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

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**Assessment of UNIDROIT's suitability for the role of Supervisory Authority**

1. This document provides an assessment of UNIDROIT's potential candidacy for the role of Supervisory Authority of the future International Registry to be established under the Mining, Agricultural and Construction (MAC) Protocol. The document has been prepared for consideration by members of the Preparatory Commission to allow for further discussion on the appointment of a Supervisory Authority at the Commission's upcoming 3<sup>rd</sup> session (3 – 4 June 2021).
2. This document provides a background on the process to appoint the Supervisory Authority as well as a brief description of the functions of the Supervisory Authority. It then assesses the suitability of UNIDROIT to undertake the role of Supervisory Authority through an analysis of UNIDROIT's statutory purposes and expertise, role as MAC Protocol Depositary, organisational structure and immunities. The document also provides an assessment of practical issues, such as costs associated with UNIDROIT undertaking the role and a timeline for next steps.
3. This document finds that there does not appear to be any legal obstacles in the UNIDROIT Statute, Headquarters Agreement, Cape Town Convention or MAC Protocol that would prevent UNIDROIT from undertaking the Supervisory Authority role. In making this assessment, the Secretariat wishes to emphasise that UNIDROIT is not actively seeking to undertake the role of Supervisory Authority. UNIDROIT's potential candidacy as the "back-up option" (see Background below) is based on proposals made by members of the MAC Protocol Diplomatic Conference in 2019 and the Preparatory Commission in 2020. UNIDROIT's preference would be for another intergovernmental organisation to undertake the role. The Secretariat has undertaken significant work over the last five years trying to identify and negotiate with other organisations. This document has been prepared with UNIDROIT being considered as an option of last resort and on the basis that no other organisations with the right profiles, purpose, expertise and existing immunities are able to undertake the role.
4. The issue before the Preparatory Commission is whether to invite UNIDROIT to consider undertaking the role of Supervisory Authority. From the outset, it is important to note that while the Preparatory Commission has the power to make such an invitation, only the UNIDROIT General Assembly has the power to accept any such invitation, on recommendation by the UNIDROIT Governing Council (as explained in the "UNIDROIT structure" section below).

## Background

5. Article 17 of the Cape Town Convention requires that each Protocol provide for a Supervisory Authority. Article XIV of the MAC Protocol provides that the Supervisory Authority shall be the international entity designated pursuant to a resolution of the MAC Protocol Diplomatic Conference. Resolution 2 of the Diplomatic Final Act invited the governing bodies of the International Financial Corporation (IFC) to accept the functions of Supervisory Authority upon or after the entry into force of the Protocol.

6. At the Preparatory Commission's second session (10-11 December 2020), the Commission requested that the Secretariat undertake research and a series of consultations to evaluate other potential candidate organisations for the role of Supervisory Authority. The Commission resolved that UNIDROIT should be considered as a backup candidate for the Supervisory Authority role only if no other organisation was found to be suitable and willing to undertake the role.<sup>1</sup> This decision followed discussions at the MAC Protocol Diplomatic Conference in November 2019 regarding UNIDROIT as a backup Supervisory Authority candidate.<sup>2</sup>

7. In 2021 the IFC informed UNIDROIT that while it would continue to support the MAC Protocol, due to recent changes in strategy and leadership, the General Counsel of IFC could not envisage the IFC becoming the Supervisory Authority. Following a series of consultations undertaken by the UNIDROIT Secretariat in the first quarter of 2021, it was further determined that the World Trade Organization (WTO), the Multilateral Investment Guarantee Agency (MIGA), the Organisation for Economic Cooperation and Development (OECD) and the World Custom's Organization (WCO) were either unwilling or unsuitable to be candidates for the Supervisory Authority role.<sup>3</sup> The United Nations Conference on Trade and Development is still considering the issue. As a result, the Commission is invited to consider UNIDROIT as the backup candidate.

