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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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**SUMMARY REPORT
OF THE THIRD SESSION
(Videoconference, 3-4 June 2021)**

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1. The third session of the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) equipment pursuant to the MAC Protocol (the Commission) took place via videoconference between 3 and 4 June 2021. The Commission was attended by 32 participants from eight Member States of the Commission, two observing States, one observing Regional Economic Integration Organisations, one observing organisation and *ex officio* observers from the Diplomatic Conference (the List of Participants is available in Annex I).

Item No. 1 Opening of the session and welcome by the UNIDROIT Secretary-General

2. The *UNIDROIT Secretary-General* welcomed participants to the third session. He noted that substantial intersessional work had been undertaken on (i) the request for proposals (RFP) for the selection of a Registrar, (ii) matters relating to the appointment of a Supervisory Authority and (iii) the development of draft regulations for the International Registry for MAC equipment. He concluded that, notwithstanding the challenges posed by the COVID19 pandemic, the Commission was making admirable progress in achieving its core mandates established at the MAC Protocol Diplomatic Conference in November 2019.

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

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

4. *The Chair* suggested that an additional item be added to the agenda to allow for participating States and regional economic integration organisations to report back to the Commission on activities relating to the implementation of the MAC Protocol.

5. The Commission agreed to add an additional agenda item on implementation activities. The Commission adopted the draft Order of Business (MACPC/3/Doc. 1, available in Annex II) as amended.

Item No. 3 Updates on implementation activities

6. *The Chair* invited participants to update the Commission on their activities to implement the MAC Protocol.

7. *An observer from the European Union (EU)* explained that the European Commission was in the process of preparing a proposal for the European Council to sign the MAC Protocol. It was expected that the proposal from the European Commission would be considered and adopted in September 2021 and that the matter would then be sent to the Council Working Party on Civil Law Matters for consideration. It was indicated that if EU Member States expressed support for the proposal, it could be possible to have signature approved by the European Council in September or October 2021. The representative concluded that the EU had experience in acceding to the Cape Town Convention and Aircraft Protocol, and approving the Luxembourg Rail Protocol. As such, the procedure for approving the MAC Protocol was relatively well understood.

8. *A representative of Spain* reiterated Spain's strong support for the MAC Protocol and Spain's intention to sign and ratify the Protocol once the European Union had done so.

9. *A representative of South Africa* noted that the Department of Trade, Industry and Competition had been assigned responsibility for the implementation of the MAC Protocol and that implementation activities would be progressed in the coming months.

10. The Preparatory Commission noted the implementation updates provided by the European Commission, Spain, and South Africa.

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

11. The Secretariat introduced the item with reference to the intersessional work described in documents [MACPC/2/Doc. 7](#), [MACPC/2/Doc. 8](#) and [MACPC/3/Doc. 2](#).

12. *The Chair* suggested that before the Commission discussed UNIDROIT's suitability for the role of Supervisory Authority, the Commission should consider whether alternative options existed, aside from the ongoing negotiations with the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Development (UNCTAD).

13. *A representative of Germany* noted that under the Luxembourg Rail Protocol, a new international entity consisting of a group of States had been established to undertake the role of Supervisory Authority (the Committee of States) with the Intergovernmental Organisation for International Carriage by Rail (OTIF) acting as its Secretariat. The representative queried whether such an approach could also be contemplated for the MAC Protocol, with UNIDROIT undertaking the role of Secretariat.

14. *An observer* noted that the Luxembourg Rail Protocol Diplomatic Conference Final Act explicitly provided for the creation of this new international entity. It was added that the Committee of States established under the Luxembourg Rail Protocol would have members nominated by both UNIDROIT and OTIF. He queried whether, in the absence of a second co-sponsoring authority, there would be specific benefits of establishing a Committee of States to perform the role of Supervisory Authority under the MAC Protocol.

15. *The Secretary-General* noted that such an approach, upon preliminary consideration, might be possible should the Commission consider it the best course of action. It was suggested that Resolution 2 of the MAC Protocol Diplomatic Conference Final Act had been drafted broadly enough to allow for the creation of a Committee of States to be appointed as Supervisory Authority. However, it was explained that the process to establish a new international entity with UNIDROIT as its Secretariat would be complex, create additional bureaucracy, and was unlikely to be any more cost effective than UNIDROIT directly undertaking the role.

