



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**

UNIDROIT 2024
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Sixth session (hybrid)
Rome, 11 April 2024

**SUMMARY REPORT
OF THE SIXTH SESSION
(Hybrid session, 11 April 2024)**

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1. The sixth 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 on 11 April 2024. The session was held as a hybrid event allowing for both in-person and videoconference participation. The Commission was attended by 33 participants from 11 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 II of this report).

Item No. 1 Opening of the session

2. *The Chair* welcomed participants to the sixth session. It was noted that simultaneous interpretation for the meeting was available in both English and French. Participants were given the opportunity to introduce themselves.

3. 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 draft order of business of the session (MACPC/6/Doc. 1)

4. *The Preparatory Commission* considered the annotated draft Order of Business (MACPC/6/Doc. 1).

5. *The Chair* drew the Commission's attention to an issue regarding the Commission's quorum rule in the Rules of Procedure, and queried whether the Commission wished to discuss it during the session. Pursuant to Rule 13 of Rules of Procedure, *a representative of the United Kingdom* proposed the inclusion of the discussion of quorum as an additional item in the order of business of the session.

6. *Representatives of Australia, Germany, Ireland, Japan, Spain and the United States of America* expressed support for the United Kingdom's proposal. With reference to the Rule 13 of Rules of Procedure, the Chair confirmed that at least two-thirds of participating Commission Members had agreed to the inclusion of the additional item in the Order of Business, which became Item 7.

7. *The Commission adopted the Order of Business* (the Order of Business is available in Annexe I of this report).

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

8. *The Chair* drew the Commission's attention to document MACPC/6/Doc. 6, which provided an update on the work undertaken by the Ratification Task Force (RTF), as established by the Commission at its fifth session in November 2022. *The Chair* invited the Secretariat to provide a summary on the work undertaken by the RTF.

9. *The Secretariat* reminded the Commission that the RTF was an informal group consisting of interested parties (including States, intergovernmental organisations, private sector representatives and individual experts) dedicated to working collectively on securing the five ratifications required for the MAC Protocol's entry into force. It was explained that the RTF was a joint exercise between voluntary participants which entailed no financial commitments, and all Commission Members interested in actively supporting MAC Protocol ratification globally were invited to join the RTF. The Secretariat emphasised that participation in the RTF by a State was not a commitment to ratify the MAC Protocol, but rather a commitment to promote the ratification of the MAC Protocol around the world. The Secretariat summarised the work undertaken by the RTF over its first two sessions. The

Secretariat noted that as of April 2024, the MAC Protocol had been signed by five States¹ and the European Union, and that it was anticipated that Paraguay would ratify the Protocol in the coming months. The Secretariat concluded by thanking all RTF members for their work on the ratification and global promotion of the MAC Protocol.

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

11. *A representative of the United States of America* thanked the Secretariat for its update and for supporting the work of the RTF. The representative explained that the United States had been working on the development of a regional project under the auspices of the Asia-Pacific Economic Cooperation (APEC) forum that would promote ratification of the MAC Protocol in the Asia-Pacific region.

12. *A member of the MAC Working Group representing US industry* noted that there had been increasing engagement with the MAC Protocol from industry stakeholders. The representative highlighted three different initiatives that the Working Group had been involved in. First, it was noted that the Working Group was working on the launch of a dedicated MAC Protocol website which would provide a user-friendly repository of information to assist in the promotion and implementation of the treaty. Second, the Working Group was working on promoting the MAC Protocol during the “the Celebration of Modern Agriculture on the National Mall” in Washington DC in May 2024. It was explained that during the event, the MAC Protocol would be promoted to diplomatic representatives from Australia, Brazil, Canada, Chile, China, the Czech Republic, France, Germany, Hungary, Mexico, Spain, Sweden, Thailand, the United Kingdom, and the Organisation for Economic Cooperation and Development (OECD). Third, the representative explained that the Working Group was working to formalise its operations through a memorandum of understanding between various national associations of equipment manufacturers, which would allow the private sector to increase its resources and capacity to promote the ratification of the MAC Protocol.

