



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

**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 FIFTH SESSION
(Hybrid session, 22-23 November 2022)**

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1. The fifth 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 between 22 and 23 November 2022. The session was held as a hybrid event allowing for both in-person and videoconference participation. The Commission was attended by 40 participants from 10 Member States of the Commission, three observing organisations, *ex officio* observers from the Diplomatic Conference and members of the UNIDROIT Secretariat (the List of Participants is available in Annexe I).

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

2. *The Chair* welcomed participants to the fifth session. It was noted that simultaneous interpretation for the meeting was available in both English and French.

3. *The UNIDROIT Secretary-General* thanked all representatives for their participation and welcomed those participants that had travelled to Rome to participate in-person.

4. Having verified that quorum had been constituted under Rule 21 of the Rules of Procedure, *the Chair* declared the session open.

Item No. 2 Adoption of the annotated draft order of business of the session (MACPC/5/Doc. 1)

5. *The Preparatory Commission adopted the draft Order of Business (MACPC/5/Doc. 1, available in Annexe II).*

Item No. 3 Consideration of the Report of the Evaluation Committee and selection of a Registrar (MACPC/5/Doc. 2)

[This section of the report is not publicly available]

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

31. *The Chair* invited the Secretariat to provide an update on matters related to the appointment of a Supervisory Authority.

32. *The Secretariat* introduced the item, with reference to Paragraphs 5 – 10 of the Annotated Agenda (MACPC/5/Doc. 1). It was recalled that at its third session, the Preparatory Commission had invited UNIDROIT to initiate its internal procedures to determine whether the Institute was willing to accept the role of Supervisory Authority.

33. The Secretariat provided an update regarding the UNIDROIT Governing Council's consideration of the matter at its 101st session (Rome, 8 – 10 June 2022). It was explained that at its 101st session, the Governing Council considered a comprehensive document prepared by the Secretariat that evaluated the relative merits of (i) the suitability of UNIDROIT undertaking the role of Supervisory Authority, and (ii) establishing a separate entity to perform the role of Supervisory Authority ([C.D. 101 \(15\)](#)). The Secretariat noted that while a majority of the Governing Council Members that

expressed a view on the matter supported UNIDROIT undertaking the role of Supervisory Authority, the Governing Council remained unable to reach consensus.

34. The Secretariat further explained that in order to allow the Governing Council to make a decision at its 102nd session in May 2023, the Governing Council decided to establish an ad hoc Committee, composed of interested Governing Council Members and public international and treaty law experts, to discuss the unresolved public international law matters. Composed of 10 members, the ad hoc Committee had begun its work in November 2022 with a mandate to report back to the Governing Council in early 2023. The Secretariat concluded that UNIDROIT should be a position to provide more clarity on whether it would be able to undertake the role of Supervisory Authority at the Preparatory Commission's sixth session in the second half of 2023.

35. *The Preparatory Commission invited UNIDROIT to continue its internal procedures to determine whether the Institute was willing to accept the role of Supervisory Authority and report back to Preparatory Commission at its sixth session.*

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

36. *The Chair* invited the Chair of the Regulations Working Group to provide an update on the development of the draft regulations for the MAC Registry.

37. *The Chair of the Regulations Working Group* reminded the Commission that at its third session it had approved the draft regulations and deemed them sufficiently developed for inclusion as an annex to the RFP. It was noted that the draft regulations, as approved by the Preparatory Commission, were contained in Annex 5 of the RFP when it was published.

38. The Chair of the Regulations Working Group suggested that it would be necessary for the Regulations Working Group to reconvene in 2023 to further develop the draft regulations. It was further suggested that the Regulations Working Group should meet once contractual negotiations with the entity likely to be appointed as Registrar were sufficiently advanced to the extent that it would be appropriate for the entity to participate in discussions regarding the regulations. The Chair of the Regulations Working Group concluded that it would be important for the Regulations Working Group to meet with the likely Registrar before the conclusion of the contract between the Supervisory Authority and the Registrar, as the timeline for the Registrar to submit the System Design Document to the Supervisory Authority following the conclusion of the contract was fairly short and might not allow sufficient time for technical consultations regarding the regulations.