## Functions of the Supervisory Authority

8. Article 17 (2) of the Convention sets out the core responsibilities of the Supervisory Authority:

*(a) establish or provide for the establishment of the International Registry;*

*(b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;*

*(c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;*

*(d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;*

*(e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;*

*(f) supervise the Registrar and the operation of the International Registry;*

*(g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;*

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<sup>1</sup> [UNIDROIT 2021 – MACPC/2/Doc. 6, paragraphs 24 – 36.](#)

<sup>2</sup> See [UNIDROIT 2019 – DCME-MAC – Doc. 24 rev.](#), paragraph 42 and [UNIDROIT 2019 – DCME-MAC – Doc. 41](#), paragraphs 42-48.

<sup>3</sup> [UNIDROIT 2021 – MACPC/2/Doc. 8.](#)

(h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;

(i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and

(j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

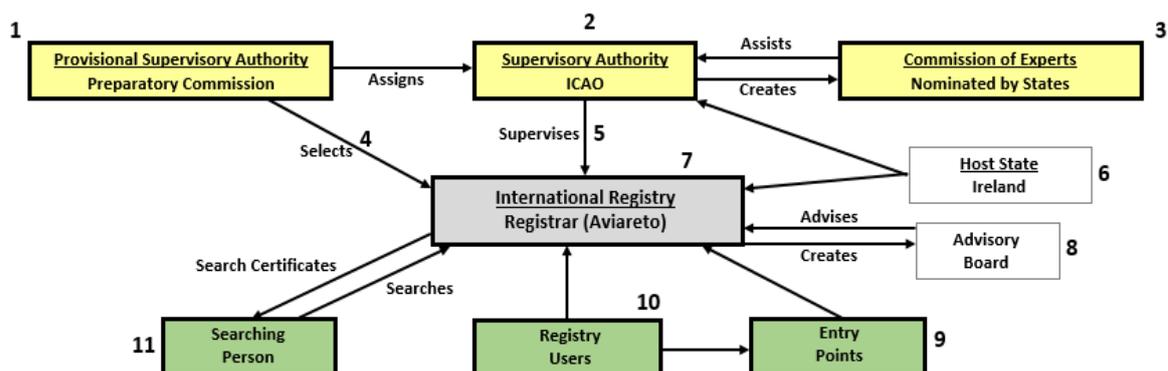
9. The Supervisory Authority has no responsibility for interpretation of the Protocol, its implementation in matters not pertaining to the International Registry nor any other functions or activities not related to the Registry. Similarly, the Supervisory Authority is not responsible for adjudicating on a particular registration, nor does it give instructions to the Registrar to change any data relating to a particular registration.

#### Assistance to the Supervisory Authority

10. In performing its core functions, the Supervisory Authority is assisted by a committee of national experts. In the case of the Aircraft Protocol, the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) continues to provide guidance and assistance to the Supervisory Authority on matters related to its role.

11. An additional body assisting the Aircraft Protocol Supervisory Authority is the International Registry Advisory Board (IRAB), which gives advice primarily to the International Registry. The IRAB is composed of leading registry experts and international commercial law practitioners and academics. In addition to advising the International Registry, the IRAB provides advice to CESAIR to assist CESAIR in making recommendations to the ICAO as Supervisory Authority.

12. The following chart illustrates the procedural steps taken to establish the International Registry under the Aircraft Protocol and is a good reference point for understanding the relationship