13. *The Chair of the Strengthening Economic Legal Infrastructure (SELI) subgroup of the APEC Economic Committee* introduced the work that had been undertaken by APEC in promoting secured transactions law reform in the Asia-Pacific region. It was explained that the MAC Protocol had been promoted during three recent APEC events: (i) an APEC workshop on “Modernising Secured Transaction Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolution Mechanisms” (Tokyo, May 2022), (ii) an Economic Committee Policy Dialogue on “Improving Access to Credit in the Asia Pacific through Asset-Based Finance - the Cape Town Convention and its MAC Protocol” (Seattle, August 2023), and (iii) an APEC Workshop on “Secured Transaction Reform: Developing Tailored Approaches for Common Law and Civil Law Jurisdictions” (Tokyo, October 2023). It was noted that the APEC Economic Committee and its SELI subgroup was considering formally adopting a project on secured transaction reform as part of its work programme, which would include the implementation of the MAC Protocol. He concluded that the concept note for the proposed project would be considered at the Economic Committee meeting in August 2024.

14. *A member of the MAC Working Group representing Japanese industry* affirmed that the Japan Construction Equipment Manufacturers Association (CEMA) had signed the cooperation MOU with other national industry associations in January 2024 and was supportive of the discussions on the MAC Protocol. The representative explained that the Japanese industry had contacted the Japanese government and requested that the Japanese government exchange views with industry for the formulation of government policies and to take actions on this matter. The representative concluded that Japanese industry would be pleased to remain actively engaged with both the MAC Preparatory

¹ The Republic of Congo, the Republic of Gambia, the Republic of Paraguay, the Federal Republic of Nigeria, and the United States of America.

Commission and the RTF in supporting the discussions on the MAC Protocol. *A representative of Japan* confirmed that the Japanese industry had communicated its support for the MAC Protocol to the Japanese government, and that the government was further considering how it could assist further.

15. *The Preparatory Commission* thanked the RTF and its participants for its work in promoting the implementation of the MAC Protocol.

Item No. 4 Designation of a Supervisory Authority (MACPC/6/Doc. 2)

16. *The Chair* introduced the item, highlighting the interdependent relationship between the designation of the Supervisory Authority, the revised draft Regulations, and the draft Contract for the Establishment and Operation of the International Registry for Interests in Mining, Agricultural and Construction Equipment ("draft Contract"). The Chair reminded the Commission that at its third session (remote, June 2021), the Commission had invited UNIDROIT to initiate its internal procedures to determine whether it was willing to be designated as the Supervisory Authority of MAC Registry. *The Chair* invited UNIDROIT to provide an update on its deliberations.

17. With reference to document MACPC/6/Doc. 2, the *Secretary-General* provided a brief background on the matter. He recalled that the Resolutions of the MAC Protocol Diplomatic Conference in November 2019 specifically invited the International Finance Corporation of the World Bank Group (IFC) to accept the role of Supervisory Authority. Due to a change of management and direction, the IFC subsequently informed the Commission that it was unable to accept the role. Following a long process that was ultimately unsuccessful in identifying another relevant international entity willing to accept the Supervisory Authority role, UNIDROIT had been asked whether it would consider accepting the role. The *Secretary-General* emphasised that it was not UNIDROIT's preference to become Supervisory Authority, but the Institute had been willing to consider the matter in order to ensure that the MAC Protocol would enter into force as soon as possible.

18. *The Secretary-General* summarised UNIDROIT's internal process for considering the matter, which had involved the procurement of independent legal advice on relevant public international law matters, consideration by the Governing Council between 2021 and 2023, and consideration by the General Assembly in 2023. It was noted that at the Governing Council's 102nd session (Rome, May 2023), 16 Council Members had indicated support for UNIDROIT accepting designation as Supervisory Authority, whereas three Council Members had expressed a preference for establishing a new entity to perform the role with UNIDROIT as its Secretariat. It was explained that at the UNIDROIT General Assembly's 82nd session (Rome, December 2023), the General Assembly had approved UNIDROIT becoming Supervisory Authority, with 11 Member States expressing support for UNIDROIT accepting the role of Supervisory Authority and one State indicating a preference to instead establish a new international body. The *Secretary-General* concluded that UNIDROIT had thus confirmed it was in a position to accept designation as Supervisory Authority by the Preparatory Commission, subject to the mandatory prerequisite that all costs associated with undertaking the function would be provided in advance through extrabudgetary funding and would not come from UNIDROIT Member State contributions.