39. *The Preparatory Commission noted the Chair of the Regulations Working Group's report.*

Item No. 6 Implementation update and establishment of a Ratification Task Force (MACPC/5/Doc. 3)

40. *The Chair* opened the floor for participants to provide updates on their efforts to promote and implement the MAC Protocol.

41. *A representative of Spain* reaffirmed Spain's commitment to ratify and implement the MAC Protocol, as first expressed at the Diplomatic Conference in 2019. The representative noted that as the European Union had not yet ratified the Protocol, there had been no specific progress towards ratification in Spain since the Preparatory Commission's fifth session in January 2022.

42. *A representative of Ireland* requested further information regarding the European Union's consideration of the MAC Protocol.

43. With reference to paragraph 3 of the document MACPC/5/Doc. 3, *the Secretariat* confirmed that the European Union signed the MAC Protocol on 20 September 2022. The Secretariat noted that the European Commission had indicated to UNIDROIT that the timeline for the European Union to ratify the MAC Protocol would depend on the support for ratification articulated by European Union Member States in the relevant fora. The Secretariat encouraged those Preparatory Commission Members that were also European Union Member States to actively support the European Union's ratification process in order to allow European Union Member States to begin their own individual ratification processes as soon as possible. *The Secretary-General* added that the European Union ratification process was not considered to be a controversial matter and had not been opposed by any European Union Member States.

44. *A representative of the MAC Working Group* noted that earlier in November 2022, the Board of the Association of Equipment Manufacturers (AEM) had approved the promotion, adoption and ratification of the MAC Protocol as a top public policy priority for 2023 and 2024. It was explained that the AEM represented 1,100 equipment manufacturers in the United States and from around the world that had operations in the United States. It was noted that the AEM Board had also allocated the necessary financial resources to support the promotion and implementation of the MAC Protocol around the world in 2023 and 2024. *Another representative of the MAC Working Group* noted that the allocated resources would allow the Working Group to formalise its operations, and support the promotion of the MAC Protocol in partnership with the US State Department, the US Commerce Departments and other supportive governments. The representative concluded that one avenue of promoting the implementation of the MAC Protocol would be through side events at existing high visibility international and regional fora, including World Bank events, the African Leaders Summit and the Asia Pacific Economic Cooperation (APEC) forum.

45. *A representative of the United States* thanked the MAC Working Group for its update and welcomed the news regarding the decision made by the AEM Board of Directors. The representative concluded that industry support for essential for the success of the MAC Protocol.

46. The Preparatory Commission noted the updates provided by Preparatory Commission Members and observers regarding the implementation of the MAC Protocol.

47. *The Chair* asked the Secretariat to introduce the proposal to establish a Ratification Task Force.

48. With reference to paragraphs 7 – 11 of Doc. MACPC/5/Doc. 3, *the Secretariat* explained that in order to strengthen efforts to promote and implement the MAC Protocol, the Preparatory Commission was invited to consider establishing a MAC Protocol Ratification Task Force (RTF). The concept of establishing a MAC RTF was based on the creation of a Luxembourg Rail Protocol Ratification Task Force in 2014 to support the implementation of the Luxembourg Rail Protocol. The Secretariat further explained that the RTF would be an informal group of interested stakeholders that would meet on a regular basis to coordinate strategy and initiatives to promote and implement the MAC Protocol. The RTF would be composed of (i) supportive Member States, (ii) supportive International Intergovernmental and Non-Governmental Organisations, (iii) the MAC Working Group (representing private sector stakeholders), (iv) the Registrar for the International Registry for MAC Equipment (once appointed), (v) the Supervisory Authority (once appointed), and (vi) the UNIDROIT Secretariat.

