



**MAC Protocol
Study Group
4th meeting
Rome, 7-9 March 2016**

UNIDROIT 2016
Study 72K – SG4 – Doc. 3
Original: English
February 2016

Fifth preliminary annotated draft of a fourth protocol to the Cape Town Convention on matters specific to agricultural, construction and mining equipment (MAC Protocol)

(Prepared by the UNIDROIT Secretariat)

<i>Summary</i>	Document providing drafting options to assist the Study Group in preparing a draft MAC Protocol.
<i>Action to be taken</i>	For discussion.
<i>Related documents</i>	<u>UNIDROIT 2014 - 72K – SG1 – Doc. 3</u> <u>UNIDROIT 2015 - 72K – SG2 – Doc. 5</u> <u>UNIDROIT 2015 - 72K – SG2 – Doc. 7</u> <u>UNIDROIT 2015 - 72K – SG3 – Doc. 3</u>

Introduction

This document is an updated version of the fourth annotated draft MAC Protocol that was circulated to the Study Group ahead of its third meeting in October 2015. The draft has been amended to reflect the conclusions from the first, second and third Study Group meetings.

This document follows the approach of the Draft Protocol considered during the earlier Study Group meetings:

- Where an Article has substantively diverged from existing practice in previous Protocols to the Cape Town Convention, the provisions are *italicised*
- Where there are different possible approaches to the drafting of a provision, secondary options are contained in [square brackets] for further consideration
- Amendments specific to the 5th annotated draft are in **red**
- Footnotes provide additional analysis and explanation of the provisions

TABLE OF CONTENTS

Article Number	Subject
Chapter I	Sphere of Application and General Provisions
Article I	Defined Terms
Article II	Application of the Convention as regards to agricultural, mining and construction equipment
Article III	Derogation
Article IV	Representative capacities
Article V	Identification of agricultural, mining or construction equipment
Article VI	Choice of law
Article VII	Association with immovable property
Chapter II	Default Remedies, Priorities and Assignments
Article VIII	Modification of default remedies 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
Chapter III	Registry Provisions Relating to International Interests in Agricultural, Construction and Mining Equipment
Article XIV	First regulations
Article XV	Designated entry points
Article XVI	Identification of Agricultural, Mining and Construction Equipment for registration purposes
Article XVII	Additional modifications to Registry provisions
Article XVIII	Notices of sale
Chapter IV	Jurisdiction
Article XIX	Waivers of sovereign immunity
Chapter V	Relationship with other Conventions
Article XX	Relationship with the UNIDROIT Convention on International Financial Leasing
Article XXI	Relationship with previous Protocols to the Cape Town Convention
Chapter VI	Final Provisions
Article XXII	Signature, ratification, acceptance approval or accession
Article XXIII	Regional Economic Integration Organisations
Article XXIV	Entry into force
Article XXV	Territorial units
Article XXVI	Declarations
[Article XXVII]	[Declarations modifying the Convention or certain provisions thereof]
[Article XXVIII]	[Reservations and declarations]
[Article XXIX]	[Subsequent declarations]
[Article XXX]	[Withdrawal of declarations]
Article XXVII	Denunciations
Article XXVIII	Review conferences, amendments and related matters
Article XXIX	Depositary and its functions
Annex I	Agricultural Equipment
Annex II	Construction Equipment
Annex III	Mining Equipment

PRELIMINARY DRAFT PROTOCOL TO THE UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURE AND CONSTRUCTION EQUIPMENT¹

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING it necessary to implement the UNIDROIT Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*), *as applicable to² mining, agricultural and construction 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 high value and mobile equipment,

*RECOGNISING the important role that mining, agricultural and construction equipment play in the global economy and in particular for *developing economies*,*³

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

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

¹ This suggested text for the preamble is taken from the almost uniform text used in the Air Protocol 2001 and the Rail Protocol 2007. In the second paragraph, the Railway Protocol shortens the phrase inside the parenthesis to ‘(the “Convention”)', however the Space Protocol subsequently readopted the original phrasing in the Aircraft Protocol ‘(hereinafter referred to as the *Convention*)’. It is unclear as to why the text in the Rail Protocol diverged in this respect. The Space Protocol contains a significantly longer preamble than the Air and Rail Protocols:

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner, RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them, MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally, DESIRING to provide broad and mutual economic benefits for all interested parties, BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions, CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection, TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

While the Official Commentary provides very little additional information on why this longer preamble was adopted, it was noted at the second MAC Protocol Study Group meeting that the longer preamble in the Space Protocol was in part due to the involvement of the United Nations Committee on the Peaceful Use of Space, who favoured a longer preamble as consistent with most UN instruments.

² *At the third Study Group meeting in October 2015 it was noted that the Protocol ‘applied to’ rather than ‘related to’ agricultural, construction and mining equipment.*

³ *At the second Study Group meeting it was decided that limited additional wording should be added to the preamble. At the third meeting various wording was discussed, with a preference for ‘emerging economies’ over ‘developing countries’ or ‘emerging markets’. The Study Group noted that the terminology should be consistent with that used in the most recent United Nations instruments.*

CHAPTER I
SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I⁴

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 any item listed in Annex 1 to the Protocol⁵*
 - (b) *"construction equipment" means any item listed in Annex 2 to the Protocol*
 - (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) *"immovable-associated equipment" means agricultural, construction or mining equipment capable of being subject to an interest under this Protocol that becomes 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 located⁶*
 - (f) *"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
 - (g) *"mining equipment" means any item listed in Annex 3 to the Protocol*
 - (h) *"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.*

⁴ This Article is consistent with all previous Protocols, except for subparagraphs 2(a), (b) and (f), which deals with the definitions of agricultural, construction and mining equipment.

⁵ It was decided at the first Study Group meeting that the classes of equipment should be defined with reference to the list of Harmonised System codes Annexed to the Protocol. This approach was reaffirmed at the second Study Group meeting. It was suggested that the rules governing the criteria for including HS codes (including amending the list) could be also be set in the Annex itself.

⁶ This definition was inserted in the fifth annotated draft Protocol following the insertion of the Article governing 'association with immovable property'. The article does not provide a substantive legal definition of 'immovable-associated equipment', it simply refers to law of the domestic country in which the equipment is located to determine whether an interest related to immovable property law is created. Similarly, it does not distinguish between different types of immovable property-related interests under the domestic law (i.e. does not distinguish between fixtures and accessories).

Article II⁷Application of the Convention as regards to 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 to the Protocol*.
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 is excluding the application of the Protocol to one or two of the Annexes of equipment to the Protocol.*⁸

⁷ Paragraphs one and two of Article II are identical in language and approach to Article II in all three previous Protocols. If further explicit exclusions in the application of the MAC Protocol are required, it would be sensible to add them as additional subparagraphs to this Article.

⁸ Paragraph three is a completely new paragraph that is not contained in any of the previous Protocols. It allows Contracting States to ‘opt out’ for the application of the Protocol to each category of equipment (agricultural, construction and mining). As an ‘opt out’ provision, in ratifying the Protocol a State will be automatically applying it to all three categories of equipment, unless a specific declaration is made in relation to this Article. In the first draft Protocol, the provision was contained in a separate article, which has now been removed after relocating this provision to Article II. The current drafting was adopted at the second Study Group meeting. The second draft read: *A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the Protocol does not apply to one or more categories of equipment, being agriculture, construction or mining equipment, as listed in the Annexes to the Protocol.*

Article III⁹Derogation

The parties may, by agreement in writing, exclude the application of Article X¹⁰ and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VII¹¹ (3) – (4).

