XXXII**

(presented by the delegation of the United States)

Article 1

(a) “agricultural equipment” means an object that falls under a Harmonized System code listed in Annex 1 to Resolution [X] adopted by the Diplomatic Conference, as well as any Harmonized System codes covering materially similar equipment in respect of which a registration may be effected pursuant to the regulations adopted by the Supervisory Authority;

(b) “construction equipment” means an object that falls under a Harmonized System code listed in Annex 2 to Resolution [X] adopted by the Diplomatic Conference, as well as any Harmonized System codes covering materially similar equipment in respect of which a registration may be effected pursuant to the regulations adopted by the Supervisory Authority.

...

(h) “mining equipment” means an object that falls under a Harmonized System code listed in Annex 3 to Resolution [X] adopted by the Diplomatic Conference, as well as any Harmonized System codes covering materially similar equipment in respect of which a registration may be effected pursuant to the regulations adopted by the Supervisory Authority.

Article XXXII

Paragraph 4 would be deleted, as the process for addressing materially similar equipment would be provided in Article 1 as noted above, based on the approach of the space protocol.

5. If the report referred to in paragraph 1 concludes that technical changes to the Harmonized System have affected the numbering of the Harmonized System codes listed in the Annexes to Resolution [X] adopted by the Diplomatic Conference, the Supervisory Authority may update the lists of Harmonized System codes via the regulations, to ensure conformity with the Harmonized System.

The HS codes currently listed in the Annexes would instead be included in a resolution of the diplomatic conference.

APPENDIX II**DRAFTING PROPOSAL FOR ARTICLES I AND X**

(presented by the delegation of China)

Article 1

(a) "agricultural equipment" means an object used in activities related to agricultural production or the primary processing of agricultural products that falls under a Harmonized System code listed in Annex 1 to the Protocol;

(b) "mineral equipment" means an object used in mineral exploration, selection and mining that falls under a Harmonized System code listed in Annex 2 to the Protocol;

...

(h) "construction equipment" means an object used in construction process that falls under a Harmonized System code listed in Annex 3 to the Protocol;

Article X

Proposed to be inserted after Alternative A, B and C of Article X.

"Where the repossession of an immovable-associated equipment is not possible, the insolvency administration or the debtor, as applicable, shall ensure that the creditor enjoys priority over the disposal of that immovable property in proportion to the value of the immovable-associated equipment in the immovable property".

APPENDIX III**REPORT OF THE DRAFTING COMMITTEE¹****TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS
SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT**

*as amended by the UNIDROIT Committee of Governmental Experts for the
preparation of a draft Protocol to the Cape Town Convention on Matters specific
to Agricultural, Construction and Mining Equipment at its first session, held in
Rome from 20 – 24 March 2017*

¹ The report reflects the work done by the Drafting Committee over its two meetings (21 March and 23 March 2017) implementing the decisions taken by the Committee of Governmental Experts at its first session. The changes proposed by the Drafting Committee to the preliminary draft Protocol are tracked.

PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT

Preamble

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING the significant benefits of the ~~it necessary to implement the~~ Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention), ~~as it relates to as facilitating the financing and leasing of uniquely identifiable high-value mobile agricultural, construction and mining~~ equipment, in the light of the purposes set out in the preamble to the Convention,

AWARE of the benefits of extending the Convention to ~~other categories of agricultural, construction and mining equipment,~~ high value and mobile equipment,

[NOTING that the World Customs Organization's Harmonized Commodity Description and Coding System governed by tThe International Convention on the Harmonized Commodity Description and Coding System allows the determination of the categories of such equipment to which the extension of the Convention is warranted,]

RECOGNISING the important role that agricultural, construction and mining equipment play in the global economy and in particular for developing countries,

MINDFUL of the need to adapt the Convention to meet the particular requirements of agricultural, construction and mining equipment and their finance,

HAVE AGREED upon the following provisions relating to agricultural, construction and mining equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) "agricultural equipment" means an object that falls under a Harmonized System code listed in Annex 1 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
 - (b) "construction equipment" means an object that falls under a Harmonized System code listed in Annex 2 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
 - (c) "guarantee contract" means a contract entered into by a person as guarantor;

- (d) “guarantor” means a person, who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (e) “Harmonized System” means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System;
- (f) “immovable-associated equipment” means agricultural, construction or mining equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated;
- (g) “insolvency-related event” means:
- (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (h) “mining equipment” means an object that falls under a Harmonized System code listed in Annex 3 to the Protocol, [including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto](#); and
- (i) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise.

Article II – Application of the Convention as regards agricultural, construction and mining equipment

1. The Convention shall apply in relation to agricultural, construction and mining equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to agricultural, construction and mining equipment.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will limit the application of the Protocol to [the entirety of the equipment comprised in](#) one or two of the Annexes.
4. This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.

Article III – Derogation

The parties may, by agreement in writing, exclude the application of Article X and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VIII (23) – (4).

Article IV – Representative capacities

A person may, in relation to agricultural, construction or mining equipment, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

Article V – Identification of agricultural, construction or mining equipment

1. For the purposes of Article 7(c) of the Convention and Article XIX of this Protocol, a description of the agricultural, construction or mining equipment is sufficient to identify the ~~agricultural, construction or mining~~ equipment if it contains:

- (a) a description of the ~~agricultural, construction or mining~~ equipment by item;
- (b) a description of the ~~agricultural, construction or mining~~ equipment by type;
- (c) a statement that the agreement covers all present and future ~~agricultural, construction or mining~~ equipment; or
- (d) a statement that the agreement covers all present and future ~~agricultural, construction or mining~~ equipment except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future agricultural, construction and mining equipment identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the ~~agricultural, construction or mining~~ equipment, without the need for any new act of transfer.

Article VI – Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVI(1).

2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Article VII – Association with immovable property

1. Where immovable-associated equipment is situated in a non-Contracting State, ~~t~~This Protocol does not affect the application of any ~~domestic laws of that State~~ that determine whether an international interest in the immovable-associated equipment ceases to exist, is subordinated to

any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property, ~~where the immovable-associated equipment is situated in a non-Contracting State.~~

2. A Contracting State, shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the entirety of Alternative A, B, or C of this Article shall apply in relation to an international interest in immovable-associated equipment which is situated in the Contracting State.

Alternative A

3. An international interest in agricultural, construction or mining equipment is not affected by the association of the equipment with the immovable property and continues to exist and retains its priority as against any ~~other~~ rights or interests in the immovable-associated equipment ~~and is not otherwise affected by the association of the equipment with the immovable property, notwithstanding that the equipment is immovable-associated equipment.~~

Alternative B

3. This Protocol does not affect the application of any ~~domestic laws~~ of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property to the extent that the equipment loses its individual legal identity in accordance with the law of that State.

