



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

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

***Second session (remote)*  
10-11 December 2020**

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**SUMMARY REPORT  
OF THE SECOND SESSION  
(Videoconference, 10-11 December 2020)**

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1. The second session of the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) equipment pursuant to the MAC Protocol (hereafter the "Commission") took place via videoconference between 10-11 December 2020. The Commission was attended by 33 participants from nine Member States of the Commission, two observing State, two 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. Acting as the provisional Chair under Rule 4 of the Rules of Procedure (MACPC/2/Doc. 2), the *UNIDROIT Secretary-General* welcomed delegations and observers to the second session.

3. The *Provisional Chair* recognised the ongoing global crisis in relation to COVID-19 and expressed hope for the third session of the Commission to be held in person. It was noted that the COVID-19 pandemic had increased the importance and relevance of the MAC Protocol to the global economy, keeping in mind the additional access to credit related issues which were anticipated in the mining, agricultural, and construction sectors. The *Provisional Chair* noted that since the first session of the Commission (8-10 May 2020), the Secretariat had completed the error-correction process for the English and French versions of the MAC Protocol to finalise the treaty, in accordance with the mandate given to it by the Diplomatic Conference. Additionally, unofficial translations of the MAC Protocol were now also available in Spanish and Portuguese.

4. The *Provisional Chair* commended the intersessional work conducted by the members of the Commission as part of the two Working Groups which had been established at the First Session: The Working Group to develop draft Regulations for the International Registry for MAC equipment (hereafter "Regulations Working Group") (see Agenda Item 5); and the Working Group to draft a request for proposals for the selection of a Registrar (hereafter "Registrar Working Group") (see Agenda Item 6). Furthermore, the *Provisional Chair* noted that the Secretariat had also been involved in various promotional events related to the MAC Protocol, particularly mentioning a virtual forum organised by the Kozolchuk National Law Center on 3 December 2020, and the ninth Annual Cape Town Convention Academic Conference held on 10-11 September 2020, both of which focussed on various aspects of the MAC Protocol.

5. *Having verified that representatives from Australia, China, Germany, Japan, Republic of Congo Spain, South Africa, the United Kingdom and the United States were in attendance, the Provisional Chair stated that quorum had been constituted under Rule 21 of the Provisional Rules of Procedure and declared the session open.*

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

6. *The Commission adopted the draft Order of Business (MACPC/2/Doc. 1, available in Annex II).*

#### **Item No. 3 Election of the Chair and Vice-Chairs of the Commission**

7. *The Provisional Chair* reminded the Members that during its first session, the Commission had postponed the election of a Chair and Vice-Chairs to the second session. As such, he invited proposals for the same.

8. *A representative of the United States* nominated Reverend Mark Smith, a representative of the United Kingdom, as Chair of the Preparatory Commission, keeping in mind his close involvement in the negotiation of the MAC Protocol, , alongside his position as one of the Co-Chairs of the Final

Clauses Committee at the MAC Protocol Diplomatic Conference. Representatives of Spain, Japan, and South Africa supported the nomination.

9. *The Commission elected Reverend Mark Smith, a representative of the United Kingdom, as the Chair.*

10. *Mr André R Smit, a representative of South Africa, and Ms Megumi Hara, a representative of Japan, expressed their will to present a candidacy for the roles of Vice-Chair. These candidacies were supported by representatives of Australia, Spain and the United States.*

11. *The Commission elected Mr André R Smit, a representative of South Africa, and Ms Megumi Hara, a representative of Japan, as first Vice-Chair and Second Vice-Chair, respectively.*

12. The newly appointed *Chair* informed the Commission that he would not be able to actively participate in the Second Session, and, as such, requested the First Vice-Chair to undertake this responsibility (hereinafter, in referring to "Chair", this report refers to Mr André R Smit).

13. *The Chair* suggested that before the Commission moved onto the next agenda item, Commission Members should be given an opportunity to update the Commission on domestic implementation activities regarding the MAC Protocol which had taken place since the First Session.

14. *Representatives of the United States* informed the Commission that the United States had signed the MAC Protocol on 1 October 2020 at a signing ceremony held at the UNIDROIT Headquarters in Rome. The representatives noted the importance of the MAC Protocol and the positive economic impact it could have on the American economy. They also informed the Commission that the U.S. Mission to the UN Agencies in Rome would be hosting an event in collaboration with UNIDROIT on 17 December 2020, alongside the 79<sup>th</sup> Session of the UNIDROIT General Assembly, as a follow-up to the signing of the Protocol.

15. *A representative of Spain* restated Spain's strong interest in becoming party to the MAC Protocol. It was noted that Spain's signature had to be preceded by a signature from the European Union, which was presently giving consideration to the MAC Protocol. Additionally, it was highlighted that the COVID-19 pandemic had resulted in a shifting of priorities in many jurisdictions, which could slow down the process of signature.

16. *A representative of the United Kingdom* noted that that the United Kingdom was presently in the same situation as Spain. However, this would change on 1 January 2021 when the United Kingdom would officially leave the European Union. It was also noted that many efforts were presently underway in the United Kingdom to allow it to become a party to the Luxembourg Rail Protocol.

17. *The Diplomatic Conference Chair of the Credentials Committee* informed the Commission that active efforts were presently underway within the Ivory Coast's Ministry of Foreign Affairs to sign and ratify the MAC Protocol.

18. *A representative of South Africa* informed the Commission that South Africa was close to signing the Luxembourg Rail Protocol, and also remained committed towards signing the MAC Protocol. Additionally, the representative noted that the Chief State Law Advisor from the South African Department for International Relations and Cooperation would be a panellist at the promotional event related to the MAC Protocol on 17 December 2020. Lastly, it was noted that recently the MAC Protocol was deemed to solely fall under the competency of the Department of Trade, Industry, and Competition in South Africa. This was an important development as in the past, there was a lack of clarity on this matter.

19. *Noting no other requests for the floor, the Chair closed the Agenda Item.*

**Item No. 4 Consideration of matters relating to the appointment of a Supervisory Authority**

20. *The Chair* drew the Commission's attention to Document MACPC/2/Doc. 3 which contained Research on Potential Candidates for Supervisory Authority and invited the Secretariat to deliver an update.

21. *The Secretariat* informed the Commission that it had received a letter from the International Finance Corporation (IFC) of the World Bank Group containing a notice that it did not see itself as suitable for the role of Supervisory Authority of the International Registry to be established under the MAC Protocol. IFC had noted that it would continue to support the MAC Protocol as it recognised its importance in facilitating access to credit in the mining, agricultural, and construction sectors. However, due to recent changes in strategy and leadership, which limited the possibility of IFC taking on novel roles, the General Counsel of IFC could not envisage IFC becoming the Supervisory Authority for the International Registry of the MAC Protocol. The letter also referenced IFC's concerns regarding a possible conflict of interest. According to the Secretariat, these concerns were unfounded and would be clarified accordingly.

22. The letter noted that this was not a formal decision of the IFC's governing bodies. However, should the Commission decide to continue to pursue IFC on the matter, it would likely only result in a formal rejection being passed. As such, the Secretariat recommended to move towards selecting an alternative Supervisory Authority for the MAC Protocol.

23. The Secretariat introduced Document MACPC/2/Doc. 3 which outlined possible candidates for the role of Supervisory Authority. This document was prepared following a request from the Preparatory Commission and contained additional information regarding the suitability of either the Organisation for Economic Cooperation and Development (OECD) or UNIDROIT undertaking the role of Supervisory Authority for the MAC Protocol. Additionally, this document also contained research previously presented to the Diplomatic Conference containing short notes on the suitability of other international organisations to undertake this role, such as the World Customs Organisation (WCO), the Asian Infrastructure Investment Bank (AIIB), and the United Nations Conference on Trade and Development (UNCTAD); as well as certain single sector international public entities, such as the International Fund for Agricultural Development (IFAD), the Food and Agriculture Organization of the United Nations (FAO), the World Farmers Organization (WFO), and the World Mining Congress (WMC).