Article IV¹²Representative capacities

A person may, in relation to agricultural, mining or construction 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.

⁹ This drafting is consistent with Article IV(3) of the Air Protocol, Article XVI of the Space Protocol and Article III of the Rail Protocol.

¹⁰ ‘Remedies on insolvency’.

¹¹ ‘Modification of default remedies provisions’.

¹² This drafting is consistent with the Article VI of the Air and Space Protocols and Article IV of the Rail Protocol.

Article V¹³**Identification of agricultural, mining or construction equipment**

1. For the purposes of Article 7(c) of the Convention and Article XVIII(2)¹⁴ of this Protocol, a description of the agricultural, mining or construction equipment is sufficient to identify the agricultural, mining or construction equipment if it contains:
 - (a) a description of the agricultural, mining or construction equipment by item;
 - (b) a description of the agricultural, mining or construction equipment by type;
 - (c) a statement that the agreement covers all present and future agricultural, mining or construction equipment; or
 - (d) a statement that the agreement covers all present and future agricultural, mining or construction equipment except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future¹⁵ 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 and mining equipment, without the need for any new act of transfer.

¹³ At the first Study Group meeting, it was decided to follow the description-based approach in Article V of the Rail Protocol. Article V of the Rail Protocol allows any method of description, which enables railway stock to be identified to the agreement creating or providing for the international interest, whether the description is by item, by type or by a statement that the agreement covers all present and future railway rolling stock. This description-based approach to identification partially overrides Article 2(2) of the Convention that requires that an object be uniquely identifiable. In following the Rail Protocol approach, Article V distinguishes the identification requirements for the constitution of an agreement from the more stringent requirements required for registration under Article XV. This more flexible approach will allow a security interest to be created over a fleet of new MAC equipment without the need for a new agreement every time an additional item under the agreement is acquired.

¹⁴ ‘Waivers of sovereign immunity’.

¹⁵ Professor de las Heras Ballel (member of the Study Group) has queried whether the use of term ‘future’ should be revised at the third Study Group meeting. She notes that, the case that paragraph 2 is describing is not referring to real future equipment since equipment may or may not exist before the perfection of the interest. The use of the term ‘future’ is consistent with its used in Article V(2) of the Luxembourg Rail Protocol.

Article VI¹⁶
Choice of law

*Option 2*¹⁷

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply this Article.

[Option 1]

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

¹⁶ The drafting of this Article is consistent with the Choice of Law Provisions in the three previous Protocols (Article VIII in the Air and Space Protocols and Article VI in the Rail Protocol).

¹⁷ Options 1 and 2 relate to how declarations are made under the Protocol. At the second Study Group meeting it was decided that the Committee of Intergovernmental Experts should be provided with a Protocol-wide option to simplify the making of declarations. Option 1 has been altered to allow for Contracting States to make a declaration specifically under this Article (see Article XXIV for further details). Option 2 is the status quo in relation to how declarations are made under the Protocol.

Article VII¹⁸Association with immovable property

1. A Contracting State, shall,¹⁹ at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will apply the entirety of Alternative A, B, C, or D of this Article in relation to an international interest in an object under this Protocol which is, or becomes²⁰, immovable-associated equipment²¹ and which is situated in the Contracting State.

2. As regards immovable-associated equipment situated in a Contracting State, all Contracting States will apply the Protocol subject to the declaration or declarations made by that Contracting State.²²

[3. This Convention does not affect the rights of a person in immovable property located in a non-Contracting State which is, or becomes, associated with immovable-associated equipment.]²³

¹⁸ This article was added to the fifth annotated draft Protocol, following consideration of the issues at the first three Study Group meetings and two out-of-session teleconferences.

¹⁹ It was decided at the first Study Group fixtures teleconference that the fixtures article should be a mandatory declaration. The benefit of making the fixtures article subject to a mandatory declaration is that it gives states some flexibility in relation to how they implement this contentious aspect of the Protocol, while also requiring them to do so, as failure of a contracting state to make a mandatory declaration would result in the Depositary refusing to accept an instrument of ratification. The language of Paragraph 1 is based upon Article 54(2) of the Cape Town Convention, which requires contracting states to make a mandatory declaration in relation to whether a court's leave is required to exercise certain remedies under the Convention.

²⁰ This language provides that the timing of the association between the object and the immovable property is irrelevant. The timing of the association is a different issue to the timing of the registration of the international interest, which is considered further in subsequent articles.

²¹ 'Immovable-associated equipment' is defined in Article 1(2) as 'immovable-associated equipment' means agricultural, construction or mining equipment capable of being subject to an interest under this Protocol that becomes 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 located.

²² This sentence clarifies that a declaration – as regards assets that are situated in the Contracting State that has made the declaration - has effect not only before the courts of the Contracting State that has made the declaration, but also before the courts of the other Contracting States. While this type of clarifying paragraph is not present in previous Protocols, the clarification may be useful, as this will be the first Protocol applying the declarations made by a Contracting State in relation to equipment located in that state (as opposed to the location of the debtor as occurs in relation to a declaration applying alternative insolvency remedies). The Secretary-General has queried whether this provision is necessary.

²³ During the second teleconference the Study Group discussed what would occur in relation to international interests in MAC equipment that became associated with immovable property in non-Contracting States. The prevailing view was that in the absence of an express provision stating otherwise, Article 29 of the Cape Town Convention would apply, and the international interest would take priority over any domestic interest arising out of the equipment's association with immovable property. As Article 29 was not drafted to contemplate an international interest conflicting with an interest arising out of association with immovable property, the Study Group concluded that it would be prudent to consider including a draft Provision providing that international interests in MAC equipment does not interfere with immovable property-related interests. This drafting is based on Article 29(7), which provides that priority given under Article 29 does not affect pre-existing interests in items installed on objects. The German Ministry of Justice has suggested that this provision could be moved to the end of the Article.

Alternative A (maintain priority of international interest)²⁴

2. An international interest in agricultural, construction or mining equipment will continue to exist and retain its priority as against any other interests arising out of its association with immovable property, notwithstanding that it is or becomes immovable-related equipment.

Alternative B (apply domestic law to immovable-associated equipment)²⁵

2. Where agricultural, construction or mining equipment subject to an international interest is or becomes immovable-associated equipment, the law of the Contracting State making the declaration determines whether the international interest ceases to exist, is subordinated to or is otherwise affected by the association with immovable property and any interest thereby created in the equipment.

