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Item No. 7 on the agenda: International Interests in Mobile Equipment

(d) 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 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 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related document</i>	<u>MACPC/5/Doc. 5</u>

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.
2. The purpose of this document is to update the Governing Council on work undertaken since its 102nd session (Rome, 10-12 May 2023) to implement the MAC Protocol.

II. STATUS

3. The MAC Protocol is not yet in force. There are three 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 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 required to implement the MAC Protocol are being advanced under the auspices of the MAC Preparatory Commission.

III. THE PREPARATORY COMMISSION

5. 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 to Resolution 1. The Preparatory Commission operates under the guidance of UNIDROIT's Governing Council and General Assembly. Customarily, the Preparatory Commission also performs an important role in encouraging States to sign, implement and ratify the Protocol. The Preparatory Commission is comprised of 16 Member States¹ and has held six sessions.²

6. The Preparatory Commission has three key responsibilities: Appointment of a Supervisory Authority; Selection of a Registrar to operate the MAC Protocol International Registry; and Preparation of the first edition of the International Registry Regulations.

A. Appointment of a Supervisory Authority

7. A separate document on the appointment of UNIDROIT as Supervisory Authority has been prepared for consideration by the Governing Council at its 103rd session (see UNIDROIT 2024 – C.D. (103) 17). The below paragraphs provide a brief summary.

8. Article 17 of the Cape Town Convention requires that each Protocol must have a Supervisory Authority to oversee the operation of the international registry established under that Protocol. Article XIV of the MAC Protocol provides that the Supervisory Authority will be the international entity designated pursuant to a resolution of the MAC Protocol Diplomatic Conference. Resolution 2 of the Diplomatic Conference Final Act had originally 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, which has required the Preparatory Commission to identify another entity to designate as Supervisory Authority.

9. In 2021, after an exhaustive process³ to identify another appropriate existing body willing to undertake the role of Supervisory Authority, the MAC Preparatory Commission invited UNIDROIT to initiate its internal procedures to determine whether the Institute was willing to accept the role of Supervisory Authority.⁴ The Governing Council considered the matter over three sessions between 2021 – 2023, and also established an ad hoc Committee to consider several public international law matters associated with UNIDROIT undertaking the Supervisory Authority role. Based on the recommendations of the ad hoc Committee, at its 102nd session (Rome, 10-12 May 2023) the

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

² The first session of the Preparatory Commission took place via videoconference on 21-22 May 2020 and was attended by 38 participants ([MACPC/1/Doc. 9](#)). The second session of the Preparatory Commission took place via videoconference on 10-11 December 2020 and was attended by 33 participants ([MACPC/2/Doc. 6](#)). The third session of the Preparatory Commission took place via videoconference on 3-4 June 2021 and was attended by 32 participants ([MACPC/3/Doc. 6](#)). The fourth session of the Preparatory Commission took place in hybrid format on 17-18 January 2022 and was attended by 41 participants ([MACPC/4/Doc. 5](#)). The fifth session of the Preparatory Commission took place in hybrid format on 22-23 November 2022 and was attended by 40 participants ([MACPC/5/Doc. 5](#)). The sixth session took place in hybrid format on 11-12 April 2024 and was attended by 33 participants.

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

⁴ See [MACPC/3/Doc. 6](#), para 25.

Governing Council decided that it would be preferable for UNIDROIT to undertake the Supervisory Authority role, rather than establishing a new intergovernmental entity to perform the role.⁵ As a result, the Governing Council referred the matter to the UNIDROIT General Assembly for further consideration, with a recommendation that UNIDROIT accept appointment as the Supervisory Authority to be established under the MAC Protocol.⁶ The UNIDROIT General Assembly Considered the matter at its 82nd session in December 2023. 11 Member States⁷ expressed support for UNIDROIT accepting the role of Supervisory Authority, whereas one State⁸ suggested it would be preferable to establish a new international body to perform the role. On this basis, the General Assembly agreed that UNIDROIT should inform the MAC Protocol Preparatory Commission that it would be willing to accept the role of Supervisory Authority, on the precondition that the costs associated with undertaking the function are fully compensated.⁹ At its sixth session in April 2024, the MAC Preparatory Commission formally designated UNIDROIT as the Supervisory Authority under the MAC Protocol, to take effect on entry into force of the Protocol. The next steps for UNIDROIT as Supervisory Authority designate are set out in document UNIDROIT 2024 – C.D. (103) 17.

