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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 note the progress on the implementation of the MAC Protocol to the Cape Town Convention</i>
<i>Mandate</i>	<i>Work Programme 2023-2025</i>
<i>Priority level</i>	<i>High</i>

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, or Pretoria Protocol) was opened for signature in Pretoria, South Africa on 22 November 2019. UNIDROIT is designated as the Depositary for the instrument pursuant to its Article XXXVII(1) of the Protocol. UNIDROIT's responsibilities as Depositary under the MAC Protocol include the operation of a system for the receipt and notification of all instruments of ratification, declarations, and other documents lodged with the Depositary, as well as performing the functions associated with the amendment of the Annexes. Under the 2023-2025 Work Programme, the implementation of the Pretoria Protocol continues to be given a high degree of priority.

2. The purpose of this document is to update the Governing Council on work undertaken since its 103rd session (Rome, 8 – 10 May 2024) 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: (i) appointment of a Supervisory Authority; (ii) selection of a Registrar to operate the MAC Protocol international registry; and (iii) A of the first edition of the international registry Regulations.

A. Appointment of a Supervisory Authority

7. At its sixth session in April 2024, the MAC Preparatory Commission formally designated UNIDROIT as the Supervisory Authority of the international registry to be established under the MAC Protocol, to take effect on entry into force of the Protocol.³ A separate document on UNIDROIT performing its obligations as Supervisory Authority has been prepared for consideration by the Governing Council at its 105th session (see UNIDROIT 2025 – C.D. (105) 17).

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 ([MACPC/6/Doc. 8](#)).

³ In 2021 the MAC Protocol Preparatory Commission requested that UNIDROIT consider whether it would accept the role of Supervisory Authority ([UNIDROIT 2021 – C.D. \(100\) B.11](#), paras 10-14, [UNIDROIT 2021 – C.D. \(100\) B.12](#), paras 3-5). The UNIDROIT Governing Council considered the matter between 2021 and 2023 and eventually recommended to the General Assembly by majority vote that UNIDROIT should be designated as the MAC Protocol Supervisory Authority (UNIDROIT 2024 – [C.D. \(102\) 25](#), paras 238 – 271). The UNIDROIT General Assembly agreed to the Governing Council's recommendation at its 82nd session in December 2023 and instructed the Secretariat to 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 ([UNIDROIT 2023 – A.G. \(82\) 11](#), paras 58 – 76). At its sixth session in April 2024, the MAC Preparatory Commission formally designated UNIDROIT as the Supervisory Authority, to take effect on entry into force of the Protocol ([MACPC/6/Doc. 8](#), paras 16 – 27).

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

8. Between 2020 and 2023, the MAC Preparatory Commission oversaw an international procurement process based on international best practice to select a Registrar to establish and operate the international registry under the MAC Protocol,⁴ which resulted in the identification of a preferred bidder in September 2023.⁵

9. 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,⁶ 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 objectives.⁷ 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.

10. DLA Piper provided initial advice on the draft contract in August 2024. The advice concluded that the draft contract generally met the Commission's core objectives, although DLA Piper recommended that several clauses should be subject to further negotiations. The Contract Negotiation Team undertook additional negotiation sessions with the preferred bidder between September and December 2024, with intersessional work on redrafting the relevant clauses. DLA Piper provided additional advice on the revised clauses in January 2025, which resulted in further discussions between the UNIDROIT Secretariat and the preferred bidder. The outstanding contract issues have now been largely resolved, and it is expected that the Preparatory Commission will be able to conclude and sign the contract imminently.

11. Once the Registry contract is signed, a Registry Working Group established by the Preparatory Commission will then begin work with the appointed Registrar to undertake the necessary steps to establish the international registry, including (i) the conclusion of the Master

⁴ 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 sessions (see [MACPC/Registrar/W.G./1/Doc. 4](#), [MACPC/Registrar/W.G./2/Doc. 4](#), [MACPC/Registrar/W.G./3/Doc. 4](#)) and approved by the Preparatory Commission at its fourth session in January 2022 ([UNIDROIT 2022 - MACPC/4/Doc. 5](#)). 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 ([UNIDROIT 2022 - MACPC/5/Doc. 5](#)). 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.

⁵ 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 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 ([UNIDROIT 2024 - MACPC/6/Doc. 8](#)).

⁶ 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.

⁷ (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.

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. It is anticipated that the Registry will be ready to become operational as soon as the MAC Protocol has been ratified by five States.

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

12. Between 2020 and 2024, a Regulations Working Group established by the Preparatory Commission prepared a draft of the International Registry Regulations, which was submitted to the Preparatory Commission for consideration in April 2024.⁸ The Preparatory Commission approved the revised draft Regulations at its sixth session (Rome, April 2024),⁹ which will become the Baseline Regulations (as incorporated as a schedule in the Registry Contract).