3. Where an international interest in agricultural, construction or mining equipment ceases to exist, is subordinated to or otherwise affected by any interest in immovable property pursuant to the preceding paragraph, the law of the Contracting State making the declaration determines whether a displaced or subordinated holder of an international interest in the equipment obtains a claim (compensatory or other) against a holder of an interest in the immovable property.²⁶

[4. Where a Contracting State makes a declaration to apply this alternative, the Contracting State will at the time of making the declaration deposit with the Depositary of the Protocol a list of interests arising in relation to immovable property law which displace, subordinate or otherwise affect international interests.]²⁷

²⁴ Alternative A allows States to declare that an international interest in an object associated with immovable property will continue to exist and enjoy priority over domestic interests resulting from its association with immovable property, even where the domestic law would grant a priority interest in the equipment to the owner of the immovable property. Alternative A does not distinguish between different types of interests arising out of association with immovable property (i.e. ‘fixtures’ and ‘accessories’). At the second teleconference it was discussed whether this Alternative should be framed using the language of Article 2 of the Model Leasing law. Ultimately it was decided that the current drafting provided a higher degree of certainty and clarity.

²⁵ The Study Group may wish to consider redrafting Alternative B as a substantive provision (as consistent with Alternatives A and C) rather than a conflict of laws provision.

²⁶ This compensatory mechanism in this provision is based on Japanese law. Under the Japanese Civil Code, with the actual joining of equipment to an immovable property, the independent property rights (including security interests) in the equipment will cease to have any legal effect. In order to safeguard the legal rights of creditors, the Code sets forth two possible compensatory measures against the owner of the immovable property, on the grounds of unjust enrichment. This can be done either directly by the creditor or alternatively through a claim by the grantor of the equipment by way of subrogation.

²⁷ This optional additional paragraph is based upon the mechanism in Article 40 of the Cape Town Convention. Article 40 requires States who make the optional declaration allowing certain non-consensual interests to be registerable in the international registry to list the non-consensual interests that can be registered. Requiring contracting states to provide a list will help provide clarity as to how exactly international interests under the Protocol may be affected by interests under arising under domestic immovable property law in contracting states who decide to make such a declaration, and may also disincentivise states from making a broad declaration. If most contracting states made a broad declaration under this article, the value and integrity of an international registered interest would be significantly diminished. It is suggested that the declarations memorandum maintained by the Depositary should require states also provide how the interests arising in relation to domestic property law would affect international interests under the Protocol.

*Alternative C (create fixture filing rule, priority of readily removable equipment and priority based on consent, disclaimer, or right to remove)*²⁸²⁹

2. An international interest in agricultural, construction or mining equipment that is or becomes immovable-associated equipment has priority over a conflicting interest in the immovable property to which the equipment is associated if the debtor has an interest of record in the immovable property or is in possession of the immovable property and the international interest:

(a) is made effective by registration substantially complying with the requirements of the Protocol in the immovable property registry before the holder of the conflicting interest is of record; and

(b) has priority over any conflicting interest of a predecessor in title of the holder of the conflicting interest;³⁰

3. An international interest in equipment that is or becomes immovable-associated equipment has priority over a conflicting interest in the immovable property if before the equipment becomes immovable-associated equipment the international interest is registered and the equipment is readily removable from or is not physically attached to the immovable property.³¹

4. An international interest in immovable-associated equipment has priority over a conflicting interest of in the immovable property if:³²

(a) the holder of the conflicting interest has consented to the international interest or disclaimed an interest in the immovable-associated equipment; or

(b) the debtor has a right to remove the equipment from or move the immovable-associated equipment away from the location of the immovable property.

²⁸ Alternative C is modelled on UCC 9-334, and each paragraph was previously listed as separate articles (Alternatives D, E and F) in the paper for the first fixtures teleconference. As these articles are cumulative rather than mutually exclusive in the UCC, the Study Group is invited to consider whether they should appear under once single Alternative in the MAC Protocol.

²⁹ The Study Group may wish to consider redrafting the language of Alternative C to be more consistent with the language of the Cape Town system, rather than with the language of the United States Uniform Commercial Code.

³⁰ Subsection two creates a fixture filing rule.

³¹ Subsection 3 provides for the priority of readily removable equipment where the international interest existed on the equipment before it became associated with the immovable property. As such, the substantive effect of this provision would be to create a priority rule for accessories, which would always be readily removable from the immovable.

³² Subsection 4 provides for priority based on consent, disclaimer or the debtor's right to remove.

*Alternative D (distinction between different types of immovable-associated equipment)*³³³⁴

2. Where agricultural, construction or mining equipment subject to an international interest [under this Protocol] is or becomes immovable-associated equipment to an extent that the equipment loses its individual legal identity under the law of the Contracting State making the declaration, the law of the Contracting State making the declaration determines whether the international interest ceases to exist, is subordinated to or is otherwise affected by any other interest in the immovable property.

3. Where an international interest [under this Protocol] ceases to exist or is subordinated to or is otherwise affected by any other interest in the immovable property pursuant to the preceding paragraph, the law of the Contracting State making the declaration determines whether a displaced, subordinated or otherwise affected holder of the international interest obtains a claim (compensatory or other) against a holder of any other interest in the immovable property.

4. Where agricultural, construction or mining equipment subject to a registered interest under this Protocol is or becomes immovable-associated equipment without losing its individual legal identity under the law of the Contracting State making the declaration, an interest in the immovable property under the law of that State that extends to the equipment by reason of it being immovable-associated equipment, has priority over the registered interest in the equipment [under this Protocol] only if the following conditions are fulfilled:

- (a) the interest in the immovable property has been registered in accordance with the requirements of the law of the Contracting State making the declaration prior to the time of registration of the 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 to the immovable property prior to the time of registration of the interest in the equipment under this Protocol.

[5. Where a Contracting State makes a declaration to apply this alternative, the Contracting State shall at the time of making the declaration deposit with the Depository of the Protocol a list of interests arising in relation to immovable property law which affect interests under this Protocol for the purposes of paragraphs 2 and 4.]³⁵

³³ Alternative D is based upon Articles x and y from the German Ministry of Justice proposal presented at the first teleconference in December 2015. The benefit of Alternative D is that distinguishes between different types of immovable-associated equipment, and in doing so it restricts the circumstances under which an international interest in an accessory will be de-prioritised as against an interest arising from its association with immovable property. The potential issue with this Article is that is dependent upon the use of the additional criterion of the complete loss of individual legal identity, even though it does revert to the national law of the location of the immovable to determine the circumstances under which the loss of individual legal identity occurs.

³⁴ The Study Group may wish to consider redrafting Alternative D as a substantive provision (as consistent with Alternatives A and C) rather than a conflict of laws provision.

³⁵ This article is consistent with Alternative B paragraph 4, and likewise requires further consideration from the Study Group.

CHAPTER II DEFAULT REMEDIES AND PRIORITIES³⁶

Article VIII³⁷

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, mining and construction 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 and mining equipment. Any remedy given by the Convention in relation to agricultural, mining and construction equipment shall be exercised in a commercially reasonable manner.³⁸ 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 days³⁹ prior written notice⁴⁰ 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 1.⁴¹

³⁶ It was decided at the third Study Group meeting to omit “assignments” from the Chapter title as the associated Chapter does not refer to assignments.

³⁷ This Article is adapted from the text of Article VII of the Rail Protocol.

³⁸ At the first Study Group meeting, the appropriateness of the phrase ‘commercially reasonable manner’ was discussed in its application to the agricultural sector, which in some jurisdictions would be considered a civil rather than commercial sector. It was agreed to continue using the phrase, to keep it consistent with the terminology in the previous Protocols.