49. The Secretariat further noted that participation in the RTF would be on a voluntary basis and there would be no financial obligations for members. The RTF would meet virtually on a quarterly basis. The main objectives of the RTF would be:

- a. To develop different strategies and initiatives for the promotion and implementation of the MAC Protocol.
- b. To maintain a table tracking the implementation status of the MAC Protocol in different countries.
- c. To coordinate efforts and resources to promote and implement the MAC Protocol.
- d. To organise events to promote and implement the MAC Protocol.
- e. To develop strategies, documents and marketing materials for the promotion of the MAC Protocol.

50. The Secretariat concluded that should the Preparatory Commission decide to establish a MAC Protocol Ratification Task Force, the UNIDROIT Secretariat could circulate invitations to interested stakeholders with the intention of holding the first meeting virtually in the first quarter of 2023.

51. *A representative of the United States* expressed support for the establishment of a MAC RTF and noted that the United States would be pleased to participate in the RTF once it had been established.

52. *A representative of Spain* expressed support for the establishment of a MAC RTF and expressed support for the RTF to have the objectives expressed in paragraph 10 of document MACPC/5/Doc. 3.

53. *A representative of the MAC Working Group* expressed support for the establishment of a MAC RTF and noted that the MAC Working Group would be pleased to join the RTF once it had been established.

54. *A representative of the Kozolchyk National Law Center* expressed support for the establishment of a MAC RTF and noted that the Kozolchyk National Law Center would be pleased to join the RTF once it had been established. The representative noted that he had been working with industry representatives in order to try to replicate the success that the Aviation Working Group had achieved in promoting the implementation of the Aircraft Protocol. It was suggested that the MAC Protocol should be included in the agenda in the relevant meetings of global organisations and industry stakeholder events. The representative concluded that another avenue of promoting the MAC Protocol would be the negotiation of an export credit agency discount agreement with the OECD, based on the Aircraft Sector Understanding negotiated for the Aircraft Protocol. The representative reaffirmed the Kozolchyk National Law Center's commitment to assist UNIDROIT in its promotion of the MAC Protocol.

55. *A representative of the International Law Institute* expressed support for the establishment of a MAC RTF and noted that the International Law Institute would be pleased to join the RTF once it had been established. The representative noted that the International Law Institute had been promoting the ratification of the MAC Protocol in the context of assisting States around the world to domestic secured transactions reforms. The representative concluded by noting that he had recently promoted the implementation of the MAC Protocol in Kenya, where the government was actively considering the matter.

56. *A representative of the United Kingdom* expressed in principle support for the establishment of a RTF, and requested further information on what its membership would be.

57. Drawing on the experiences of the Luxembourg Rail Protocol RTF, *the Deputy Secretary General* suggested that it might be best for the RTF to be composed of States and organisations that

wished to play an active role in promoting the implementation of the MAC Protocol. In that regard, the Deputy Secretary-General further suggested that initially limiting participation to highly motivated States and organisations might improve the coordination and functioning of the MAC RTF. The Deputy Secretary-General concluded that participation in the RTF should not entail any mandatory financial obligations, however it could be necessary for participants to consider providing funding for specific promotion and implementation activities.

58. *A representative of the United States* agreed that it would be preferable for the RTF to initially be composed of a small group of highly motivated participants, with the possibility of expanding membership at a later stage. The representative also agreed that targeted financial contributions to support specific implementation activities would be required, but was not currently in a position to make any such commitments. The representative concluded that one activity that should be considered as a medium-term priority was the updating and preparation of additional economic assessments on the predicted impact of the MAC Protocol, as the global economic assessment prepared for the consideration of the MAC Protocol Committee of Governmental Experts in 2018 was almost five years old.

59. *A representative of Spain* also agreed that it would be preferable for the RTF to initially be composed of a small group of highly motivated participants.

