



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**

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***Registrar Working Group
Third session (remote)
7 May 2021***

**SUMMARY REPORT
OF THE THIRD SESSION
(Videoconference, 7 May 2021)**

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1. The third session of the Registrar Working Group established by the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) Equipment took place via videoconference on 7 May 2021. The session was attended by 14 participants from four Member States of the Commission, one observing State, one International Non-Governmental Organisation and *ex officio* observers from the Diplomatic Conference (the List of Participants is available in Annex I).

2. This report summarises the discussion which took place at the third session of the Registrar Working Group.

Item No. 1 Opening of the session

3. *The Chair* welcomed the participants to the third session of the MAC Registrar Working Group.

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

4. The Working Group adopted the draft Order of Business (MACPC/Registrar/W.G./3/Doc.1).

Item No. 3 Approval of the Report of the second Session of the Registrar Working Group

5. The Working Group approved the Report of the second Session (MACPC/Registrar/W.G./2/Doc. 4).

Item No. 4 Consideration of issues associated with draft Request for Proposals

6. *The Chair* drew the attention of the Working Group to the Issues Paper (MACPC/Registrar/W.G./3/Doc.2) and thanked the members of the Working Group who had assisted in updating the draft Request for Proposal (RFP).

1. Issues relating to the substantive content of the RFP

(a) General Approach to drafting the RFP

7. *The Chair* introduced the issue and drew attention to the changes which had been made to the RFP to reflect the agreements reached at the Working Group's second session.

8. *The Working Group approved the new drafting with regard to Paragraph 61 of the RFP which related to functional equivalents to a Frequently Asked Questions (FAQ) function of the Registry.*

9. *With regard to Paragraph 62, it was proposed and agreed that the Helpdesk should be available 40 hours each week. It was also proposed and agreed that the RFP should include a note that where, according to the Supervisory Authority, a demonstrated need was identified for the availability of additional hours of helpdesk services outside the working hours of the time zone where the International Registry is located, the Registrar should be able to accommodate the same.*

10. With regard to Annex 3 of the RFP which contained a statement of functional requirements for the International Registry, it was noted that these had been updated to align more closely with the draft Regulations.

11. It was noted that some parts of Annex 3 contained a high degree of flexibility for the Registrar, particularly with regard to items which had specific rules in the Regulations. As such, it

was proposed that a general disclaimer should be added which indicated that the Regulations would take priority over the functional requirements, and that prospective bidders should always consider them first.

12. It was noted that some parts of Annex 3 were broad in nature. This was because the statement of requirements were drafted to ensure Registrar's built a registry which was capable of adapting to any specific requirements which the Supervisory Authority might require it to follow. It was recognised that greater alignment was needed between Annex 3 and the RFP in general.

13. It was noted that in certain provisions, Annex 3 had highly specific technical requirements and that these should be reflected in more functional terms.

14. Several participants noted that that too many items had been marked as 'Highly Important' in Annex 3 and that consideration should be given to balancing out this usage.

15. Some participants raised concerns with regard to the length and extensiveness of Annex 3, and it was noted that a disclaimer giving priority to the Regulations would also be helpful in this regard.

16. One participant queried if adherence to Annex 3 should be given value when evaluating the proposals received. It was noted that while the RFP outlined the setting up of the register, Annex 3 showcased the entire suite of functions which any Registrar would be expected to deliver in bidding to establish the International Registry for MAC equipment. As such, when evaluating bids, consideration should ideally be given to the entire registry structure, including system design, personnel, and infrastructure related items.

17. *The Working Group agreed that adherence to Annex 3 should be given importance when evaluating the proposals received. The Working Group requested the Secretariat to include language to reflect this in the RFP accordingly. It was noted that this could be included as part of the Technical Score given to each bid.*

18. *It was agreed that how the relative importance of items in Annex 3 impacted the scoring should also be clarified in the section on evaluation. Consideration should also be given to the present possibly over-frequent use of the classification as "highly important".*

19. *It was also agreed that a general disclaimer should be added to Annex 3 which indicated that the Regulations would take priority over the functional requirements, and that – while bidders should always be expected to be able to fulfil these general functional requirements – the Regulations could contain more concrete requirements and could also be subject to future amendments.*

20. The Chair invited participants of the Working Group to send written comments regarding specific issues in Annex 3 to the Secretariat.

(b) Nature of the registrar's activities

21. *The Chair* introduced the issue and invited the Working Group to consider the drafting suggested in Paragraph 16 and 111-113 of the RFP.