³⁹ Paragraph 4 adopts the 14 calendar day written notice period adopted in the Rail and Space Protocols, rather than the 10 working days adopted in the Aircraft Protocol. This allows for greater certainty and to avoid the need to ascertain what are considered working days in the particular jurisdiction in which the remedy is to be exercised. The first Study Group meeting agreed with the adoption of the approach from the Rail Protocol.

⁴⁰ It was suggested at the second Study Group meeting that the Official Commentary should provide that the Protocol adopts the UNIDROIT Contract Principle definition of the term ‘notice’. Article 1.10 of the Contract Principles provide that ‘a notice is effective when it reaches the person to whom it is given.’ This approach reflects the ‘receipt principle’; notice is not effective unless and until it reaches the person to whom it is given. The principles also note that the parties are of course always free to expressly stipulate the application of the ‘dispatch principle’ to a contract, which provides that notice is given once it has been sent from one party to the other, regardless of whether it has been received.

⁴¹ Paragraph 5 provides a general obligation on Contracting States to ensure that the relevant administrative authorities expeditiously assist a creditor exercise remedies under the Protocol. This is a departure from the Aircraft Protocol, which mandates a Contracting State to honour a request for de-registration and export if two conditions are satisfied. Given there may be various administrative authorities responsible for the regulation of MAC equipment, this general obligation seems appropriate for inclusion in the MAC Protocol. Research prepared by the National Law Centre for Inter-American Free Trade on domestic registration and titling regimes for MAC equipment confirmed that the Article VII(V) Rail Protocol approach was most appropriate.

6. A chargee proposing to procure the export of agricultural, construction and 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 IX⁴²

Modification of provisions regarding relief pending final determination

Option 1⁴³

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

[Option 2]

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXIV(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, “speedy”⁴⁴ 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 VII(1):

⁴² This Article is consistent with the drafting of Article VIII of the Rail Protocol.

⁴³ Options 1 and 2 relate to how declarations are made under the Protocol. At the second Study Group meeting it was decided that the Committee of Intergovernmental Experts should be provided with a Protocol-wide option to simplify the making of declarations. Option 1 has been altered to allow for Contracting States to make a declaration specifically under this Article (see Article XXIV for further details). Option 2 is the status quo in relation to how declarations are made under the Protocol.

⁴⁴ The second Study Group meeting discussed whether the Protocol should define the word ‘speedy’. It was noted that this could be a fraught issue and it could be very difficult to define ‘speedy’ precisely, as Parliaments in some countries do not have the power to bind the courts, in the context of how quickly they must provide relief. It was further noted that it was not mandatory for Contracting States to make a declaration in relation to specifying the time period for ‘speedy’ relief, however if they do choose to make a declaration, they must specify the time period. Ultimately, it was decided not to define speedy.

(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 VII(1) 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 X⁴⁵

Remedies on Insolvency

Option 1⁴⁶

1. 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 this Article and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A, B or C.

2. A Contracting State making a declaration pursuant to paragraph 1 shall specify the time-period required by this Article.

3. *A Contracting State making a declaration pursuant to paragraph 1 shall specify which Annexes to the Protocol the declaration applies to. A Contracting State making a declaration pursuant to paragraph 1 may apply different Alternatives to different Annexes. Where a Contracting State declares the application of different Alternatives to different Annexes, a Contracting State shall also declare which Alternative applies to HS codes contained in more than one Annex.⁴⁷*

[Option 2]

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXIV(3).⁴⁸

⁴⁵ At the first Study Group meeting it was tentatively agreed that Alternatives A, B and C should be kept in the draft Protocol, pending further discussion. As a matter of policy, there is benefit in giving Contracting States the widest variety of options in selecting insolvency remedies, as long as they remain consistent with the approaches in the previous Protocols. Given that Alternative B is included in all three previous Protocols, it would be reasonable for its inclusion in the MAC Protocol as well. The first Study Group meeting was supportive of also including Alternative C, on the basis that takes into account the Continental European approach to insolvency. The second Study Group meeting confirmed that the MAC Protocol should include Alternatives A, B and C, as consistent with the approach in the Rail Protocol.

⁴⁶ Options 1 and 2 relate to how declarations are made under the Protocol. At the second Study Group meeting it was decided that the Committee of Intergovernmental Experts should be provided with a Protocol-wide option to simplify the making of declarations. Option 1 has been altered to allow for Contracting States to make a declaration specifically under this Article (see Article XXIV for further details). Option 2 is the status quo in relation to how declarations are made under the Protocol.

⁴⁷ *At the third Study Group meeting it was decided to allow Contracting States to apply different insolvency alternatives to different Annexes to the Protocol. The rationale behind giving states this additional flexibility arose out of the consideration of special insolvency regimes for agriculture. Under the current drafting, the Protocol would allow Contracting States to apply an insolvency alternative to construction and mining equipment, however not apply a declaration and thus apply domestic insolvency law to agricultural equipment. The mandatory requirement to declare which insolvency alternative applies to HS codes contained in more than one Annex should remove any potential uncertainty in relation to which insolvency regime applies to a certain piece of MAC equipment.*

⁴⁸ ‘Declarations relating to certain provisions’.

2. *References in this Article to the "insolvency administrator" shall be to that person in its official, not in its personal, capacity.*
4. *References in this Article to the "insolvency administrator" shall be to that person in its official, not in its personal, capacity.⁴⁹*
5. *The courts of Contracting States shall apply this Article in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.*

Alternative A

4. 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, mining or construction 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, mining or construction equipment if this Article did not apply.
5. 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.
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, mining or construction 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, mining or construction equipment under arrangements designed to preserve the agricultural, mining or construction equipment and maintain it and its value.
8. The insolvency administrator or the debtor, as applicable, may retain possession of the agricultural, mining or construction 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.
9. With regard to the remedies in Article VII⁵⁰, paragraph (1) :

⁴⁹ This is a boiler-plate provision found in the 'Remedies on Insolvency' Articles in the previous Protocols (Article XI, Alternative A paragraph 4 in the Aircraft Protocol, Article IX paragraph 2 of the Luxembourg Rail Protocol and Article XXI, Alternative A paragraph 5 of the Space Protocol). In the Aircraft and Space Protocols this provision is located in Alternative A, whereas in the Rail Protocol, it is part of the overarching Article and not attached to any specific Alternative. On the basis that it is appropriate for this provision to apply to the meaning of Insolvency Administrator in all Articles, it appears prudent to follow the example of the Rail Protocol and include the provision in the overarching Provision. The Study Group may want to discuss this further at their fourth meeting.

⁵⁰ 'Modification of default remedies Provisions'.

- (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. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.
11. No obligations of the debtor under the agreement may be modified 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 VII⁵¹ of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

4. 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 XXXII(3) OR this Article]⁵² 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, mining or construction equipment, in accordance with the applicable law.
5. 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.
6. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
7. 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, mining or construction equipment but fails to do so, the court may permit the creditor to take possession of the agricultural, mining or construction 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.

⁵¹ 'Modification of default remedies Provisions'.

⁵² The wording will depend on which approach to declarations is adopted.

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

Alternative C

4. 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 and mining equipment in accordance with the applicable law.

