



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

**PREPARATORY COMMISSION FOR THE
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY
FOR MAC EQUIPMENT PURSUANT TO THE MAC
PROTOCOL**

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***Regulations Working Group
Second session (remote)
24 November 2020***

**SUMMARY REPORT
OF THE SECOND SESSION
(Videoconference, 24 November 2020)**

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1. The second session of the Regulations Working Group established by the Preparatory Commission for the establishment of the International Registry for Mining, Agricultural and Construction (MAC) equipment pursuant to the MAC Protocol took place via videoconference on 24 November 2020. The Commission was attended by 20 participants from eight Member States of the Commission, one observing State, one observing organisations, and ex officio observers from the Diplomatic Conference (the List of Participants is available in Annex I).

Item No. 1 Opening of the session

2. The UNIDROIT Secretary-General opened the session and welcomed the participants to the second session of the Regulations Working Group.

Item No. 2 Adoption of the order of business of the session

3. The Working Group adopted the draft Order of Business (MACPC/Regulations/W.G./2/Doc. 2, available in Annex II).

Item No. 3 Approval of the Report of the First Session of the Regulations Working Group

4. The Working Group approved the Report of the First Session (MACPC/Regulations/W.G./1/Doc. 3).

Item No. 4 Consideration of issues associated with draft Regulations

5. *The Chair* suggested that the Working Group consider the matters raised in the Issues Paper (MACPC – Regulations W.G.2 - Doc. 2), starting with issues of access, consent, and registration criteria. The Chair invited the participants to raise any additional issues as discussions progressed.

Access to the International Registry and Vetting

6. *The Chair* drew attention to paragraphs 7-12 of the Issues Paper, recalling that at the end of the first session of the Working Group, the Secretariat had been requested to prepare several flow charts explaining how account establishment and vetting processes operated under the Aircraft Protocol Registry and a number of domestic PPSA regimes. These had been prepared by the experts within the Working Group. The Chair invited the participant who had prepared Appendix 2 of the Issues Paper, relating to design options for user authentication and access to the MAC Registry, to speak to the materials.

7. It was noted that there are several types of user authentication and access processes practised in different parts of the world. Four options which could be explored for the MAC Registry are (i) using foundational ID frameworks of member countries and using Application Program Interfaces (APIs) to integrate with the MAC Registry; (ii) adopting the transactional ID framework authentication processes used by the International Registry for the Aircraft Protocol (Standalone PKI SecureSign IR); (iii) developing a new self-asserted ID system specifically for the MAC Registry; or iv) following a hybrid model which would allow users to select a member country ID system (e.g. where the country had declared a designated entry point), and a MAC IR self-asserted ID system where a designated entry point was not used.

8. It was noted that the system followed by the Aircraft Protocol Registry was likely not to be appropriate for the MAC Registry, because of the relatively lower level of sophistication of the individuals and organisations who are likely to be using the MAC Registry to file or discharge a registration. A participant noted that different types of parties (secured creditors, debtors, etc) might have differing levels of sophistication. As such, a certain amount of flexibility should be allowed in

the Regulations for the registry to ensure easy access (with verifications) for the maximum number of users. It was noted that all States did not have functional digital ID frameworks. Additionally, secured creditors from outside member countries of the MAC Protocol could also be wanting to make registrations in the MAC Registry. As such, a hybrid system of using digital IDs as well as a self-asserted system for the MAC Registry would likely be best suited.

9. A participant noted that there were three separate questions that needed to be considered, in order to develop the account-opening framework: (i) what information a secured creditor must provide in order to establish an account; (ii) what the registry does with the information provided; and (iii) how the registry verifies that the person establishing the account has the authority to do so on behalf of the nominated account-holder. Consideration also needed to be given to the types of verifications which the registry would need to perform when a person sought to amend the details of an account, or when a person wanted to use the account to make a registration..