19. *The Secretariat* further drew the Commission's attention to Paragraph 18 of document MACPC/6/Doc. 2, which provided a cost estimate of UNIDROIT performing the role of Supervisory Authority. The Secretariat confirmed that UNIDROIT would not begin its role as Supervisory Authority until the MAC Protocol entered into force, and that the Preparatory Commission would continue in its role as provisional Supervisory Authority until entry into force. It was noted that the cost of the Supervisory Authority functions would be provided by fee revenue from the future Registry, however, this would only occur once there was a sufficient number of transactions generating adequate fees. It was explained that during the transitional period between entry into force of the Protocol and the

point at which Supervisory Authority costs could be fully provided by Registry fees, UNIDROIT would need support from interested parties in order to begin its role as Supervisory Authority. It was further explained that the draft Contract provided a waterfall mechanism which provided that for the first five years after entry into force, an increasing percentage of Supervisory Authority costs would be recovered from Registry fees, and the shortfall would be provided by interested parties. It was noted that the Secretariat would undertake consultations with interested parties regarding the provision of the transitional period funding required for UNIDROIT to begin its role as Supervisory Authority. Finally, the Secretariat explained that document MACPC/6/Doc. 2 also provided additional information in relation to the costs estimate for UNIDROIT to perform the Depositary function, recalling that UNIDROIT had been designated as MAC Protocol Depositary at the Diplomatic Conference in 2019.

20. *A representative of the United States of America* expressed support for the designation of UNIDROIT as Supervisory Authority. The representative queried how UNIDROIT had prepared its Supervisory Authority costs estimate and whether costs were expected to increase over time. *The Secretariat* explained that it had used three sources of the information for calculating the costs estimate: (i) the actual costs incurred by the International Civil Aviation Organisation (ICAO) in performing its function as Supervisory Authority under the Aircraft Protocol, (ii) the anticipated costs of the Intergovernmental Organisation for International Carriage by Rail (OTIF) in performing its function as Secretariat to the Supervisory Authority under the Luxembourg Rail Protocol, and (iii) the Secretariat's own experience as the Secretariat to the MAC Protocol Preparatory Commission. The Secretariat noted that UNIDROIT had tried to ensure that the estimate would be both accurate and reasonable, noting that UNIDROIT's estimate was 20% lower than the average annual ICAO costs under the Aircraft Protocol, and constituted approximately 9% of the projected annual costs of hosting, maintaining and operating the Registry.

21. *A representative of the United States of America* further queried whether there would be additional savings from UNIDROIT undertaking the role of both Supervisory Authority and Depositary, on the basis that it would simplify communication between the two entities. *The Secretariat* acknowledged that there would be some savings and convenience from UNIDROIT performing both roles, however it was unlikely to significantly affect the overall costs of associated with either function, as communication between the Supervisory Authority and Depositary were very minor parts of each entity's overall responsibilities.

22. *A representative of the United States of America* noted an error in the document, and clarified that under the MAC Protocol, the Depositary could only recover costs associated with its duties under Article 62(2) of the Convention and Article XXXVII(2)(c)-(f) of the MAC Protocol, which generally related to changes in the Harmonized System Codes listed in the MAC Protocol Annexes. *The Secretariat* agreed with the United States, notwithstanding the significant costs that UNIDROIT currently incurred in relation to the general Depositary functions under the Cape Town Convention and all four of its Protocols.

23. *A representative of Spain* expressed support for UNIDROIT being designated Supervisory Authority.

24. *A representative of the United Kingdom* expressed support for UNIDROIT being designated Supervisory Authority. The representative queried whether third party funding would be required once the Registry was generating sufficient fee income, noting that UNIDROIT required up-front provision of its projected Supervisory Authority costs each year, rather than reimbursement. *The Secretariat* confirmed that it was expected that the Registry would be generating sufficient fee income after five years that it would be in a position to provide UNIDROIT with its projected Supervisory Authority costs up-front, and that there would be no need for ongoing third party funding at that point.