24. The Secretariat noted that both, OECD and UNIDROIT, could be suitable candidates for the role of Supervisory Authority for the MAC Protocol. Regarding OECD, the goals of the MAC Protocol aligned well with OECD's mandate and purpose which was to promote sustainable economic growth and employment, contribute broadly to economic development, and contribute towards the expansion of world trade on a multilateral, non-discriminatory basis. Additionally, OECD had also been involved with the Aircraft Protocol of the Cape Town Convention whereby there existed an 'OECD discount' in the Aircraft Sector Understanding on Export Credits for Civil Aircraft developed by the OECD Trade and Agriculture Directorate. This discount had played an important role in the success of the Aircraft Protocol.

25. With regard to UNIDROIT, the Secretariat addressed concerns which the Commission had raised at its first session regarding possible issues with UNIDROIT undertaking the role of Supervisory Authority for the International Registry of the MAC Protocol, keeping in mind that UNIDROIT was already the Depository of the treaty. Noting the strictly consultative, informative, and procedural

relationship between the Depository and the Supervisory Authority, and the involvement of a panel of experts in conducting all Supervisory Authority related tasks, it was concluded that there existed no conflict of interest for UNIDROIT to undertake both roles, and that each would be managed separately at the Institute. However, the Secretary General noted the preference that UNIDROIT be treated as a backstop for this role, should no other viable alternatives be available. The Secretariat noted that the Commission was not restricted to the organisations listed in the document and may also consider other organisations.

26. *A representative from the United States* noted that OECD had many programs dedicated to agricultural development in Asia, Africa, Latin America, and other developing regions of the world. Additionally, they also had industry and government engagement groups related to MAC equipment, as well as key partnerships with non-Member States, including Brazil, China, India, Indonesia, and South Africa. It was added that they also possessed infrastructure and construction related programs which could indicate relevance to multiple MAC sectors.

27. *A representative of South Africa* noted that OECD's membership was largely limited to Europe and North America, with only a few members from outside those regions. In particular, OECD had no Member States from Africa. It was noted that while this was not a determining factor, it should be kept in mind should the decision be taken to select OECD as the Supervisory Authority. It was proposed that alternatives could be considered. Particularly, consideration could be given to WCO which had an intrinsic link with the MAC Protocol through its Harmonized System (HS) Codes, which made up the scope of the MAC Protocol. Keeping in mind that the HS Codes which were part of the MAC Protocol would need to be revised, amended, or expanded in the future, having WCO as the Supervisory Authority could be valuable. However, noting also that WCO might not have experience in the area of secured transaction, the representative of South Africa welcomed views from the Preparatory Commission on this matter.

28. *The Diplomatic Conference Chair of the Credentials Committee* shared the concerns regarding OECD's membership expressed by South Africa. The representative indicated support for considering WCO, after which UNIDROIT could be considered as the backup option. Additionally, the World Trade Organization (WTO) may also be considered as an option.

29. *The Diplomatic Conference Chair of the HS Codes Working Group* agreed with the Secretariat that UNIDROIT should only be treated as a backup option, with other organisations to be considered first. This was keeping in mind the possible conflicts which could exist noting UNIDROIT's role as Depository for the MAC Protocol, as well as the limited amount of resources available to UNIDROIT.

30. *A representative of China* agreed with the concerns raised regarding OECD's limited membership, noting that China was also not a member State. As such, it was proposed that consideration should be given to more global organisations, and in particular, UNCTAD, which functioned under the United Nations.

31. *A representative of Australia* noted that while OECD had a limited membership, they had the mandate and the experience of involving non-member States in specific programs as necessary in their implementation. It was noted that OECD remained a good candidate for this role. At the same time, a limited number of other organisations (possibly only a couple) should also be considered, with UNIDROIT being a backup option. It was added that while there was time available for this, it was important not to delay this matter substantially, and that the Commission should consider adding a time-limit to resolving it, as this would ensure giving a positive signal to the international community, and also allow for time to negotiate appropriately with the entity which was selected to be the Supervisory Authority.

32. *A representative of the United States* noted the importance of appointing a Supervisory Authority which could advance the growth of the MAC Protocol. The representative agreed with the Australian proposal to develop a concise list of candidates and setting a time limit for the appointment of the Supervisory Authority. Additionally, the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group was proposed as another potential candidate, keeping in mind its large global membership and its involvement in promoting access to credit.

33. *A representative of the United Kingdom* concurred with the interventions made thus far suggesting that a small number of international organisations be considered for the role of Supervisory Authority, with UNIDROIT being a backstop. Additionally, it was pointed out that a large amount of the work of the Supervisory Authority would be conducted by a panel of experts, which would have global representation.

34. *A representative of Japan* agreed with the need to move towards finding an alternative Supervisory Authority to the IFC. The representative agreed with concerns regarding OECD's membership which had been raised by others, and also agreed with UNIDROIT serving as a backstop in case no other entity could be appointed. It was noted that in Japan's experience, while WCO had a high degree of technical competence regarding HS Codes, it only had a limited amount of legal expertise, which might not make it a very suitable candidate for the role. It was queried whether the mandate given to the Preparatory Commission after moving from IFC allowed it to simultaneously negotiate with several international organisations once or was it limited to one.

35. *The Secretariat* noted that, if appointed, UNIDROIT would not be able to accept the role of Supervisory Authority counting only on its own budget. While the expenses of the Supervisory Authority would be covered through fees retained by the International Registry once the MAC Protocol became operational, the limited expenses incurred in the interim period between appointment and the time where the International Registry became viable would need to be covered through extrabudgetary contributions as a means of bridge financing. As such, it was reminded that UNIDROIT should be considered as a backstop, and that should it be appointed, support from States would be imperative to ensure its success in this role. It was also noted that, while formal negotiations could only be conducted with one organisation at a time, informal assessments of interest should be conducted with multiple organisations in order to expedite the process of selecting a Supervisory Authority. The Secretariat would always work in tandem with the Commission and would only work towards fulfilling the mandate given to it. As such, the Secretariat invited the Commission to identify all the organisations it wished contacted for the role, and also to possibly set out a hierarchy and a timeline accordingly.

36. *The Chair* summarised that OECD remained a viable option, despite some concerns about its membership. There were also proposals to consider WCO as to their suitability for the role, while noting that there were concerns regarding its highly technical nature. Additionally, if there was enough support from the Commission, MIGA's suitability could also be examined. It was noted that the Commission agreed that there were no in-principle reservations to UNIDROIT undertaking the role. However, it should only be considered as a backstop. Furthermore, there were also proposals to consider UNCTAD and WTO for the role, which would need further support to be advanced.

37. *The Secretariat* noted that WCO had been actively involved in the process of identifying the HS Codes which formed the annexes of the MAC Protocol. The Secretariat's experience aligned with that of Japan, whereby WCO appeared to have a strong technical focus, and very limited or no experience in secured transactions or the management of registries. Additionally, being involved in the negotiations of the MAC Protocol from an early stage, WCO had opportunities to express its interest in the role of Supervisory Authority but chose never to do so.

38. *A representative of Spain* expressed support for considering WTO to undertake the role of Supervisory Authority. The importance of setting a timeline was also reiterated and the representative recommended the Commission to clearly outline the way forward.

39. *A representative of Australia* noted that all of the aforementioned organisations had their own internal processes to make formal decisions of this nature. Additionally, the representative asked for guidance from the Secretariat in how much time it would need to conduct informal assessments of interest. *The Secretariat* noted that the mandate from the Diplomatic Conference indicated that the operational infrastructure for the MAC Protocol needed to be established within two years from the convening of the first meeting of the Preparatory Commission (21-22 May 2020). As such, while there was time available, the Secretariat intended to identify a firm option to start formal procedures before the third meeting of the Commission (expected to take place in June 2021). The Secretariat queried whether all five options (OECD, WCO, UNCTAD, MIGA, WTO) should be given the same amount of priority/treatment, or whether a hierarchy should be established. Additionally, the Secretariat also requested support from the Members of the Commission in identifying suitable individuals within the aforementioned organisations to contact, keeping in mind that many of these organisations were not aware of the MAC Protocol or what the role of Supervisory Authority entailed.