4. Where agricultural, construction or mining equipment subject to an international interest is immovable-associated equipment and to the extent that it has not lost its individual legal identity, an interest in the immovable property that extends to that equipment has priority over the registered international interest in the equipment only if the following conditions are fulfilled:

- (a) the interest in the immovable property has been registered in accordance with the requirements of domestic law prior to the time of registration of the international interest in the equipment under this Protocol and registration of the interest in the immovable property continues to be effective; and
- (b) the equipment became associated with the immovable property prior to the time of registration of the international interest in the equipment under this Protocol.

Alternative C

3. This Protocol does not affect the application of any domestic laws that determine whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

CHAPTER II

DEFAULT REMEDIES AND PRIORITIES

Article VIII – Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of agricultural, construction or mining equipment from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to agricultural, construction or mining equipment. Any remedy given by the Convention in relation to agricultural, construction or mining equipment shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving fourteen or more calendar days' prior written notice of a proposed sale or lease to interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.
6. A chargee proposing to procure the export of agricultural, construction or mining equipment under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:
 - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

Article IX – Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):

"(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom",

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
6. With regard to the remedies in Article VIII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief specified in Article 13 of the Convention is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.

Article X – Remedies on Insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVI(3).
2. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

Alternative A

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the agricultural, construction or mining equipment to the creditor not later than the earlier of:
 - (a) the end of the waiting period; and
 - (b) the date on which the creditor would be entitled to possession of the agricultural, construction or mining equipment if this Article did not apply.
4. For the purpose of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the agricultural, construction or mining equipment and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the agricultural, construction or mining equipment under arrangements designed to preserve the agricultural, construction or mining equipment and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the agricultural, construction or mining equipment where, by the time specified in paragraph 3, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
8. With regard to the remedies in Article VIII(1):
- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.
10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVI(3) whether it will:
- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
 - (b) give the creditor the opportunity to take possession of the agricultural, construction or mining equipment, in accordance with the applicable law.
4. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.
5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
6. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the agricultural, construction or mining equipment but fails to do so, the court may permit the creditor to take possession of the agricultural,

construction or mining equipment upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

7. The agricultural, construction or mining equipment shall not be sold pending a decision by a court regarding the claim and the international interest.

Alternative C

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:

- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
- (b) give the creditor the opportunity to take possession of the agricultural, construction or mining equipment in accordance with the applicable law.

4. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the "suspension period"). Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.

5. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the agricultural, construction or mining equipment pending an order of the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency administrator or the debtor, as applicable, otherwise agree.

6. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the agricultural, construction or mining equipment and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

7. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the agricultural, construction or mining equipment under arrangements designed to preserve and maintain it and its value.

8. Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, the insolvency administrator or debtor may retain possession of the agricultural, construction or mining equipment and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.

9. With regard to the remedies in Article VIII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
10. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
11. Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.
12. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
13. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
14. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.
15. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

Article XI – Insolvency assistance

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(1).
2. The courts of a Contracting State in which agricultural, construction or mining equipment is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article X.

Article XII – Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the agricultural, construction or mining equipment in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and
 - (b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to agricultural, construction or mining equipment.

CHAPTER III

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT

Article XIII – The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment, provided that such Supervisory Authority is able and willing to act in such capacity.
2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
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. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XIV – First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

Article XV – Designated entry points

1. A Contracting State may at any time designate an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under laws of another State. The various entry points shall be operated at least during working hours in their respective territories.
2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale.

Article XVI – Identification of agricultural, construction or mining equipment for registration purposes

A description of agricultural, construction or mining equipment that contains its manufacturer's serial number and the name of the manufacturer, as supplemented [by such additional information as may be provided by the regulations](#) ~~to ensure uniqueness~~ is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention. ~~The supplementary information required for the identification of the object shall be specified by the regulations.~~

Article XVII – Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for agricultural, construction or mining equipment shall be the name of its manufacturer and its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.
2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.
3. The fees referred to in Article 17(2)(h) 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 [\[and the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 62 of the Convention\]](#).
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
5. The Registrar shall be liable under Article 28(1) of the Convention for loss caused up to an amount not exceeding the value of the agricultural, construction or mining equipment to which the loss relates. Notwithstanding the preceding sentence, the liability of the Registrar shall not exceed 5 million Special Drawing Rights in any calendar year, or such greater amount, computed in such manner, as the Supervisory Authority may from time to time determine by regulations.
6. The preceding paragraph shall not limit the Registrar's liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.
7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.
8. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Article XVIII – Notices of Sale

The regulations shall authorise the registration in the International Registry of notices of sale of agricultural, construction or mining equipment. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

CHAPTER IV

JURISDICTION

Article XIX – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to agricultural, construction or mining equipment under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.
2. A waiver under the preceding paragraph must be in writing and contain a description of the agricultural, construction or mining equipment as specified in Article V(1) of this Protocol.

CHAPTER V

RELATIONSHIP WITH OTHER CONVENTIONS

Article XX – Relationship with the UNIDROIT Convention on International Financial Leasing

The [Convention on International Interests in Mobile Equipment](#) ~~Convention~~ as applied to agricultural, construction ~~or~~ and mining equipment shall supersede the UNIDROIT Convention on International Financial Leasing in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

CHAPTER VI

FINAL PROVISIONS

Article XXI – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in _____ on _____ by States participating in the Diplomatic Conference to Adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction or Mining Equipment held at _____ from _____ to _____. After _____, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXII – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXIII – Entry into force

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:
 - (a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and
 - (b) the date of the deposit by the ~~Secretariat~~ Supervisory Authority with the Depository of a certificate confirming that the International Registry is fully operational.
2. For other States this Protocol enters into force on the first day of the month following the later of:
 - (a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and
 - (b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXIV – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. Any such declarations are to be notified to the Depository and shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
 - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

Article XXV – Transitional Provisions

In relation to agricultural, construction and mining equipment Article 60 of the Convention shall be modified as follows:

 (a) replace paragraph 2(a) with the following:

“(a) “effective date of this Convention” means in relation to a debtor the latest of the time when:

(i) this Convention enters into force;

(ii) the State in which the debtor is situated at the time the right or interest is created or arises becomes a contracting State, and

(iii) the Protocol becomes applicable in that State to the equipment which is subject to the pre-existing right or interest.”

~~in paragraph 2(a), after “situated” insert “at the time the right or interest is created or arises”;~~

(b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration ~~becomes-takes effect~~effective, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

(c) Insert the following paragraph:

“4. For the purposes of paragraph 3, a declaration takes effect with respect to a pre-existing right or interest in equipment to which the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment becomes applicable in that State in accordance with Article XXXII(4) of that Protocol at the time the Protocol becomes applicable to that equipment.”

Article XXVI – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and XI of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article IX(2).