22. *It was proposed and agreed to delete the last bullet point in Paragraph 112. It was also agreed to use 'unless otherwise agreed to with the Supervisory Authority' in both instances where there are references to the distribution of shares of the revenue from ancillary activities in Paragraph 113.*

23. *With regard to Paragraph 111, it was proposed and agreed that reference should be made to 'integrity and/or reliability'. Additionally, it was also agreed that the reference to 'website' in the example within Paragraph 113 should be changed to a more technologically neutral term.*

24. *With regard to consideration to be given to a possible two-tier structure for the MAC International Registry, the Chair thanked the Secretariat for its research in this regard and noted that no action needed to be taken.*

(c) Promotion and Industry Support

25. *With regard to the issue of how much money a Registrar should commit to allocating for promotion and industry support, the Working Group approved the sum of €35,000 to be included in the RFP.*

(d) Indication of volume of work

26. *The Chair introduced the issue and noted that the Secretariat had inserted numbers in Paragraph 29 and 71 of the RFP which required bidders to provide enough capacity as that utilised by the Aircraft Registry in 2020. Language had also been added with regard to the scalability of the registry.*

27. *It was agreed that footnote 8 of the RFP (para. 29) should be made consistent with the MAC Protocol.*

28. *While recognising the value of indicating certain volumes of work in order to enable bidders to adequately estimate their costs, it was agreed that the RFP should specify clearly that the volume of work indicated was entirely based on the Aircraft Registry and merely indicative. As such, it may not be reflective of the volume to be expected by the MAC Registry. This should also be reflected in Paragraph 106 when advising bidders on how to anticipate their costs. Bidders should base their calculation of costs on these numbers and should confirm their capacity to accommodate actual volumes of work that might be significantly higher or lower.*

(e) Technological compatibility

29. *The Chair introduced the issues relating to browser compatibility and Application Programme Interfaces (APIs) and noted that additional drafting had been added in Paragraphs 32, 85, and 33.*

30. *The Working Group approved the new drafting in Paragraphs 32, 33, and 85.*

(f) Languages

31. *The Chair introduced the issue noting that Paragraph 60 of the RFP had been redrafted to reflect the agreements reached by the Working Group at its second session.*

32. *It was proposed and agreed that the reference to 'website' in Paragraph 60(a) should be replaced with a more technologically neutral term.*

33. *It was proposed and agreed that the reference to 'registrations and searches' should be omitted and replaced with a reference to the general registry platform, keeping in mind that registrations and searches would not be subject to translation or activities in other languages.*

34. *It was also proposed and agreed that in the RFP footnote 13 (to para. 60 lit. b) should be deleted: A translation of the registry platform might also, if such a need arises, be required into a language that is not based upon the Latin alphabet.*

(g) Currency of the operation and currency of indicated costs

35. *The Chair* introduced the issues relating to currency of the operation of the Registry, and the currency of the cost proposal submitted by any bidder. It was noted that Paragraph 77 of the RFP had been redrafted to reflect the Working Group's view on the issue of currency of operation.

36. *The Working Group approved the new drafting of Paragraph 77 of the RFP.*

37. *With regard to the currency in which bids should be received, the Chair noted that the Secretariat's research had shown that bids were normatively collected in the currency of the country of the tender's issuer. As such, Euros should be indicated in Paragraph 106 of the RFP. It should also be noted that if the bidders indicate expenses in another currency, a conversion to Euros on a specific date should be mentioned. The Working Group supported this approach.*

(h) Governing law of contract with registrar

38. *The Chair* introduced the issue noting that Paragraph 128 had been updated to reflect the Working Group's views on this matter.

39. *The Working Group approved the new drafting of Paragraph 128 of the RFP.*

(i) Data Protection and Privacy

40. *The Chair* introduced the issue and drew attention to Paragraphs 94 and 95 of the RFP which had been redrafted based on the Secretariat's research on how data protection and privacy were treated in other international tender documents.

41. *One participant proposed that Paragraph 94 (b) should be deleted, as it was not relevant to security controls related to privacy. The Working Group agreed with this proposition.*

42. *With regard to Paragraph 94 (f), the Working Group agreed that it should be retained, even if it had certain overlaps with Paragraph 95.*

43. *The Working Group deliberated whether a specific reference should be made to the European Union's General Data Protection Regulation (GDPR) in Paragraph 95. It was agreed that it is to be expected that the Registry will be accessed from a large number of users from jurisdictions where the standards of the GDPR apply and that therefore the consideration of the compliance with these standards would be helpful to allow for fair evaluation of the proposals. It was agreed, however, that in the text of the RFP this reference to a specific standard should be replaced with non-specific language to allow also the consideration of other widely accepted international standards of data protection.*

44. The Secretariat noted that Paragraph 71 of the RFP regarding data storage was no longer considered to be in contradiction with widely accepted data protection and privacy related legislations.

(j) Intellectual Property

45. *The Chair* introduced this issue and drew attention to Paragraphs 72 and 126 of the RFP.