40. *A representative of Australia* queried whether, noting the reservations expressed, it was appropriate to remove WCO from the shortlist. *The Diplomatic Conference Chair of the HS Codes Working Group* noted that should the Commission move forward with WCO, it was important to bear in mind that Article XXXV(1) of the MAC Protocol operated under an assumption that WCO was not the Supervisory Authority of the MAC Protocol. As such, it should be clarified whether WCO was able to undertake this role under the MAC Protocol without a conflict of interest. Similar concerns had been expressed concerning UNIDROIT, but were addressed by the Secretariat, which meant that similar research could be prepared in relation to WCO.

41. *A representative of Spain* noted that the possible conflict of interest, as well as its highly technical nature, may not make WCO a suitable candidate to consider for the role of Supervisory Authority. Regarding timeline, it was noted that other milestones in the establishment of the international infrastructure required for the MAC Protocol to enter into force (such as setting up the International Registry) could be relevant in deciding upon a deadline to appoint a Supervisory Authority. *The Diplomatic Conference Chair of the HS Codes Working Group* noted that within the work of the Registrar Working Group, the matter of deciding the governing law for the contract between the Supervisory Authority and the Registrar depended upon the identification of a Supervisory Authority. As such, the two tasks would have to have similar deadlines.

42. *A representative of Japan* agreed with the notion of not including WCO in the list of entities to be considered for the role of Supervisory Authority, keeping in mind the possible conflict of interest, and its highly technical nature. With regards to deadline, keeping in mind that UNIDROIT was a backstop, it was queried when it would be a suitable time to take the matter to UNIDROIT's governing organs, noting that they would also require time to adopt any decision on this matter.

43. *A representative of the United States* noted that, in terms of priorities, OECD should be primary, keeping in mind that their suitability had already been considered by the Secretariat, and that no major reservations had been raised by the Commission against it. As a secondary option, WCO and UNCTAD could be considered as the Secretariat had already undertaken some research regarding these organisations, whereas WTO and MIGA could be considered as tertiary options as they had never been considered before. It was noted that WTO and MIGA would need a preliminary assessment first before moving towards engaging with them. With regard to the lack of global membership at OECD, it was noted that it conducted several programs which involved non-Member States and these could be consulted in moving forward on this matter.



44. *The Secretariat* noted that the conflict with regard to WCO in Article 35(1) was largely unfounded and could easily be resolved. Moreover, should that conflict be substantial enough to rule out WCO's suitability for Supervisory Authority, UNIDROIT would most likely also be ruled out keeping in mind similar issues. It was added that the Secretariat, with support from Members of the Commission, could conduct research into all five of the aforementioned organisations and present this to the Commission by the end of March 2021. It was queried whether the Commission would prefer a preliminary analysis, of the type found in Document 3 for MIGA and WTO before moving forward with further investigating their interests in the matter.

45. *A representative of Australia* agreed with the need for a preliminary assessment of the suitability of MIGA and WTO for the role, before approaching them. Additionally, the representative supported the deadline of 31 March for the Secretariat to submit its results and research to the Commission.

46. *The Secretariat* proposed submitting research to the Commission on MIGA and WTO by 31 January 2021. This research would include an assessment of their suitability for the role of Supervisory Authority. The Commission would be given time to give comments on these assessments, and a lack of objections would reflect support for the Secretariat's assessments for these two organisations. At the same time, the Secretariat, with support from Commission members, would start to approach OECD, WCO, and UNCTAD to assess their interest in becoming the Supervisory Authority for the MAC Protocol. The Secretariat would revert back with the results of these approaches to the Commission by 31 March 2021.

47. *The Preparatory Commission accepted the Secretariat's proposal to receive an assessment on MIGA and WTO by 31 January 2021, and to receive the results of the Secretariat's approaches with OECD, WCO, and UNCTAD by 31 March 2021.*

#### **Item No. 5 Updates on the activities of the Working Group to develop draft Regulations for the International Registry for MAC equipment**

48. *The Chair* invited the Chair of the Regulations Working Group, a representative of Australia, to present the reports of the first two meetings of this Group.

49. *The Chair of the Regulations Working Group* noted that the Group had met twice since the first session of the Commission. Several key issues in the process of drafting the Regulations for the International Registry for MAC equipment had been discussed during these meetings. The Regulations Working Group had paid close attention to the general approach to be taken in drafting the Regulations, such that while it was acknowledged that the 9<sup>th</sup> edition of the Regulations for the Aircraft Registry was a useful starting point for the MAC Registry Regulations, substantial changes would need to be made in order for them to be appropriate for the MAC Protocol. There was a recognised need to keep the Regulations user-friendly, keeping in mind the potential type of users of the MAC International Registry, as compared to the Aircraft Registry. Language barriers were also considered as a challenging aspect for the MAC Registry Regulations, and it was noted that assistance could be sought from designated entry points in this regard to facilitate access and understanding of the MAC International Registry in different jurisdictions. However, not every jurisdiction would appoint an entry point, as therefore more thought needed to be given to this issue. It was considered that the use of intermediaries to facilitate access to the Registry could also be a good solution for the issue of languages.

50. *The Chair of the Regulations Working Group* noted that other key issues which the Working Group deliberated extensively included access to the Registry, with particular consideration of the type/level of vetting necessary to allow users to access the Registry, as well as counterparty consent

in registering interests on the Registry. The consent of the debtor was discussed at particular length, as well as registration criteria for the identification of MAC equipment to ensure uniqueness.

51. The *Chair of the Regulations Working Group* further elaborated the discussion on access arrangements for the MAC Registry which was focussed on vetting requirements for individuals and entities trying to make registrations on the MAC Registry. This discussion posed three questions: 1) what documents, if any, were needed by an organisation to open an account, including documentation to ascertain that the individual opening the account had the relevant authorisation to act on behalf of the organisation; 2) once the documents had been submitted, what would the registrar do with them, keeping in mind the importance of not exposing the registrar to liability; and 3) once an account had been established, what kind of proof needed to be provided to allow an individual to make registrations continually on behalf of the entity. It was noted that the vetting system at the Aircraft Registry required several documents from those registering an account, and the registrar also took steps to verify the identity of the users. On the other hand, several secured transactions systems (including Australia's PPSA) had less extensive vetting requirements, sometimes not requiring any documents as proof of identity or power to act. In Australia, this was because transactions in an account on the Registry flowed through a workbench specifically created for the relevant entity, and if a person had access to the workbench, it was assumed they had power to act on behalf of that entity. There were also middle-ground approaches adopted in different jurisdictions.

52. The *Chair of the Regulations Working Group* added that the Group had deliberated the possibility of relying upon national digital ID systems to allow for verification. These would only be effective if a country had such a system. It was noted that the Group had agreed that the document intensive policies of the Aircraft Registry were not appropriate for the MAC Registry, keeping in mind the different nature of the users of the MAC Registry. It was noted that the objective a Registry was intended to serve (e.g. title-Registry vs noticeboard) often drove the decision-making process of how intensive the documentation requirements needed to be.