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, B or C of Article X and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A, B or C. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article X.

4. (a) Any declaration made pursuant to this Protocol shall apply to the entirety of the equipment to which this Protocol applies.

(b) A Contracting State that makes a declaration in respect of any Alternative provided for in Articles VII or X shall chose the same alternative regarding the entirety of the equipment to which this Protocol applies.

54. The courts of Contracting States shall apply Article X in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXVII – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.

Article XXVIII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles II, VII, XXIV, XXVI, XXVII and ~~XXXIX~~ may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depository.

Article XXIX – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depository to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depository.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXX – Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, may withdraw it at any time by notifying the Depository. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

Article XXXI – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.
4. A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex.

Article XXXII – Review conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority;
 - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable; and
 - ~~(e) whether any changes to the Harmonized System have affected the Harmonized System codes listed in the Annexes, or whether new codes have emerged under the Harmonized System that may warrant inclusion in the Annexes.~~
- ~~3. Any amendment to this Protocol other than the Annexes shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by five States Parties in accordance with the provisions of Article XXIII relating to its entry into force.~~
- ~~4. If the report referenced in paragraph 1 identifies additional agricultural, construction or mining equipment that is materially similar to equipment that falls under existing Harmonised System codes contained in the Annexes, the Depositary may add or retain the Harmonised System codes covering such additional equipment to the Annexes. The Depositary shall notify States Parties of a revision to the Annexes under this paragraph. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the~~

~~States Parties a majority of the States Parties notify the Depository of their objection, the revision shall not become effective. The Depository shall immediately notify all States Parties of the date that a revision pursuant to this paragraph enters into force.~~

~~5. — If the report referred to in paragraph 1 concludes that technical changes to the Harmonized System have affected the numbering of the Harmonized System codes listed in the Annexes without expanding their scope, the Depository may revise the Harmonized System codes contained in the Annexes to ensure conformity with the Harmonized System. The Depository shall specify the date as of which such a revision shall apply. The Depository shall notify States Parties of a revision to the Annexes and the date at which the revision shall become effective.~~

Article XXXII — Review conferences, amendments and related matters

3. Any amendment to this Protocol other than to the Annexes [pursuant to paragraphs 4 and 5] shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by five States Parties in accordance with the provisions of Article XXIII relating to its entry into force.

4. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depository, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonised System codes listed in the Annexes, or the inclusion of any additional codes covering uniquely identifiable high value mobile equipment of a type that is used in the agricultural, mining or construction sectors that may warrant inclusion of such equipment in the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. The Depository shall communicate to all Contracting States the adoption of the amendment. Contracting States shall notify the Depository within a period of twelve months from the date of the communication if they do not accept to be bound by the amendment. Any such amendment shall become effective in respect of the other States ninety days after the end of that period of 12 months unless [75%] or more of the Contracting States have notified the Depository that they do not accept to be bound. The Depository shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.

5. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depository, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonized System codes listed in the Annexes without changing the scope of the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. After approval of an amendment by Contracting States the amendment will become effective upon the expiration of [ninety] days after such approval. The Depository shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.

6. Any revision to the Annexes shall not affect rights and interests arising prior to the date the revision becomes effective or applicable.

Article XXXIII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of the deposit of the certificate referred to in Article XXIII(1)(b);
 - (iii) the date of entry into force of this Protocol;
 - (iv) each declaration made in accordance with this Protocol, together with the date thereof;
 - (v) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
 - (b) transmit certified true copies of this Protocol to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at _____, this _____ day of _____, _____, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

ANNEXES TO THE PROTOCOL

ANNEX 1 – AGRICULTURAL EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to agricultural equipment that falls under the following Harmonised System codes in this Annex.

842481: Mechanical appliances (whether or not hand-operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines – Other appliances -- Agricultural or Horticultural

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders – Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Plows

843221: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Harrows, scarifiers, cultivators, weeders and hoes – Disc harrows

843230: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Seeders, planters and transplanters

843240: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Manure Spreaders and fertilizer distributors

843340: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Straw or Fodder Balers

843351: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Combine Harvester or Thresher

843680: Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders -- Other machinery

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870190: Tractors (other than tractors of heading 8709) – Other

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

ANNEX 2 – CONSTRUCTION EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to construction equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermet

842641: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled -- On tires

842649: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled – Other

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping on compacting machinery

843069: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Other

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

847432: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Machines for mixing mineral substances with bitumen

847982: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Other machines and mechanical appliances -- Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines.

847910: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Machinery for public works, building or the like

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870190: Tractors (other than tractors of heading 8709) – Other

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

870510: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) – Crane lorries

870540: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) – Concrete-mixer lorries

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

ANNEX 3 – MINING EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to mining equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermets

842911 - Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010 : Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping on compacting machinery

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

870190: Tractors (other than tractors of heading 8709) – Other

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

APPENDIX IV**TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS
SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT**

*as amended by the UNIDROIT Committee of Governmental Experts for the
preparation of a draft Protocol to the Cape Town Convention on Matters specific
to Agricultural, Construction and Mining Equipment at its first session, held in
Rome from 20 – 24 March 2017*

**PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AGRICULTURAL,
CONSTRUCTION AND MINING EQUIPMENT**

Preamble

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING the significant benefits of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention), as facilitating the financing and leasing of uniquely identifiable high-value mobile equipment, in the light of the purposes set out in the preamble to the Convention,

AWARE of the benefits of extending the Convention to agricultural, construction and mining equipment,

[NOTING that the World Customs Organization's Harmonised Commodity Description and Coding System governed by the International Convention on the Harmonised Commodity Description and Coding System allows the determination of the categories of such equipment to which the extension of the Convention is warranted,]

RECOGNISING the important role that agricultural, construction and mining equipment play in the global economy and in particular for developing countries,

MINDFUL of the need to adapt the Convention to meet the particular requirements of agricultural, construction and mining equipment and their finance,

HAVE AGREED upon the following provisions relating to agricultural, construction and mining equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) "agricultural equipment" means an object that falls under a Harmonised System code listed in Annex 1 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
 - (b) "construction equipment" means an object that falls under a Harmonised System code listed in Annex 2 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
 - (c) "guarantee contract" means a contract entered into by a person as guarantor;

- (d) “guarantor” means a person, who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (e) “Harmonised System” means the Harmonised Commodity Description and Coding System governed by The International Convention on the Harmonised Commodity Description and Coding System;
- (f) “immovable-associated equipment” means agricultural, construction or mining equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated;
- (g) “insolvency-related event” means:
- (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (h) “mining equipment” means an object that falls under a Harmonised System code listed in Annex 3 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto; and
- (i) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise.