10. It was noted that each model of verification had different pros and cons. Noting the diverse nature of the potential users of the MAC Registry, while it would be beneficial to allow for a simple system of verification, one participant suggested that it was important to ensure that the identity of users could be ascertained in order to maximise the reliability of the register. Another participant expressed a preference for a simpler system of access, and suggested that the risks of such an approach could be manageable; whereas another participant noted a preference for a higher level of vetting for access to the registry.

11. It was noted that it was important to provide adequate assurances at low costs with simplicity. This could be drafted in the regulations in various ways. With regard to verification of debtors, one participant proposed that creditors making registrations could be responsible for verifying consent from the debtor, rather than requiring debtors to establish their own account for this purpose. Other participants supported the idea of the registry only vetting creditors, and allowing the creditors to vet the debtors. The participants requested additional research from the Secretariat regarding this option.

12. It was suggested that the regulations should be drafted with a degree of flexibility, allowing the registrar to fine-tune its practices based on its ongoing experience of the use of the system. Several participants noted the importance of openness of access to the registry for users, although it was pointed out that an open system did not necessarily mean a system which did not take adequate measures for verification and vetting.

13. It was noted that the MAC Registry had a different starting point to that of the Aircraft Protocol Registry, as the Aircraft Protocol Registry was developed against the background of an pre-existing comprehensive system of registrations and filings for aircraft in many jurisdictions, which is not the case for the MAC sectors. Consideration needed to be given to steps a registrar could take, versus steps a registrar could allow users to take. It was suggested that the MAC Registry could have a more enabling function, whereby it would set out minimum standards of information which users needed to present to access the registry.

14. It was queried whether there would be two types of user accounts: one for organisations such as law firms acting on behalf of secured creditors; and user accounts for the creditors themselves. It was also suggested, with regard to the level of vetting, that a minimum standard could be to verify the identity of the proposed user (to ensure that the user actually existed), and to ensure that a power of attorney or other evidence had been provided to confirm the capacity of the individual registering an account to act on behalf of the proposed user.

15. It was noted that, should the registry be expected to verify the identity documents of its users, it may have to receive ID documents in a range of languages, which it might not be able to

process. The process for handling such issues would also need to be clarified. It was noted that this problem could be reduced in some jurisdiction if vetting processes were undertaken by a domestic designated entry point – however, this would not always be a workable solution as secured parties may be from non-Contracting States.

16. A participant noted that the Aircraft Protocol Registry asked for signed authorisation documents but took the documents it received “at face value” (unless there was an obvious issue). This system had functioned well for the Aircraft Protocol Registry and was largely based on inked signatures on documents – however, more parties had recently started to move towards electronic signatures for these types of documents, which were also acceptable.

17. It was noted, if verification is required, that not only the authority of a person to act on behalf of a user may need to be verified, but also potentially the authority of an intermediary (such as a law firm) to act on behalf of a client. Other participants suggested that these types of verification would not be necessary, as any dispute which occurred between private parties with regard to authority did not involve the registry, and was a private matter between those parties. The Registry’s function was to showcase registrations as received, keeping in mind its notice-based nature, and not to verify whether an underlying international interest actually existed. Verification processes would also complicate the regulations unnecessarily. It was added that usability and accessibility were very important elements of the registry, and complicated verification processes would not facilitate them but rather only create barriers to entry. The problems associated with nefarious registrations were very limited in practical experience (even with debtor-based registration systems, where the information required to make registrations was much easier to find as compared to the MAC Registry), and should not be expected on a large scale for the MAC Registry. However, it was noted that when nefarious registrations were made, the processes associated to remedying them could be costly, and consideration should be given to the administrative and judicial aspects which would arise from such registrations.