53. With regard to the issue of consent, the *Chair of the Regulations Working Group* noted that the issue stemmed from Article 20 of the Cape Town Convention which highlighted counterparty consent requirements for registrations on the Registry, and Article 18(1)(a) which noted that the mechanisms for obtaining electronic consent needed to be identified within the Regulations. At the same time, Article 18(2) established that 'The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.' It was stated that several types of interests listed in Article 20 were such that it would be likely for both parties to have accounts with the Registrar. For these types of transactions, obtaining consent would be a straightforward process. As such, the Working Group had devoted more time to discussing the mechanisms for obtaining consent from debtors which were likely not accountholders on the Registry. It was highlighted that keeping in mind the types of debtors likely to make use of the MAC Protocol Registry, a large amount of technical sophistication could not be anticipated. As such, electronic consent mechanisms needed to be simple in nature. The Group had explored two options in this regard: 1) to ask the secured creditor to confirm that it had obtained the debtor's consent - this would require a safety net to be built into the system which would disallow secured creditors from providing consent on behalf of debtors if a creditor was found to have made false statements; and 2) for the secured creditor to provide contact details for the debtor as part of the registration, and then for the registrar to obtain consent from the debtor. The Working Group had shared its reservations to the first option and indicated a need for debtors to be able to provide consent themselves. Regarding the second option, it was not certain how practical such a solution would be. It was noted that the Regulations did not need to clearly outline the consent mechanism, but rather only indicate the standard which any registrar needed to meet to obtain consent. The Chair of the Regulations Working Group welcomed comments from the Commission on this matter.

54. *The Diplomatic Conference Rapporteur* congratulated the Regulations Working Group for the progress it had made. Regarding the doctrine of consent under the Cape Town Convention, it was noted that actual consent from the debtor was necessary. As such, while it would not be possible for a creditor to simply notify the registrar of the debtor's consent, a mechanism could be created to allow the creditor to confirm to the registrar that it had actually obtained consent from the debtor outside of the Registry system, so that the debtor would not have to concern itself with the technological aspects of the Registry. Regarding the notion that the term electronic signature needed to be replaced (found in footnote 33 of the Draft Regulations) with a more technologically neutral term, it was noted that the requirement in Article 18(1)(a) of the Cape Town Convention specifically mentioned the need for 'electronic' transmission of consent. As such, there needed to be a mechanism for electronic signature, which could be supplemented by other mechanisms such as a digital signature.

55. *An Observer from Aviareto* congratulated the Regulations Working Group for the progress it had made. It was stated that the term 'electronic signature' was generally considered technologically neutral, whereas 'digital signature' was more specific in terms of technologies. It was also stated that the Cape Town Convention required consent to be obtained in writing (as defined in Article 1(nn)). As such, a mechanism whereby creditors obtained consent from debtors outside of the Registry must also follow this rule. *A representative of Spain* agreed with the use of electronic signature, which was regarded a neutral term – as reaffirmed through the UNCITRAL Model Law on Electronic Signatures. It was reflected that criticisms for this term were more relevant to the European Directive on Electronic Signatures, which actually referred more the digital signatures in its use of the term, which created some confusion at the European level.

56. *The Chair of the Regulations Working Group* introduced the discussion regarding registration criteria. This related to the information that must (or may) be provided to the Registry by a user to make a valid registration of an international interest in an item. It was remembered that this contained two parts under the MAC Protocol: the first related to the manufacturers serial number of a particular asset, which must always be provided to make a valid registration; and, as per Article XVII of the MAC Protocol, '...such additional information as required to ensure uniqueness...'. It was noted that Article XVII put responsibility onto the Regulations to outline what additional information should be.

57. With regard to manufacturer's serial number, the *Chair of the Regulations Working Group* relayed that the Group had agreed that no additional information would be necessary where a manufacturer used an ISO standard PIN as the serial number for a piece of equipment, as all ISO PINs were unique. However, where a manufacturer did not use an ISO PIN, additional information would be required to ensure uniqueness. In the present draft of the Regulations, it was recalled that Section 5.1(c)(ii) contained three types of information which must be provided: a) the brand name for the equipment, if unavailable, the name of the manufacturer; b) the manufacturer's generic model designation; and c) such other descriptive information about the equipment as is required to ensure uniqueness of the equipment. Agreement had been reached by the Regulations Working Group on items (a) and (b) of Regulation 5.1(c)(ii), establishing that such information should be mandatorily provided. There was however no agreement yet on the inclusion of (c). It was noted that the disagreements on this matter stemmed from two different interpretations of what the Regulations were expected to do under Article XVII of the MAC Protocol. The *Chair of the Regulations Working Group* drew the Commission's attention to MACPC/2/Doc. 5 which outlined these two different interpretations.

58. The first interpretation focussed on the fact that Article XVII required a registration to contain the item's serial number "and such additional information as required to ensure uniqueness". Under this interpretation, the task of the drafters of the Regulations was to ensure that the categories of information that could or must be provided in a registration were comprehensive enough to ensure

that the item was described in a way that could always allow it to be distinguished from any other item. This interpretation would provide a more clinically complete set of data on the register (at least, that is, if registrations were made correctly). It would however make the registration process more complex, and so could be off-putting to users. The second interpretation focussed on the fact that the second sentence in Article XVII stated that the Regulations were to provide what additional information was required to ensure uniqueness. Under this interpretation, the task of the Regulations was not simply to deliver on the obligation imposed by the first sentence. Rather, the Regulations would delineate what the scope of that obligation was in the first place (almost as if the article required uniqueness "as defined in the Regulations"). This interpretation would allow the Registry to be more user-friendly for registrants, but might be more likely to result in overlapping registrations.

59. The *Chair of the Regulations Working Group* summarised discussions previously held on this matter with Sir Roy Goode (*The Diplomatic Conference Rapporteur*), who had suggested a third 'middle-ground' approach. Sir Roy Goode agreed that the first interpretation set too high a bar, as it was probably not even possible to design a practical registration system that could truly achieve uniqueness. Rather, his view was that the first sentence of Article XVII should be read as if "required" were replaced with "designed". On this interpretation, the registration criteria set out in the Regulations only needed to be "designed to ensure uniqueness", and a registration of an international interest over an item of MAC equipment would be effective if it correctly described the item in accordance with the Regulations, even if the description could apply to another item (or items) as well. This still left open the question of what the Regulations needed to do in terms of how much additional information should they require a registrant to provide. The *Chair of the Regulations Working Group* welcomed comments from the Members of the Commission on this matter.

60. *The Diplomatic Conference Rapporteur* suggested replacing the wording 'to ensure' with 'for the purpose of ensuring' in Regulation 5.1.(c)(ii)(c) in order to remove the strict requirement to 'ensure' uniqueness which was implied by the present language, as it would likely be impossible to guarantee uniqueness in every circumstance. It was queried whether the Registry system could be built in a way to prevent registrations to be made against identical equipment.

61. *A representative of Spain* queried whether it would be possible for registrants which possessed an ISO PIN to also insert additional information in their registrations. It was noted that the Regulations Working Group wanted to make the process of registration as simple as practicable. As such, if an item possessed an ISO compliant PIN, it would not be necessary to provide any further information. Whether or not such would be forbidden had not been considered and was still an open issue.

62. *An observer from NatLaw* noted that under the MAC Protocol, searches on the Registry could only be made by serial number. As such, any searcher would have to open all registrations matching a serial number they were interested in to find additional information about those pieces of equipment. This was different as compared to the provisions of the Aircraft Protocol. It was noted that ensuring uniqueness in the broad sense would be impossible. The Regulations needed to ensure that any searcher could ascertain the equipment they were looking for based on the serial number and the additional information provided. It was added that the Registry should not reject multiple registrations for the same serial number, as equipment in different parts of the world could have the same serial number. Moreover, the same piece of equipment may also have multiple parties registering interests within it. It was noted that the concern of multiple pieces of equipment having the same serial number was only relevant if the same debtor owned these multiple pieces, which could be deemed a rare occurrence.

63. *A representative of the United States* queried whether a mechanism could be built into the Registry which prevented duplicate registrations, while not impacting the ability of multiple valid

interests within the same object being registered. Additionally, the importance of having measures and guidelines in place where two items were not unique was also emphasised.