Article II – Application of the Convention as regards agricultural, construction and mining equipment

1. The Convention shall apply in relation to agricultural, construction and mining equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to agricultural, construction and mining equipment.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will limit the application of the Protocol to the entirety of the equipment comprised in one or two of the Annexes.
4. This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.

Article III – Derogation

The parties may, by agreement in writing, exclude the application of Article X and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VIII (2) – (4).

Article IV – Representative capacities

A person may, in relation to agricultural, construction or mining equipment, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

Article V – Identification of agricultural, construction or mining equipment

1. For the purposes of Article 7(c) of the Convention and Article XIX of this Protocol, a description of the agricultural, construction or mining equipment is sufficient to identify the equipment if it contains:

- (a) a description of the equipment by item;
- (b) a description of the equipment by type;
- (c) a statement that the agreement covers all present and future equipment; or
- (d) a statement that the agreement covers all present and future equipment except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future agricultural, construction and mining equipment identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the equipment, without the need for any new act of transfer.

Article VI – Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVI(1).

2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Article VII – Association with immovable property

1. Where immovable-associated equipment is situated in a non-Contracting State, this Protocol does not affect the application of any law of that State that determine whether an international interest in the immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

2. A Contracting State, shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the entirety of Alternative A, B, or C of this Article shall apply in relation to an international interest in immovable-associated equipment which is situated in the Contracting State.

Alternative A

3. An international interest in agricultural, construction or mining equipment is not affected by the association of the equipment with the immovable property and continues to exist and retain its priority as against any rights or interests in the immovable-associated equipment.

Alternative B

3. This Protocol does not affect the application of any law of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property to the extent that the equipment loses its individual legal identity in accordance with the law of that State.

4. Where agricultural, construction or mining equipment subject to an international interest is immovable-associated equipment and to the extent that it has not lost its individual legal identity, an interest in the immovable property that extends to that equipment has priority over the registered international interest in the equipment only if the following conditions are fulfilled:

- (a) the interest in the immovable property has been registered in accordance with the requirements of domestic law prior to the time of registration of the international interest in the equipment under this Protocol and registration of the interest in the immovable property continues to be effective; and
- (b) the equipment became associated with the immovable property prior to the time of registration of the international interest in the equipment under this Protocol.

Alternative C

3. This Protocol does not affect the application of any domestic laws that determine whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

CHAPTER II

DEFAULT REMEDIES AND PRIORITIES

Article VIII – Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of agricultural, construction or mining equipment from the territory in which it is situated.

2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to agricultural, construction or mining equipment. Any remedy given by the Convention in relation to agricultural, construction or mining equipment shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving fourteen or more calendar days' prior written notice of a proposed sale or lease to interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.
6. A chargee proposing to procure the export of agricultural, construction or mining equipment under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:
 - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

Article IX – Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):

"(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom",

and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the words "and (e)".
4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
6. With regard to the remedies in Article VIII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief

specified in Article 13 of the Convention is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.

Article X – Remedies on Insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVI(3).

2. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

Alternative A

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the agricultural, construction or mining equipment to the creditor not later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the agricultural, construction or mining equipment if this Article did not apply.

4. For the purpose of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the agricultural, construction or mining equipment and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the agricultural, construction or mining equipment under arrangements designed to preserve the agricultural, construction or mining equipment and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the agricultural, construction or mining equipment where, by the time specified in paragraph 3, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article VIII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVI(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the agricultural, construction or mining equipment, in accordance with the applicable law.

4. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

6. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the agricultural, construction or mining equipment but fails to do so, the court may permit the creditor to take possession of the agricultural, construction or mining equipment upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

7. The agricultural, construction or mining equipment shall not be sold pending a decision by a court regarding the claim and the international interest.

Alternative C

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

- (b) give the creditor the opportunity to take possession of the agricultural, construction or mining equipment in accordance with the applicable law.
4. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the "suspension period"). Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.
5. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the agricultural, construction or mining equipment pending an order of the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency administrator or the debtor, as applicable, otherwise agree.
6. Unless and until the creditor is given the opportunity to take possession under paragraph 3:
- (a) the insolvency administrator or the debtor, as applicable, shall preserve the agricultural, construction or mining equipment and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
7. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the agricultural, construction or mining equipment under arrangements designed to preserve and maintain it and its value.
8. Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, the insolvency administrator or debtor may retain possession of the agricultural, construction or mining equipment and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.
9. With regard to the remedies in Article VIII(1):
- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
10. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
11. Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.

12. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

13. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

14. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

15. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

Article XI – Insolvency assistance

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(1).

2. The courts of a Contracting State in which agricultural, construction or mining equipment is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article X.

Article XII – Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the agricultural, construction or mining equipment in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to agricultural, construction or mining equipment.

CHAPTER III

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT

Article XIII – The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment, provided that such Supervisory Authority is able and willing to act in such capacity.
2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
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. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XIV – First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

Article XV – Designated entry points

1. A Contracting State may at any time designate an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under laws of another State. The various entry points shall be operated at least during working hours in their respective territories.
2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale.

Article XVI – Identification of agricultural, construction or mining equipment for registration purposes

A description of agricultural, construction or mining equipment that contains its manufacturer's serial number and the name of the manufacturer as supplemented by such additional information as may be provided by the regulations is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention.

Article XVII – Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for agricultural, construction or mining equipment shall be the name of its manufacturer and its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.
2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.
3. The fees referred to in Article 17(2)(h) 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].
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
5. The Registrar shall be liable under Article 28(1) of the Convention for loss caused up to an amount not exceeding the value of the agricultural, construction or mining equipment to which the loss relates. Notwithstanding the preceding sentence, the liability of the Registrar shall not exceed 5 million Special Drawing Rights in any calendar year, or such greater amount, computed in such manner, as the Supervisory Authority may from time to time determine by regulations.
6. The preceding paragraph shall not limit the Registrar's liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.
7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.
8. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Article XVIII – Notices of Sale

The regulations shall authorise the registration in the International Registry of notices of sale of agricultural, construction or mining equipment. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

CHAPTER IV

JURISDICTION

Article XIX – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to agricultural, construction or mining equipment under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.
2. A waiver under the preceding paragraph must be in writing and contain a description of the agricultural, construction or mining equipment as specified in Article V(1) of this Protocol.

