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**Item No. 9 on the agenda: International Interests in Mobile Equipment**

**(c) Implementation and status of the Protocol on Matters Specific to Mining, Agricultural and Construction Equipment (MAC Protocol)**

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation and status of the MAC Protocol to the Cape Town Convention</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of progress</i>
<i>Mandate</i>	<i>Work Programme 2020 - 2022</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<a href="#"><i>MACPC/2/Doc. 6</i></a> <a href="#"><i>MACPC/3/Doc. 6</i></a>

## **I. INTRODUCTION**

1. The Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment ([MAC Protocol](#)) was opened for signature in Pretoria (South Africa) on 22 November 2019. The MAC Protocol is not yet in force.
2. The purpose of this document is to update the Governing Council on work undertaken to implement the MAC Protocol since the 99<sup>th</sup> session of the Governing Council in September 2020.

## **II. STATUS**

3. There are currently three outstanding requirements for the MAC Protocol to enter into force: first, a Supervisory Authority of the International Registry to be established under the MAC Protocol must be appointed; second, an International Registry itself must be established and become fully operational; finally, five States must ratify the Protocol. The appointment of a Supervisory Authority is an administrative requirement, whereas the certification that the Registry is fully operational and the five ratifications are formal requirements under Article XXV of the Protocol.
4. The activities to implement the MAC Protocol are being advanced under the auspices of the MAC Preparatory Commission.

### III. THE MAC PREPARATORY COMMISSION

5. As consistent with the implementation of the other Cape Town Convention Protocols and Resolution 1 of the MAC Protocol Diplomatic Conference [Final Act](#), a Preparatory Commission has been established to act as Provisional Supervisory Authority. The UNIDROIT Secretariat has been designated as the Secretariat of the Preparatory Commission pursuant to Resolution 1. The Preparatory Commission operates under the guidance of the Governing Council and General Assembly of UNIDROIT.

6. Customarily, the Preparatory Commission also performs the important role of encouraging States to sign, ratify and implement the Protocol.

7. The first session of the Preparatory Commission took place via videoconference between 21 and 22 May 2020 and the second session took place via videoconference between 10 and 11 December 2020. The second session was attended by 33 participants from nine Member States of the Commission, two observing States, two observing organisations, and ex officio observers from the Diplomatic Conference. A report of the second session is available in document [MACPC/2/Doc. 6](#).

8. The third session of the Preparatory 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. A report of the third session is available in document [MACPC/3/Doc. 5](#).

9. The Preparatory Commission has three key responsibilities:

- (a) Appointment of a Supervisory Authority;
- (b) Selection of a Registrar to operate the MAC Protocol International Registry;
- (c) Preparation of the first edition of the International Registry Regulations.

#### **(a) Appointment of a Supervisory Authority**

10. 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 Final Act of the Diplomatic Conference 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.

11. In 2021, the General Counsel of IFC informed the Preparatory Commission that, while it would continue to support the MAC Protocol, recent changes in strategy and leadership moved the core line of work away from this type of activity, and, hence, the IFC would not envisage the IFC becoming the Supervisory Authority.

12. At the Preparatory Commission's second session, the Commission requested that the Secretariat undertake research and 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. This decision followed discussions at the MAC Protocol Diplomatic Conference in November 2019 regarding UNIDROIT as a backup Supervisory Authority candidate.

13. Following a series of consultations undertaken by the UNIDROIT Secretariat in the first quarter of 2021, it was 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. In June 2021, the International Fund for Agricultural Development (IFAD) also informed UNIDROIT that it was unable to undertake the role. The United Nations Conference on Trade and Development (UNCTAD) is still examining the issue.

14. At the Preparatory Commission's third session, as a result of the lack of other viable candidates, the Commission considered the suitability of UNIDROIT to undertake the role of Supervisory Authority. Subject to the ongoing consultations with 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. 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, following the model of the Rail Protocol, as an alternative option if neither UNIDROIT nor any other existing organisation was able to accept the role.

15. The Governing Council is being provided with a separate document (C.D. (100) B.12) considering the suitability of UNIDROIT to undertake the role of Supervisory Authority.

#### **(b) Selection of a Registrar to operate the MAC Protocol International Registry**

16. At the Preparatory Commission's first session, a Working Group was established to draft a request for proposals (RFP) for the selection of a Registrar (the Registrar Working Group). The Registrar Working Group has met four times. The first session was held on 4 November 2020 (MACPC/Registrar/W.G./1/Doc. 4), the second on 26 February 2021 (MACPC/Registrar/W.G./2/Doc. 4), the third on 7 May 2021 (MACPC/Registrar/W.G./3/Doc. 4), and the fourth on 20 May 2021.

17. Following its fourth session, the Registrar Working Group submitted a draft RFP for the consideration of the Preparatory Commission. The draft RFP 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. The draft RFP had also received external input from procurement experts in Australia, Ireland and the United States.