46. It was suggested that alignment should be ensured in this regard with Paragraph 117. Several participants expressed concerns with regard to the reference to ownership of the software

of the registry by the Supervisory Authority. It was noted that the registry might use software which was only licensed to the Registrar, and thereafter licensed by the Registrar to the Supervisory Authority. As such, the concept of ownership in software in Paragraph 72 should be deleted.

47. *It was agreed that Paragraph 117 already covered for issues with regard to rights in software. As such, the question of rights in the software should be covered under Paragraph 117 only, whereas other intellectual property rights should be covered under Paragraph 72.*

(k) Matters in the RFP dependent upon the Regulations Working Group

48. *The Chair* drew attention to Paragraphs 35, 38, and 39 of the RFP which contained functional provisions relating to pending matters at the Regulations Working Group.

49. *It was proposed and agreed that the reference in Paragraph 35 to 'administrators' should be changed to 'users'. It was also proposed and agreed that a reference should be made to the Regulations in Paragraph 38.*

50. *It was agreed that no additional information or change should be made in the RFP regarding the use of the term 'electronic signature', as this was a matter to be dealt with in the Regulations. If it should be decided in the Preparatory Commission to replace the term 'electronic signature' with a more functional concept, then the RFP would have to be aligned accordingly.*

51. It was noted that additional language needed to be added to reflect the issues of Entry Points and Closing Room to the RFP. With regard to the Closing Room, it was noted that similar functionalities were already captured in Annex 3, and that a general reference could be included in the RFP to indicate that while the introduction of Closing Room functionality is not a necessary feature for the MAC Registry, such was done for in other registries under the Cape Town Convention.

2. Issues relating to the technical content of the RFP

52. With regard to technical content of the RFP, *the Secretariat* noted that advice had been collected from external experts and had already been implemented in the RFP, particularly with regard to technological and procurement elements. It was confirmed that the Secretariat would continue to receive advice on this and would propose changes to the RFP accordingly.

3. Issues of Procedure

(a) Who to invite

53. *The Chair* noted that this issue had already been addressed and no additional action was necessary.

(b) How to distribute

54. *The Chair* noted that this issue had already been addressed and no additional action was necessary.

(c) Process of submission of Proposals

55. *With regard to the process of submission of proposals, it was noted that based on research, email was an acceptable form of collecting proposals. This had been reflected in the RFP accordingly. Additionally, the Secretariat noted that while collecting proposals, the documents received would be treated with the necessary degree of confidentiality, in respect of all relevant data protection and privacy related rules.*

(d) Evaluation

56. *The Chair* introduced the issue and recognised that the RFP presently relied on a scoring system which considered the cost proposal and the technical proposal. Additionally, outside experts would also be considered as necessary. It was noted that the process for scoring the technical offer was highly arbitrary and did not contain enough specificities.

57. Several participants noted that the technical score should be measured against an objective set of criteria. It was added that adherence to Annex 3 of the RFP was one factor which should be considered in determining the technical score for any proposal. It was added that system requirements could be broken down into various categories, such as system design, security, features, etc.

58. Several participants noted the importance of considering personnel (including collecting names and CVs of staff) and infrastructure related requirements into the evaluation criteria. This could include obligating the bidders to share previous experience of building or managing electronic registry related operations, preferably related to secured transactions. *It was agreed that such requirements should only be stated in a broad manner. The Working Group considered whether SME participation should be encouraged expressly in the RFP, and decided that this was not necessary.*

59. The Secretariat noted that the evaluation processes followed for selecting registrars for other Protocols of the Cape Town Convention had varied significantly. For the Aircraft Protocol, between 3-5 proposals had been received and the process was led by ICAO which set up an evaluation team which was assisted by procurement experts from within the ICAO Secretariat who developed a comprehensive ratings system for assessment. Outside experts were also called upon as appropriate. The report of the evaluation team was submitted the Preparatory Commission, where only Members from those States which did not have a bid were allowed to vote to come to a final decision. For the Rail Protocol, the process was handled by the Preparatory Commission and only a limited number of bids were received.

60. It was suggested that a two-tier system should be followed, whereby certain proposals would be discarded at the first stage for not meeting the threshold necessary to be considered. Only proposals that passed a preliminary pass-fail test would be scored under the rating system. It was recognised that this was already addressed by Paragraph 139 of the RFP and could be expanded further and expressed more clearly and objectively.

61. It was noted that proposals once submitted would not be allowed to be improved or changed. At the same time, the Preparatory Commission could ask questions of the bidders and ask for clarifications pursuant to Paragraph 131 of the RFP.