CHAPTER V

RELATIONSHIP WITH OTHER CONVENTIONS

Article XX – Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention on International Interests in Mobile Equipment as applied to agricultural, construction and mining equipment shall supersede the UNIDROIT Convention on International Financial Leasing in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

CHAPTER VI

FINAL PROVISIONS

Article XXI – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in _____ on _____ by States participating in the Diplomatic Conference to Adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction or Mining Equipment held at _____ from _____ to _____. After _____, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXII – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "Contracting State" or "Contracting States" or "State Party" or "States Parties" in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXIII – Entry into force

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:
 - (a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and
 - (b) the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational.
2. For other States this Protocol enters into force on the first day of the month following the later of:
 - (a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and
 - (b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXIV – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. Any such declarations are to be notified to the Depository and shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
 - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

Article XXV – Transitional Provisions

In relation to agricultural, construction and mining equipment Article 60 of the Convention shall be modified as follows:

- (a) replace paragraph 2(a) with the following:

“(a) “effective date of this Convention” means in relation to a debtor the latest of the time when:

 - (i) this Convention enters into force;
 - (ii) the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, and
 - (iii) the Protocol becomes applicable in that State to the equipment which is subject to the pre-existing right or interest.”
- (b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration takes effect, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”
- (c) insert the following paragraph:

“4. For the purposes of paragraph 3, a declaration takes effect with respect to a pre-existing right or interest in equipment to which the Protocol to the

Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment becomes applicable in that State in accordance with Article XXXII(4) of that Protocol at the time the Protocol becomes applicable to that equipment.”

Article XXVI – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and XI of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article IX(2).
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, B or C of Article X and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A, B or C. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article X.
4. (a) Any declaration made pursuant to this Protocol shall apply to the entirety of the equipment to which this Protocol applies.
(b) A Contracting State that makes a declaration in respect of any Alternative provided for in Articles VII or X shall choose the same Alternative regarding the entirety of the equipment to which this Protocol applies.
5. The courts of Contracting States shall apply Article X in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXVII – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.

Article XXVIII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles II, VII, XXIV, XXVI, XXVII and XXIX may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXIX – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXX – Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

Article XXXI – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

4. A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex.

Article XXXII – Review conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol other than to the Annexes [pursuant to paragraphs 4 and 5] shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by five States Parties in accordance with the provisions of Article XXIII relating to its entry into force.

4. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonised System codes listed in the Annexes, or the inclusion of any additional codes covering uniquely identifiable high value mobile equipment of a type that is used in the agricultural, mining or construction sectors that may warrant inclusion of such equipment in the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. The Depositary shall communicate to all Contracting States the adoption of the amendment. Contracting States shall notify the Depositary within a period of twelve months from the date of the communication if they do not accept to be bound by the amendment. Any such amendment shall become effective in respect of the other States ninety days after the end of that period of 12 months unless [XX%] or more of the Contracting States have notified the Depositary that they do not accept to be bound. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

5. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonised System codes listed in the Annexes without changing the scope of the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. After approval of an amendment by Contracting States the amendment will become effective upon the expiration of [ninety] days after such approval. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

6. Any revision to the Annexes shall not affect rights and interests arising prior to the date the revision becomes effective or applicable.

Article XXXIII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of the deposit of the certificate referred to in Article XXIII(1)(b);
 - (iii) the date of entry into force of this Protocol;
 - (iv) each declaration made in accordance with this Protocol, together with the date thereof;
 - (v) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
 - (b) transmit certified true copies of this Protocol to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at _____, this _____ day of _____, _____, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

ANNEXES TO THE PROTOCOL

ANNEX 1 – AGRICULTURAL EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to agricultural equipment that falls under the following Harmonised System codes in this Annex.

842481: Mechanical appliances (whether or not hand-operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines – Other appliances -- Agricultural or Horticultural

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders – Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Plows

843221: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Harrows, scarifiers, cultivators, weeders and hoes – Disc harrows

843230: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Seeders, planters and transplanters

843240: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Manure Spreaders and fertilizer distributors

843340: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Straw or Fodder Balers

843351: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Combine Harvester or Thresher

843680: Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders -- Other machinery

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870190: Tractors (other than tractors of heading 8709) – Other

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

ANNEX 2 – CONSTRUCTION EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to construction equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermet

842641: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled -- On tires

842649: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled – Other

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping on compacting machinery

843069: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Other

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

847432: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Machines for mixing mineral substances with bitumen

847982: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Other machines and mechanical appliances -- Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines.

847910: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Machinery for public works, building or the like

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870190: Tractors (other than tractors of heading 8709) – Other

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

870510: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) – Crane lorries

870540: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) – Concrete-mixer lorries

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

ANNEX 3 – MINING EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to mining equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermets

842911 - Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010 : Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping on compacting machinery

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

870190: Tractors (other than tractors of heading 8709) – Other

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

APPENDIX V**AGENDA AND ORDER OF BUSINESS**

(Prepared by the UNIDROIT Secretariat)

1. Opening of the session and election of the officers.
2. Adoption of the annotated draft agenda and organisation of the session.
3. Introduction to the Convention on International Interests in Mobile Equipment and project history of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment.
4. Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment.
5. Future work.
6. Review of report.
7. Any other business.

Monday 20 March

- 08:30 Registration
- 10:00 – 12:30 *Morning session*
Item 1: Opening of the session and election of officers
Item 2: Adoption of the Agenda and Organisation of the session
Item 3: Introduction to the CTC and MAC Protocol
- 14:00 – 17:00 *Afternoon session*
Item 4: Consideration of the preliminary draft Protocol
Article I – Defined terms
Article II – Application of the Convention
Article XXXII - Review conferences, amendments and related matters
Annex 1
Annex 2
Annex 3
- 18:00 Drafting Committee (Pakistan Room)

Tuesday 21 March

- 08:30 Registration
- 09:00 – 12:30 *Morning session*
Item 4: Consideration of the preliminary draft Protocol
Article II – Application of the Convention (continued)
Article XXXII - Review conferences, amendments and related matters
Annex 1
Annex 2
Annex 3
- 14:00 – 17:00 *Afternoon session*
Item 4: Consideration of the preliminary draft Protocol
Article III – Derogation
Article IV – Representative Capacities
Article V – Identification of agricultural, construction and mining equipment
Article VI – Choice of law
- 18:00 Drafting Committee (Pakistan Room)

Wednesday 22 March

09:00 – 12:30

*Morning session***Item 4:** Consideration of the preliminary draft Protocol
Article VII – Association with immovable property

14:00 – 17:00

*Afternoon session***Item 4:** Consideration of the preliminary draft Protocol
Article VII – Association with immovable property (continued)

18:00

Drafting Committee (Pakistan Room)

Thursday 23 March

09:00 – 12:30

*Morning session***Item 4:** Consideration of the preliminary draft Protocol
Article VIII – Modification of default remedy provisions
Article IX – Modification of provisions regarding relief pending final determination
Article X – Remedies on insolvency
Article XI – Insolvency assistance
Article XII – Debtor provisions
Article XIII - The Supervisory Authority and the Registrar
Article XIV - First regulations
Article XV - Designated entry points