18. A participant queried whether there should be a maximum period of registration for a user, noting that setting a maximum registration period for registrations helped to keep the register up-to-date and clear of inappropriate registrations. It was also noted that a high degree of vetting requirements would also open up the registrar to additional liability, and larger costs relating to insurance, which was not ideal. Participants noted the unlikelihood of nefarious registrations, noting the specific nature of the information (serial number of machinery) which any party needed to provide in order to effectuate a registration. However, it was noted that former owners of machinery would have access to serial numbers, and there would still be potential for fraud.

19. It was noted that civil law jurisdictions often only gave recognition to registrations effectuated by individuals who possessed sufficient powers within a company to do so. As such, it may be beneficial for the registry to verify such information, which was often easily publicly available through company registers maintained by these jurisdictions. It was added that many jurisdictions would likely prefer a registry which undertook such vetting processes, and that it would not be very costly to provide them.

20. Participants stressed the need to strike a balance for these processes, noting that modern technologies made it easier for vetting to be undertaken. It was also suggested that verifying whether a person had authority to effectuate a registration reduced errors and wrongful registrations on the system.

21. It was noted that if a system of national IDs was followed for verifying user identities for the Registry, it would be important to ensure that these IDs could be linked to the company on whose behalf the user was setting up an account. It was suggested that authority could be assured through the use of official company email addresses, which would be linked to user accounts at the time of

registration. One participant noted the importance of the ability to contact a party making registrations in cases of disputes. As such, the MAC Registry could provide guidance to users to set up accounts using generic email addresses rather than those registered in the name of specific people.

22. It was indicated that a standard would need to be set for the types of digital IDs accepted by the registry. Accepting ID cards would add several layers of complexity to the registry (such as which ID card was suitable (driver's license, social security card, etc)). The Aircraft Protocol Registry had the practice of collecting a fax of the user's passport or State issued ID card. However, they were in the process of introducing a practice of verifying passports/IDs through video calls. With regard to the information a company would need to provide, the Aircraft Protocol Registry had a practice whereby they verified that both the company and the person making a registration existed, which could be done by examining and verifying the certificate of incorporation submitted. The company was also verified by collecting a link to the relevant government website where it appeared that the company was registered (in the case that a trust was the entity making transactions, a letter showcasing the establishment of the trust was considered sufficient). In the case of a company registered in a non-English speaking country, the Aircraft Protocol Registry also requested a certified translation of the incorporation document (methods for automating this were being explored). Beyond this, the document which purported to confer authority on the person who had registered the account was taken as it was presented, without further screening. It was noted that the document purporting authority needed to be signed by someone other than the administrator of the account.

23. It was noted that such a standard of verifying companies may not be appropriate for the MAC Registry, as there would be many more small and medium sized companies from developing economies using the MAC Registry, as compared to the Aircraft Registry. Such companies may not be easy to verify for the registry.

24. *The Chair summarised the discussion, noting that on the question of information to be collected from the users when setting up accounts, the Working Group agreed on the use of digital IDs, should the users have them. For those parties which did not have a digital ID, it was important to only require easily available documents in order to make the registry useable to the highest number of users as possible, while at the same time ensuring a level of reliability of data. There was no agreement on what these documents should be at this stage. The issue of if/how to verify whether a person opening an account on behalf of a proposed user had sufficient authority to do so needed to be considered. It was noted that should a digital ID be collected by the registry, it could easily be verified. However, in the case where a digital ID was unavailable, further consideration needed to be given as to how the information provided on behalf of a user should be processed by the registrar. Lastly, further consideration also needed to be given to the issue of verifying whether a person who had registered an account on behalf of a user had the authority to act on the user's behalf.*

Consent

25. *The Chair* opened the discussion for the issue of how the registry would verify or collect the consents which are required under several articles of the Cape Town Convention system. It was noted that Article 20 of the Cape Town Convention set out the different circumstances in which consent was needed to undertake certain registrations, and that Article 18(1)(a) confirmed that the MAC Regulations were to specify the requirements for effectuating a registration, including provision for prior electronic transmission of consent. However, Article 18(2) provided that the Registrar was not under a duty to enquire whether a consent to registration had in fact been given or was valid. It was noted that the Regulations Working Group had to ensure that any minimum requirements for consent put forth by the MAC Protocol were accurately reflected in the Regulations.