60. *A representative of the International Law Institute* drew the Preparatory Commission's attention to paragraph 5(c) of MACPC/5/Doc. 3, which highlighted the importance of targeted impact messaging in promoting the MAC Protocol. The representative agreed that the MAC Protocol should be promoted as a treaty that strengthens international rule of law, international cooperation, trade, development, food security, supports financial inclusion and combats climate change. *A representative of Spain* agreed, noting that situating the MAC Protocol as part of a broader narrative on combating climate change and supporting the UN Sustainable Development Goals was essential in promoting the instrument.

61. *A representative of Ireland* queried what the invitation process for the RTF would be. *The Secretariat* responded that, on the basis of the Preparatory Commission's discussion, the Secretariat would initially invite all Preparatory Commission members and observing organisations to join the RTF, and that those States and organisations that wished to play an active role in the promotion and implementation of the Protocol were encouraged to join. The Secretariat concluded that States might wish to join the RTF in order to support the global adoption of the MAC Protocol, even if they were not currently in a strong position to progress their own domestic implementation of the instrument.

62. *The Preparatory Commission approved the establishment of a MAC Protocol Ratification Task Force, as proposed in document MACPC/5/Doc. 3. The Preparatory Commission requested that the Secretariat invite all Preparatory Commission participants to become members of the Ratification Task Force, and encouraged those participants that wished to play an active role in the promotion and implementation of the Protocol to consider joining the new body.*

Item No. 7 2022 revision of the Harmonized System (MACPC/5/Doc. 4)

63. *The Chair* invited the Secretariat to provide an update on the 2022 revision of the Harmonized Commodity Description and Coding System (HS) and its implications for the MAC Protocol.

64. With reference to MACPC/5/Doc. 4, *the Secretariat* reminded the Commission that the scope of the MAC Protocol in relation to mining, agricultural and construction equipment was determined by the 56 HS codes listed in the MAC Protocol Annexes. The Secretariat further noted that the HS

codes listed in the MAC Protocol Annexes were based on the 2017 edition HS, which was the nomenclature in force at the time that the MAC Protocol was adopted in November 2019.

65. The Secretariat explained that the HS 2022 revision was the seventh edition of the HS nomenclature and became effective on 1 January 2022. The new HS 2022 revision comprised of 351 sets of amendments covering a range of goods moving across borders which related mainly to new product streams in international trade. The Secretariat noted that following the entry into force of the HS 2022 revision on 1 January 2022, the Secretariat had undertaken an analysis on the 56 HS codes listed in the MAC Protocol Annexes and whether they were affected by the HS 2022 revision. With reference to Annexe 1 of Doc. 4, the Secretariat noted that the analysis had confirmed that neither the English nor French versions of the MAC Protocol were affected by the HS 2022 revision and that the MAC Protocol thus remained consistent with the HS edition currently in force.

66. The Secretariat noted that the next HS revision would be adopted in 2027. UNIDROIT would continue to monitor developments and engage with the WCO in advance of the 2027 revision being adopted to determine whether the 56 codes listed in the MAC Protocol Annexes would be affected.

67. *The Preparatory Commission noted that the MAC Protocol remained consistent with the 7th edition of the Harmonized System, which entered into force on 1 January 2022.*

Item No. 8 Timetable and planning of future work

68. *The Secretariat* explained the proposed timetable for future work, based on the Preparatory Commission's decisions at its fifth session. In particular, the Secretariat suggested specific timelines in relation to several of the Preparatory Commission's responsibilities:

69. Appointment of a Registrar: the Secretariat would write to the tenderers informing them of their ranking by 1 December 2022. The Secretariat would then propose a negotiating team to represent the Preparatory Commission in negotiations with the preferred tenderer(s) by 31 December 2022, for approval through the Preparatory Commission's written decision-making mechanism. Once the negotiation team had been approved, negotiations would then begin in January or February 2023, which the intention of having a final contract for consideration by the Preparatory Commission within six months.