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 RFP was developed by the Registrar Working Group over seven sessions¹⁰ and approved by the Preparatory Commission at its fourth session in January 2022.

11. The RFP was published on 21 March and closed on 1 September 2022. Four bids were submitted in response to the RFP. An Evaluation Committee established by the Preparatory Commission assessed the bids according to the methodology set out in the RFP itself and submitted a report to the Preparatory Commission. The Preparatory Commission considered the Evaluation Committee's report at its fifth session in November 2022. The Preparatory Commission approved the ranking of the four bidders as recommended by the Evaluation Committee and agreed to negotiate in sequence with the bidders in order of their ranking.

12. The Preparatory Commission established a negotiation team to undertake the contract negotiations on its behalf, including individuals with expertise in the technical aspects of building and operating a registry, as well as individuals with expertise in the evaluation of financial matters. The composition of the negotiation team was approved by the Preparatory Commission in February 2023. In compliance with the request from the Preparatory Commission, the Secretariat also commissioned an independent evaluation of the preferred bidder's financial proposal, with financial support from the MAC Working Group. Undertaken by consulting firm PWC and completed in August 2023, the

⁵ The decision was not unanimous: 16 Governing Council Members supported UNIDROIT becoming Supervisory Authority, whereas three Governing Council Members supported the establishment of a new international entity to be the Supervisory Authority, with UNIDROIT as its Secretariat. The Governing Council's discussion and the different views expressed by Governing Council Members are available in the 102nd session report ([C.D. \(102\) 25](#), paras 238 – 271).

⁶ The Governing Council's discussion and the different views expressed by Governing Council Members are available in the 102nd session report ([C.D. \(102\) 25](#), paras 238 – 271).

⁷ Australia, Brazil, France, India, Japan, Paraguay, Poland, South Africa, Spain, the United Kingdom and the United States of America.

⁸ Canada.

⁹ See the UNIDROIT General Assembly 82nd session Report ([UNIDROIT 2023 – A.G. \(82\) 11](#)), paras 58 – 76.

¹⁰ The Registrar Working Group met seven 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](#)), the fourth session was on 20 May 2021 (no report), the fifth session took place on 16 November 2021 (no report), the sixth session took place on 21 December 2021 (no report) and the seventh session took place on 13 June 2022 (no report).

evaluation found that the preferred bidder's financial proposal was satisfactory. The evaluation was submitted to the Preparatory Commission in September 2023, which allowed the organisation of the contract negotiations with the preferred bidder to commence thereafter.

13. Following several initial coordination and planning meetings in late 2023, contract negotiations began in January 2024. The Contract Negotiation Team undertook negotiations with the preferred bidder over a period of approximately 50 hours across seven sessions,¹¹ as well as several intersessional internal coordination meetings. In March 2024, the Contract Negotiation Team submitted a draft contract to the MAC Preparatory Commission, with a recommendation that the draft contract sufficiently met the Commission's core objectives¹² and was ready for signature. At its sixth session in April 2024, the Preparatory Commission approved the draft contract and authorised its finalisation, subject to a final independent evaluation to be provided by the international law firm DLA Piper on a *pro bono* basis. The Preparatory Commission also decided to establish a Registry Working Group to work with the appointed Registrar to establish the international registry.

14. It is anticipated that the Registry Contract will be finalised in the coming weeks, after which the Registry Working Group will begin work with the appointed Registrar to undertake the necessary steps to establish the international registry, including (i) the conclusion of the Master Services Agreement, the Deed of Business Continuity, and the Software Security Agreement and (ii) the preparation of a project implementation plan and Registry Figma Prototype.

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

15. 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). Over four sessions in 2020 and 2021,¹³ the Regulations Working Group resolved a number of policy and technical issues relating to the operation of the future MAC International Registry. 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 RFP when it was published on 21 March 2022.

16. The Regulations Working Group was reconvened in early 2024 to consider updating the draft Regulations in tandem with the contract negotiations for the appointment of a Registrar.¹⁴ Following the sixth session, the Working Group approved a revised version of the draft Regulations which was considered by the Preparatory Commission at its sixth session in April 2024. The Preparatory

¹¹ Contract negotiation sessions were held on (i) 11 January, (ii) 1 February, (iii) 7-8 February, (iv) 21 February, (v) 12-13 March, (vi) 19 March and (vii) 25 March 2024.