16. Several States showed interest in the option suggested for consideration by the representative of Germany and requested further research on the issue. *Representatives of South Africa, Spain and the United States* suggested that the establishment of Committee of States to act as Supervisory Authority should only be considered as a last resort, should IFAD, UNCTAD and UNIDROIT all be unable to perform the role.

17. *The Chair* opened the floor for comments on UNIDROIT's suitability for the role of Supervisory Authority. *Representatives of Australia, South Africa, Spain, the United Kingdom and the United States* thanked the Secretariat for their detailed documentation and expressed support for UNIDROIT as the backup candidate for the role of Supervisory Authority. It was suggested that UNIDROIT begin the internal processes required to accept the role.

18. *A representative of South Africa* queried whether UNIDROIT should be the preferred candidate on the basis that IFAD and UNCTAD might not be as well suited as UNIDROIT for the role. *The Secretary-General* responded that IFAD was a United Nations organisation directly involved in financing agricultural projects around the world and that there would be significant benefits in IFAD undertaking the role.

19. *The Secretary-General* described the internal process required for UNIDROIT to undertake the role and the approvals required for UNIDROIT to be appointed to the role by the end of 2021. He emphasised that financing for UNIDROIT to undertake the role would have to be confirmed before UNIDROIT could formally accept the function.

20. *Representatives of several States* noted that financing would be required regardless of which entity performed the role of Supervisory Authority and that it would be difficult for States to provide financing in the short-term. It was suggested that specific financing arrangements should be discussed at a subsequent meeting. *The Secretary-General* noted that UNIDROIT would not need to receive the funding in advance of accepting the Supervisory Authority role, but it would need clear financial commitments from States and the private sector to ensure that the costs associated with performing the role would be fully funded.

21. *Representatives of several States* suggested that while UNIDROIT should begin its internal processes as soon as possible and in parallel to the ongoing discussions with IFAD and UNCTAD, it was not necessary for a Supervisory Authority to be appointed by the end of 2021. It was noted that once UNIDROIT had completed its internal processes and was in a position to accept the role of Supervisory Authority, the matter would need to be considered by the Commission again for final approval.

22. *A representative of Germany* queried whether the UNIDROIT Statute as currently drafted would allow UNIDROIT to undertake the role of Supervisory Authority. He suggested that the matter would need to be considered carefully by UNIDROIT's governing organs.

23. *A representative of the United Kingdom* noted that Article XIV(2) of the MAC Protocol could allow for the appointment of another organisation as Supervisory Authority in the future, even after the Protocol had entered into force. *The Secretary-General* suggested that the Secretariat could give the matter further consideration, but, in principle, the nature of UNIDROIT's commitment as a fall-back option would be consistent with allowing a transition to a new suitable entity performing the role in case such alternative would arise in the future.

24. *A representative of the United States* queried whether UNCTAD should remain on the list of potential candidates as the organisation had not positively responded to the Secretariat's initial communications and might not be overly supportive of the protections that the Cape Town Convention and MAC Protocol provided for secured creditors.

25. *The Preparatory Commission* reaffirmed that UNIDROIT was the backup candidate for the role of Supervisory Authority should no other existing organisation with the right profile, expertise and experience be willing to undertake the role.

26. *The Preparatory Commission* requested that the UNIDROIT Secretariat continue its discussions with the International Fund for Agricultural Development (IFAD) and the United Nations Conference on Trade and Development (UNCTAD) to determine whether either organisation was willing to undertake the role of Supervisory Authority.

27. *Subject to the ongoing negotiations with IFAD and UNCTAD, the Preparatory Commission invited UNIDROIT to initiate its internal procedures to determine whether the Institute was willing to accept the role of Supervisory Authority.*

28. *The Preparatory Commission requested that the Secretariat prepare further analysis on whether a new international body could be established to perform the role of Supervisory Authority with UNIDROIT acting as its Secretariat, as an alternative option if neither UNIDROIT nor any other existing organisation was able to accept the role.*

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

29. *The Chair introduced the item. It was noted that the Commission needed to consider and approve the draft Regulations in order for them to be attached to the RFP for the selection of the Registrar. The Chair invited the Chair of the Regulations Working Group to summarise the progress made by the Working Group since the Preparatory Commission's second session.*