25. *A representative of Ireland* confirmed its support for the designation of UNIDROIT as Supervisory Authority. The representative asked how the interim financing would be determined amongst interested parties. *The Secretariat* clarified that the issue required further discussion, and that negotiations on the matter would intensify as the MAC Protocol approached entry into force.

26. *A representative of Australia* expressed support for UNIDROIT being designated Supervisory Authority.

27. The Preparatory Commission designated UNIDROIT as the Supervisory Authority of the International Registry for Interests in Mining, Agricultural and Construction equipment to be established under the MAC Protocol.

Item No. 5 Report of the Negotiation Team (MACPC/6/Doc. 3), consideration of the draft Contract for the Establishment and Operation of the International Registry for Interests in Mining, Agricultural and Construction Equipment (MACPC/6/Doc. 4), and establishment of a Registry Working Group

[This section of the report is not publicly available]

Item No. 6 Consideration of the revised draft Regulations for the International Registry for interests in MAC equipment (MACPC/6/Doc. 5)

48. *The Chair* invited the Chair of the MAC Regulations Working Group to provide an introduction to the revised draft Regulations (MACPC/6/Doc. 5).

49. *The Chair of the MAC Regulations Working Group* provided an overview of the Regulations Working Group's proposed revisions to the draft Regulations, which had been developed during two virtual sessions in early 2024. The Chair recalled that the draft Regulations had previously been approved by the Preparatory Commission at its third session in June 2021, on the basis that they were sufficiently well-developed for inclusion in the RFP. It was explained that the Regulations Working Group had proposed only a limited number of revisions in relation to Sections 3.8, 5.1 and 5.11 of the draft Regulations. The Chair noted that it would be likely that further revisions would be required in the future, taking into account both the suggestions made by Sir Roy Goode (detailed in MACPC/6/Doc. 7), and based on the experience of the Registrar in developing the MAC Registry. The Chair concluded that it would be appropriate for those possible amendments to be considered in more detail by the Preparatory Commission at future sessions, and that the revised draft Regulations were appropriately developed to be approved as the Baseline Regulations in the Registry contract.

50. *The Chair* opened the floor for comments on the revised draft Regulations.

51. *A representative of France* sought additional explanation regarding the proposed changes to Section 5.1 of the revised draft Regulations. *The Chair of the MAC Regulations Working Group* explained that the proposed changes to Section 5.1 clarified that the primary registration criterion for interests in MAC equipment would be the equipment's ISO-complaint serial number assigned to the object by the manufacturer. The Chair further explained that the additional criteria would only be required when the MAC equipment did not have an ISO-compliant serial number. *The representative of France* thanked the Chair for the additional clarification and noted that France was supportive of the proposed amendment.

52. *A representative of France* asked whether the revised draft Regulations provided the languages in which information could be provided in the Registry. *The Chair of the MAC Regulations Working Group* explained that the language requirements for the Registry were set out in the Registry

contract rather than the Regulations. The Chair made a distinction between the languages in which registrations could be made, and the languages in which the Registry itself was available in. *The Secretariat* noted that Clauses 12.5 and 12.6 of the draft Contract provided that the Registry front-end interface and helpdesk services from the Go-Live date would be in English, French and Spanish. It was noted that the front-end interface and helpdesk services could also be made available in other languages in the future, depending on the official languages of the States that ratified the Protocol.

53. The Preparatory Commission thanked the MAC Regulations Working Group for its work. The Preparatory Commission approved the revised draft Regulations for inclusion in the Registry contract as the Baseline Regulations. The Preparatory Commission thanked the Rapporteur for his comments on the revised draft Regulations and agreed that the Rapporteur's comments should be further considered by the Registry Working Group, once it had begun its work.

Item No. 7 Consideration of the Preparatory Commission's Rules of Procedure in relation to establishing quorum and the taking of decisions

54. *The Chair* introduced the issue, noting that Rule 21 of the Rules of Procedure stated that an absolute majority of Commission Members were required to establish quorum for the Preparatory Commission to be formally constituted and make decisions. The Chair noted that as several Commission Members were not active in attending sessions, several previous Commission sessions had been seriously in jeopardy of not establishing quorum. *The Chair* opened the floor for comments on whether the Commission should consider amending its Rules of Procedure in relation to attaining quorum and making decisions.