14:00 – 17:00

*Afternoon session***Item 4:** Consideration of the preliminary draft Protocol
Article XVI - Identification of agricultural, construction or mining equipment for registration purposes
Article XVII - Additional modifications to Registry provisions
Article XVIII - Notices of Sale
Article XIX - Waivers of sovereign immunity
Article XX – Relationship with the UNIDROIT Convention on International Financial Leasing
Article XXI - Signature, ratification, acceptance, approval or accession
Article XXII - Regional Economic Integration Organisations
Article XXIII - Entry into force

18:00 – 22:00

Drafting Committee (Pakistan Room)

Friday 24 March

09:00 – 12:30

Morning session

Item 4: Consideration of the preliminary draft Protocol
Article XXIV - Territorial units
Article XXV - Transitional Provisions
Article XXVI - Declarations relating to certain provisions
Article XXVII - Declarations under the Convention
Article XXVIII - Reservations and declarations
Article XXIX - Subsequent declarations
Article XXX - Withdrawal of declarations
Article XXXI - Denunciations
Article XXXIII - Depositary and its functions

14:00 – 17:00

Afternoon session

Item 4: Consideration of the preliminary draft Protocol
Item 5: Future work
Item 6: Review of report
Item 7: Any other business

Close of meeting

APPENDIX VI**LIST OF PARTICIPANTS
LISTE DES PARTICIPANTS****MEMBER STATES /
ETATS MEMBRES****AUSTRALIA / AUSTRALIE**

Mr Greg FRENCH
Ambassador
Embassy of Australia in Italy
Rome

Ms Isabella SWIFT
Second Secretary
Embassy of Australia in Italy
Rome

Mr Bruce WHITTAKER
Senior Consultant, Ashurst
Barton

BRAZIL / BRESIL

Mr Rodrigo Octávio BROGLIA MENDES
Professor
University of São Paulo
São Paulo

Mr Vinicius CARDOSO
Third Secretary
Embassy of Brazil in Italy
Rome

Mr Eduardo VIEIRA DE ALMEIDA FILHO
Professor
University of São Paulo
São Paulo

CANADA

Mr Dominique D'ALLAIRE
(Head of Delegation)
Lawyer/Counsel
Department of Justice Canada
Ottawa

Mr Michel DESCHAMPS
Adviser/Lawyer
Mc Carthy Tétrault
Montreal

Ms Claudia HINZER
Second Secretary Political and Economic Affairs
Embassy of Canada in Italy
Rome

Mr Paul MORRISON
Manager
Policy Development in Insolvency
Department of Innovation, Science and Economic
Development
Ottawa

Mr Roderick WOOD
Adviser/Professor
University of Alberta
Edmonton

**CHINA (PEOPLE'S REPUBLIC OF) /
CHINE (REPUBLIQUE POPULAIRE DE)**

Mr Weibing GU
Director
International Cooperation Department
Ministry of Agriculture
Beijing

Mr Liu KEYI
Deputy Director
Ministry of Commerce
Treaty and Law Department
Beijing

Ms Zhiping ZHANG
Director
Filong Law Firm
Beijing

**CZECH REPUBLIC /
REPUBLIQUE TCHEQUE**

Ms Pavlina RUCKI
Deputy Director
Ministry of Industry and Trade
Department of European and International Law
Prague

Ms Veronika VANIŠOVÁ
Secretary of the First Deputy Minister
Ministry of Agriculture
Prague

EGYPT / EGYPTE

Mr Khaled ELTAWHEEL
First Secretary
Embassy of the Arab Republic of Egypt in Italy
Rome

Mr Hazem FAWZY
First Secretary
International Legal Affairs Department
Ministry of Foreign Affairs
Cairo

Mr Anas SHADI
First Secretary
Embassy of the Arab Republic of Egypt in Italy
Rome

Mr Ayman THARWAT
Chargé d’Affaires
Embassy of the Arab Republic of Egypt in Italy
Rome

ESTONIA / ESTONIE

Ms Kätlin TAMMIKU
Private Law Adviser
Ministry of Justice
Tallin

FINLAND / FINLANDE

Mr Pekka PULKKINEN
Senior Adviser, Legislative Affairs
Ministry of Justice
Government

FRANCE

Mr Jean-François RIFFARD
Expert, Professor of Private Law
University of Auvergne
Chamalières

GERMANY / ALLEMAGNE

Mr Max WILCKE
(Head of Delegation)
Legal Adviser
Ministry of Justice and for Consumer Protection
Berlin

Mr Ole BÖGER
Judge
Hanseatic Court of Appeal Bremen
Bremen

Mrs Eva-Maria KIENINGER
Chair
German and European Private Law, Private
International Law
University of Würzburg, Faculty of Law
Würzburg

Mr Olaf REIF
Head of the Legal Department
Embassy of the Federal Republic of Germany in
Italy
Rome

Mr. Benjamin VON BODUNGEN
Lawyer
Bird & Bird
Heilbronn

HOLY SEE / SAINT-SIEGE

M. Vincenzo BUONOMO
Professeur de droit international
Université Pontificale du Latran
Mission Permanente du Saint-Siège auprès de la
FAO
Cité du Vatican

Mme Marilena MONTANARI
Chercheuse en droit international
Université Pontificale du Latran
Mission Permanente du Saint-Siège auprès de la
FAO
Cité du Vatican

HUNGARY / HONGRIE

Ms Zsuzsa DEGRELL
Legal Expert
Ministry of Justice
Budapest

INDIA / INDE

Mr Arvind MESHARAM
Deputy Commissioner
Ministry of Agriculture and Farmers Welfare
New Delhi

Ms Uma SEKHAR
Joint Secretary
Ministry of External Affairs
New Delhi

INDONESIA / INDONESIE

Mr Zahermann MUABEZI
Deputy Director of Private International Law
Legal Affairs and International Treaties
Ministry of Foreign Affairs
Jakarta

Mr Royhan Nevy WAHAB
First Secretary for Multilateral Affairs
Alternate Permanent Representative of the Republic
of Indonesia to UNIDROIT
Embassy of Indonesia in Italy
Rome

Mr Des ALWI
Chargé d’Affaires
Embassy of Indonesia in Italy
Rome

Ms Aisyah Murtina ALLAMANDA
Third Secretary
Embassy of Indonesia in Italy
Rome

ITALY / ITALIE

Mr Giuseppe Benedetto REITANO
Second Secretary
Ministry of Foreign Affairs and International
Cooperation
Rome

Mr Roberto CIANELLA
Official
Office of the Director General
Ministry of Economic Development
Directorate General for Safety of Mining and Energy
Activities
National Mining Office for Hydrocarbons and
Georesources
Rome

Mr Marco CORSETTI
Official
Office of the Director General
Ministry of Economic Development
Directorate General for Safety of Mining and Energy
Activities
National Mining Office for Hydrocarbons and
Georesources
Rome

Mr Sandro LIBERATORI
General Director
ENAMA - Ente Nazionale per la Meccanizzazione
Agricola
Rome