#### Notes:

1. The Preparatory Commission (PCIR) was established by Resolution 2 of the Diplomatic Conference to act (pending entry into force of the Convention/Protocol), under the guidance and supervision of the ICAO Council, as the 'Provisional Supervisory Authority'. Its main task was to set up the International Registry.
2. ICAO was invited by Resolution 2 (see also Protocol Art XVII(1)) to act as Supervisory Authority (SA). ICAO accepted this function.
3. This body is established by virtue of Art XVII(4) of the Aircraft Protocol. The group meets every 1-2 years and its recommendations are submitted to the SA.
4. The selection occurred in May 2004. The initial Regulations and Procedures were also approved by the PCIR.
5. See Convention Art 17(2) for list of SA responsibilities.
6. Standard host state arrangements were put in place.
7. See Convention Art 17(5) for Registrar responsibilities.
8. The Aviation Working Group (AWG) accepted an invitation to chair the Advisory Board.
9. Entry points may or shall be used where a declaration has been made by the State in which an aircraft (airframe) is registered for nationality purposes.
10. Further information for users of the International Registry is available at <https://www.internationalregistry.aero/ir-web/home>
11. Any person may search the International Registry upon payment of the applicable fee.

between the Supervisory Authority, the International Registry the Commission of Experts and the Advisory board.

13. To replicate the success of the CESAIR in advising the Supervisory Authority of the Aircraft Protocol Registry, Resolution 2 of the MAC Protocol Diplomatic Conference Final Act invites the Supervisory Authority to establish a Commission of Experts consisting of not more than 15 members appointed by the Supervisory Authority from among persons nominated by the Signatory and Contracting States to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority in the discharge of its functions.

### **UNIDROIT purpose and expertise**

14. Established in 1926 as an auxiliary organ of the League of Nations, UNIDROIT comprises 63 member States which cover over 73% of the world population and over 90% of global nominal GDP.

15. Article 1 of the UNIDROIT Statute sets out the Institute's purposes:

*The purposes of the International Institute for the Unification of Private Law are to examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law.*

*To this end the Institute shall:*

*(a) prepare drafts of laws and conventions with the object of establishing uniform internal law;*

*(b) prepare drafts of agreements with a view to facilitating international relations in the field of private law;*

*(c) undertake studies in comparative private law;*

*(d) take an interest in projects already undertaken in any of these fields by other institutions with which it may maintain relations as necessary;*

*(e) organise conferences and publish works which the Institute considers worthy of wide circulation.*

16. As an international organisation with a primarily legislative function, the role of supervising an International Registry does not sit perfectly within the Institute's core purpose. However, UNIDROIT was responsible for the development and negotiation of the Cape Town Convention and its four Protocols. UNIDROIT also serves as the Depositary for the Convention and its four Protocols. Consequently, UNIDROIT has the highest possible level of knowledge and expertise concerning the functioning and operation of the MAC Protocol and its Registry.

17. UNIDROIT has responsibility for promoting the implementation and ultimately the success of its instruments. The MAC Protocol cannot enter into force without the designation of a Supervisory Authority. As the backstop candidate for the role, it would seem reasonable for UNIDROIT to consider performing the role as doing so would appear necessary for the Institute's most recent treaty to enter into force, and UNIDROIT has the sufficient knowledge and expertise to undertake the role.

18. Should the Preparatory Commission invite UNIDROIT to consider accepting the role of Supervisory Authority, it is possible that changes to the UNIDROIT Statute would be required.

## **UNIDROIT structure**

19. The central organs of UNIDROIT are the Governing Council and the General Assembly. The Governing Council, composed by the President, elected by the Italian Government, and 25 members elected by the General Assembly, determines the means of achieving the statutory objectives of the Institute and supervises the work of the Secretariat for the implementation of the Work Programme. The General approves the Institute's annual Accounts and Budget and approves its Work Programme every three years. The General Assembly also appoints, for a five-year term, the members of the Governing Council. The General Assembly is composed of one representative of the Government of each Member State. The Secretariat, composed of a team of international civil servants and support staff, serves as the executive body of Institute in the implementation of the decisions adopted by the Governing Council. UNIDROIT also has a Finance Committee composed of Member States. The Finance Committee usually meets twice annually to review the Institute's draft budget and accounts in order to provide feedback to the Secretariat and advise the General Assembly.

20. Should the Preparatory Commission invite UNIDROIT to consider accepting the role of Supervisory Authority, the matter would have to be considered by the Governing Council and approved by the General Assembly.