55. *A representative of Australia* suggested lowering the quorum requirement from "absolute majority" to "at least one third" of the Commission Members. *Representatives of the United Kingdom and the United States of America* supported Australia's proposal.

56. Pursuant to Rule 25 of the Rules of Procedure, the Preparatory Commission decided to amend Rule 21 of the Rules of Procedure to provide that "at least one third" of Commission Members would constitute a quorum for the valid formation of the Commission.

57. In light of the lower quorum requirement, *the Secretary-General* queried whether the rule for the taking of decisions required further consideration. Several different approaches were discussed, including whether a higher qualified majority for the taking of decisions should be required now that the quorum requirement had been lowered. *A representative of Australia* noted that imposing a higher voting requirement could potentially make the Commission's decision-making process even harder. *A representative of the United States of America* suggested that the decision taking rule should be amended to require that the Commission try to make decisions by consensus, and that an absolute majority of participating members would be the decision taking rule only where consensus could not be reached.

58. Pursuant to Rule 25 of the Rules of Procedure, the Preparatory Commission decided to amend Rule 21 of the Rules of Procedure to provide that the Commission should in the first instance make decisions by consensus, and if consensus could not be reached, then the Commission would make decisions by an absolute majority vote of the Commission Members participating in the session.

59. *The Chair* suggested that the Commission should continue to monitor the operation of the Rules of Procedure in light of the agreed-upon amendments, to determine whether further changes might be needed in the future.

Item No. 8 Timetable and planning of future work

60. *The Secretariat* provided an overview of the Commission's future work, and the proposed timetable for that work. In particular, the Secretariat suggested the following timelines in relation to several of the Preparatory Commission's responsibilities:

61. Review and finalisation of the Registry contract: The Contract Negotiation Team expected to receive the outcome of the independent legal review within one – two months after the Commission session. The Contract Negotiation Team would then need one – two months to finalise the content of the draft Contract, depending on the outcome of the independent legal review. As such, it was expected that the draft Contract would be signed within a maximum of four months of the Commission session, if no major issues arose during the independent legal review.

62. Registry Working Group: The Secretariat intended to formally request nominations for the Registry Working Group when circulating the draft report for the current session. The Registry Working Group would then be constituted of the approved nominated representatives, and would begin its work once the Registry contract had been signed. The Registry Working Group would begin its work later in 2024 on (i) the fulfilment of the Commission's contractual obligations, such as the preparation of the Project Implementation Plan, Figma Prototype and Master Services Agreement within one year of the Contract being signed, and (ii) consideration of amendments to the Baseline Regulations.

63. Ratification Task Force: The Ratification Task Force would continue to meet informally on a quarterly basis, and the Secretariat encouraged any interested participants to join the RTF.

64. Amendments of the Rules of Procedure: The Secretariat intended to circulate the amended version of the Commission's Rules of Procedure alongside the draft report of the current session.

65. Preparatory Commission seventh session: The Secretariat suggested that the Preparatory Commission's seventh session be scheduled between 12 and 15 months after the signing of the Contract, which was likely to be in the second half of 2025.

66. The Preparatory Commission approved the future work and timelines proposed by the Secretariat.

Item No. 9 Any other business

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

68. No other business was raised in this session.

Item No. 10 Closing of the session

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

70. *The Chair* closed the sixth session of the Commission.

ANNEXE I**ORDER OF BUSINESS**

1. Opening of the session I
2. Adoption of the annotated draft order of business of the session (MACPC/6/Doc. 1)
3. Ratification Task Force and Implementation update (MACPC/6/Doc. 6)
4. Designation of a Supervisory Authority (MACPC/6/Doc. 2)
5. Report of the Negotiation Team (MACPC/6/Doc. 3), consideration of the draft Contract for the Establishment and Operation of the International Registry for Interests in Mining, Agricultural and Construction Equipment (MACPC/6/Doc. 4), and establishment of a Registry Working Group
6. Consideration of the revised draft Regulations for the International Registry for interests in MAC equipment (MACPC/6/Doc. 5)
7. Consideration of the Commission's Rules of Procedure in relation to establishing quorum and the taking of decisions
8. Timetable and planning of future work
9. Any other business
10. Closing of the session

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

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