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**GOVERNING COUNCIL**  
**101<sup>st</sup> session**  
**Rome, 8 - 10 June 2022**

UNIDROIT 2022  
C.D. (101) 14  
Original: English  
May 2022

**Item No. 6 on the agenda: International Interests in Mobile Equipment**

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

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation 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="#"><u>MACPC/4/Doc. 5</u></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 purpose of this document is to update the Governing Council on work undertaken since the 100<sup>th</sup> session of the Governing Council in September 2021 to implement the MAC Protocol.

**II. STATUS**

2. 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.

3. The activities to implement the MAC Protocol are being advanced under the auspices of the MAC Preparatory Commission.

### III. THE PREPARATORY COMMISSION

4. As consistent with the implementation of the other Cape Town Convention Protocols and [Resolution 1 of the MAC Protocol Diplomatic Conference](#), a Preparatory Commission has been established to act as Provisional Supervisory Authority for the MAC Protocol. The UNIDROIT Secretariat has been designated as the Secretariat of the Preparatory Commission pursuant also to Resolution 1. The Preparatory Commission operates under the guidance of the Governing Council and General Assembly of UNIDROIT. Customarily, the Preparatory Commission also performs an important role in encouraging States to sign, implement and ratify the Protocol. The Preparatory Commission currently has 16 Member States.<sup>1</sup>

5. The first session of the Preparatory Commission took place via videoconference between 21 and 22 May 2020 and was attended by 38 participants.<sup>2</sup> The second session of the Preparatory Commission took place via videoconference between 10 and 11 December 2020 and was attended by 33 participants.<sup>3</sup> The third session of the Preparatory Commission took place via videoconference between 3 and 4 June 2021 and was attended by 32 participants.<sup>4</sup> The fourth session of the Preparatory Commission took place in hybrid format between 17-18 January 2022 and was attended by 41 participants.<sup>5</sup>

6. 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

7. 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 Conference Final Act had invited the governing bodies of the International Financial Corporation (IFC) to consider undertaking the functions of Supervisory Authority upon or after the entry into force of the Protocol. However, in 2020, the IFC informed the MAC Preparatory Commission that it was unable to undertake the role.

8. Over the past years, the UNIDROIT Secretariat has made strenuous efforts to identify an existing international body willing to undertake the role of Supervisory Authority.<sup>6</sup> Mostly due to the scope of the Protocol, which covers three different economic sectors, the Secretariat has been unable to identify appropriate organisations willing to undertake this role. As such, there are two possible remaining options:

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<sup>1</sup> Australia, Canada, the Republic of Congo, the People's Republic of China, France, The Gambia, Germany, the Republic of Ireland, Japan, Republic of Korea, Nigeria, Paraguay, Spain, South Africa, the United Kingdom and the United States.

<sup>2</sup> The report from the Preparatory Commission's first session is available here: [MACPC/1/Doc. 9](#).

<sup>3</sup> The report from the Preparatory Commission's second session is available here: [MACPC/2/Doc. 6](#).

<sup>4</sup> The report from the Preparatory Commission's third session is available here: [MACPC/3/Doc. 6](#).

<sup>5</sup> The report from the Preparatory Commission's fourth session is available here: [MACPC/4/Doc. 5](#).

<sup>6</sup> See [UNIDROIT 2021 – C.D. \(100\) B.11](#), paras 10-14, [UNIDROIT 2021 – C.D. \(100\) B.12](#), paragraphs 3-5.

- (i) Establish a new international entity to undertake the role, with UNIDROIT as its Secretariat, similar to the approach adopted under the Luxembourg Rail Protocol.<sup>7</sup>
- (ii) Consider whether UNIDROIT could undertake the role of Supervisory Authority.

9. At its 100<sup>th</sup> session in 2021, the Governing Council discussed (i) the suitability of UNIDROIT undertaking the role of Supervisory Authority of the International Registry to be established under the MAC Protocol, and, to a limited extent, (ii) how the Supervisory Authority functions could be incorporated into UNIDROIT's governance structure. No consensus was reached on these matters. The Governing Council requested that the Secretariat prepare further detailed information on the specific tasks that would be required from the Governing Council, should UNIDROIT be appointed as Supervisory Authority, and an analysis of a dual system, with a new international entity created to perform the role of Supervisory Authority, with UNIDROIT as its Secretariat.<sup>8</sup> The Governing Council will be provided with a separate document addressing these issues for discussion at its 101<sup>st</sup> session.