62. It was noted that as part of the process of receiving proposals, prospective bidders may seek clarifications. The process for submitting such clarifications was outlined in Paragraph 133 of the RFP. *The Working Group agreed that the Preparatory Commission should be made aware of this process and that the Preparatory Commission might want to consider its procedures for offering clarifications to prospective bidders.*

63. One participant queried if the RFP should outline the role outside experts would play in the valuation process. It was clarified that it would not be helpful to include specific roles for outside experts in this regard. It was noted that the mandate to select experts and task them with work was with the Preparatory Commission. The Preparatory Commission could consider a criteria for selection of experts, which could include impartiality and global distribution.

64. *It was agreed that the Secretariat would continue to collect advice from procurement experts on the matter of evaluation and propose a more detailed draft of evaluation related provisions for*

consideration at the next session of the Working Group. This would particularly focus on delineating the process of assigning a technical score to the proposals.

(e) Timeline

65. It was recalled that the MAC Protocol Diplomatic Conference Resolution 2 included the following guidance:

*"... with a view to guarantee the operability of the International Registry by the time of entry into force of the Protocol, to ensure that the Registrar managing the International Registry be **selected in accordance with an objective, transparent and fair selection process, and that all necessary regulations and procedures be prepared and approved, with a target date of two years from the convening of the first meeting of the Preparatory Commission**, which is to take place before six months have passed from the adoption of the Protocol;"*

66. This guidance resulted in an obligation on the Preparatory Commission to conclude the work of selecting a Registrar, as well as having the necessary regulations and procedures for it by May 2022. Keeping this in mind, the participants deliberated the following timeline found in Paragraph 149 of the RFP:

- (a) [DD MM] – RFP is issued;
- (b) [DD MM] (a + 3 months) – final date for the request to participate and preliminary offer to be submitted;
- (c) [DD MM] (b + 3 months) – evaluation by Preparatory Commission and notification of all tenderers on their ranking, notification to the preferred tenderer – preferred tenderer should be prepared to commence contract negotiations within 4 weeks of the notification – although may be subject to change;
- (d) [DD MM] (estimated) (c + 3 months) – finalisation of contract negotiations between the Preparatory Commission and the preferred tenderer;
- (e) [DD MM] (estimated) (d + 1 month) – approval by the Preparatory Commission of the final contract between the Supervisory Authority and the preferred tenderer;
- (f) [DD MM] (e + 3 months) – submission to the Supervisory Authority by the Registrar of the System Design Document (SDD) as referred to in paragraph 78;
- (g) No later than 6 months after (e) – commencement of test phase of the International Registry;
- (h) No later than 8 months after (e) – completion of test phase of the International Registry;
- (i) No later than 12 months after (e) – full implementation and commissioning of the International Registry. The full implementation and commissioning of the International Registry refers to the preparedness for the International Registry to immediately begin full operations. However, the precise date of the entry into force of the MAC Protocol, and of the actual commencement of full operations of the International Registry, will be determined in accordance with Article XXV of the MAC Protocol, and that date may be after the date that the full implementation and commissioning of the International Registry is achieved (see Annex 1, paragraph 149).

67. It was noted that the ongoing COVID-19 pandemic, alongside the fact that a Supervisory Authority had not yet been selected for the MAC Protocol International Registry could slow down the process of the selection of a Registrar.

68. It was queried as to what was exactly meant by the 'selection' of a Registrar within two years. *The Working Group agreed that this referred purely to the process of selecting one Registrar, and did not include the time it would take to negotiate a contract with the selected Registrar.*

69. *Keeping this in mind, the Working Group agreed to retain the timeline for points (a), (b), and (c). It was also agreed that the Secretariat would adjust the deadlines for other points based on feedback from technical experts and experience in setting up registries and conducting contract negotiations.*

70. *The Working Group noted that the two-year obligation also included the production of Procedures for the International Registry. It was agreed that this point would be raised at the Preparatory Commission which may consider setting up a mechanism to prepare the first draft of the Procedures within the timeframe specified.*

(f) Inclusion on Critical Performance Factors

71. *The Working Group agreed the paper on Collateral Registries as part of the Best Practices of Electronic Registry Design and Operation project would be included as an annex to the RFP.*

Item No. 5 Timetable and planning of further work

72. The Registrar Working Group noted that it would convene for its fourth session on Thursday, 20 May 2021. The Members of the Group were invited to submit written comments to the RFP intersessionally.

73. It was noted that the RFP produced after the Working Group's fourth session would be submitted to the MAC Preparatory Commission at its third session on 3-4 June 2021.

Item No. 6 Any other business

74. No other business was raised under this item.

Item No. 7 Closing of the Session

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

76. The Chair closed the third session of the Registrar Working Group.

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

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ANNEX II

ORDER OF BUSINESS

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