Ms Natascia MAISANO
Employee
ENAMA - Ente Nazionale per la Meccanizzazione
Agricola
Rome

JAPAN / JAPON

Ms Megumi HARA
Professor
Gakushuin University
Tokyo

LUXEMBOURG

Mme Janine FINCK
Ambassadeur
Ambassade du Luxembourg en Italie
Rome

M. André FLAMMANG
Premier Secrétaire
Ambassade du Luxembourg en Italie
Rome

Mme Marie-Lise STOLL
Attachée
Ambassade du Luxembourg en Italie
Rome

M. Bob EWEN
Stagiaire
Ambassade du Luxembourg en Italie
Rome

MALTA / MALTE

Ms Gabriella MARCELJA
Attaché
Embassy of the Republic of Malta in Italy
Rome

Mr Ivan VASSALLO
Consul General
Embassy of the Republic of Malta in Italy
Rome

NIGERIA

Mr Peter EDAKO
Senior Counsellor – Economy Matters
Embassy of Nigeria
Rome

PARAGUAY

Mr Martin LLANO-HEYN
Ambassador
Embassy of Paraguay
Rome

POLAND / POLOGNE

Mr Maciej BIALEK
Senior Expert
Ministry of Energy, Mining Department
Warsaw

**REPUBLIC OF KOREA /
REPUBLIQUE DE COREE**

Mr Mingu LEE
Judge
Suncheon District Court
Suncheon

**RUSSIAN FEDERATION /
FEDERATION DE RUSSIE**

Mr Aleksei FILIPPOV
Legal Adviser
Department of Law
Ministry of Economic Development
Moscow

Ms Ekaterina SOROKOVA
General Director
International and Comparative Law research Centre
Moscow

SAUDI ARABIA / ARABIE SAOUDITE

Mr Mohammed M. ALGHAMDI
Permanent Representative to FAO
Royal Embassy of Saudi Arabia in Italy
Rome

**SOUTH AFRICA /
AFRIQUE DU SUD**

Mr André Remeires SMIT
State Law Adviser
Government of the Republic of South Africa
Department of International Relations and
Cooperation
Pretoria

SPAIN / ESPAGNE

Mr Rafael OSORIO
First Secretary
Embassy of Spain in Italy
Rome

Ms Teresa RODRÍGUEZ DE LAS HERAS BALLELL
Associate Professor in Commercial Law
Universidad Carlos III de Madrid
Getafe (Madrid)

TUNISIA / TUNISIE

M. Nabil RACHDI
*Magistrat à la Cour de Cassation tunisienne,
Chef de Département au Centre d'études juridiques
et judiciaires (CEJJ),
Chargé d'enseignement à l'ENA, l'ESC et l'ISE*
Tunis

TURKEY / TURQUIE

Mr Mehmet BULUT
Counsellor
Embassy of the Republic of Turkey in Italy
Rome

Ms Sule ERKAN
Lawyer
Ministry of Environment and Urbanisation
Ankara

Mr Ercin ERKAYA
Lawyer
Ministry of Environment and Urbanisation
Ankara

Mr Muhammet SONMEZ
Lawyer
Ministry of Environment and Urbanisation
Ankara

Ms Pinar ÜSTÜNYER ÇETİNKAYA
Lawyer
Ministry of Environment and Urbanisation
Ankara

**UNITED KINGDOM /
ROYAUME-UNI**

Sir Roy GOODE
Emeritus Professor of Law
University of Oxford
Oxford

Ms Louise GULLIFER
Professor of Commercial Law
Fellow and Tutor in Law
Harris Manchester College
Oxford

Mr Mark W. SMITH
Deputy Director
Rescue, Restructure, Insolvency and Easter
Department for Business, Energy
and Industrial Strategy
London

**UNITED STATES OF AMERICA /
ETATS-UNIS D'AMERIQUE**

Mr Henry GABRIEL
(UNIDROIT Governing Council Member)
Professor of Law
Elon Law School
Greensboro, N.C.

Mr Jeffrey KLANG
Senior Counsel
International Law
Des Plaines

Mr Charles MOONEY
Professor of Law
University of Pennsylvania Law School
Philadelphia

Ms Nathalie REY
Counsel
Export-Import Bank of the United States
Washington, D.C.

Mr Timothy SCHNABEL
Attorney
Department of State
Washington, D.C.

Ms Amy SCHNABEL
Foreign Affairs Officer
Department of State
Washington, D.C.

Mr Padraic SWEENEY
Department of Commerce
Senior International Trade Specialist
Washington, D.C.

Ms Daleya UDDIN
Alternate Permanent Representative
U.S. Mission to UN Rome Based Organizations
Rome

* * *

**NON MEMBER STATES /
ETATS NON MEMBRES**

ALBANIA / ALBANIE

Ms Lauresha GREZDA
Director
European Integration & Projects Department (SPO)
Ministry of Agriculture, Rural Development & Water
Administration
Tirana

**BOSNIA AND HERZEGOVINA /
BOSNIE-HERZEGOVINE**

Ms Vesela PLANINIĆ
Chargé d'Affaires
Embassy of Bosnia and Herzegovina in Italy
Rome

BURKINA FASO

Mme Aoua TOURE SAKO
Ministre Conseiller
Ambassade du Burkina Faso en Italie
Rome

M. Kuilga Emmanuel YAMEOGO
Directeur des Mines
Ministère de l'Energie, des Mines et des Carrières
Ouagadougou

CÔTE D'IVOIRE

M. Jacques Roger Claude EKRA
Directeur des Affaires Juridiques et du Contentieux
Ministère de l'Industrie et des Mines
Abidjan

M. Timothée EZOUAN
Ministre Conseiller
Ambassade de Côte d'Ivoire en Italie
Rome

| | |
|---------------------------|--|
| | <p>M. Jean-Albert NIANSSOUNOU <i>Directeur du développement minier</i> Ministère de l'Industrie et des Mines Abidjan</p> |
| ERITREA / ERYTHREE | <p>Mr Asmerom Kidane TECLEGHIORGHIS <i>Alternate Permanent Representative of the State of Eritrea to FAO, IFAD & WFP</i> Rome</p> |
| HAITI / HAÏTI | <p>M. Jean-Pierre DELIENNE <i>Premier Secrétaire</i> Ambassade d'Haïti en Italie Rome</p> <p>M. Jean Turgot Abel SENATUS <i>Conseiller</i> Ambassade d'Haïti en Italie Rome</p> <p>M. Yves THEODORE <i>Conseiller</i> Ambassade d'Haïti en Italie Rome</p> |
| JORDAN / JORDANIE | <p>Mr Ali ALBSOUL <i>Deputy Head of Mission/Ministry Plenipotentiary</i> Embassy of the Hashemite Kingdom of Jordan in Italy Rome</p> |
| KENYA | <p>Ms Jennifer Wanjiru NGANGA <i>State Counsel</i> Office of the Attorney General & Department of Justice Nairobi</p> <p>Ms Beatrice OSICHO <i>State Counsel</i> Office of the Attorney General & Department of Justice Nairobi</p> |
| MADAGASCAR | <p>Mr Rakotoson Andriamanalimanana DAVID <i>Directeur</i> Centre de formation et d'application en machinisme agricole-Antsirabe Antsirabe</p> |
| MALI | <p>M. Mamadou SOGODOGO <i>Deuxième Conseiller</i> Ambassade du Mali en Italie Rome</p> |