21. UNIDROIT has a flexible governance structure. The fact that the role as Supervisory Authority would be framed in the general mandate to promote and implement the Institute's legislative texts would allow for the definition of an internal decision-making process which adapts best to the requirements of the Supervisory Authority. If UNIDROIT is appointed as the Supervisory Authority, it would be possible for either the General Assembly or the Governing Council to undertake the formal functions (for example, the appointment or dismissal of the Registrar, the approval of Regulations, the setting of fees, etc). A third option would be for the Governing Council to undertake most functions but refer the Supervisory Authority's formal functions to the General Assembly. The allocation of responsibility for the Supervisory Authority's functions to either the General Assembly and/or the Governing Council could be clarified by amending the Institute's Statute, although this may not be necessary.

22. As consistent with Resolution 2 of the MAC Protocol Diplomatic Conference Final Act, it is anticipated that UNIDROIT would establish a Commission of Experts to advise the General Assembly in the discharge of its functions as Supervisory Authority. The General Assembly would appoint the 15 members of the Commission of Experts from among persons nominated by the Signatory and Contracting States to the Protocol.

23. Contracting States to the MAC Protocol that are not UNIDROIT Member States would only be able to attend the UNIDROIT General Assembly as observers and would have no formal vote in relation to the General Assembly undertaking its formal functions as Supervisory Authority. Contracting States interested that wanted to exercise a vote in relation to the Supervisory Authority undertaking its functions would be encouraged to become Members of UNIDROIT. Alternatively, such Contracting States could also seek to have an official elected to the Commission of Experts advising the Supervisory Authority.

## **UNIDROIT as both Depositary and Supervisory Authority**

24. UNIDROIT serves as the Depositary of the MAC Protocol. The Depositary function is undertaken by the UNIDROIT Secretariat. The Secretariat reports on its Depositary functions to the General Assembly on an annual basis.

25. The Cape Town Convention and its Protocols have been drafted assuming that the Depositary and Supervisory Authority are separate entities. As such, there are several articles of the MAC Protocol that contemplate interactions between the Supervisory Authority, as set out in the table below.

26. It is the Secretariat's view that nothing in the text of the Cape Town Convention or the MAC Protocol would make it inappropriate for UNIDROIT to undertake the role of Depositary and Supervisory Authority. In reaching this assessment, the Secretariat notes the following points:

- i. The relevant articles only contemplate reporting or consultation between the Supervisory Authority and Depositary that would not be impeded by UNIDROIT performing both roles.
- ii. No potential conflicts of interest arise from UNIDROIT performing both roles (see the analysis on fees below).
- iii. From a structural perspective, the decisions pertaining to the office of Supervisory Authority and the role of Depositary would be performed by different UNIDROIT organs. The Depositary function is performed by the UNIDROIT Secretariat, whereas the decision-making function of the Supervisory Authority would be performed by the UNIDROIT General Assembly and/or the Governing Council. This structural separation would allow the Depositary to still "consult" or "inform" the Supervisory Authority, which would involve the Secretariat "consulting" or "informing" the General Assembly/Governing Council of various issues, acts which are entirely consistent with the normal functioning of UNIDROIT. Moreover, in the very unlikely case of conflict, a strict pre-defined procedure with informational barriers between the Secretariat would be envisaged.
- iv. UNIDROIT would perform its role of Supervisory Authority with advice from a separate body in the Commission of Experts (composed of experts nominated by signatory and Contracting States), which provides an additional layer of independent input. It could be envisaged that, in case of potential conflict, the decision ought to be adopted by consensus between the Supervisory Authority and the Commission of Experts.