26. Consent by electronic mechanisms was preferred, and discussed at the first session of the Regulations Working Group. However, it was noted that different levels of electronic consent could be considered for different types of transactions, such as requiring a higher level for discharge-related transactions. It was noted that the most frequent type of consent to be collected would be from the debtor in a registration, for which there had been suggestions that the task of obtaining debtor consent could be delegated to the creditor, rather than the registrar. As such, the options could be that either the secured creditor provides a document confirming the debtor's consent, or provides a phone number or email address for the debtor to the registry so that the registry can communicate directly with the debtor to ask whether it is prepared to consent to a registration.

27. It was stated that for transactions such as subordination, or assignment, where creditor consent was required, a higher level should be considered, whereas for debtor consent, simpler consent procedures would be acceptable. A participant noted that the registry would not be able to verify who the debtor actually was for any proposed registration. As such, minimal requirements should be acceptable. Another participant suggested that while a low level of proof of consent would be sufficient, it should not be as low as simply accepting a statement from a creditor as to the debtor's consent. Moreover, safeguards should be built in the system in the case where a dispute arose with regard to a creditor which provided wrongful information as to consent: for example so that such a creditor would be barred from providing consent on behalf of debtors in the future. Another safeguard could be that debtors who possessed accounts on the registry would be required to provide consent through its account, rather than simply the email addresses provided by the creditors.

28. A participant queried whether it would be useful for the message seeking a debtor's consent to ask two questions: (i) whether the email address/phone number belonged to the person listed as the debtor in a registration; and if yes (ii) whether the person consented to the registration. Such a mechanism would reduce the risk of mistakes. Other participants supported such a mechanism, noting that the Regulations may not need to go into these details, but that this could be left to the registrar.

29. A participant noted that certain types of registrations required consent from different parties. For example, an amendment to a registration (as per Regulation 5.11) required the consent of all named parties. Mechanisms for obtaining such a consent needed to be examined further, however, simplicity should be adopted to the extent possible. Additionally, it was noted that under the Aircraft Protocol Registry Regulations (Regulation 5.4(b)), a debtor needed to consent to an assignment – this was not the needed under the MAC Protocol. Furthermore, it was queried whether third parties would be allowed to act on behalf of debtors (e.g. where several farmers shared a tractor and were all effectively debtors). *The Working Group requested the Secretariat to draw attention to these matters in the Issues Paper for the Group's third session.*

30. *The Chair summarised the discussion noting that there were a number of possible mechanisms to collect debtor consent, such as allowing the secured creditor to confirm that the debtor had consented, or requiring the secured creditor to provide the electronic details of the debtor in order to enable the registry to collect consent from the debtor directly. With regard to creditor-to-creditor transactions, further consideration needed to be given to determine the level of consent the registry should collect.*

31. One participant suggested that there was no reason why different standards of consent should be applied to different types of transactions. It was noted that should consent be required from another creditor who already had an account on the registry, this would be easy to accomplish as all the details regarding the creditor would already be available. Using the electronic signature mechanism already stored on the system, obtaining creditor consent from verified users would not be cumbersome. It was noted that the only item which the Regulations would need to cover would

be that consent could be provided by electronic signature. All other procedural matters could be dealt with by the registry depending upon the type of party consent needed to be acquired from. It was noted that the 'self-search' option should only be available to verified creditors – as such, the importance of full accounts for creditors, and single-use accounts for certain types of debtors was highlighted as a very useful feature of the registry.