64. *The Diplomatic Conference Chair of the HS Codes Working Group* agreed with the interpretation provided by Sir Roy Goode, which gave priority to the second sentence of Article XVII whereby allowing the Regulations to determine the criteria for uniqueness. With regard to redrafting Regulation 5.1(c)(ii)(c), it was proposed that the entire clause should be deleted, as allowing registrants to provide open-ended information could confuse searchers who would not be aware of what information they could expect to find on the Registry. It was added that should it be deemed necessary for additional information beyond 5.1(c)(ii) (a) and (b) to be provided, such additional information should clearly be specified. Regarding the proposal of allowing the Registry to reject registrations for equipment which, through the information provided, was not unique – it was noted that this would not be helpful as it would not provide clarity to searchers as to which equipment had a registration against it. Moreover, this would also not be prudent, as different types of interests could be registered against the same asset, which would necessarily not have unique identification criteria.

65. *A representative of Australia* also disagreed with the proposal for the Registry to reject multiple registrations against equipment which was already on the register, keeping in mind that junior creditors would normally register interests against equipment which already had a senior creditor.

66. *A representative of Japan* agreed that the Registry could not achieve factual uniqueness in every case, and should be designed to achieve legal uniqueness, rather than factual. It was noted that only serial number, and 5.1(c)(ii) (a) and (b) would not be enough to ensure uniqueness, as not infrequently pieces of equipment had all three of these items as the same. As such, additional criteria, whether open-ended or specific, should be required. In the case of ISO PINs, additional information should not be allowed, as this could be considered as seriously misleading towards a searcher. It was noted that in Japan and in other countries, manufacturers sometimes had factory/plant-based methods of assigning serial numbers, or manufacturing-year-based methods, which often resulted in duplication. As such, it would be important to provide a list of additional types of information which a registrant could enter to ensure uniqueness. Additional research needed to be conducted on this matter and a certain degree of flexibility was also important as these practices were relatively common. It was added that should the option of providing a list not be available, the open-ended 5.1(c)(ii)(c) should be retained.

67. *The Diplomatic Conference Rapporteur* elaborated that the problem of multiple registrations against equipment which had all the same characteristics had the potential to seriously mislead searchers, as the multiple registrations could potentially be associated to the same, or to different assets. As such, one possible solution could be to require additional information where a registrant was making a registration on an asset prima facie already on the Registry.

68. *The Chair of the Regulations Working Group* noted that should a system be built which restricted registrations against equipment of the same specifications as one already found on the Registry, it would always need to allow registrations purposefully being registered against the asset already on the Registry (e.g. junior creditors etc). This option could be explored further. With regard to having an open-ended text option available, it was noted that this might enable registrants to enter information in different languages, which would be unhelpful and create confusion for searchers. On the other hand, providing a list of additional criteria based on certain fact-patterns could result in asking registrants for information which they might not easily have and thereby make the Registry less appealing to use.

69. *A representative of South Africa* expressed support for the proposition that the Registry could prompt registrants to provide additional information only in cases where serial numbers and information provided in 5.1(c)(ii) (a) and (b) was the same as that for equipment already on the Registry. Further discussion was necessary to ascertain what this additional information should be.

70. *An observer from NatLaw* noted that the Registry needed to be designed in a manner which created the least amount of legal uncertainty. However, specific design elements could lead to different types of legal issues. It was noted that while it was technologically possible to reject registrations against assets which had the same identification criteria, this would create legal issues which needed to be examined further. Additionally, regarding uniqueness, it was explained that an object's uniqueness was relevant for two types of parties: searchers and judges. It was important to ensure that registrations in the Registry were not prone to being deemed 'seriously misleading' by a judge and deemed ineffective – this would become likely should open-ended information be allowed, as the application of the 'seriously misleading test' was very different across jurisdictions. Moreover, should a searcher have any concerns about the uniqueness of an object, it would always have the option of contacting the party listed as holding a right in the asset which the searcher (supposing it is a secured creditor) was interested in. As such, the focus should be on designing a Registry which was effective and useful, rather than one which allowed for large amount of unnecessary and potentially seriously misleading information to be entered.

71. *The Diplomatic Conference Chair of the HS Codes Working Group* agreed with the comments provided by the observer from *NatLaw* regarding the risks posed by allowing open-ended information to be provided. Regarding the proposal to only require additional information when a registration was being made with identification criteria similar to that of an asset already on the Registry, it was noted that this would not be useful, as the original asset should also be required to provide the same information. It was added that requesting a large amount of additional information would disincentivise users from using the Registry. As a solution, it was proposed that the Registry could be designed in a manner whereby it could determine using the serial number and the information requested by 5.1(c)(ii) (a) and (b) that the equipment being registered is one which may have duplicates - only in such situations, the relevant additional information could be requested (such as factory name).

72. *A representative of Japan* noted that while it was possible for creditors to enquire with other creditors about assets on the Registry, it was not an efficient solution. It also raised issues of creditors already on the Registry not able to provide information due to issues such as confidentiality. As such, a limited list of additional criteria would be useful (such as manufacturing year or factory location depending upon the type of asset) and would not have the risk of being seriously misleading. It was added that in examining what additional criteria should be required, the components which formed ISO PINs could be considered, as this included information readily available for most assets.

73. *An observer from Aviareto* noted that the number of registrations against equipment with the same serial number would be high, keeping in mind the nature of manufacturers in the mining, agriculture and construction sectors. The larger the number of fields required to fill when making a registration, the less likely it would be that the registration overlaps with another already on the register, and the easier the task of a searcher. Regarding open-ended information, it was added that a functionality could be included whereby such information is not searchable, but only browsable. Additionally, requesting such information only in cases where a similar object was already on the Registry could be a workable solution. It was added that it would be very useful to collect data from manufacturers and analyse how big the risk of duplication was, as this would greatly aid the design of the Registry.

74. *A representative of Spain* agreed with the need for allowing creditors to obtain as much information as practicable from the Registry, rather than forcing them to do their own due diligence.

It was also agreed that open-ended information should not be allowed, and that a limited list of specific items should be developed in the cases of registrations being filed for equipment which was seemingly already on the Registry.

75. *The Secretariat* noted that, to the extent possible given the ripeness of the discussion, guidance would be useful on this matter for Sir Roy Goode in order to assist him in finalising the Official Commentary for the MAC Protocol.

76. *The Chair of the Regulations Working Group* reflected that there was consensus on the need to require the information requested in Regulation 5.1(c)(ii) (a) and (b). Further consideration needed to be given as to what further, if any, information should be requested, and whether such additional information should be mandatory. The Chair of the Regulations Working Group also requested additional clarity from the Commission on the questions posed in MACPC/2/Doc. 5 regarding interpreting Article XVII of the MAC Protocol and outlining the task which the Regulations were expected to complete.

77. *The Chair* invited comments on the question of uniqueness, and specifically as to what it was to be measured against (uniqueness of one asset vis-a-vis another asset on the Registry? Or another asset anywhere in the world? Or another asset carrying the same serial number? Etc).

78. *The Diplomatic Conference Chair of the HS Codes Working Group* noted that uniqueness should be vis-a-vis any other asset in the world. This was because should uniqueness be measured vis-a-vis other assets on the Registry, the first registration against an asset of a particular kind would not have to provide additional information, whereas all future assets would. This was not considered fair or efficient. As such, any standard of uniqueness should be applied against all other assets in the world.

79. *The Diplomatic Conference Rapporteur* proposed uniqueness to be vis-a-vis all assets which were registrable on the Registry, rather than all assets in the world, or all assets already on the Registry. This was because it was not a title-based Registry, but purely a Registry designed to give priority to competing interests.