30. *The Chair of the Regulations Working Group noted that the Regulations Working Group had met twice since the Commission's second session and that the reports from those meetings were available in documents [MACPC/Regulations/W.G./3/Doc. 3 rev](#) and [MACPC/Regulations/W.G./4/Doc. 5](#). It was explained that the Regulations Working Group had prepared a set of draft Regulations ([MACPC/3/Doc. 4](#)) that it believed were sufficiently developed to be attached to the RFP for the selection of the Registrar.*

31. *The Chair of the Regulations Working Group summarised the Working Group's recommendations in relation to six technical issues:*

32. *First, Regulation 6.5 had been amended to enable parties to opt-out of receiving electronic notices relating to interests they were associated with, instead of requiring parties to opt-in to receive such notifications.*

33. *Second, Regulation 13.1 had been amended to clarify that Contracting States were only permitted to designate an entry point to the International Registry where the debtor was located in their territory at the time at which the interest was registered. A representative of Spain recalled that at the Commission's second session it had been decided that the MAC Regulations should not follow the Aircraft Registry Regulation's approach of distinguishing between authorising and direct entry points and should instead adopt a neutral formulation for entry points. She queried whether Regulation 13 would require further amendment to reflect the Commission's policy decision on this matter. The Chair of the Regulations Working Group agreed that Regulation 13 required further amendment to accurately reflect the Commission's decision.*

34. *Third, Regulation 5.18 had been amended to allow the Registrar to make, amend or discharge a registration in the Registry without following the standard procedures if it was ordered to do so by a court of competent jurisdiction in the place where the Registrar had its centre of administration. It was noted that the language in Regulation 5.18 which provided that the Registrar "may" make, amend or discharge a registration related to the fact that the Registrar had permission to make such changes without following the standard procedures, and was not intended to give the Registrar the discretion to not comply with a mandatory order made by a competent court. A representative of Germany noted that the language in Regulation 5.18 might require further consideration to ensure it reflected international civil procedure norms. The Chair of the Regulations Working Group noted that the reference to the court of competent jurisdiction reflected the language in Article 44 of the*

Cape Town Convention. *The Chair* suggested that any further action on this matter could be progressed through correspondence with the Chair of the Regulations Working Group.

35. Fourth, Regulation 5.5 which permitted block assignments had been retained in square brackets. It was explained that block assignments might not be necessary if a Closing Room™ like facility was developed, as provided by the Aircraft Registry.

36. Fifth, Regulation 7 had been removed, which had previously provided for the making of non-convention filings. It was explained that the Regulations Working Group had removed Regulation 7 on the basis that (i) the existence of non-convention filings could confuse parties undertaking searches of the Registry and (ii) it was likely that the MAC International Registry would attract sufficient registrations to ensure it was economically viable without the need for non-convention filings. It was noted that the Registrar would still be permitted to publish information as an ancillary or additional profit-making service.

37. Sixth, the language in Regulation 8.3 had been amended. Regulation 8.3 allowed for the making of "informational searches", which allowed parties to make a broader search of the Registry, which would operate like a close match searching system.

38. *The Chair of the Regulations Working Group* then provided a summary of the Working Group's recommendations in relation to three significant policy matters:

(i) Access requirements for users of the International Registry

39. Regulation 4 had been amended to allow for a debtor or searching party to interact with the International Registry without opening an account. The debtor or searching party would only need to provide a minimum amount of information to be set out in the Registry procedures. It was explained that a broad spectrum of practices existed in relation to access rules. At one end, some registries required users to provide significant amounts of information to verify their identity, as required by the Aircraft Registry. This approach provided a high degree of confidence that users had the requisite authority to undertake certain actions, but also placed an administrative burden on them. At the other end of the spectrum was the approach adopted in many domestic personal property security registries which allowed for easier access to the registry but reduced confidence in the accuracy of the information in the registry. The Regulations Working Group decided that a strict approach to identification and access requirements was not appropriate for the MAC Registry, given the anticipated diversity in the types of users. It was noted that a searching party would need to provide sufficient information to make a credit card payment to pay the search fee. It was further noted that allowing the Registry procedures to define the exact information required for debtors or searching parties to interact with the Registry would allow the future Registrar to make suggestions on how the function could operate.

40. *An observer* noted that in amending Regulation 4, the draft Regulations might have inadvertently omitted a rule that governed how officials at entry points gained access to the Registry. He suggested that this matter could be addressed in Regulation 13 in the next draft of the Regulations.