¹² (i) The draft contract required the contractor to establish and operate the MAC Registry in compliance with the requirements set out in the RFP, and the preferred bidder's response to the RFP, (ii) the draft contract provided a clear and reasonable timeline for the establishment of the MAC Registry that will ensure the registry will be operational as soon as possible after the requisite number of States have ratified the MAC Protocol, (iii) the draft contract provided financial consequences should the contractor not fulfil its contractual obligations, and (iv) the draft contract provided mechanisms for the Supervisory Authority to step in to ensure the continued operation of the MAC Registry, should the contractor be unwilling or unable to continue to act as registrar.

¹³ 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](#)).

¹⁴ The Regulations Working Groups fifth session was held virtually on 19 February 2024, and the sixth session was held virtually on 19 March 2024.

Commission approved the revised draft Regulations, which will become the Baseline Regulations (as incorporated as a schedule in the Registry Contract).

17. The Registrar designate, Regulations Working Group and MAC Protocol Diplomatic Conference Rapporteur Sir Roy Goode all identified several matters in the draft Regulations that require further consideration. These matters will be considered by the Registry Working Group and Registrar designate in the coming months, once the Registry Contract has been finalised and signed.

IV. RATIFICATION AND PROMOTION OF THE MAC PROTOCOL

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

19. As of April 2023, five States (the Republic of the Congo, the Republic of The Gambia, the Republic of Paraguay, the Federal Republic of Nigeria and the United States of America) and one regional economic integration organisation (the European Union) have signed the Protocol. The Republic of the Congo, the Republic of The Gambia, the Republic of Paraguay and the Federal Republic of Nigeria signed the Protocol at the Diplomatic Conference on 22 November 2019. The United States of America signed the MAC Protocol on 1 October 2020 at a ceremony held at the seat of UNIDROIT in Rome. The European Union signed the MAC Protocol on 20 September 2022.

20. The MAC Protocol is under consideration in several States around the world. In many such States, following recent governmental meetings with the UNIDROIT Secretariat, consideration is at a preliminary stage (Brazil, India, Japan and China). In other States, the treaty has been under long-term consideration and there has been some progression towards Government approval and the development of implementing legislation (e.g., Kenya and Mauritius).

21. One State is close to ratification: the Republic of Paraguay. In August 2023, the President and Foreign Minister of Paraguay recommended that the Paraguayan Parliament approve the MAC, Rail and Space Protocols to the Cape Town Convention (Paraguay is already a Contracting State of the Cape Town Convention and the Aircraft Protocol). In December 2023, the Paraguayan Senate approved the ratification of the three Protocols. In March 2024, the Paraguayan Chamber of Deputies approved the ratification of the three Protocols. It is anticipated that in the coming weeks the Paraguayan President will formally enact the three treaties and deposit the instruments of ratification with the UNIDROIT Secretariat, which will make Paraguay the first Contracting State of the MAC Protocol as well as the first country in the world to be party to all four protocols of the Convention.

A. The MAC Protocol Ratification Task Force

22. At its fifth session in November 2022, the Preparatory Commission decided to create a MAC Protocol Ratification Task Force (RTF) to support the implementation of the MAC Protocol. The RTF is an informal group of interested stakeholders that meets on a quarterly basis to coordinate strategy and initiatives to promote and implement the MAC Protocol. The RTF is currently composed of four States, one international organisation, private sector representatives, the Registrar designate and the UNIDROIT Secretariat.¹⁵

¹⁵ The RTF is currently composed of Germany, Ireland, the United Kingdom, the United States of America, the MAC Working Group, the International Law Institute, the Registrar Designate and the UNIDROIT Secretariat. Australia and Japan are also currently considering joining the RTF.