80. *An observer from NatLaw* highlighted the significance of the question being considered, as it would also apply to situations where different types of registrations needed to be made on the same asset. It was noted that uniqueness could be considered vis-a-vis three different concepts: 1) any other asset in the world; 2) any other asset on the Registry, or any other registrable asset; and 3) any other asset which the same debtor possessed. It was noted that option 1 was not possible, as it would put too high a burden on the creditor to ascertain no other similar asset existed anywhere in the world, which might be impossible to do. The second option also created similar issues as a creditor had no mechanism to ascertain whether another registrable asset of that kind existed in other parts of the world. Moreover, for uniqueness only to apply against assets already on the register, extra burdens were added on all future registrations for similar assets, which was illogical. It was suggested that the third approach should be adopted, which defined uniqueness as that vis-a-vis another asset held by the same debtor, as the search results were supposed to only be the first step of the due diligence process any creditor would normally conduct.

81. *A representative of Spain* reiterated the importance of uniqueness in the Cape Town Convention system. It was noted that any searcher should be able to ascertain whether an asset was the one they were searching for purely through the Registry, and should not have to conduct any additional due diligence on the matter. As such, uniqueness vis-a-vis all other assets on the Registry was important to achieve. As such, all relevant factors needed to determine this should be available for registrants to provide.

82. *A representative of Japan* agreed with the recommendations made by the representative of Spain. It was reiterated that while factual uniqueness against all other assets in the world was impossible, the Registry should always provide enough information such that a searcher can ascertain that the object is the one they were searching for. It was added that if creditors had to conduct due diligence on their own and contact first registrants of assets, registrants would receive a large number of queries and might even have to pay legal fees to address them, which would be an unreasonable expense created by using the MAC Registry. It was noted that additional research needed to be conducted on how common it was to encounter similar serial numbers in order to understand how often these issues would be faced.

83. *The Diplomatic Conference Rapporteur* clarified that any intending financier or creditor would need to ascertain whether the asset against which it was making a registration was already on the register or not. To have this certainty, uniqueness must be defined as being vis-a-vis all other registrable items of equipment. This could be achieved by providing some fields for additional information relating to the assets. This was not only relevant when the same debtor possessed two similar pieces of equipment, but also when different debtors were involved.

84. *An observer from Aviareto* noted that uniqueness could be defined as whether or not a searcher could easily identify all registrations on the Registry against a particular object of interest, as this was what creditors in financing, and judges in insolvency, would examine. It was added that open-ended information should not be allowed, as this could create confusion. However, a fourth additional category of fixed criteria beyond the three already agreed upon should be considered. It was also added that various factors could be used by creditors in analysing whether particular search results were relevant to them (such as date of registration). Regarding what additional criteria could be considered, year of manufacture could be examined as an option, as well as location of the object at the time of registration (to a relatively broad scale such as country or state), as this would allow searchers to ascertain whether a particular registration was relevant to them.

85. *A representative of the United Kingdom* agreed with the points noted by the representatives of Spain and Japan. It was noted that the requirement for uniqueness in the Cape Town Convention existed in order to ensure that the register could perform its functions. This would only be possible if uniqueness was vis-a-vis all other assets which could have interests registered against them in the past or in the future.

86. *An observer from NatLaw* noted that the Commission seemed to have two different views of the primary function of the Registry. One view suggested that the function of the Registry was to tell a searcher what it should do; whereas the second view suggested that the searcher should conduct due diligence based on the information it found on the register. It was noted that in the draft Official Commentary of the MAC Protocol in Paragraph 2.155, it was explained that the International Registry system was a notice-based system which presupposed that a searching party would make further inquiries of the results it found. As such, it was noted that creditors might be expected to conduct additional due diligence after searching the Registry. It was noted that it would be useful to clarify this and also note that there would be no particular issues in conducting this due diligence which related to banking secrecy or confidentiality, as due diligence laws were regulated by domestic jurisdictions.

87. *A representative of Spain* expressed reluctance to use location as an identification criterion as this was contrary to one of the primary goals of the Cape Town Convention such that it applied to movable assets which would often cross borders. It was noted that criterion such as year of manufacture would be more appropriate. It was also noted that adding additional criteria would make the Registry more in line with the Cape Town Convention system, which focused on uniquely identifiable pieces of equipment. It was added that the intention was not to make the Registry a traditional civil law type Registry where information on the Registry needed to be endorsed by the



registrar and needed to be proven to be accurate. However, adding additional identification criteria had no drawbacks to the functioning of the Registry.

88. *The Diplomatic Conference Chair of the HS Codes Working Group* noted that any interests created against assets on the Registry should be able to be associated to uniquely identifiable assets. This was one of the primary goals of the Cape Town Convention. It was queried how commonly overlaps arose for all three of the types of information which was presently being requested and suggested that additional input be sought from the industry as to how common these situations were. Moreover, regarding options for a fourth criteria, it was noted that location would not be useful as assets would be prone to moving, as well as that the debtor's location would normally always already be available (through company information). With regard to year of manufacturing, additional information needed to be collected from the industry as to whether this would solve the problem.

89. *An observer from NatLaw* agreed with the usefulness of adding additional specific criteria to Regulation 5.1(c)(ii) beyond point (a) and (b), emphasising that such criteria should not be open-ended.

90. *A representative of Japan* recommended a three tier system, where the first tier would be for those types of equipment which had an ISO PIN, which would then be the only information necessary; the second tier would be for those types of equipment which could be considered unique solely through the provision of manufacturer serial number and the information request in Regulation 5.1(c)(ii) (a) and (b); and the third tier being those types of equipment for which this information was not enough, where additional information would need to be provided to ensure uniqueness. For the additional information, a list of options could be made available, including place of manufacturer (factory/plant name), manufacturing year, etc. It was added that the Japanese industry had been very cooperative throughout the process of the negotiation of the MAC Protocol and had provided very useful feedback in the determining the mechanisms through which equipment was serialised. Factory based serial numbers were a common practice in Japan and should ensuring uniqueness through them, or other mechanisms to include them, not be recognised by the Commission in preparing the Regulations for the MAC Registry, it would be difficult to convince the Japanese manufacturers to continue to support the MAC Protocol.

91. *The Chair summarised that there was agreement for the need to include a fourth identification criterion, and that this should not be open ended.*

92. *The Chair of the Regulations Working Group* noted that a discussion on the definition of uniqueness was fundamentally connected to the question of how to ensure uniqueness. It was noted that there was general consensus on uniqueness being vis-a-vis other items on the register, and other registrable items. In order to provide for uniqueness against registrable items, options to enter criteria needed to be provided which would make a registration against an asset unique to all future registrations in similar assets. These additional criteria should largely look at characteristics of objects, rather than externalities (such as identity of the debtor). At the same time, it was noted that externalities may be used as filters to further refine search results. It was noted that additional consideration needed to be given to what additional criteria could be provided, and whether or not this should be provided on a mandatory basis. It was noted that no amount of additional information could guarantee uniqueness in all circumstances. As such, it should be clarified what would need to be done in the rare situations where two assets had all the same identification criteria.

93. *The Secretariat* queried if there was agreement within the Commission to conduct further research on how often serial numbers coincided and situations of equipment with similar identification criteria would occur. It could be examined whether the problem only occurred in Japan, or if it was also common in other jurisdictions. If the matter was specific to manufacturers from certain jurisdictions, it was queried if the Registry could be designed to request additional information in

cases where the equipment being registered was manufactured in those jurisdictions. It was also queried if there was consensus on the interpretation of Article XVII of the MAC Protocol, for the purposes of the Official Commentary.

94. *An observer from Aviareto* noted that it would be possible to build a mechanism within the Registry which would request additional information from the registrant should they indicate that their relevant equipment was made in a particular jurisdiction.

95. *The Diplomatic Conference Rapporteur* recollected that there was consensus that the Regulations were not required to guarantee uniqueness, but were to be made for the purpose of ensuring uniqueness. There was also consensus that should objects have ISO PINs, then no additional information was necessary to ensure uniqueness. It was queried whether there was also consensus that uniqueness was vis-a-vis all registrable objects, rather than just those which were already on the register.

96. *The Chair of the Regulations Working Group* supported the idea of having jurisdiction specific options on the Registry. It was noted that additional research would be necessary to determine which jurisdictions presented issues of this nature.