(ii) Debtor Consent

41. Regulations 4.3 and 7 had been amended to provide that a debtor did not need to create an account to give consent to a registration. It was noted that it was important for the MAC Registry to make it simple for debtors to consent to a registration by electronic means. Possibilities included through an email or mobile message sent to the debtor's email address or mobile phone. The

Regulations Working Group did not reach a decision on the specific mechanism through which a debtor was to give their consent, which would be developed through the Registry procedures. It was noted that deferring this matter to the procedures had the added advantage of allowing the Registrar to provide suggestions on the matter.

(iii) Registration criteria for MAC equipment

42. Regulation 5.1 had been amended to provide a two-tiered identification system based on (i) primarily the object's ISO-compliant number, or (ii) if no ISO number existed, the manufacturer's serial number, brand name, model designation and other descriptive information as required by the Registry procedures. It was noted that identification criteria had been an issue thoroughly discussed by the Regulations Working Group. There had been clear consensus on the rules in Regulation 5.1(b)(i) and 5.1(b)(ii)(a) and (b), however the additional identification information required in Regulation 5.1(b)(ii)(c) to ensure uniqueness had been difficult to agree upon. It was explained that Regulation 5.1(b)(ii)(c) deferred the matter to the Registry procedures. The *Chair of the Regulations Working Group* noted that the Secretariat had undertaken an industry survey regarding serialisation practices and that the Commission might wish to further consider whether Regulation 5.1(b)(ii)(c) was still necessary in light of the survey results.

43. *The Secretariat* expressed its gratitude to all Members and Observers of the Commission who had assisted in conducting this industry survey and noted that the industry survey results were contained in Annex III of the report from the Regulations Working Group's fourth session ([MACPC/Regulations/W.G.4/Doc. 5](#)). The Secretariat had received responses from 24 manufacturers based in seven different States. The survey indicated that manufacturers did not generally use the same serial numbers for multiple pieces of equipment. In the rare occasions that similar serial numbers were used, they related to different types of equipment. Additionally, it was added that many manufacturers had adopted ISO 10621:2002 (for PINs) or ISO 3779 (Road vehicles – Vehicle identification number (VIN)) as standards for serialising equipment, which prevented duplication. Even though there were various methodologies for serialising equipment, respondents were not aware of any manufacturers in the MAC sectors which duplicated serial numbers for similar types of equipment.

44. *An observer* noted that the survey indicated that where the same serial number was used for different MAC objects, it was clear that there would be differences in model designation that would allow each object to be uniquely identified. However, he suggested that Regulation 5.1(b)(ii)(c) be retained as the survey did not cover 100% of industry practices and it was possible that other manufacturers were still issuing identical serial numbers for MAC objects with the same or similar model designations. He concluded that it was sensible for the exact additional identification criteria required in Regulation 5.1(b)(ii)(c) to be determined by the Registry procedures as it was not possible to know the fact patterns that could emerge regarding different MAC objects with identical serial numbers.

45. *A representative of the United Kingdom* agreed that Regulation 5.1(b)(ii)(c) should be retained as it was an optional tool that could be utilised if required in the future. It was noted that it was also worth retaining in the draft Regulations to be attached to the RFP, as it would alert entities submitting proposals to the matter. It was queried whether the Registry procedures were easier to amend than the Regulations.

46. *A representative of Japan* supported the drafting proposed by the Regulations Working Group. She noted that some manufacturers in Japan used the same serial number for different MAC objects and retaining Regulation 5.1(b)(ii)(c) would be a useful mechanism for resolving identification issues that could arise in the future. *A representative of Spain* also supported the drafting proposed by the Regulations Working Group and the retention of Regulation 5.1(b)(ii)(c).

47. *A representative of Japan* explained that manufacturers of construction and agriculture equipment often produced equipment that was sold under a different brand name (for example, the Japanese manufacturer "K" could produce equipment that was marketed under the brand of US multinational company "C"). She suggested that the drafting of Regulation 5.1(b)(ii)(a) might be ambiguous in requiring the use of the manufacturer's name only if the brand name "was unavailable".

48. *An observer* noted that where a MAC object had a different manufacturer name and brand name, and a party incorrectly inserted one instead of the other in registering an interest in the object, would not invalidate the registration, as the object's serial number would be the primary identification criterion. *The Chair of the Regulations Working Group* noted that while Regulation 5.1(b)(ii)(a) might create some ambiguity in the situation identified by the representative of Japan, the observer was correct in noting that an error in inserting the brand name instead of the manufacturer name or vice versa would not invalidate the registration.