## **B. Selection of a Registrar to operate the MAC Protocol International Registry**

10. 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 on 4 November 2020 ([MACPC/Registrar/W.G./1/Doc. 4](#)), the second session was on 26 February 2021 ([MACPC/Registrar/W.G./2/Doc. 4](#)), the third session was on 7 May 2021 ([MACPC/Registrar/W.G./3/Doc. 4](#)), and the fourth session was on 20 May 2021.

11. Following its fourth session, the Registrar Working Group submitted the 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. The Registrar Working Group submitted the draft RFP to the Preparatory Commission with a recommendation that the document was sufficiently developed to begin the tender process.

12. At its third session, the Commission evaluated the draft RFP and requested that States nominate experts with relevant expertise to conduct a final review of the RFP and to prepare guidance for the Evaluation Committee, which will assist the Preparatory Commission in evaluating the proposals submitted in response to the RFP. Seven additional experts from four Members States of the Commission were nominated and joined the fifth and sixth sessions of the Registrar Working Group which took place on 16 November and 21 December 2021 respectively.

13. The Registrar Working Group resubmitted the RFP alongside an Evaluation Committee Guidance Document to the Preparatory Commission at its fourth session. Both documents were

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<sup>7</sup> Under the Luxembourg Rail Protocol, a new international entity will be established to perform the role of Supervisory Authority, with the Intergovernmental Organisation for International Carriage by Rail (OTIF) acting as the Supervisory Authority Secretariat.

<sup>8</sup> See [UNIDROIT 2021 – C.D. \(100\) B.24 – Report](#), paragraphs 160 – 186.

approved by the Commission and the Secretariat was instructed to publish the RFP on behalf of the Commission, as well as start the process of establishing the Evaluation Committee.

14. The Request for Proposals for the International Registry for MAC Equipment was published on 21 March 2022. The Secretariat organised a Solicitation Conference to promote the RFP on 1 April 2022.<sup>9</sup> The RFP is presently open, and the bidders may submit their proposals by 21 July 2022.

15. Concurrently, the Secretariat has invited Member States of the Preparatory Commission to nominate experts for the Evaluation Committee which will evaluate all the proposals received in response to the RFP.

### **C. Preparation of the first edition of the International Registry Regulations**

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

17. 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 has 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.

18. 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 draft Regulations were duly included as an Annex to the Request for Proposal when it was publicised on 21 March 2022.

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

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

20. As of April 2022, 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 signed the MAC Protocol on 1 October 2020 at a ceremony held at the UNIDROIT Headquarters in Rome.

21. 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

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<sup>9</sup> The published RFP can be found on this page: <https://www.unidroit.org/macrfp/>.

governments and industry. UNIDROIT continues to work closely with the private sector through the MAC Working Group in implementing the MAC Protocol and has scheduled private sector consultations in Washington DC in May 2022.

22. To promote the MAC Protocol in Europe, on 27 January 2022, the UNIDROIT Secretary-General delivered a presentation to the European Union Working Party on Civil Law Matters on the MAC Protocol's benefits for the European Union. It is anticipated that the European Union will sign the MAC Protocol during the French Presidency of the European Council (January – June 2022).

23. To promote the MAC Protocol in the Asia-Pacific region, UNIDROIT is in the process of establishing 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.

24. Additionally, to promote the MAC Protocol in Africa, the Secretariat presented the treaty to the Board of the Leasing Association of Kenya on 15 September 2021. The Secretariat has also continued to engage on an *ad hoc* basis with other States, including India, Kazakhstan, Pakistan, Spain, Ukraine and Uzbekistan.

## **V. FUTURE STEPS**

25. The Secretariat is supporting the Preparatory Commission and its subgroups in order to facilitate the earliest possible entry into force for the MAC Protocol.

26. The deadline for entities to submit proposals for the International Registry for MAC Equipment is 21 July 2022. Once the deadline elapses, the Secretariat will confirm arrangements for the creation of the Evaluation Committee, which will meet in August and September 2022 to evaluate all proposals received. It is anticipated that the Preparatory Commission will hold its fifth session in October or November 2022, at which the Preparatory Commission will decide which entity should be invited to begin negotiations to build and operate the Registry. It is anticipated that the entity will build the Registry during 2023 and that it will be ready to begin operation in 2024.

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

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

28. *The Governing Council is invited to note of progress towards implementing the MAC Protocol to the Cape Town Convention.*