5. 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.

6. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the agricultural, construction and 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.

7. 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 and 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.

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

9. 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 and 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.

10. With regard to the remedies in Article VII(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.
11. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
12. 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.
13. 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.
14. 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.
15. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.
16. 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 XI⁵³

Insolvency assistance

Option 1⁵⁴

1. *A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply this Article.*

[Option 2]

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXIV(1).
2. The courts of a Contracting State in which agricultural, mining or construction 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 IX.⁵⁵

⁵³ Aside for the declarations issue, the text of this Article is identical to Article XII of the Aircraft Protocol and Article X of the Rail Protocol. It does not seem necessary to modify the text.

⁵⁴ Options 1 and 2 relate to how declarations are made under the Protocol. At the second Study Group meeting it was decided that the Committee of Intergovernmental Experts should be provided with a Protocol-wide option to simplify the making of declarations. Option 1 has been altered to allow for Contracting States to make a declaration specifically under this Article (see Article XXIV for further details). Option 2 is the status quo in relation to how declarations are made under the Protocol.

⁵⁵ ‘Remedies on insolvency’.

Article XII⁵⁶Debtor 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, mining or construction 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, mining or construction equipment.

⁵⁶ The text of this article follows Article XXV of the Space Protocol, which is consistent with the corresponding provisions in Article XVI of the Aircraft Protocol and Article XI of the Rail Protocol.

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

Article XIII⁵⁷

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, Mining and Construction 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 XIV⁵⁸

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.

⁵⁷ This provision is adapted from Article XXVIII (1) of the Rail Protocol, which allows a degree of flexibility in designating a Supervisory Authority. This approach seems appropriate for the MAC Protocol. Paragraphs 2 and 3 are identical in language and approach to the Aircraft and the Space Protocols. There appears to be no need to change the text in relation to the MAC Protocol. The Railway Protocol, in addition, contains several provisions listing the functions and the tasks of a Secretariat established in order to assist the Supervisory Authority. It was noted at the second Study Group meeting that the Rail Protocol adopted additional paragraphs in its corresponding Supervisory Authority Article because the Protocol itself was establishing a new body to act as the Supervisory Authority, an approach the MAC Protocol will not adopt.

⁵⁸ The wording of this Article is consistent with the text of Article XVIII of the Aircraft Protocol and Article XXIX of the Space Protocol.

Article XV⁵⁹Designated 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 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.⁶⁰
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.

⁵⁹ This provision is identical to Article XIII of the Rail Protocol. It was decided at the first Study Group meeting that the MAC Protocol should allow the designation of entry points, as this would make it easier countries with national personal property registries to ratify the Convention (e.g. Spain). It was further decided that the Rail Protocol approach should be adopted, given that the MAC Protocol will allow for the registration of notifications of sale on the same basis as the Rail Protocol. As provided in the Official Commentary to the Rail Protocol, use of an entry point may be made optional or compulsory, except in the case of information required for registrations of notices of sale, for which use of the entry point cannot be made compulsory. This reflects the fact that such registrations cannot affect the rights of any person, or have any other effects, under the Convention or Protocol.

⁶⁰ The Rail Protocol approach slightly modified the approach in Article XIX of the Aircraft Protocol by including the final sentence of paragraph 1, dealing with operational hours of the national entry points, which the Aircraft Protocol deals with in Article XX(4).

Article XVI⁶¹**Identification of Agricultural, Mining and Construction
Equipment for registration purposes**

1. *A description of agricultural, construction or mining equipment that contains its manufacturer's serial number, the name of the manufacturer and its model designation⁶² is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention.*

[2. Notwithstanding paragraph 1, for an initial period finishing at a date defined in the regulations, for the purposes of Article 18(1)(a) of the Convention, where agricultural, construction or mining object does not have a manufacturer's serial number, the regulations shall prescribe a system for the allocation of identification numbers by the Registrar which enable the unique identification of the agricultural, construction or mining object, which shall be affixed to the object.]⁶³

Article XVII⁶⁴**Additional modifications to Registry provisions**

1. *For the purposes of Article 19(6) of the Convention, the search criteria for agricultural, construction and mining equipment shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.⁶⁵*

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*

⁶¹ It was decided at the first Study Group meeting that the approach in Article XIV of the Rail Protocol should be followed. However, the provisions in Article XIV of the Rail Protocol relating to the identification of equipment through an affixed national or regional identification number were removed (paragraphs 1(c), 2, 3 and 4), as it was considered unlikely that states would have specific national registries relating specifically to agricultural, construction and mining equipment. As such, the previous draft Article based on the Rail Protocol approach read as follows:

For the purposes of Article 18(1)(a) of the Convention, the regulations shall prescribe a system for the allocation of identification numbers by the Registrar which enable the unique identification of items of agricultural, mining and construction equipment. The identification number shall be: (a) affixed to the item of agricultural, mining or construction equipment; (b) associated in the International Registry with the manufacturer's name and the manufacturer's identification number for the item so affixed.

At the second Study Group meeting, this issue was revisited. It was decided that the manufacturer serial number should be the primary identifier to be used for registration purposes. As such, it was decided that the drafting of the Article should be modelled upon Article VII of the Aircraft Protocol (as reflected in paragraph 1).

⁶² **It was decided at the third Study Group meeting that model designation would remain party of the criteria for registration, subject to further consultation with private industry to determine whether model designations were uniformly used.**

⁶³ At the second Study Group meeting it was also decided that a second paragraph should be added under which it would be allowed, until a certain date, to make registrations also for equipment without a unique manufacturer's serial number (as reflected in paragraph 2). This drafting is, in part, based upon Article XIV(1) of the Rail Protocol. **The Working Group has advised that in the February 2016 Tier 1 preliminary list of HS codes, only equipment under two HS codes may not have individual serial numbers.**

⁶⁴ Consideration of this Article is complicated by the significantly diverging practices over the three previous Protocols (Article XX of the Aircraft Protocol, Article XV of the Railway protocol and Article XXXII of the Space Protocol). At the second Study Group meeting it was decided that the Aircraft Protocol approach should generally be followed.

⁶⁵ As consistent with Article XX(1) of the Aircraft Protocol, Paragraph 1 specifically details the search criteria that should be available in the International Registry. This is in contrast to the Rail Protocol approach, which allows the Regulations to determine the search criteria. The Space Protocol provides that the search criteria will be those set in the Regulations that are required to describe the object for registration purposes.

the registration no later than ten calendar days⁶⁶ 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.⁶⁷

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.⁶⁸

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 and 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.⁶⁹

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.⁷⁰

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.⁷¹

⁶⁶ Paragraphs 2 follows the approaches of the Rail and Space Protocols, by providing for a 10 calendar day period to discharge a registration, as opposed to 5 working days as provided in the Aircraft Protocol. The 10 calendar day solution appears to be most appropriate for inclusion in the MAC Protocol.

⁶⁷ Paragraph 3 is based upon the Aircraft and Space Protocols that provide for the recovery of costs for the International Registry and the Supervisory Authority. Alternatively, The Rail Protocol deals with this in a separate Article.