49. *An observer* suggested that Regulation 5.1(a)(i) might require further consideration in relation to how it dealt with MAC objects with both an ISO-compliant PIN and an ISO-compliant VIN. *The Chair of the Regulations Working Group* agreed that the matter required further consideration.

50. *The Preparatory Commission thanked the Regulations Working Group for preparing the draft Regulations. The Commission approved the draft Regulations. The Commission agreed that the draft Regulations in their current form were sufficiently developed for inclusion in the Request for Proposals for the selection of a Registrar.*

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

51. Before discussing Item 6 on the agenda, *the Chair* requested that any participant representing a non-state observer institution that might have an intention to submit a tender or be involved with the submission of a tender to leave the meeting. The Chair then requested that the Chair of the Registrar Working Group update the Commission on the preparation of the draft RFP.

52. *The Chair of Registrar Working Group* noted that the Registrar Working Group had met three times since the Commission's second session and that the reports from the Working Group's second and third sessions were available in documents [MACPC/Registrar/W.G./2/Doc. 4](#) and [MACPC/Registrar/W.G./3/Doc. 4](#) respectively. He explained that the draft RFP circulated (MACPC/3/Doc. 5) was based on a number of resources, including (i) the RFPs prepared for the appointment of the Registrars under the Aircraft Protocol and Rail Protocol, (ii) domestic procurement RFPs provided by participants in the Registrar Working Group, (iii) international guidance documents on procurement best practices produced by the United Nations and OECD and (iv) the collateral registries guide produced by the Best Practices on the design and operation of Electronic Registries (BPER) project undertaken under the auspices of the Cape Town Convention Academic Project. It was noted that the collateral registry guide would be made available in Annex 6 of the RFP once the guide had been finalised. It was further noted that the draft RFP had received input from procurement experts in Australia, Ireland and the United States and had been approved by the five States participating in the Registrar Working Group. The Chair of the Registrar Working Group explained that the Registrar Working Group believed that the draft RFP was ready to be issued so that the procurement process to select the Registrar could formally begin.

53. *The Chair of the Registrar Working Group* provided an overview of the draft RFP. He identified several issues that might require specific consideration by the Commission.

54. First, it was explained that the draft RFP set out the registry requirements in broad functional terms rather than using the specific technical language as found in the draft Regulations.

55. Second, it was explained that Annex 3 of the draft RFP provided a technologically neutral statement of requirements. It was noted that the technologically neutral approach would allow innovative tenderers to propose new solutions or technologies to satisfy the statement of requirements.

56. Third, it was explained that paragraphs 108 – 111 of the draft RFP provided that the Registry must be a not-for-profit business, although the Registrar would be permitted to offer profit making ancillary services on the basis that they did not compromise the integrity or reliability of the Registry. It was noted that under paragraph 111, unless otherwise agreed with the Supervisory Authority, at least 40% of the gross revenues from ancillary services dependent on the Registrar's main activity of managing the Registry would be required to be allocated to the payment of the establishment costs of the Registry, whereas the Registrar could potentially realise all profit related to independent ancillary services.

57. Fourth, it was noted that paragraph 26 provided that the Registrar would be required to provide for expenditure of 35,000 euro annually (as from the conclusion of the contract between the Registrar and the Supervisory Authority) for promotion activities for the MAC Protocol and the Registry. It was explained that this amount had been increased from the 25,000 euro annual requirement in the Rail Registry RFP due to both inflation and the higher anticipated need for promotional work required under the MAC Protocol.

58. Fifth, it was explained that paragraph 29 of the draft RFP used the number of annual registrations in distinct objects under the Aircraft Registry as an indicative example of the possible volume of registrations the MAC Registry might need to process, although the draft RFP specified that the actual volume could be much higher or lower. Paragraph 103 explained that the indicative volumes provided in paragraph 29 contained the basis on which tenderers should provide their estimated costs. It was noted that while the number of annual registrations under the Aircraft Registry could not be presumed to represent an accurate estimate of likely annual registrations under the MAC Registry, it was the most relevant data point to use as no sufficiently reliable estimates existed. *A representative of the United States* suggested that a cautious approach should be adopted in providing indicative volumes for bidding purposes, noting that the volume of registrations would increase over time and was likely to be quite low initially. *Representatives of several States* suggested that while the reference to the volume of registrations under the Aircraft Protocol was necessary to provide a level playing field for tenderers to estimate costs, it was essential that the RFP made it clear that the Aircraft Registry volume was indicative only.