MONGOLIA / MONGOLIE

Mr Dawadash SAMBUU
Counselor
Embassy of Mongolia in Italy
Rome

MOZAMBIQUE

Mr Melquisedec MUAPALA
Assistant
Embassy of the Republic of Mozambique in Italy
Rome

Mr Inacio Tomas MUZIME
Counsellor / Alternate Representative
Embassy of the Republic of Mozambique in Italy
Rome

Ms Leodmila SERZEDELLOS AMONE
Assistant
Embassy of the Republic of Mozambique in Italy
Rome

PHILIPPINES

Ms Maria Luisa GAVINO
Agricultural Affairs Assistant
Embassy of the Philippines in Italy
Rome

Mr Lupiño LAZARO, Jr.
Agriculture Attaché
Embassy of the Philippines in Italy
Rome

**SAO TOME AND PRINCIPE /
SAO TOME-ET-PRINCIPE**

Mr Edimilson DAS NEVES CRAVID
Diplomate
Ministère des Affaires étrangères et des
communautés
São Tomé

Mr Nelson Manuel QUARESMA DE NAZARÉ
Ministry of Foreign Affairs and Communities
Third Secretary
São Tomé

Ms N'Dginga VILA NOVA TROVOADA DA COSTA
*Diplomate responsable de la coopération bilatérale
entre S.T.P et les pays Africains*
Ministère des Affaires étrangères et des
communautés
São Tomé

**SOUTH SUDAN /
SOUDAN DU SUD**

Mr Sabino Okuj Obok BENY
Legal Advisor Ministry of Agriculture
Legal Counsel Ministry of Justice
Ministry of Agriculture & Food Security
Juba

Mr John Ogoto Kanisio OKELENG LEFUK
Undersecretary for Food Security
 Ministry of Agriculture & Food Security
 Juba

SUDAN / SOUDAN

Ms Eiman OSMAN
Legal Advisor
 Khartoum

THAILAND / THAILANDE

Mr Krisada CHINAVICHARANA
Director General
 Fiscal Policy Office
 Ministry of Finance
 Phaya Thai Bangkok

Mr Putthipong NILSUM
Legal Officer
 Fiscal Policy Office
 Ministry of Finance
 Phaya Thai Bangkok

ZAMBIA / ZAMBIE

Mr Glyne Namulula MICHELO
First Secretary Economic and Trade
 Embassy of the Republic of Zambia in Italy
 Rome

Mrs Victoria MUSHIBWE
Counsellor Administration – Chargé d’Affaires
 Embassy of the Republic of Zambia in Italy
 Rome

* * *

**REGIONAL ECONOMIC INTEGRATION ORGANISATION /
 ORGANISATION REGIONALE D’INTEGRATION ECONOMIQUE**

EUROPEAN UNION / UNION EUROPEENNE

**EUROPEAN COMMISSION /
 COMMISSION EUROPEENNE**

Ms Patrizia DE LUCA
Team Leader
 DG JUSTICE
 Unit A1 Civil Justice
 Brussels - Belgium

**GENERAL SECRETARIAT OF THE
 COUNCIL OF THE EUROPEAN UNION /
 SECRETARIAT GENERAL DU CONSEIL
 DE L’UNION EUROPEENNE**

Mr Xavier THOREAU
Political Administrator
 Brussels - Belgium

* * *

**INTERGOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERGOUVERNEMENTALES**

| | |
|--|--|
| FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) / ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO) | Mr Antonio TAVARES <i>Legal Affairs Director</i> Legal Office Rome - Italy |
| INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) / FONDS INTERNATIONAL DE DÉVELOPPEMENT AGRICOLE (FIDA) | Mr Charles FORREST <i>Senior Legal Officer</i> Rome - Italy |
| UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)/ COMMISSION DES NATIONS UNIES POUR LE DROIT COMMERCIAL INTERNATIONAL (CNUDCI) | Mr Spyridon BAZINAS <i>Senior Legal Officer</i> International Trade Law Division Office of Legal Affairs Vienna International Center Vienna – Austria |
| WORLD BANK GROUP / GROUPE DE LA BANQUE MONDIALE | Mr John WILSON <i>Senior Finance Specialist</i> Mexico |

* * *

**INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES NON-GOUVERNEMENTALES**

| | |
|---|---|
| INTERNATIONAL BAR ASSOCIATION) / ASSOCIATION INTERNATIONALE DU BARREAU | Mr Giuseppe DE FALCO <i>Lawyer</i> Studio Legale Ughi E Nunziante Rome - Italy |
| INTERNATIONAL LAW ASSOCIATION / ASSOCIATION DE DROIT INTERNATIONAL | Mr Alberto MALATESTA <i>Secretary General – Italian Branch</i> Castellanza (VA) - Italy |
| NATIONAL LAW CENTER FOR INTER- AMERICAN FREE TRADE | Mr Marek DUBOVEC <i>Senior Research Attorney</i> Tucson, Arizona - United States of America |
| | Ms Kumiko KOENS <i>Professor</i> Yamagata University Yamagata-Shi - Japan |

**WORLD FARMERS' ORGANISATION
(WFO)/ ORGANISATION MONDIALE DES
AGRICULTEURS (OMA)**

Ms Cristina AROLDI
Junior Legal Officer
Rome - Italy

Mr Paul BODENHAM
Legal Counsel
Rome - Italy

* * *

OTHERS / AUTRES

**MAC PROTOCOL WORKING GROUP /
GROUPE DE TRAVAIL MAC**

Mr Phillip DURHAM
Secretary-General
New York City - United States of America

Mr Felipe BONSENSO VENEZIANO
Member of the Executive Board
São Paulo - Brazil

Mr Robert DOWNEY
General Counsel-North America
Corporate and Asset Finance
Macquarie Group Limited
Nashville, TN - United States of America

* * *

UNIDROIT

Mr José Angelo ESTRELLA FARIA
Ms Anna VENEZIANO
Ms Frédérique MESTRE
Mr William BRYDIE-WATSON

Secretary-General
Deputy Secretary-General
Senior Legal Officer
Legal Officer