13. The Registrar designate, the Regulations Working Group and the MAC Protocol Diplomatic Conference Rapporteur Sir Roy Goode all identified several matters in the draft Regulations that might 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 signed, since, in part, the final content of the Regulations will depend on the exact content of the contractual framework agreed with the Registrar designate.

IV. RATIFICATION AND PROMOTION OF THE MAC PROTOCOL

14. As stated in the introduction to this document, UNIDROIT has been designated as the Depositary of the MAC Protocol, pursuant to Article XXXVII(1) of the [treaty](#).

15. As of April 2023, one State has ratified the MAC Protocol (Paraguay), and four States (the Republic of Congo, the Republic of The Gambia, the Federal Republic of Nigeria and the United States of America) and one regional economic integration organisation (the European Union) have signed the Protocol.¹⁰

16. Paraguay deposited its instrument of ratification of the MAC Protocol on 27 November 2024. In doing so, Paraguay became the first country to ratify all four existing Protocols to the Cape Town Convention.¹¹ The instrument of ratification and declarations made by Paraguay in ratifying the MAC Protocol provide useful models for other States in Latin America considering ratification.

17. The MAC Protocol is under consideration in several States around the world. In the past 12 months, UNIDROIT has bilaterally engaged officials in 21 States regarding the ratification of the MAC

⁸ 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, the Regulations Working Group resolved a number of policy and technical issues relating to the operation of the future MAC international registry ([MACPC/Regulations/W.G./1/Doc. 3](#), [MACPC/Regulations/W.G./2/Doc. 4](#), [MACPC/Regulations/W.G./3/Doc. 3 rev](#), and [MACPC/Regulations/W.G./4/Doc. 5](#)). 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 ([MACPC/3/Doc. 6](#)). The draft Regulations were duly included as an Annex to the RFP when it was published on 21 March 2022. The Regulations Working Group was reconvened for two sessions in early 2024 to consider updating the draft Regulations in tandem with the contract negotiations for the appointment of a Registrar. Following the sixth session, the Working Group approved a revised version of the draft Regulations which submitted to the Preparatory Commission for consideration at its sixth session in April 2024.

⁹ See [MACPC/6/Doc. 8](#), paras 48 – 53.

¹⁰ The Republic of 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.

¹¹ <https://www.unidroit.org/paraguay-becomes-first-state-to-ratify-the-full-cape-town-convention-system/>.

Protocol.¹² In many States, following recent governmental meetings with the UNIDROIT Secretariat, consideration is at a preliminary stage (e.g., 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., Mauritius).

18. UNIDROIT is also working closely with European stakeholders to work towards the ratification of the MAC Protocol by the European Union as soon as possible. The European Union has competence for several matters under the MAC Protocol, which means that European Union Member States cannot ratify the MAC Protocol until the European Union has done so. The Secretariat has been liaising closely with the European Construction Equipment Association (CECE), and the European Agricultural Machinery Association (CEMA), as well as interested EU Member States to work with the European Commission to prioritise ratification of the MAC Protocol. This has involved (i) the organisation of a consultation event in Brussels (see para 21(k) below), (ii) the preparation of materials on the benefits of the MAC Protocol for Europe, and (iii) bilateral meetings with industry stakeholders and correspondence with interested Member States, the EU Commissioner for Justice and relevant European Commission officials. The current position of the EU Commission is that at least one EU Member State must sign the MAC Protocol before the EU will consider ratification.

A. The MAC Protocol Ratification Task Force

19. The Preparatory Commission created a MAC Protocol Ratification Task Force (RTF) in 2022 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 six States, one international organisation, private sector representatives, the Registrar designate and the UNIDROIT Secretariat.¹³

20. Following its first two meetings in 2023, the RTF met twice in 2024.¹⁴ During these sessions, the RTF worked on the following initiatives:

- (a) Adoption of the MAC Protocol as a policy priority by relevant international and regional fora:
 - (i) International Financial Institutions: Asian Development Bank (ADB), Asian Infrastructure and Investment Bank (AIIB), European Bank for Reconstruction and Development (EBRD), World Bank Group (WBG).
 - (ii) International Organisations: Organisation for Economic Cooperation and Development (OECD).
 - (iii) Regional bodies: Asia-Pacific Economic Cooperation (APEC), East African Community (EAC), the European Union (EU).
- (b) 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 annual event on the MAC Protocol around the Cape Town Academic Conference in the United Kingdom each September.

¹² Australia, China, Colombia, Democratic Republic of Congo, Germany, Guatemala, Indonesia, Ireland, Japan, Papua New Guinea, Poland, Mauritius, Mongolia, Republic of Congo, Serbia, South Africa, Sweden, Uganda, United Kingdom, United States of America, Zambia.