⁶⁸ Paragraph 4 diverges from the Aircraft Protocol approach, and instead adopts the Rail Protocol approach by moving the second sentence ('various entry points shall be operated at least during working hours in their respective territories') to Paragraph 1 of Article XIV (Designated entry points).

⁶⁹ At the first Study Group meeting, it was noted that there was a disagreement on the implementation of the insurance provisions in the Aircraft Protocol and it took time to resolve the issue. At the second Study Group meeting, the Study Group did not settle on a position on this issue. Paragraph 5 is currently based upon the Rail Protocol approach, which provides that the liability of the Registrar is set at the amount not exceeding the value of the MAC equipment to which the loss relates, but shall not exceed 5 million Special Drawing Rights in any calendar year, which is significantly lower than the liability in the Aircraft Protocol, which sets the liability of the International Registry at the maximum value of an aircraft object. Paragraph 6 further provides that the liability cap will not apply for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees. The Space Protocol does not explicitly provide for the liability cap for the Registrar, and instead deals with the issue in the Regulations.

⁷⁰ Paragraph 7 is based on the Rail Protocol Approach, which provides that the insurance or guarantee shall be determined by the Supervisory Authority, having regard to the prospective liability of the Registrar. The Space Protocol provides that the insurance or guarantee shall cover the Registrar's liability as provided for in the Regulations. The Aircraft Protocol does not have a corresponding provision addressing this issue.

⁷¹ This Paragraph is identical with Paragraph 6 of the Aircraft Protocol provision, Paragraph 8 of Rail Protocol provision and Paragraph 7 of Space Protocol provision and should be adopted in the MAC Protocol.

Article XVIII⁷²Notices of Sale⁷³

1. The regulations shall authorise the registration in the International Registry of notices of sale of agricultural, construction and 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**⁷⁴Waivers 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, mining or construction 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, mining or construction equipment as specified in Article V⁷⁵ of this Protocol.

⁷² At the first Study Group meeting it was decided to add an additional Article based on Article XVII of the Rail Protocol in relation to notices of sale. Article XVII of the Rail Protocol allows for the registration in the International Registry of notices of sale covering railway rolling stock. However, such registration of a notice of sale is for information purposes only and does not have any legal effect under the Convention or Protocol. The first Study Group meeting noted that the benefits of this approach were that it allowed for more accessible information on the sales of equipment to be provided, and it generated additional fees for the International Registry. This Article has been added to the Protocol in the same location, as it exists in the Rail Protocol (at the end of the Chapter dealing with the International Registry).

⁷³ The 4th annotated draft Protocol provided an additional new provision in relation to Article 29(3) of the Cape Town Convention. It was an entirely new paragraph not contained in any of the previous Protocols. At the second Study Group meeting it was concluded that if the Rail Protocol approach is adopted in the MAC Protocol, then it should also clarify that national law that allows certain buyers to take free of or subject to an interest should prevail, otherwise secondary buyers could rely on 29(3) to take free of an interest even if they would not qualify for such priority under the domestic law. The current drafting of this provision is only a preliminary attempt and the Secretariat is concluding further research on this issue, in order to report back to the Study Group at its third meeting. It was decided at the third Study Group meeting to omit the paragraph. It provided: *Registration of a notice of sale in conformity with this Protocol does not give the buyer of the equipment to which the registration of notice of sale applies any priority of interest under Article 29(3) of the Convention unless provided for by national law*

⁷⁴ The wording of this Article is consistent with the text of the corresponding provisions in all previous Protocols (Article XXII of the Aircraft Protocol, Article XVIII of the Rail Protocol and Article XXXIII of the Space Protocol). At the first Study Group meeting the necessity of this provision was questioned, as it was more relevant in the Aircraft and Rail Protocols because many airlines and railways are state owned. At the first Study Group meeting it was decided to retain the provision, pending further consideration by the Committee of Governmental Experts.

⁷⁵ 'Identification of agricultural, mining and construction equipment'.

CHAPTER V
RELATIONSHIP WITH OTHER CONVENTIONS

Article XX⁷⁶

Relationship with the UNIDROIT Convention on International Financial Leasing

1. The Convention as applied to agricultural, mining and construction 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.

Article XXI⁷⁷

Relationship with previous Protocols to the Cape Town Convention

1. Interests registerable under the Protocol to the Convention on International Assets in Mobile Equipment on Matters Specific to Aircraft Equipment, the Protocol to the Convention on International Assets in Mobile Equipment on Matters Specific to Railway Rolling Stock or the Protocol to the Convention on International Assets in Mobile Equipment on Matters Specific to Space Assets may not be registered under this Convention.

CHAPTER VI
FINAL PROVISIONS

Article XXII⁷⁸

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, Mining and Construction 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 XXVI.
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.

⁷⁶ This Article is consistent with the drafting in Article XXV of the Aircraft Protocol, Article XIX of the Rail Protocol and Article XXXIV of the Space Protocol.

⁷⁷ This Article is a newly drafted Article based on the decision at the third Study Group meeting to completely carve out the scopes of the previous Protocols from the scope of the MAC Protocol, for the sake of clarity and legal certainty.

⁷⁸ The wording of this Article is consistent with the drafting in Article XXVI of the Aircraft Protocol, Article XXII of the Rail Protocol and Article XXXVI of the Space Protocol.

Article XXIII⁷⁹**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 XXIV⁸⁰**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

⁷⁹ The wording of this Article is consistent with the drafting in Article XXVII of the Aircraft Protocol, Article XXI of the Rail Protocol and Article XXXVII of the Space Protocol.

⁸⁰ At the first Study Group meeting it was tentatively concluded that the MAC Protocol should enter into force for each specific class of equipment contained in the Annexes to the Regulations of the International Registry (agricultural, construction and mining) once that class had received four ratifications, and the Registry was operational. The Study Group decided that drafting from Article XXIV of the Rail Protocol and Article XXXVIII of the Space Protocol should be adapted to achieve this. The drafting provided to achieve this outcome was as following:

1. *This Protocol enters into force separately for each specific list of equipment contained in [the Annexes to the Regulations of the International Registry] 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 fourth instrument of ratification, acceptance, approval or accession of that specified list of equipment.*

(b) *the date of the deposit by the Secretariat with the Depositary of a certificate confirming that the International Registry is fully operational.*

2. *For other States this Protocol enters into force for each specific list of equipment contained in the [Annexes to the Regulations of the International Registry] 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 of that specified list of equipment; and*

(b) *the date referred to in sub-paragraph (b) of the preceding paragraph.*

At the second Study Group meeting, it was decided that the staggered entry into force approach was actually necessary, noting it was adding additional complication without great benefit. Instead, the Study Group concluded that the Protocol should enter into force once five states have ratified the Protocol, and the International Registry is fully operational. As such, the current drafting is modelled on Article XXIII of the Rail Protocol.

- (b) the date of the deposit by the Secretariat 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 XXV⁸¹

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 Depositary 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.⁸²

⁸¹ The text of paragraphs 1 – 4 is identical to Article XXIX in the Aircraft Protocol, Article XXIV of the Rail Protocol and Article XXXIX of the Space Protocol.

⁸² Paragraph 5 is taken from the Railway Protocol. At the first Study Group meeting it was agreed to adopt the above drafting, noting that paragraph 5(c) may need to be omitted, depending on whether relevant administrative authorities relating to MAC equipment exist.