32. For registrations of assignments, subordinations, and subrogation, it was highlighted that the different impact of such registrations on the two parties involved in a transaction should mean that the party which was negatively impacted (i.e. the party which was losing its priority rights to a certain object) must be required to provide a higher level of consent (rather than just clicking a link), as consent to such a registration had a significant impact on its rights. A participant queried whether documents provided by the parties which had signatures could substitute the consent which the registry needed to ascertain. It was noted that it would not always be possible to upload agreements to the registry.

33. *It was agreed that the Regulations would not prescribe in great detail the implementation process of collecting consent, but rather set out the minimum standards of consent which the registrar must collect.*

34. It was suggested that the minimum standard could be an 'electronic signature'. A participant suggested that Article 20 of the Cape Town Convention only required single-party consent (from the party against whom a registration was made). However, the Aircraft Protocol Registry requested consent from both parties (the party making a registration and the party against whom a registration was being made).

35. It was suggested that as long as a consenter was identified clearly, understood what they were consenting to, and provided consent through a mechanism acceptable under the Cape Town Convention and MAC Protocol, this should be sufficient in all circumstances. Another participant noted that while principles were important, it was also important to highlight some standards and rules which the registry must follow.

Registration Criteria

36. The Chair recalled the discussions regarding this matter at the first meeting of the Regulations Working Group, noting that changes had been made accordingly to Section 5.1(c) of the Regulations. The Chair welcomed comments and suggestions to this updated draft, including to the question of additional information which could be provided/required by the registry when collecting registrations. The questions to be considered included the kinds of additional information, if any, to be provided, and whether such information would be mandatory or optional.

37. One participant expressed preliminary support for the updated draft of Regulation 5.1(c). It was indicated that, with regard to additional criteria, it was important to be brief and reliable; not requiring too much information to be given by the registrant, while at the same time adequately identifying the piece of equipment (to facilitate searchers). It was noted that the register would be indexed according to the alphanumeric serial number, which should always be separate from the additional criteria required.

38. A participant added that the additional information presently requested in part 5.1(c)(ii) (a) and (b), which included only the brand/manufacturer's name, and generic model designation/descriptive name of the equipment, was adequate; whereas the information in (c), which included any other descriptive information, was not adequate, reminding the Working Group that the information entered by a registrant would never be translated by the registry, as opposed to the forms used to collect information, which may be translated. As such, it was not useful to collect

information which could be lost in translation. While specific information for specific cases could be requested, open ended input should generally not be allowed on the registry.

39. One participant stated that part 5.1(c)(ii) (a) and (b) should be mandatorily provided by the registrants. Other participants supported this proposition where an ISO compliant serial number was not provided. It was noted that there were instances, especially in Japan, where the same manufacturer produced the same type of equipment in different factories with the same serial number. A participant suggested that this issue should be addressed by national industry associations in coordination with the Registrar, which could allow additional information to be inserted only for these specific cases.

40. A participant suggested using the word 'object' instead of 'item' in part 5.1.(c), keeping in mind that 'item' had a specific meaning under the MAC Protocol. Another participant agreed with this proposition.

41. A participant noted that serial numbers should be required to be entered into a specific field, in order to ensure consistency. Consideration could also be given to what was meant by the term 'serial number' (which was a practice done in PPSA regimes in Canada and Australia). Additionally, further consideration needed to be given to the format of the serial number, noting that this may not be a real issue as the provision already requested the 'entire' serial number, which by itself was an indication of format. The participant concurred with the idea of limiting the amount of additional information collected to part 5.1(c)(ii) (a) and (b), noting that this would also ensure that the chances of a notice in the registry providing seriously misleading information were nullified.

42. It was noted that allowing the registry some flexibility to resolve issues relating to duplicate registrations would be prudent. It was also noted that in order to allow easy searchability of the registry, it would be useful to ensure that serial numbers were inserted in a particular format. Other participants agreed with the proposition that 'entire serial number' was an adequate description of format, and that the serial number field should also allow for the entry of diacritical marks. Additionally, should an ISO compatible serial number be available, formatting would automatically be standardised. It was noted that in cases where an ISO compatible serial number was available, it was often the case that the object had a manufacturer serial number as well as an ISO number – a participant recommended that in such a case, only the ISO compatible serial number should be entered into the registry, noting that the manufacturer's serial number would typically be embedded in the ISO compatible number.