¹³ The RTF is currently composed of Australia, Germany, Ireland, Spain, the United Kingdom, the United States of America, the MAC Working Group, the International Law Institute, the Registrar Designate and the UNIDROIT Secretariat.

¹⁴ The RTF held its first session on 5 October 2023, its second session on 19 December 2023, its third session on 12 April 2024 and its fourth session on 10 December 2024.

- (iii) Organisation of an APEC Workshop on the agriculture finance and the MAC Protocol in Japan (October 2025)
- (c) Collaboration on the launch of a new website for the MAC Working Group, which went live in April 2025 (<https://www.macprotocol.org/>). The MAC Protocol website includes information on (i) the MAC Protocol's legal, economic and sustainable development benefits, (ii) how States ratify the MAC Protocol, (iii) how industry stakeholders can join the MAC Working Group, (iv) links to relevant resources, and (v) a status map of States that have signed and ratified the Cape Town Convention and MAC Protocol.
- (d) Collaboration on the preparation of a new MAC Protocol benefits assessment for the MAC Protocol, to update the 2018 Economic Assessment.
- (e) Establishment of a digital sharepoint for all RTF members to upload and access relevant materials and creation of a table tracking the implementation status of the MAC Protocol in different countries.

B. Promotion of the MAC Protocol

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 governments and industry. Over the last 12 months, these activities include:

- (a) Presentation to African legal experts of the UNIDROIT International Programme for Law and Development on how the MAC Protocol could provide legal and economic benefits for African States (Rome, July 2024);
- (b) Policy Dialogue during the APEC Economic Committee on how the MAC Protocol could facilitate access to finance for the agricultural sector in the Asia-Pacific region (Lima, August 2024);¹⁵
- (c) Presentations by academics and the Secretariat on various aspects of the MAC Protocol to 128 legal experts at the 13th Annual Cape Town Convention Academic Conference (Cambridge, September 2024);¹⁶
- (d) International Conference regarding "Sustainable Economic Development through Credit Expansion – A Focus on the Mining, Agriculture and Construction Protocol and Rail Protocol" to 76 participants from 16 States (Cambridge, September 2024);¹⁷
- (e) Consultation workshop with 40 Japanese government officials, legal experts and private sector representatives to discuss the legal and economic impacts of the MAC Protocol, and its potential benefits and costs for Japan (Tokyo, September 2024);¹⁸
- (f) Consultations with Colombian Government Officials (Bogota, October 2024); and
- (g) Indonesian Government interdepartmental event on how Indonesia can increase engagement and benefit from its Unidroit Membership, which focused on Indonesia's consideration of the MAC and Rail Protocols (remote participation in Jakarta event, November 2024);

¹⁵ <https://www.unidroit.org/unidroit-supports-apec-agricultural-sector-secured-finance-reform-initiative-in-peru/>.

¹⁶ <https://www.unidroit.org/unidroit-and-the-university-of-cambridge-hold-the-13th-annual-cape-town-convention-academic-project-conference/>.

¹⁷ <https://www.unidroit.org/unidroit-delivers-international-conference-promoting-the-implementation-of-the-mac-protocol-and-luxembourg-rail-protocol/>.

¹⁸ <https://www.unidroit.org/unidroit-delivers-mac-protocol-consultation-workshop-for-japanese-stakeholders/>.

- (h) Consultation roundtable with Hong Kong finance companies to discuss how the MAC Protocol would improve the regional legal framework for equipment finance (Hong Kong, November 2024);¹⁹
- (i) Consultations with South African Government Officials (Pretoria, January 2025);
- (j) Consultations with the International Law Institute, the Organisation for American States, the World Bank Group, the US Chamber of Commerce and the Association of Equipment Manufacturers (Washington, February 2025);²⁰
- (k) Consultation event on the benefits of the MAC Protocol for the European Union, in partnership with the European Construction Equipment Association (CECE), and the European Agricultural Machinery Association (CEMA) (Brussels, February 2025);²¹
- (l) Organisation of consultation event with Chinese stakeholders on the benefits of the MAC Protocol for China (postponed due to weather event) (Beijing, April 2025);
- (m) Quarterly virtual meetings with the MAC Working Group.

V. FUTURE STEPS

22. 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

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

¹⁹ <https://www.unidroit.org/unidroit-co-hosts-consultation-event-on-the-implementation-of-the-cape-town-convention-and-its-protocols-in-hong-kong-china/>.

²⁰ <https://www.unidroit.org/unidroit-undertakes-consultations-with-washington-based-institutions/>.

²¹ <https://www.unidroit.org/unidroit-delivers-consultation-event-on-the-benefits-of-the-mining-agriculture-and-construction-mac-protocol-for-the-european-union-in-brussels/>.