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

Pretoria, 11-22 November 2019

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**SUMMARY REPORT
FOR 21 NOVEMBER 2019**

SIXTH MEETING OF THE PLENUM

Item No. 11 on the Agenda: Adoption by the Conference of the Final Act of the Conference and of any instruments, recommendations and resolutions resulting from its work

1. The President opened the meeting at 14:20. She proposed that the Plenum examine each Article individually, followed by an examination of the Final Act and the Draft Resolutions.
2. With respect to the title of the Protocol, one delegation proposed that, as an expression of gratitude to the Government of the Republic of South Africa for hosting the Diplomatic Conference, the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the "MAC Protocol") should also be referred to as the 'Pretoria Protocol'. Several delegations expressed their support for the proposal.
3. The President queried whether the proposed title should be introduced within the text of the treaty or should be an informal title. The Secretary-General proposed the matter be addressed by adding a new line to Resolution 5 of the Diplomatic Conference: 'RESOLVES that the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment shall also be known as the "Pretoria Protocol".' *The Conference approved the Secretary-General's proposal.*
4. *The Preamble was adopted without amendment.*
5. *Article I (Defined Terms) was adopted without amendment.*
6. *Article II (Application of the Convention as regards equipment) was adopted without amendment.*
7. *Article III (Derogation) was adopted without amendment.*
8. *Article IV (Representative capacities) was adopted without amendment.*
9. *Article V (Identification of equipment) was adopted without amendment.*

10. *Article VI (Choice of law) was adopted without amendment.*
11. *Article VII (Association with immovable property) was adopted without amendment.*
12. *Article VIII (Modification of default remedies provisions) was adopted without amendment.*
13. *Article IX (Modification of provisions regarding relief pending final determination) was adopted without amendment.*
14. The President opened the floor for comments on Article X (Remedies on Insolvency).
15. The representative of Germany noted that Germany had been a strong supporter of UNIDROIT and the Cape Town Convention project, which had been a great success for over 20 years. Germany thanked the Republic of South Africa for hosting the Diplomatic Conference. The representative of Germany noted that Germany would have preferred to retain Alternatives B and C in Article X of the Protocol. In Germany's view, the retention of Alternatives B and C would have provided a more balanced insolvency regime and would have given the Contracting States the possibility to choose an insolvency alternative which was more consistent with their own insolvency law. Germany noted that Alternative A could be viewed as not providing an adequate level of debtor protection. Additionally, Germany added that Article X was an opt-in provision and in the absence of an alternative with an adequate procedural safeguard, many States, for legal and sometimes constitutional purposes, would opt out entirely, undermining the harmonising effect of the Protocol. This outcome would not assist creditors, as they would have to become familiar with many different insolvency jurisdictions. Germany further explained that the other Protocols to the Cape Town Convention had provided additional insolvency alternatives to provide Contracting States with more choice. Germany suggested that the deletion of the other insolvency alternatives at the Diplomatic Conference could be viewed as a break with established Cape Town Convention principles. Germany stated that it disapproved of the process which led to the deletion of the alternatives. Nevertheless, Germany expressed it was pleased with the conclusion of the negotiations, and acknowledged the MAC Protocol as a valuable instrument.
16. *Article X (Remedies on Insolvency) was adopted without amendment.* The President expressed her gratitude to the German delegation for their compromise and for showcasing the spirit of international cooperation in resolving the matter.
17. *Article XI (Insolvency assistance) was adopted without amendment.*
18. *Article XII (Provisions relating to inventory) was adopted without amendment.*
19. *Article XIII (Debtor provisions) was adopted without amendment.*
20. *Article XIV (The Supervisory Authority and the Registrar) was adopted without amendment.*
21. *Article XV (First regulations) was adopted without amendment.*
22. *Article XVI (Designated entry points) was adopted without amendment.*
23. *Article XVII (Identification of equipment for registration purposes) was adopted without amendment.*
24. *Article XVIII (Additional modifications of Registry provisions) was adopted without amendment.*
25. *Article XIX (Modifications of discharge provisions) was adopted without amendment.*