70. Appointment of a Supervisory Authority: The Secretariat would continue to support the Governing Council ad hoc Committee in its evaluation of whether UNIDROIT could accept the role of Supervisory Authority, and would report back to the Preparatory Commission at its sixth session.

71. Development of Registry Regulations: The Regulations Working Group would reconvene in 2023 to further develop the Regulations, once contractual negotiations with the entity likely to be appointed as Registrar were sufficiently advanced to the extent that it would be appropriate for the entity to participate in the development of the regulations.

72. Ratification Task Force: The Secretariat would send out invitations to Preparatory Commission members and interested observers to join the Ratification Task Force. The Ratification Task Force would then hold its first meeting remotely in the first quarter of 2023. Meetings would then be scheduled on a quarterly basis thereafter and the Ratification Task Force would report back to the Preparatory Commission at its sixth session.

73. Preparatory Commission sixth session: The Secretariat suggested that in order to allow the negotiation team to negotiate and submit an acceptable final contract with the future Registrar to

the Preparatory Commission for the Commission's consideration and approval, the Preparatory Commission's sixth session should be scheduled between September and November 2023.

74. *The Commission agreed on the timelines and future work proposed by the Secretariat.*

Item No. 9 Any other business

75. *The Chair opened the floor for any other business.*

76. *A representative of Australia suggested that the future MAC Registry should consider charging different fees to users in different countries, on the basis determining what would constitute a 'low fee' would vary depending on the GDP of each ratifying State. The representative concluded that the matter could be discussed further within the Regulations Working Group and in negotiations with the bidder(s).*

77. *A representative of Spain supported the suggestion made by the representative of Australia. The representative explained that the fees charged would be a fundamental aspect of the negotiations with the bidder(s), and concluded that negotiations should also take into account technological developments and interoperability considerations.*

78. *A representative of Ireland noted that the Form 5 of the RFP included the key contract terms and conditions that should provide the basis of the negotiations between the negotiation team and the bidder(s).*

79. *The Secretary-General confirmed that the rules in the RFP would form the basis of the negotiations with the bidder(s) and that the negotiating team would be able include the matters raised by the representatives of Australia and Spain as part of the negotiations.*

80. *The Chair thanked (i) the attendees for their positive contributions, (ii) the Secretariat for providing the documentation for the meeting and (iii) the interpreters for their work during such a technical meeting. The Chair encouraged participants to consider in-person attendance at the Preparatory Commission's sixth session in 2023.*

81. *The Secretary-General thanked his colleagues Mr William Brydie-Watson and Mr Hamza Hameed for supporting the operation of the Preparatory Commission, with special mention of Mr Hameed's outstanding work on the RFP and Evaluation Committee process.*

Item No. 10 Closing of the session

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

83. *The Chair closed the fifth session of the Commission.*

ANNEXE I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****REPRESENTATIVES / REPRÉSENTANTS****STATES / ÉTATS**

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MAC WORKING GROUP	Mr Daryl BOUWKAMP Senior Director International Business Development, Government Affairs, Vermeer Mr Alexander RUSS Global Affairs Manager Association of Equipment Manufacturers (AEM)

EX OFFICIO OBSERVERS

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CHAIRPERSON OF THE HS CODES WORKING GROUP / <i>PRÉSIDENT, GROUPE DE TRAVAIL DES CODES SH</i>	Mr Ole BÖGER Judge Hanseatic Court of Appeal in Bremen

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Mr Hamza HAMEED
Legal Consultant / *Consultant*

Mr Camilo SALDÍAS
Pro bono Consultant

ANNEXE II**ORDER OF BUSINESS**

1. Opening of the session and welcome by the UNIDROIT Secretary-General
2. Adoption of the annotated draft order of business of the session (MACPC/5/Doc. 1)
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7. 2022 revision of the Harmonized System (MACPC/5/Doc. 4)
8. Timetable and planning of future work
9. Any other business
10. Closing of the session