*MAC Protocol articles that contemplate interaction between the Supervisory Authority and Depositary*

Article	Text	Comment
Article XXV (1)(b)	the date of the deposit by the <b>Supervisory Authority</b> with the <b>Depositary</b> of a certificate confirming that the International Registry is fully operational.	The UNIDROIT General Assembly/Governing Council acting as Supervisory Authority would be responsible for confirming that the International Registry is fully operational. It would then "deposit" the certificate with the Depositary. On a practical level, the certificate would be prepared by the member of the UNIDROIT Secretariat responsible for providing the administrative support to the Supervisory Authority and then "deposited" with the member of the UNIDROIT Secretariat responsible for the Depositary function.
Article XXXIV	(1) The <b>Depositary</b> , in consultation with the <b>Supervisory Authority</b> , shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the <b>Depositary</b> shall take into account the reports of the <b>Supervisory Authority</b> concerning the functioning of the international registration system.	Paragraph 1 merely requires the Depositary to consult with the Supervisory Authority in preparing annual reports and to take into account Supervisory Authority reports in preparing the Depositary reports.  Paragraph 2 requires the Depositary to consult with the Supervisory Authority in convening Review Conferences. This requirement would be satisfied by the UNIDROIT Secretariat (acting as Depositary) writing to members of the UNIDROIT General Assembly/Governing

	(2) At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the <b>Depositary</b> , in consultation with the <b>Supervisory Authority</b> .	Council with the proposed details of the Review Conference and the General Assembly then discussing the matter at their annual meeting if necessary.
Article XXXV (1)	Upon the acceptance of a Harmonized System revision, the <b>Depositary</b> shall consult the World Customs Organization and <b>Supervisory Authority</b> in relation to any Harmonized System codes listed in the Annexes that might be affected by the revision.	This article requires the Depositary to consult the Supervisory Authority in relation to changes to the Harmonized System that might affect the MAC Protocol Annexes. This requirement would be satisfied by the UNIDROIT Secretariat (acting as Depositary) writing to members of the General Assembly/Governing Council and the General Assembly/Governing Council then discussing the matter at their annual meeting if necessary.
Article XXXVII (2)	The <b>Depositary</b> shall: (c) provide the <b>Supervisory Authority</b> and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available and assist in the performance of any related duties to ensure the proper operation of the Registry; (d) inform the <b>Supervisory Authority</b> and the Registrar of any pending processes under Article XXXV or Article XXXVI and of the outcomes of any such processes;	Paragraph (c) requires the Depositary to provide the Supervisory Authority with various documents associated with a State's ratification, approval or accession of the MAC Protocol. This requirement would be satisfied by the UNIDROIT Secretariat (acting as Depositary) submitting the various documents to the General Assembly/Governing Council.  Paragraph (d) requires the Depositary to inform the Supervisory Authority of any processes for adjusting or modifying the MAC Protocol Annexes. This paragraph would be satisfied by the UNIDROIT Secretariat (acting as Depositary) writing to members of the General Assembly/Governing Council informing them of any processes under Article XXXV or Article XXXVI.

### The role of the Supervisory Authority in setting fees

27. The Supervisory Authority sets the fees for the International Registry, from which UNIDROIT will benefit as Depositary, only insofar as recovery of costs under Article XVIII(2)(b) is concerned. Article XVIII(2)(b) provides:

*2. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover:*

...

*(b) the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 62(2)(c) of the Convention and Article XXXVII(2)(c) to (f) of this Protocol.*

28. Article XVIII(2)(b) does not create a conflict of interest as the funds recoverable by the Depositary can only cover the reasonable costs of the Depositary for performing certain functions. In other words, the criterion to determine the fees is regulated by law, and thus, in the absence of discretion, any potential conflict disappears. Moreover, as Article XVIII(2)(b) is a cost recovery mechanism, even if the Supervisory Authority increased the fees for using the Registry, the Depositary's costs would remain the same (therefore, the Depositary could not exploit its role as Supervisory Authority to somehow increase the costs it generates as Depositary). The Supervisory Authority would have to set the fees to cover the Registry costs, Supervisory Authority costs, and the Depositary costs, regardless of who performs the role of Supervisory Authority.