59. Sixth, it was explained that the draft RFP did not explicitly state that it was anticipated that the MAC Registry would need to charge a lower registration fee, due to the lower value of the assets being registered. Instead, the draft RFP required tenderers to provide a proposed registration fee. A tenderer that provided a lower registration fee would be given a higher financial score. It was noted that paragraph 112 of the draft RFP clarified that the Supervisory Authority would set the fees, as agreed in the contract between the Registrar and the Supervisory Authority. It was further noted that paragraph 139 of the draft RFP provided the basis on which the Commission would evaluate the financial scores of proposals.

60. *The Commission* discussed whether the RFP should specify that the MAC Registry registration fees should be lower than the Aircraft Registry registration fees. There was no consensus on the matter. *The Chair* asked that the Secretariat to provide further information on how the RFPs for the Aircraft and Rail Registries had dealt with the setting of fees. On the second day of the Commission's session, *the Secretariat* reported that the RFPs published for the selection of the Registrars under

the Aircraft Registry and Rail Registry, as well as other international registries, did not provide references for the setting of fees. It was noted that under those RFPs, a competitive process had been established that encouraged tenderers to provide for the lowest possible fees.

61. *The Chair of the Registrar Working Group* suggested that it might be useful for paragraph 107 of the RFP to provide that in view of the comparatively low value of MAC equipment, it was expected that registration fees should be set as low as possible to ensure that the registration of interests in MAC equipment were economically viable. It was suggested that there would be no need to specifically state the cost of the registration fees under the Aircraft Protocol, as doing so could result in tenderers basing their fee proposals on the current Aircraft Registry fees. *The Commission agreed to the approach proposed by the Chair of the Registrar Working Group.*

62. Seventh, it was explained that paragraph 91 of the draft RFP provided that proposals should consider the compatibility of their proposed registry systems with widely applicable standards of data protection and privacy. It was suggested that to ensure a level playing field in assessing proposals that could be submitted from States with differing data protection laws, proposed registry systems should be compatible with both relevant national data protection laws and "widely applicable data protection standards". It was further noted that while there were no comparable provisions in the RFPs for the Aircraft Registry and Rail Registry (as they had been drafted at a time when data protection laws were less developed), most modern domestic RFPs did include data protection and privacy standards.

63. Eighth, it was explained that in order to attract the broader range of tenderers, the draft RFP did not require tenderers to be located in UNIDROIT Member States nor MAC Protocol Contracting States. However, paragraph 71 of the draft RFP did provide that it was preferable for a Registry's computer back-up and storage systems to be located in the territory of a Cape Town Convention Contracting State. *A representative of Spain* queried how this matter would be assessed and whether a tenderer simply making a commitment to base their computer back-up and storage systems in a Cape Town Convention Contracting State would be sufficient. *The Chair of the Registrar Working Group* suggested that for the purposes of the evaluation of a tender, a commitment would be sufficient and that tenderers would not be required to establish such back-up and storage systems at the time of submitting their proposal.

64. Ninth, it was explained that paragraph 102 of the draft RFP provided that cost estimates in proposals should be provided in euros to establish a uniform standard to evaluate the cost aspects of different proposals. Paragraph 102 further provided that if a proposal prepared their schedule of estimated costs in a different currency, the proposal should provide a conversion to euros on the date on which the proposal was submitted.

65. *The Commission agreed with the policy positions recommended by the Registrar Working Group in the draft RFP.*

66. The Commission thanked the Registrar Working Group for their efforts in preparing the draft RFP. The Commission agreed that the draft RFP was well drafted and fit for purpose. However, there was no consensus on whether to approve the draft RFP in this session of the Commission. Representatives of some States suggested that the draft RFP was ready for approval by the Commission. Representatives of other States suggested that the draft RFP should not be approved until there had been agreement on the evaluation process and to allow experts involved in the evaluation process to review the draft RFP one final time.