18. The Registrar Working Group submitted the draft RFP to the Preparatory Commission recommending that the RFP was sufficiently developed to begin the tender process. At the Preparatory Commission's third session, the Commission agreed that the RFP was well drafted and fit for its purpose, however decided to withhold approval pending one final review by experts and the establishment of a separate evaluation process. The Commission agreed that the Registrar Working Group should be tasked with further consideration of the 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, among others, to advise the Registrar Working Group. The Secretariat circulated the invitation on 7 July 2021, with a deadline for nomination of experts by 10 September 2020.

### **(c) Preparation of the first edition of the International Registry Regulations**

19. At the Preparatory Commission's first session, a Working Group was established to prepare a first draft of the International Registry Regulations (the Regulations Working Group). The Regulations Working Group has met four times.

20. The first session was held on 14 – 15 September 2020 ([MACPC/Regulations/W.G./1/Doc. 3](#)), the second session on 24 November 2020 ([MACPC/Regulations/W.G./2/Doc.4](#)), the third on 19 February 2021 ([MACPC/Regulations/W.G./3/Doc. 3 rev](#)) and the fourth on 30 April 2021 ([MACPC/Regulations/W.G./4/Doc. 5](#)).

21. Over its four sessions, the Regulations Working Group has resolved a number of policy and technical issues relating to the operation of the future MAC International Registry. In particular, the Regulations Working Group established (i) the criteria required to identify a MAC object for the purposes of registering an interest in the International Registry, (ii) the access requirements for users of the International Registry and (iii) the procedure for debtors to provide their consent for a registration.

22. Following its fourth session, the Regulations Working Group submitted the draft Regulations to the Preparatory Commission. At the Preparatory Commission's third session, the Commission approved the draft Regulations and agreed that the draft Regulations were sufficiently developed for inclusion in the RFP for the selection of a Registrar. The final version of the Regulations may need to be adapted based on the amendments that may be included in the final revision of the RFP.

## **IV. IMPLEMENTATION AND PROMOTION OF THE MAC PROTOCOL**

23. UNIDROIT has been designated as the Depositary of the MAC Protocol, pursuant to Article XXXVII(1) of the [treaty](#).

24. As of 2 July 2021, five States (the Republic of Congo, the Republic of Gambia, the Republic of Paraguay, the Federal Republic of Nigeria and the United States of America) have signed the treaty. The Republic of Congo, the Republic of Gambia, the Republic of Paraguay and the Federal Republic of Nigeria signed the Protocol at the Diplomatic Conference on 22 November 2020. The United States of America, represented by the former Secretary of State Mr Michael R Pompeo, signed the MAC Protocol on 1 October 2020 at a ceremony held at the UNIDROIT Headquarters in Rome.

25. It is anticipated that the European Union will consider the signature of the MAC Protocol during the Slovenian Presidency of the European Council (July – December 2021).

26. The Secretariat has continued to promote the MAC Protocol at various intergovernmental, regional, and domestic fora in order to encourage signatures, ratifications, and support from governments and industry. In particular, UNIDROIT is seeking to establish a long-term secured transactions reform project with the Asia Pacific Economic Cooperation (APEC) forum, which would include the implementation of the Cape Town Convention and its Protocols in APEC member economies.

27. On 3 December 2020, the Secretariat participated in a virtual forum organised by the Kozolchik National Law Center promoting the opportunities created by the MAC Protocol in Latin America. The Secretariat, in partnership with the U.S. Mission to the UN Agencies in Rome, also organised a panel discussion on 'The Global Reach of the Cape Town Convention: The Potential for the Mining, Agriculture, and Construction Sectors' as an official side-event to the 79<sup>th</sup> session of the UNIDROIT General Assembly on 17 December 2020.

28. The Official Commentary on the Cape Town Convention and its MAC Protocol by Professor Sir Roy Goode was published in May 2021. Sir Roy Goode was commissioned to prepare the Official Commentary in Resolution 4 of the MAC Diplomatic Conference Final Act.

29. UNIDROIT continues to work closely with the private sector through the MAC Working Group in implementing the MAC Protocol.

## **V. FUTURE STEPS**

30. The Secretariat is supporting the Preparatory Commission and its Working Groups in order to facilitate the earliest possible entry into force for the MAC Protocol. Further meetings of the Registrar Working Group and Regulations Working Group will be scheduled in the coming months. It is anticipated that the Preparatory Commission will meet for its fourth session in December 2021 to approve the RFP and the related evaluation processes.

31. The Secretariat will continue to assist States and regional economic integration organisations in their implementation of the MAC Protocol.

## **VI. ACTION TO BE TAKEN**

32. *The Governing Council is invited to take note of progress in implementing the MAC Protocol to the Cape Town Convention.*