Article XXVI⁸³**Declarations****Option 1⁸⁴**

1. *Declarations may only be made under articles of this Protocol, where expressly authorised.*⁸⁵
2. *Declarations made under the Convention, including those made under Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.*⁸⁶
3. *No reservations may be made to this Protocol.*⁸⁷
4. *A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXV 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.*
5. *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.*⁸⁸
6. *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.*
7. *Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXV under Article 60 of the Convention, may withdraw it at any time by*

⁸³ At the first Study Group meeting, it was recommended that the Articles governing declarations be simplified, as the approach to declarations uniformly adopted across the three previous Protocols' is unnecessarily complicated. At the second meeting, it was decided that the draft Protocol should leave two drafting options for consideration by the Committee of Intergovernmental Experts.

⁸⁴ Option 1 differs significantly from the previous Protocols, providing an alternative, simplified approach to making declarations under the Protocol.

⁸⁵ Paragraph 1 is based upon the Articles governing 'Reservations and declarations' under the previous three Protocols (Article XXXII in the Aircraft Protocol, Article XXVIII in the Rail Protocol and Article XLIII in the Space Protocol). It provides that declarations may only be made where expressly authorised, and are made directly under the relevant Articles themselves: Article II (3) (Application of the Convention), Article VI (1) (Choice of Law), Article VIII (1) (Modification of provisions regarding relief pending final determination), Article IX (1) (Remedies on Insolvency), Article XXII (Territorial Units).

⁸⁶ Paragraph 2 is consistent with the Articles governing 'Declarations under the Convention' under the previous three Protocols (Article XXXI in the Aircraft Protocol, Article XXIX in the Rail Protocol and Article XLII in the Space Protocol). However, the Official Commentaries to the previous commentaries states that this Article is 'arguably unnecessary but has the merit of making it clear that declarations under the Convention relating to specified provisions apply to any modifications of those Provisions by each Protocol' (Aircraft Protocol Official Commentary 5.119, Rail Protocol 5.94, Space Protocol Official Commentary 5.141). As such, in the interests of simplifying the approach to declarations, it suggested that the Study Group consider deleting this unnecessary provision altogether, and clarifying in the Official Commentary that its deletion has no substantive effect. Alternatively, if the Study Group decides that it should remain in the Protocol, it is suggested that it be made a subparagraph of this Article, rather than its own standalone Article, for simplicity.

⁸⁷ Paragraphs 3 and 4 are based on the Articles governing 'Reservations and declarations' under the previous three Protocols (Article XXXII in the Aircraft Protocol, Article XXVIII in the Rail Protocol and Article XLIII in the Space Protocol). In the previous Protocols, this Article was constructed with an additional specific reference to the Articles that specifically allowed declarations (e.g., Article XXXII of the Aircraft Protocol provides that '*no reservations may be made to this Protocol, but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions*'). This approach appears to be unnecessarily overcomplicated.

⁸⁸ Paragraphs 5 is consistent with the wording of Paragraph 1 of Article XXXIII of the Aircraft Protocol and Article XXX of the Railway Protocol (Subsequent Declarations). The drafting of paragraphs 6 and 7 is consistent with all the drafting of the 'Subsequent Declarations' Article in all previous Protocols. The first Study Group meeting decided to adopt the approach above, as modelled on the Aircraft and Rail Protocols. It is suggested that these provisions can be made subparagraphs of this Article, rather than its own standalone Article, for simplicity.

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.

8. *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.*⁸⁹

9. *Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.*

[Option 2]⁹⁰

[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 VI⁹¹ and X⁹² 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 VIII⁹³ of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article VIII(3).

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 IX⁹⁴ 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 IX.

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

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether it does not apply the Protocol to any list of equipment contained in the Annexes to the International Registry.]

⁸⁹ Paragraph 8 is consistent with the wording of Paragraph 1 in Article XXXIV of the Aircraft Protocol and Article XXXI of the Rail Protocol (Withdrawal of declarations). The drafting of paragraph 9 is consistent with the Railway and the Space Protocols. The first Study Group meeting decided to adopt the above drafting of this Provision. It is suggested that these provisions can be made subparagraphs of this Article, rather than its own standalone Article, for simplicity.

⁹⁰ Option 2 is the status quo in relation to how declarations are made under the Protocol, and is consistent with the ‘Declarations relating to certain Provisions’ Articles in Article XXX in the Air Protocol, Article XXVII in the Rail Protocol and Article XLI in the Space Protocol.

⁹¹ Choice of law.

⁹² Insolvency Assistance.

⁹³ Modification of provisions regarding relief pending final determination.

⁹⁴ Remedies on Insolvency.

[Article XXVII⁹⁵]**Declarations modifying the Convention or certain provisions thereof**

Declarations made under the Convention, including those made under Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.

[Article XXVIII⁹⁶]**Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIII, XXIV, XXV, XXVII and XXXVIII 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 XXIX⁹⁷]**Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXV 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.

⁹⁵ As discussed in the commentary to Option 1 under Article XXIV (declarations) above, if the Committee of Intergovernmental Experts decides to simplify the method of making declarations under the Protocol, this Article may be deleted.

⁹⁶ As discussed in the commentary to Option 1 under Article XXIV (declarations) above, if the Committee of Intergovernmental Experts decides to simplify the method of making declarations under the Protocol, this Article may be deleted.

⁹⁷ As discussed in the commentary to Option 1 under Article XXIV (declarations) above, if the Committee of Intergovernmental Experts decides to simplify the method of making declarations under the Protocol, this Article may be deleted.

[Article XXX⁹⁸]**Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXV 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 XXVII⁹⁹**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 categories of equipment, being agriculture, construction or mining equipment as listed in the Annexes to the Protocol, shall be considered a denunciation of the Protocol in relation to those categories of equipment.*¹⁰⁰

⁹⁸ As discussed in the commentary to Option 1 under Article XXIV (declarations) above, if the Committee of Intergovernmental Experts decides to simplify the method of making declarations under the Protocol, this Article may be deleted.

⁹⁹ This drafting is consistent with all previous Protocols (Article XXXV of the Aircraft Protocol, Article XXXII of the Rail Protocol and Article XLV of the Space Protocol).

¹⁰⁰ It was decided at the first Study Group meeting that an additional paragraph should be added to this Article, clarifying that a subsequent declaration from a State that dis-applies the Protocol to a certain category of equipment is, in effect, a denunciation of the Protocol in relation to those categories of equipment that the State subsequently opts out of. The Study Group approved the drafting of this provision at its second meeting.

Article XXVIII¹⁰¹**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.
 - (e) whether any changes to the Harmonized System has affected the Harmonized System codes listed in the Annexes to this Protocol, or whether new codes have emerged under the Harmonized System that may warrant inclusion in the Annexes to this Protocol.¹⁰²
3. Any amendment to this Protocol 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 ten States Parties in accordance with the provisions of Article XXIX relating to its entry into force.
4. If the report referred to in paragraph 1 concludes that changes to the Harmonised System has affected Harmonised System codes listed in the Annexes to this Protocol, the Depositary may revise the HS codes contained in the Annexes to ensure conformity with the Harmonised System. The Depositary may only revise the codes listed in the Annexes in conformity with this paragraph if such changes do not result in a substantive expansion of the scope of the Protocol to new types of agricultural, construction and mining equipment. The Depositary shall notify States Parties of a revision to the Annexes. 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 register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.¹⁰³

¹⁰¹ The drafting of paragraphs 1-4 of this Article (aside from paragraph 2(e)) are consistent with all previous Protocols (Article XXXVI of the Aircraft Protocol, Article XXXIII of the Rail Protocol and Article XLVII of the Space Protocol). Paragraphs 5 and 6 have been added to provide for amendment procedures for the Annexes to the Protocol.