67. *The Commission decided to withhold approval of the draft RFP until the draft RFP had been reviewed one final time by experts and the evaluation process had been agreed upon.*

Evaluation process

68. *The Chair of the Registrar Working Group* noted that the draft RFP provided a limited framework for the evaluation of proposals. Paragraphs 134-146 of the draft RFP established a two-stage process which would be undertaken by an Evaluation Committee established by the Commission. Tenderers would first be assessed on whether they provided sufficient evidence of financial, technical and professional capacity to undertake the Registrar role. During the first stage, proposals would be assessed on a pass/fail basis. Those tenderers that satisfied the first stage of the process would then have their technical and financial offers assessed and be assigned technical and financial scores. The offer with the highest final score would be considered as the preferred tenderer. It was suggested that technical experts would not need to be involved with the first stage of the process.

69. It was noted that paragraph 143 of the draft RFP provided that the Commission would invite the preferred tenderer for negotiations but also allowed the Commission to undertake simultaneous negotiations with the next highest ranked tenderers. It was explained that this approach would give the Commission flexibility and ensure that the Commission would not have to wait until contract negotiations had completely failed with the preferred tenderer before engaging in negotiations with the next highest ranked tenderers.

70. *A representative of South Africa* noted that while he agreed with the policy approach in paragraph 143, it appeared that there was some contradiction with paragraph 145, which provided that if the negotiations with the preferred tenderer failed, the Commission would enter into negotiations with the tenderer with the next highest score, unless the circumstances otherwise required.

71. *A representative of Australia* suggested that the language in the draft RFP could be improved to clarify that the Commission reserved the right to not enter into a contract with any of the tenderers and that the language of paragraph 146 could be read to require the Supervisory Authority to enter into a contract. *A representative of South Africa* agreed, and suggested that the draft RFP should explicitly provide that inviting a tenderer to enter into contract negotiations would not create a legal expectation or right for the tenderer.

72. *The Commission agreed that the draft RFP should provide for negotiations to begin with the preferred tenderer, while allowing for simultaneous negotiations with the next highest ranked tenderers. The Commission agreed that the language in the RFP should clarify that (i) there was no duty for the Commission or Supervisory Authority to enter into a contract with any of the tenderers and (ii) inviting a tenderer to enter into contract negotiations would not create any legal rights or expectations.*

73. *The Chair of the Registrar Working Group* explained that paragraph 135 provided for the involvement of a balanced group of experts with a broad geographical distribution in the evaluation process to ensure that the process was unbiased and fair. It was noted that under the Aircraft Protocol, the Preparatory Commission also set up an evaluation committee that was assisted by technical and procurement experts from ICAO's procurement department. Under the Rail Protocol, the Preparatory Commission evaluated the proposals themselves with minimal outside expertise.

74. *A representative of the United States* suggested that further work was required on (i) an evaluation plan, including the establishment of the Evaluation Committee, and (ii) a guidance document providing how the Evaluation Committee would be convened, the appointment of experts, and how the Evaluation Committee would undertake its work. The representative suggested that there would be merit in allowing for those experts appointed to Evaluation Committee to review the draft RFP once before it was published. The representative emphasised that the United States was

not critical of the RFP content but rather wanted to ensure the robustness of the evaluation process. It was noted that the appointment of the Registrar was the Commission's most important task and that every effort should be made to ensure the process was fair and transparent. It was further noted that the Registrar appointment process under the Aircraft Protocol had been challenging and that spending time developing and fully documenting the evaluation process would lower the risk of procurement litigation. The representative concluded that it was more important for the Commission to get the process right than to abide by the aspirational timelines established by the Diplomatic Conference Final Resolution 1, under which a Registrar had to be selected within two years of the first session of the Preparatory Commission (by May 2022).

75. *The representatives of some States* suggested that the composition of the Evaluation Committee could be determined during the four-month period during which prospective tenderers were invited to submit their proposals. *The representatives of other States* agreed with the representative of the United States that it was preferable to agree upon the evaluation process before the draft RFP was approved and to allow experts that were likely to participate in the Evaluation Committee the opportunity to review the draft RFP one final time.

76. The Commission discussed how experts would be identified and appointed to the Evaluation Committee. It was noted that the Evaluation Committee would require participants with expertise in different areas, including (i) procurement, (ii) registry design and operation, and (iii) information and communications technology. It was suggested that Commission members could appoint national experts to the evaluation committee. It was further suggested that experts that participated in the BPER project could be invited to participate and that Commission members could use their professional networks to identify experts. The Commission discussed whether the experts nominated to review the draft RFP would also participate in the Evaluation Committee. *It was agreed that no experts from States that submitted tenders should be included in the Evaluation Committee to avoid any potential conflicts of interest.* It was suggested that while it would be beneficial to have the same experts involved in both processes, there was no problem with altering the experts involved in the evaluation process at a later stage. *The Commission agreed that a State that did not nominate any experts to advise the Registrar Working Group should not be permitted to later object to the outcomes reached by the Working Group on the basis that their domestic experts needed to be further consulted.*

77. *A representative of Germany* queried whether experts would be remunerated. *The Secretariat* explained that remuneration would need to be provided by States participating in the Commission. In the absence of such funding being made available, it was suggested that Commission members could appoint Government experts who were already salaried or outside experts who could be invited to provide their expertise on a *pro bono* basis.