29. All Protocols to the Cape Town Convention already contemplate the Supervisory Authority setting the fees for the Registries and recover the costs of performing the role of Supervisory Authority from the registry fees. This is the case for ICAO, which both sets the fees for the Aircraft Registry, and recovers its Supervisory Authority costs annually from those fees. This is clearly analogous to a situation where the Supervisory Authority would set the fees and recover some of those fees due to it also performing the role of Depositary.

### **Immunity**

30. Under Article 27(2) of the Convention, the Supervisory Authority and its officers and employees enjoy such immunity from legal or administrative process as is specified in the Protocol. Article XIV(3) of the MAC Protocol provides that the Supervisory Authority and its officers and employees enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise. Article XIV is designed to provide strong immunity for the Supervisory Authority by reference to the Supervisory Authority's existing statute-based immunity.

31. Article 2(4) of the UNIDROIT Statute provides that "*The privileges and immunities which the Institute and its agents and officers shall enjoy shall be defined in agreements to be concluded with participating Governments.*" Articles 2, 6 and 7 of the UNIDROIT Headquarters Agreement (1969) set out the privileges and immunities of the Institute (available in Annex 1 of this document). The Secretariat understands these immunities to be sufficient to protect the Supervisory Authority, should UNIDROIT accept the role.

32. The immunity of the Supervisory Authority can be contrasted with the position of the Registrar, which under Article 28 of the Convention is held strictly liable for compensatory damages for loss suffered by a person directly resulting from an act or omission of the Registrar and its officers and employees or from a malfunction of the International Registry system. The Registrar is required to cover this liability by insurance or a financial guarantee in an amount determined by the Supervisory Authority. In the case of Aviareto under the Aircraft Protocol, the current level of cover is \$150 million.

### **Costs**

33. Once the MAC Protocol is operational, the costs incurred by the Supervisory Authority will be recovered through the fees paid to the International Registry by its users. Under the Aircraft Protocol, ICAO has never incurred any costs in performing its role as Aircraft Protocol Supervisory Authority which have not been fully recovered. In determining the fees paid by users, the Supervisory Authority can ensure that the reasonable costs of establishing, operating and regulating the International Registry and of supervising the Registrar, alongside the costs associated with performing its functions under Article 17(2) of the Convention are fully recovered.

34. As Supervisory Authority of the Aircraft International Registry, ICAO has reported the following costs associated with the performance of its functions, exercise of its powers and discharge of its duties under Article 17 (2) of the Convention:

1 January 2014 to 31 December 2014: US\$ 230,340

1 January 2015 to 31 December 2015: US\$ 212,204

1 January 2016 to 31 December 2016: US\$ 235,252

35. These costs covered professional and secretarial support; ICAO has advised that they currently have one full-time lawyer (at a P4 level on the UN officer scale) and one full-time secretary that work as the Secretariat of the Supervisory Authority. It is anticipated that UNIDROIT would require the same level of staffing to undertake the role of Supervisory Authority of the MAC Registry, and thus would incur similar costs to those incurred by ICAO.

36. The fees generated by the Aircraft International Registry have been significantly higher than the costs associated with running and supervising the registry. At the end of 2018, the International Registry had \$968,830 surplus of income over expenditure, enabling it to achieve an accumulated shareholders' fund of \$8,673,637.<sup>4</sup>

#### *Initial costs*

37. Before the International Registry for the Aircraft Protocol became operational and started generating fees, initial start-up funding was provided to ICAO to perform its tasks as Supervisory Authority by States and the private sector pursuant to the second Resolution of the Diplomatic Conference Final Act.<sup>5</sup>

38. In undertaking the role of Supervisory Authority for the Aircraft Protocol Preparatory Commission, ICAO requested the following annual costs (in \$USD):

Staff costs (1 professional, 1 general service staff)	\$137,000
Meeting expenses	\$80,000
Translation services	\$33,000
Consultant for tendering process	\$43,000
Overhead and administrative expenses	\$20,000
Council and miscellaneous/unforeseen expenses	\$47,000
<b>Total</b>	<b>\$360,000</b>