97. *The Diplomatic Conference Chair of the HS Codes Working Group* agreed with the notion to define uniqueness as uniqueness vis-a-vis all registrable objects. Agreement was also expressed with the concept of building a mechanism to allow for the Registry to request additional information where equipment was manufactured in a particular jurisdiction. It was noted that discretion could be given to the registrar for this as it would be best positioned to make a determination on the issue.

98. *The Secretariat* noted that additional research would have to be conducted to identify jurisdictions which presented these problems. Additionally, consideration also needed to be given to the manner in which location of manufacturer was to be collected, as to whether this would need to be inputted by a registrant, or simply a check-box indicating that the item was not manufactured in a particular jurisdiction. It was noted that it should also be kept in mind that many manufacturers had factories and plants in different countries and that it would not always be straightforward to identify the country of manufacturer for a particular object.

99. *An observer from NatLaw* expressed a preference for a general solution rather than a jurisdiction specific one. It was noted that as more research would become available, more jurisdictions would need to be added which would create confusion for users. Moreover, information relating to where an asset was manufactured might not always be available, especially on the secondary market. It was also noted that the registrar should not be given discretion to determine such matters, as this would allow registrars to have an opinion as to the validity of a registration.

100. *A representative of Japan* also expressed concerns with a jurisdiction specific approach, and favoured a general approach, especially noting the multinational nature of many equipment manufacturers. Concerns were also expressed with regard to giving the registrar discretion to define additional criteria for specific jurisdictions.

101. *A representative of Spain* agreed with the areas of consensus outlined by the Rapporteur. The representative also agreed with a general approach, rather than a jurisdiction specific one. It was also noted that discretion should not be given to the registrar for identifying criteria, especially considering that Article XVII specifically put this responsibility on the Regulations.

102. *A representative of the United States* agreed with the importance of ensuring that the needs of every jurisdiction should be met in preparing the Regulations. It was noted that private sector

participation could assist in addressing these issues, as well as provide feedback on the extent of the issues being discussed by the Commission.

103. *A representative of China* noted that ISO PINs had not yet been adopted widely by all manufacturers. Additionally, a preference was expressed for a general rule, rather than a jurisdiction specific rule, as the latter would create confusion for the registrants.

104. *A representative of Japan* suggested that the Official Commentary should explain the definition of ISO PIN, as well as serial number, and welcomed input from the Commission in defining these terms.

105. *The Diplomatic Conference Chair of the HS Codes Working Group* noted that definitions of such terms should not appear in the Official Commentary as Article XVII of the MAC Protocol delineated that these should be found in the Regulations, which were yet to be finalised. *A representative of Spain* agreed that the Official Commentary should not have definitions of these terms, whereas the Regulations should include these definitions. Additionally, as per Article XVII of the MAC Protocol, the Regulations should also contain the format of the serial number. *The Chair of the Regulations Working Group* agreed that the Official Commentary should not have definitions of these terms, as this was a task for the Regulations.

106. *A representative of Japan* noted that the Regulations should clarify that when there was an ISO PIN, no additional information should be allowed to be provided. *The Chair of the Regulations Working Group* noted that additional efforts could be made to clarify the Regulations accordingly.

107. *The Chair summarised the discussion, noting that the Commission agreed that the requirement under Article XVII of the MAC Protocol was not that the registration criteria were required to guarantee uniqueness, rather, they were for the purpose of ensuring uniqueness to the extent practicable. Additionally, the purpose of registration criteria was not to identify equipment against the whole world, but against interests which were on the Registry or were registrable.*

108. *The Chair noted that the Commission had discussed whether a detailed discussion of manufacturer's serial numbers should be included in the Official Commentary. It was agreed that it would be premature at this stage to do so, as the details of the serial number requirements were still under development. There was however broad agreement that an ISO PIN would be sufficient on its own to ensure uniqueness, as had already been envisaged by the Diplomatic Conference.*

109. *Beyond this, while there was agreement on additional registration criteria such as brand name of the equipment/manufacturer, it was agreed that it would be best for the Official Commentary to only provide an interpretation of Article XVII at this stage, rather than delve into the specifics of what criteria could/should be included in the Regulations, as this would likely be decided at the third session of the Commission in June. The Commission agreed that additional criteria needed to be specific, rather than open-ended.*

110. *It was also agreed that input needed to be sought from the industry with regard duplication of serial numbers, and country specific methodologies of serialising equipment.*

#### **Item No. 6 Updates on the activities of the Working Group to draft a request for proposals for the selection of a Registrar**

111. *The Chair* invited the Chair of the Registrar Working Group, an ex-officio observer who served as the Chairperson of the HS Codes Working Group, to present the report of the first meeting of this Group.

112. *The Chair of the Registrar Working Group* noted that the Group had met once since the last session of the Commission. At its first meeting, it had considered a first draft of the Request for Proposals (RFP) document which would be issued to invite interested tenderers to apply for the role of registrar for the MAC Protocol. The Chair of the Registrar Working Group drew the Commissions attention to MACPC/Registrar/W.G./1/Doc. 4 which contained the report for the Group's first meeting.

113. The Chair of the Registrar Working Group highlighted several issues which had been discussed by the Group. The first issue related to the nature of the registrar's activities. On this, the Group agreed that the registrar should be allowed to offer ancillary profit-making services to allow it to be economically feasible. Such activities needed to be approved by the Supervisory Authority and would not include activities which would compromise the primary tasks of the Registry. Activities which would not be allowed included legal and arbitration related services.

114. The second issue related to promotion and industry support. On this, the question was whether a registrar should be expected to set aside a sum of money for the promotion of the MAC Protocol. The Group had decided to postpone a recommendation on this matter, but it had retained a preliminary sum of €25,0000 per year in the RFP, which was consistent with the sum listed in the RFP for the Luxembourg Rail Protocol, and the sum which the Aircraft Registry paid presently as licensing fees for the Official Commentary. Additional consideration needed to be given to this sum keeping in mind the need to promote the MAC Protocol amongst a wide variety of stakeholders.

115. The third issue related to inserting an indication of a volume of work in the RFP in order to allow tenderers to make accurate assessments of costs in their proposals. On this, the Registrar Working Group had requested the Secretariat to conduct additional research into estimating a baseline volume of transactions all bidders should be expected to account for based on other RFP documents as well as the economic assessment for the MAC Protocol

116. The fourth issue related to technological compatibility of the Registry. On this, there was agreement amongst the members of the Registrar Working Group that the Registry should be compatible with a broad range of browsers, including mobile browsers, in order to allow it to be accessible to the largest number of stakeholders. Within this item, the Registrar Working Group discussed the use of Application Programming Interfaces (APIs) for connecting to and using the Registry. While the utility of APIs was recognised, the Group noted that APIs presented several issues, including those related to liability. The Group had requested the Secretariat to conduct additional research on this matter.

117. The fifth issue which the Registrar Working Group had considered related to languages which the Registry needed to be available in. On this, it was noted that it was important for the Registry to be available in a number of languages. It was identified that consideration of languages was relevant to three aspects of the Registry: 1) helpdesk; 2) the Registry website; 3) the information which users would submit to search and register in the Registry. Regarding the first two, the Working Group agreed that these items should be clearly separated in the RFP and the obligations upon the bidders to provide multilingual functionality should be limited to these two items at this stage. Regarding the third item, noting the legal significance of such information, it was agreed that no translation should be available. It was also agreed that the Registry should be able to accept registration information in any language which the user may wish to provide, including the use diacritical marks. Furthermore, it was agreed that the fields requesting information from users should be available in different languages. The Working Group expressed that the Registry website and helpdesk should be available in the six UN languages upon its launch, whereas additional languages could be added as new States became party to the MAC Protocol.