78. *The Commission agreed that further information regarding the evaluation process and the operation of the Evaluation Committee was required, including how it would interpret the evaluation criteria set out in the draft RFP and how the committee would weight the technical scores for the proposals.* *The Secretary-General* requested further guidance on the content of the evaluation plan and guidance document envisaged by the Commission.

79. The Commission discussed whether the evaluation process should include the testing of registry prototypes. It was noted that there was nothing in the RFP that would prevent the Commission requesting prototypes be developed during the contract negotiation phase. *A representative of Australia* cautioned that if the Commission intended to request the development of prototypes, then the matter should be explicitly addressed in the RFP due to the significant cost involved in preparing prototypes and to ensure fairness to prospective tenderers. It was noted that paragraph 147 of the draft RFP contemplated a three-month test phase for the Registry once a Registrar was appointed.

80. The Commission discussed how the draft RFP should be further evaluated and how evaluation plan and Evaluation Committee guidance document should be developed. *The Commission decided that these matters could be dealt with by the Registrar Working Group, which could then report back to the Commission at its next session.*

81. It was noted that it was essential that States proposed further experts to advise the Registrar Working Group, as the body in its current form had already approved the existing draft RFP. *The representatives of several States committed to nominating additional experts to advise the Registrar Working Group. It was queried whether the evaluation plan and/or the evaluation process should be included in the RFP. A representative of Australia noted that there was no best practice in relation to this matter as some RFPs included significant detail on evaluation plans and processes, whereas others included only basic details.*

82. The Commission discussed whether a further Commission session would be required to approve the draft RFP. *The representatives of some States suggested that the draft RFP was sufficiently developed to be approved at the current session, subject to any further minor changes made by the Registrar Working Group, without the need for the convening of a further Commission session. The representatives of other States noted that while the draft RFP was of a high quality, there was no detriment in allowing the Commission to consider it one final time once it had been further advised upon by domestic experts and the evaluation plan and evaluation process had been developed.*

83. The Commission discussed the timeline for future steps. *The Secretary-General noted that should the Commission wish to extend the process to allow for Government-appointed experts to further advise upon the draft RFP, it would not be possible to select a Registrar before the aspirational two-year deadline established in Resolution 1 of the MAC Protocol Diplomatic Conference Final Act (which was to elapse in May 2022). The representatives of several States noted that while there was no need to unduly slow down the process, it was more important to ensure a transparent and fair evaluation plan and process was established than to comply with the aspirational deadline. It was further noted that as the Supervisory Authority had not yet been appointed and the Protocol had not been ratified by any States, the process to appoint a Registrar did not need to be expedited. The Commission discussed how long States would need to identify and appoint experts to the Registrar Working Group. The Commission agreed that States should be given at least two months to appoint experts to the Registrar Working Group.*

84. *The Commission agreed that the Registrar Working Group should be tasked with further consideration of the draft RFP and the development of an evaluation plan and a guidance document for the Evaluation Committee. The Commission requested that the Secretariat prepare a formal communication inviting States to nominate experts with relevant expertise in the fields of (i) procurement, (ii) registry design and operation and (iii) information and communications technology to advise the Registrar Working Group.*

Item No. 7 Timetable and planning of further work

85. *The Chair noted that it was not yet possible to confirm a date for the fourth session of the Preparatory Commission.*

86. *The Commission requested that the Secretariat propose a date for the Commission's fourth session once further details regarding the process for the appointment of the Registrar were confirmed.*

Item No. 8 Any other business

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

Item No. 9 Closing of the session

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

89. *The Chair closed the third session of the Commission.*

ANNEX I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****REPRESENTATIVES / REPRESENTANTS****STATES / ETATS**

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Ministère de l'agriculture et du développement rural

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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. Updates on implementation activities
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 future work
8. Any other business
9. Closing of the session