¹⁰² The Study Group may wish to consider whether this additional sub-paragraph should be added to explicitly provide that Review Conferences should consider changes to the Harmonized System.

¹⁰³ Paragraph 4 provides for a simplified amendment process for the Annexes to realign them with changes to the Harmonized System. This approach is based upon Article 24 of the Montreal Convention.

5. Any amendment to the Annexes that constitute a substantive expansion or contraction of the scope of the Protocol must conform with the process established in paragraph 4 of this Article.¹⁰⁴

6. Any amendment to the Annexes shall not affect international interests in existence before the entry into force of the amendment.¹⁰⁵

¹⁰⁴ Paragraph 5 provides that substantive expansion or contraction of the lists of HS codes in the Annexes to the Protocol need to go through the formal Protocol amendment process used in the previous Protocols to the Cape Town Convention.

¹⁰⁵ Paragraph 6 ensures that any existing interest created under an HS code that is subsequently deleted, moved or otherwise affected by an amendment process (under either paragraphs 5 or 6) will not be affected by the subsequent changes to the HS code.

Article XXIX¹⁰⁶**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 entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) 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.

¹⁰⁶ This drafting is consistent with all previous Protocols (Article XXXVII of the Aircraft Protocol, Article XXXIV of the Rail Protocol and Article XLVIII of the Space Protocol).

ANNEXES TO THE PROCOTOL¹⁰⁷

ANNEX 1

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

[2. *From time to time, the Supervisory Authority may adopt an addendum to realign any equipment identified in this Annex with its correct numbering or title following amendments to the Harmonised System, or to include additional Harmonised System codes that are substantively similar to types of equipment already included in this Annex.]¹⁰⁸*

3. *This Annex is to be read in conjunction to any addendum adopted by the Supervisory Authority under paragraph 2.¹⁰⁹*

[4. *The Convention does not apply to equipment defined in this Annex where the object as identified in the Annex is capable of being an object under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment and the Luxembourg Protocol is in force in the relevant contracting state.]¹¹⁰*

LIST AGRICULTURE HS CODES FROM TIER 1 OF THE PRELIMINARY LIST

¹⁰⁷ The current lists of equipment contained in these Annexes are based upon a list of 103 HS codes provided by the private sector in March 2015. In considering this preliminary list at its second meeting, the Study Group raised several issues with the suggested HS codes, particularly in relation to multiple purpose equipment, accessions, affixable equipment and whether the types of equipment in the suggested codes are independently financeable. As such, this draft preliminary Annex should not be considered to be indicative of the final list HS codes to be included within the scope of the MAC Protocol and has been produced for illustrative purposes only.

As consistent with the Study Group's decision at the second meeting, where a type of MAC equipment has the possibility to be listed under more than one of the classes (agriculture, construction and mining), it has been listed under each Annex independently. The Study Group also confirmed that in the event that a Contracting State opts out of a particular Annex of equipment (agriculture, construction or mining), where a type of equipment is included on that Annex and another Annex, the type of equipment would continue to be covered by the Protocol in that Contracting State, regardless of its final use.

¹⁰⁸ This provision was inserted in the second annotated draft, but has subsequently been made redundant by the amendments to the "Review conferences, amendments and related matters" Article in the 5th annotated draft Protocol. It has been left here in square brackets as an alternative approach.

¹⁰⁹ The second Study Group meeting noted that future decisions to modify the Annexes (both substantive and in response to HS System amendments) would have to operate as an addendum to the Protocol, as the Annex itself could only be changed by a formal treaty amendment process. The Annex itself would provide that it would need to be read in conjunction with the addendum, which could itself only be amended to realign the Annexes with the HS System following amendments to the HS System, or to include new HS codes that were substantively similar to types of equipment covered by HS codes already included on the list. The Study Group concluded that while this approach may be slightly unwieldy, it would allay any concerns that the scope of the Protocol was too uncertain or easily expanded.

¹¹⁰ At its second meeting the Study Group decided that the Annexes to the MAC Protocol should provide that the MAC Protocol applies to the types of equipment contained in the HS codes in the Annexes, except where they are capable of being considered objects under the Rail Protocol and the Rail Protocol was already in force in the contracting state. The Study Group further concluded that any conflict between subsequent attachment of MAC equipment to Railway Rolling Stock would be dealt with by Article 29(7) of the Cape Town Convention. This issue is further discussed in Section M of the Issues Analysis (paragraphs 280-288). It has subsequently been made redundant by the insertion of the "Relationship with previous Protocols to the Cape Town Convention" Article in the 5th annotated draft Protocol. It has been left here in square brackets as an alternative approach.

ANNEX 2¹¹¹

1. *As consistent with Article II, the Convention shall apply in relation to construction equipment identified under the following Harmonised System codes in this Annex.*
2. *From time to time, the Supervisory Authority may adopt an addendum to realign any equipment identified in this Annex with its correct numbering or title following amendments to the Harmonised System, or to include additional Harmonised System codes that are substantively similar to types of equipment already included in this Annex.*
3. *This Annex is to be read in conjunction to any addendum adopted by the Supervisory Authority under paragraph 2.*
4. *The Convention does not apply to equipment defined in this Annex where the object as identified in the Annex is capable of being an object under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment and the Luxembourg Protocol is in force in the relevant contracting state.*

LIST CONSTRUCTION HS CODES FROM TIER 1 OF THE PRELIMINARY LIST

¹¹¹ Paragraphs 1-4 of Annex 2 are substantively identical to the paragraphs of Annexes 1 and 3. This is necessary because contracting states are able to exclude the application of the Protocol to one or more Annexes (Article II(3)).

ANNEX 3¹¹²

1. *As consistent with Article II, the Convention shall apply in relation to mining equipment identified under the following Harmonised System codes in this Annex.*
2. *From time to time, the Supervisory Authority may adopt an addendum to realign any equipment identified in this Annex with its correct numbering or title following amendments to the Harmonised System, or to include additional Harmonised System codes that are substantively similar to types of equipment already included in this Annex.*
3. *This Annex is to be read in conjunction to any addendum adopted by the Supervisory Authority under paragraph 2.*
4. *The Convention does not apply to equipment defined in this Annex where the object as identified in the Annex is capable of being an object under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment and the Luxembourg Protocol is in force in the relevant contracting state.*

LIST AGRICULTURE HS CODES FROM TIER 1 OF THE PRELIMINARY LIST

¹¹² Paragraphs 1-4 of Annex 3 are substantively identical to the paragraphs of Annexes 1 and 2. This is necessary because contracting states are able to exclude the application of the Protocol to one or more Annexes (Article II(3)).