23. The RTF has held three sessions over the past nine months.¹⁶ During these sessions, the RTF worked on the following initiatives:

- (a) Establishment of a digital sharepoint for all RTF members to upload and access relevant materials.
- (b) Creation of a table tracking the implementation status of the MAC Protocol in different countries.
- (c) Adoption of the MAC Protocol as a policy priority by relevant international and regional fora:
 - (i) International Organisations: Organisation for Economic Cooperation and Development (OECD)
 - (ii) International Financial Institutions: Asian Development Bank (ADB), Asian Infrastructure and Investment Bank (AIIB), European Bank for Reconstruction and Development (EBRD), World Bank Group (WBG)
 - (iii) Regional bodies: Asia-Pacific Economic Cooperation (APEC), East African Community (EAC), the European Union (EU)
- (d) The organisation of future events to promote and implement the MAC Protocol:
 - (i) Virtual briefing for US Embassies in specific African States that have already ratified the Cape Town Convention (led by the MAC Working Group) (2024)
 - (ii) Organisation of an event on the MAC Protocol around the annual Cape Town Academic Conference in Cambridge, United Kingdom (September 2024)
 - (iii) Organisation of an APEC Workshop on the agriculture finance and the MAC Protocol in Japan (2025)
- (e) Development of a list of up to 10 priority States to which RTF members can provide ratification support in 2024 and 2025.
- (f) Collaboration on the launch of a new website for the MAC Working Group.
- (g) Collaboration on the preparation of a new MAC Protocol benefits assessment for the MAC Protocol, to update the 2018 Economic Assessment.

B. Promotion of the MAC Protocol

24. 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. Over the last 12 months, these activities include:

- (a) Presentation for Georgian Legal experts on the operation and legal benefits of the Cape Town Convention and its Protocols (Rome, May 2023).
- (b) Presentation to African legal experts as part of the UNIDROIT International Law and Development Programme on how the MAC Protocol could provide legal and economic benefits for African States (Rome, July 2023).
- (c) Workshop for the Indian Government on the legal and economic benefits of the MAC Protocol (New Delhi, July 2023).

¹⁶ The RTF held its first session on 5 October 2023, its second session on 19 December 2023 and its third session on 12 April 2024.

- (d) Remote presentation during Policy Dialogue during the APEC Economic Committee on the benefits of the implementation of the MAC Protocol in the Asia Pacific region (Seattle, August 2023).
- (e) Presentation on how the Cape Town Convention and the MAC Protocol could support the European Bank for Reconstruction and Development (EBRD)'s core work to the EBRD Legal Transition Team (London, September 2023).
- (f) Presentation on how the MAC Protocol will support mechanisation and economic development at the UN Food and Agriculture Organization Mechanization Conference (Rome, September 2023).
- (g) Presentation of the legal and economic benefits of the MAC Protocol at an APEC Workshop on Secured Transactions Reform (Tokyo, October 2023).
- (h) Remote presentation on the MAC Protocol to the Strategic Committee of the European Agricultural Machinery Industry (CEMA). The presentation focused on how the MAC Protocol would facilitate new export opportunities for European agricultural equipment manufacturers, and support several CEMA policy priorities (Brussels, October 2023).
- (i) Presentation to the Mongolian Ministry of Justice and a broad group of stakeholders on how the MAC Protocol would provide legal and economic benefits in Mongolia (Ulan Baatar, November 2023).
- (j) Presentation on how the MAC Protocol will support the Asian Infrastructure and Investment Bank (AIIB) in achieving its Infrastructure for Tomorrow (i4t) agenda and its four thematic priorities of green infrastructure, connectivity and regional cooperation, technology-enabled infrastructure and private capital mobilization (Beijing, December 2023).
- (k) Presentation to the Equipment Financing and Leasing Association (ELFA) on the benefits of the MAC Protocol for the equipment finance industry (Washington DC, January 2024).
- (l) Presentation to the World Bank Group on how the MAC Protocol would complement the legal reforms undertaken by the World Bank Group to facilitate private sector investment and develop financial markets globally (Washington DC, January 2024).
- (m) Quarterly virtual meetings with the MAC Working Group.

V. FUTURE STEPS

25. The Secretariat will (i) continue to support the work of the Preparatory Commission, the Registrar Working Group and the Ratification Task Force, and (ii) continue cooperation with the Registrar designate and MAC Working Group, in order to facilitate the earliest possible entry into force of the MAC Protocol. The Secretariat will also continue to directly assist States and regional economic integration organisations in their implementation of the MAC Protocol.

VI. ACTION TO BE TAKEN

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