39. UNIDROIT is currently supporting the work of the Preparatory Commission in its role as Provisional Supervisory Authority, as consistent with the role the Institute has undertaken for the Rail Protocol Preparatory Commission and the Space Protocol Preparatory Commission. However, if the Preparatory Commission invites UNIDROIT to consider formally accepting the role of Supervisory Authority, it is essential that initial start-up funding be provided by States and the private sector. It is highly unlikely that the General Assembly would accept UNIDROIT undertaking the role of Supervisory Authority without a guarantee that UNIDROIT did not incur any costs in undertaking the role, as consistent with the position with ICAO under the Aircraft Protocol. Such funding would be required until the MAC International Registry was operating and generating sufficient fees to cover its own operating costs and compensate the Supervisory Authority for the costs associated with the Supervisory Authority undertaking its functions.

40. UNIDROIT is currently under a significant resource burden in supporting the work of the MAC Protocol Preparatory Commission. However, should UNIDROIT accept the role of Supervisory Authority, the Secretariat does not envision that it would require the level of funding requested by ICAO before the entry into force of the Protocol. Below is an initial estimate of the annual costs that UNIDROIT would incur in performing its duties as Supervisory Authority before entry into force of the Protocol (in Euros), which constitutes less than 50% of the amount request by ICAO in 2001.

<sup>4</sup> Aviareto's annual statistical and financial reports are available at: <https://www.internationalregistry.aero/ir-web/>.

<sup>5</sup> <https://www.unidroit.org/english/conventions/mobile-equipment/conference2001/finalact.pdf>.

Table: Estimated annual UNIDROIT expenses for the Supervisory Authority before entry into force

Staff costs <sup>6</sup>	
1 Professional Officer (P4) at 50% capacity	62,000
1 General Service Staff (Level 4) at 50% capacity	26,000
Meeting expenses	10,000
Translation services	10,000
Overhead and administrative expenses	5,000
Council and miscellaneous/unforeseen expenses	5,000
<b>Total</b>	<b>118,000</b>

41. If the Preparatory Commission decides to invite UNIDROIT to accept the role of Supervisory Authority, the Secretariat urges States and the private sector to consider making voluntary contributions in advance of the UNIDROIT General Assembly meeting that will consider the matter.

### Timeline

42. Should the Preparatory Commission wish to invite UNIDROIT to undertake the role of Supervisory Authority, the matter will need to be considered by the Governing Council, the Finance Committee and approved by the General Assembly. Generally, the UNIDROIT Governing Council meets annually in May and the UNIDROIT General Assembly meets annually in December. However, due to the global COVID-19 pandemic, the Governing Council will have an additional meeting in September 2021. The Finance Committee could consider the financial implications for Unidroit undertaking the role of Supervisory Authority at its 92<sup>nd</sup> session, which is likely to take place in October 2021. However, this timeline would require the Preparatory Commission to make an initial decision on this matter by August 2021 at the latest.

43. The steps for this process would be as follows:

1. Preparatory Commission formally decides to invite UNIDROIT to consider becoming the Supervisory Authority of the future MAC Protocol Registry. This could be done at the 3<sup>rd</sup> session (3-4 June 2021) or at any other extraordinary session convened before August.
2. The Secretariat would prepare a document for its Governing Council explaining the consequence of accepting the role as Supervisory Authority and proposing a decision-making process and other governance matters within the Institute to optimise efficiency and minimise potential conflicts.
3. The Governing Council considers the matter at its 100<sup>th</sup> session in September and makes a recommendation to the General Assembly.
4. The Finance Committee considers the financial aspects of Unidroit undertaking the Supervisory Authority role at its 92<sup>nd</sup> session in October and makes a recommendation to the General Assembly.
5. The General Assembly considers the matters at its session in December and decides whether UNIDROIT should accept the role of Supervisory Authority, and, if deemed applicable, any amendments required to the Institute's governance.