26. *Article XX (Notices of Sale) was adopted without amendment.*
27. *Article XXI (Waivers of sovereign immunity) was adopted without amendment.*
28. *Article XXII (Relationship with the UNIDROIT Convention on International Financial Leasing) was adopted without amendment.*
29. The President opened the floor for comments on Article XXIII (Signature, ratification, acceptance, approval or accession), noting that some additional details had to be inserted into Paragraph 1 of the Article. One delegation proposed the completion of the paragraph as follows: 'This Protocol shall be open for signature in Pretoria on 22 November 2019 by States participating in the Diplomatic Conference to Adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment held at Pretoria from 11 to 22 November 2019. After 22 November 2019, 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 XXV.'
30. One delegation queried the references to the title of the Conference, and as to whether the Article should include the word 'draft', which appeared in the title of the Conference in other documents. Another delegation noted that the word 'draft' had been used as the purpose of the Conference was to consider a 'draft' Protocol, whereas the Article was purposed to adopt 'the' Protocol. Several delegations suggested relying on the past practice within the Aircraft Protocol and the Rail Protocol where the word 'draft' had not been used, while one delegation noted that the word 'draft' had been used in the Space Protocol. It was noted that there should be consistency, and that the Secretariat could be tasked with removing the word 'draft' from the appropriate places within the Final Act.
31. *Article XXIII was adopted as amended.*
32. *Article XXIV (Regional Economic Integration Organisations) was adopted without amendment.*
33. *Article XXV (Entry into force) was adopted without amendment.*
34. *Article XXVI (Territorial units) was adopted without amendment.*
35. *Article XXVII (Transitional Provisions) was adopted without amendment.*
36. *Article XXVIII (Declarations relating to certain provisions) was adopted without amendment.*
37. *Article XXIX (Declarations under the Convention) was adopted without amendment.*
38. *Article XXX (Reservations and declarations) was adopted without amendment.*
39. *Article XXXI (Subsequent declarations) was adopted without amendment.*
40. *Article XXXII (Withdrawal of declarations) was adopted without amendment.*
41. *Article XXXIII (Denunciations) was adopted without amendment.*
42. *Article XXXIV (Review conferences, amendments and related matters) was adopted without amendment.*
43. *Article XXXV (Adjustments to the Harmonized System codes in the Annexes following a Harmonized System revision) was adopted without amendment.*

44. *Article XXXVI (Modifications of the Annexes) was adopted without amendment.*
45. The President opened the floor for comments on Article XXXVII (Depositary and its functions). One delegation noted that under Article XXXVII(2)(d) and Article XXXVII(2)(f), the Depositary had an obligation to communicate a State's withdrawal of an earlier notice stating that it was not to be bound by an adjustment under Article XXXV or a modification under Article XXXVI. The delegation suggested that this point should be reflected in the Official Commentary to the Protocol.
46. *Article XXXVII (Depositary and its functions) was adopted without amendment.*
47. With respect to the additional information required at the end of the Protocol, one delegation proposed the following text: 'DONE at Pretoria, this twenty second day of November, two thousand and nineteen, 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.' *The Conference approved the proposed text..*
48. *Annex 1 (Mining Equipment) was adopted without amendment.*
49. *Annex 2 (Agricultural Equipment) was adopted without amendment.*
50. *Annex 3 (Construction Equipment) was adopted without amendment.*
51. The President noted that delegations could continue to note grammatical or typographic changes to the text of the Protocol to the Secretariat for a limited period.
52. Following the Conference's completion of its review of the entire text of the draft Protocol, the President declared the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the "MAC Protocol"), as amended, adopted by consensus.
53. *Annexe II of the Final Act (Resolution 1 relating to the establishment of the Preparatory Commission for the establishment of the International Registry for mining, agricultural and construction equipment) was adopted without amendment.*
54. *Annexe III of the Final Act (Resolution 2 relating to the establishment of the Supervisory Authority of the International Registry for mining, agricultural and construction equipment) was adopted without amendment.*
55. *Annexe IV of the Final Act (Resolution 3 relating to technical assistance with regard to the implementation and use of the International Registry for mining, agricultural and construction equipment) was adopted without amendment.*
56. *Annexe V of the Final Act (Resolution 4 relating to the Official Commentary on the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment) was adopted without amendment.*
57. The President opened the floor for discussion on Annexe VI of the Final Act (Resolution 5 expressing the gratitude of the Conference to the Government of the Republic of South Africa for hosting and organising the Conference). The Secretary-General noted that the following paragraph would be added to end of the Resolution in order to refer to the Protocol as the 'Pretoria Protocol': 'RESOLVES that the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment shall also be known as the "Pretoria Protocol".'*Annexe VI was adopted as amended.*

58. *The Final Act was adopted as amended.*

59. The President of the Conference expressed her gratitude to the delegations, the Secretariat, and all those who had made the Diplomatic Conference possible. She noted that it was an honour for South Africa to have hosted the Diplomatic Conference, and for having successfully adopted the Pretoria Protocol. She noted South Africa's commitment to the Pretoria Protocol and its intention to continue facilitating the global adoption of the instrument. She applauded the achievement by the Diplomatic Conference of a final text which fulfilled the objectives set out and met the needs of economies all across the world. She commended the openness, inclusiveness, and transparency demonstrated throughout the negotiations, and the efforts made to adopt the instrument by consensus. She thanked the Chair of the Commission of the Whole, and the Chairs and Co-Chairs of Committees and Working Groups which had been established by the Conference for their efforts in finalising the Protocol, as well as the Vice Presidents of the Conference for their availability throughout the process. She additionally expressed her sincere gratitude to all the experts, governments, and individuals involved in the negotiations of the Protocol, as well as the UNIDROIT Secretariat for its work in facilitating the preparation of the Protocol. Lastly, she sincerely expressed her gratitude to the logistics and technical teams, the interpreters, as well as all the individuals involved in practically organising the Diplomatic Conference.

60. The President adjourned the meeting at 15:40.