43. A participant supported the idea of retaining part (c) which allowed for an open ended entry of information by the registrant, as this could help searchers to ascertain the equipment they were searching for, citing the example that in Japan, most machines would have an automobile license plate, which if included in the registration under additional information, would greatly assist searchers to identify an object. It was added that in Japan, serial numbers were often repeated. While a situation where the same debtor held multiple items of equipment with the same serial number would be rare, it would still be possible. As such, additional information would be very useful for those searching the registry. The additional information would not create problems of finding registrations as the primary criteria for search would always only be the serial number.

44. A participant noted that mandatorily requiring the descriptive name of the equipment might be misleading and cause confusion. Another participant concurred with this proposition, noting that if the reasoning behind deleting point (c) was to promote simplicity, point (b) did not facilitate this. It was noted that information relating to the debtor (names etc) would also be available when a search would be made. This would also facilitate identifying an asset. However, another participant noted that assets must be identifiable solely by the identification criteria, rather than additional information such as the name of the debtor. Another participant noted that additional information

would only be examined by a searcher when two items of the same serial number were found on the registry – as such, the additional information should not be mandatory, but should always be allowed to be submitted in an open-ended manner.

45. It was noted that the search functionality would need to be designed in a manner where it would account for issues such as registrants using spaces instead of hyphens etc.

46. It was noted that Article XVII of the MAC Protocol required the Regulations to “specify the format of the manufacturer’s serial number and provide what additional information is required to ensure uniqueness.” As such, the Regulations should be flexible enough to always ensure registrants were able to provide enough information to ensure uniqueness.

47. A participant reiterated the importance of not overburdening the registry with collecting large amounts of information, as this would increase transaction costs and also increase the potential liability of the registrar. It was suggested that the probability of two items having the same serial number and causing confusion was very low, and did not warrant the collection of large amounts of additional information. However, another participant noted that a perfected international interest could only be registered if the Article XVII requirement of uniqueness was met through a registration – as such, it was important to allow registrants to provide such information.

48. It was agreed that should a registrant provide an ISO compliant serial number for equipment, this was enough to ensure uniqueness, and would not require the registrant to provide any additional information. It was also agreed to replace the term “item” with “object”. It was also agreed that diacritical marks should be enterable as part of serial numbers. With regard to additional criteria, it was agreed that Regulation 5.1.(c)(ii)(a) and (b) were appropriate as mandatory additional items (unless the serial number was the ISO number), leaving out the requirement for descriptive name. No agreement was reached on 5.1.(c)(ii)(c).

Item No. 5 Timetable and planning of further work

49. The Chair invited participants to submit written comments on the rest of the items in the Issues Paper directly via email.

50. *The Secretariat noted that it would propose dates for the third session of the Regulations Working Group at the second session of the MAC Preparatory Commission (10-11 December 2020).*

51. *The Secretariat noted that it would prepare an updated version of the draft MAC Regulations and Issues Paper and circulate the documents in advance of the third session.*

Item No. 6 Any other business

52. *No other business was raised under this item.*

Item No. 7 Closing of the Session

53. *The Chair thanked all the participants for their attendance and positive contributions to the discussion.*

54. *The Chair closed the second session of the Commission.*

ANNEX I**LIST OF PARTICIPANTS****REPRESENTATIVES****STATES**

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ANNEX II**ORDER OF BUSINESS**

1. Opening of the session
2. Adoption of the order of business of the session
3. Approval of the Report of the First Session of the Regulations Working Group
4. Consideration of issues associated with draft Regulations
5. Timetable and planning of further work
6. Any other business
7. Closing of the session