44. Should no decision be reached by the Preparatory Commission on this matter by August, it is unlikely that UNIDROIT could formally accept the role before the General Assembly meeting in December 2022.

<sup>6</sup> These staffing costs include all possible allowances under the UNIDROIT Regulations and in practice are likely to be lower.

**Next steps**

45. The Preparatory Commission may wish to discuss whether to invite UNIDROIT to consider becoming the Supervisory Authority for the future MAC Protocol Registry. If the Preparatory Commission decides not to invite UNIDROIT to consider becoming the Supervisory Authority, the Preparatory Commission may wish to discuss whether further organisations have been identified that could be invited to undertake to role, in order to avoid the entry into force of the Protocol being delayed.

46. Should the Preparatory Commission agree to invite UNIDROIT to consider becoming the Supervisory Authority, participating States and the private sector are encouraged to consider making voluntary financial contributions in order for UNIDROIT to undertake the Supervisory Authority role from 2022.

**ANNEX 1 – UNIDROIT HEADQUARTERS AGREEMENT**

*Unofficial English translation*

**Agreement between the Italian Government and the International Institute for the Unification of Private Law in respect of the privileges and immunities of the Institute, concluded at Rome, 20 July 1967**

...

**Article 2***Assets, premises and archives*

1. The assets of the Institute intended for its functions shall be exempt from investigation, expropriation, confiscation and any administrative proceedings except where the latter refer to matters subject to Italian jurisdiction.
2. The premises and archives of the Institute, and in general all the documents which its owns or which are in its possession, shall be inviolable.

...

**Article 6***Privileges and immunities of Government representatives and agents*

1. The representatives of participating Governments, the representatives of international Institutes or Organisations that take part in the meetings convened by the Institute, as well as the Institute's own agents shall be accorded the following privileges and immunities:
  - (a) jurisdictional immunity for all acts performed in their official capacity, including the spoken and written word;
  - (b) exemption from restrictive immigration measures and other formalities applicable to foreign nationals, both for the incumbents and their dependants;
  - (c) in respect of currency and exchange restrictions and personal baggage, facilities on a par with those accorded to foreign Government representatives on temporary official business.
2. For the purposes of this Article, the following shall be considered agents of the Institute: the President of the Institute, the Secretary-General, the members of the Governing Council or their delegates, the members of the Administrative Tribunal as well as the permanent members of the Institute at the other international Organisations.
3. In addition to the privileges and immunities specified in paragraph 1 of this Article in respect of the President, privileges and immunities, exemptions and facilities shall be granted to Ambassadors (heads of mission) on the understand, as regards tax privileges, that they are not Italian citizens nor have their permanent residence in Italy.

The names of the agents shall be communicated by the President of the Institute to the Ministry of Foreign Affairs.

**Article 7***Privileges and immunities of officers*

1. The officers of the Institute shall enjoy the following privileges and immunities on the territory of the Italian Republic:
  - (a) jurisdictional immunity for acts performed in their official capacity and within the limits of their duties, including the spoken and written word;

(b) exemption – for officers not having Italian nationality and not having had their habitual residence in Italy prior to the date on which the Institute was founded – from any direct tax levied by the Treasury or by local authorities on income, fees and allowances paid to them by the Institute by way of remuneration;

(c) the right, for officers not having Italian nationality, to import free of customs duties and without any restrictions, their furniture and personal effects provided such import occur within a year from the date on which they took office, and to export these objects on the same terms and conditions upon their definitive departure.

2. The categories of officers of the Institute to whom the privileges and immunities referred to in this article apply shall be decided by the President of the Institute together with the Minister of Foreign Affairs.

3. The aforementioned privileges and immunities shall be granted to the officers in the sole interests of the Institute, not for the personal benefit of those officers.

The Institute shall accordingly have the right and the duty to waive the immunity of any officer in cases where that immunity might hinder the course of justice and where it can be relinquished without prejudice to the interests of the Institute.