118. Additional issues which the Registrar Working Group discussed included currency of operation of the Registry and the currency in which bids would be submitted, as well as the issue of the

governing law of the contract between the registrar and the Supervisory Authority. Regarding currencies, the Working Group agreed that bidders should be allowed to indicate the currency in which they would collect fees, noting that it would be in the interest of the registrar to facilitate transactions, rather than disincentivise them. It was also agreed to postpone the discussion on which currency bidders would have to submit their proposals in to the second session of the Working Group. Regarding governing law of the contract, it was noted that no decision on this matter could be reached prior to the appointment of a Supervisory Authority.

119. The Chair of the Registrar Working Group noted that the Group had also provided comments on some additional issues in writing. This included the issue of data protection and privacy. On this, the RFP had indicated that a bidder would only need to comply by the rules present within their own jurisdictions. Several members of the Group had suggested that this would not be adequate, and that a minimum baseline standard should be identified, as data protection and privacy Regulations differed among jurisdictions. Additional discussions were necessary on this matter.

120. The Chair of the Registrar Working Group invited the Members of the Commission to provide input on the issues discussed thus far, and also requested that Members of the Commission who could assist in getting feedback on the technical aspects of the RFP inform the Secretariat accordingly.

121. On the issue of indicating a monetary amount which the registrar must set out for promotion of the MAC Protocol, *a representative of South Africa* queried whether a percentage of the revenue (perhaps on a sliding scale) could be adopted as a solution. This could be increased as the Registry's business expanded. *The Chair of the Registrar Working Group* noted that the importance of promotion would be larger when the Registry was initially established, a time when revenue would be non-existent. As such, it would be difficult to ascribe a percentage on a sliding scale for this task. Additionally, it was noted that commitments could also be sought in this regard from external sources of financing, such as the resources available to the Supervisory Authority.

122. *An observer from Aviareto* noted that from a bidder's point of view, having a fixed amount would be better than having a percentage. Additionally, €25,000 was a relatively small sum as compared to the overall budget any prospective bidder would have to set aside in applying for this role. In determining the costs of promotion, it was stressed that it would be useful to identify what expenses would be incurred and how much activity would be anticipated from the registrar before the Registry became operational. It was added that these costs should be considered as the reasonable costs of operating the Registry, which could later be recovered from the fees collected for registrations.

123. *The Diplomatic Conference Rapporteur* noted that industry participants could be an important channel through which monetary support for promoting the Registry and the MAC Protocol could be sought. It was recalled that the industry was one of the key supporters in the promotion of the Aircraft Registry.

124. *A representative of South Africa* agreed with the usefulness of having a minimum standard of data protection for all bidders. *The Chair of the Registrar Working Group* noted that such a minimum standard would augment the user-trust in the Registry and would also make the process of selecting the registrar easier, as all bids could be evaluated on an even scale in terms of data protection.

125. *The Secretariat* queried what a reasonable timeframe would be to publish the RFP to appoint a registrar for the MAC Protocol. *An observer from Aviareto* noted that a prescriptive RFP would take longer, whereas a more general RFP would be faster to execute. The key aspects of the RFP should be data integrity, which was fundamental to the success of the MAC Protocol. It was noted that the

RFP should not be too specific in terms of technology and should put the onus on the bidders to indicate what standards they would apply. With regard to data protection, the observer from Aviareto noted that GDPR at the European level set a high standard for data protection, and could be considered as a baseline standard.

126. *An observer from NatLaw* noted that higher-level principles were important in the RFP rather than highly specific information on how the Registry would operate. This was because many companies already had experience in building registries of this sort and would be able to accommodate the specifics of the MAC Registry easily at a later stage, should they be selected.

127. *A representative of the United Kingdom* noted that enough detail needed to be present in the RFP in order to ensure that all bids could easily be evaluated and compared.

128. *The Secretariat* queried whether there was any decision which needed to be taken by the Commission (beyond procedural) in order to publish the RFP. *An observer from Aviareto* noted that an indication of volume of transactions was important insofar as to allow prospective bidders to understand the size of the Registry they were expected to build. Additionally, the main driver of costs in the construction phase of a Registry was software – with options existing to either develop using a waterfall or an agile model. The observer recommended agile development as that would expedite the process and reduce costs of development. Post-launch, it was noted that the support services offered by the Registry would be the costliest element, as these would need to be offered in multiple languages. It was added that domestic entry points could potentially assist with offering support to customers. Lastly, any bidder would also consider how soon costs could be recovered through fees generated by the Registry.

129. *The Chair of the Registrar Working Group* queried what the role of a registrar would be in authenticating users of the Registry, and whether the mechanisms that bidders would need to building order to clear this function should also be made part of the RFP. Additionally, it was queried whether it would need to be clarified that creditors may verify debtors, rather than the registrar having to do so. *An observer from Aviareto* noted that it could be useful to allow bidders to make proposals in this regard on their own, rather than prescribing this in the RFP. The RFP could identify a baseline for the standard of authentication necessary, with the bidders expected to deliver ideas on how they would meet this standard.

130. *A representative of Spain* queried whether the fees the registrar would be allowed to charge for registrations should be included in the RFP. It was also enquired whether the fees for making registrations on the Aircraft Registry had ever changed, and what the considerations should be in deciding the fees for the MAC Registry. *An observer from Aviareto* noted that the fees for the Aircraft Registry had not changed since it went live in 2006. It was added that this was not a per registration fee, but rather a fee for as many registrations a party could make on an aircraft in one session (on average, the cost was circa 20\$ per registration). It was anticipated that the fees for the MAC Registry would likely be per item and would be lower than that of the Aircraft Registry. This amount should be calculated by inputting estimates for figures such as operating costs of the Registry, and number of expected registrations and searches per year.

131. *Noting no other requests for the floor, the Chair commended the work done by the Registrar Working Group and concluded the discussion on Agenda Item 6.*

**Item No. 7 Time-table and planning of further work**

132. *The Secretariat proposed to hold the third meeting of the Regulations Working Group in the middle of February, and the second meeting of the Registrar Working Group towards the end of February. The Commission noted these proposals.*

133. *The Chair of the Regulations Working Group noted that the Group still needed to discuss several issues, such as those relating to registration criteria for which the discussion would be based on research to be collected from the industry. As such, the group may need to meet more than once before the third session of the Commission.*

134. *A representative of the United States stressed the importance of working towards increasing the number of signatures and ratifications for the MAC Protocol, and for the members of the Commission to promote the MAC Protocol within their jurisdictions and internationally to the maximum extent possible.*

135. *The Secretariat proposed 3-4 June, or 21-22 June for the third session of the Commission. Several representatives expressed a preference to hold the third session on 3-4 June 2021.*

**Item No. 8 Any other business**

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

**Item No. 9 Closing of the Session**

137. *The Chair thanked all the participants for their attendance and positive contributions to the discussion. The Chair wished all participants health and safety in the coming months.*

138. *The Secretariat thanked the Chair and all the participants for their attendance and participation in the Commission and the Working Groups established within it.*

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

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

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 PROTOCOL

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CHAIRPERSON OF THE HS CODES WORKING GROUP	Mr Ole BÖGER Judge Hanseatic Court of Appeal in Bremen
AVIARETO	Mr Rob COWAN Managing Director

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		Ms Anna VENEZIANO Deputy Secretary-General
		Mr William BRYDIE-WATSON Senior Legal Officer
		Ms Marina SCHNEIDER Principal Legal Officer and Treaty Depositary
		Mr Hamza HAMEED Legal Consultant

**ANNEX II****ORDER OF BUSINESS**

1. Opening of the session and welcome by the UNIDROIT Secretary-General
2. Adoption of the order of business of the session
3. Election of the Chair and Vice-Chairs of the Commission
4. Consideration of matters relating to the appointment of a Supervisory Authority
5. Updates on the activities of the Working Group to develop draft regulations for the International Registry for MAC equipment
6. Updates on the activities of the Working Group to draft a request for proposals for the selection of a Registrar
7. Timetable and planning of further work
8. Any other business
9. Closing of the session.