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**MAC Protocol
Study Group
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Practical Issues

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	Analysis of practical issues facing the creation of the MAC Protocol.
<i>Action to be taken</i>	Discussion.
<i>Related documents</i>	None.

Introduction

1. This document briefly sets out several of the practical issues that must be resolved in creating the MAC Protocol. While these issues do not require immediate attention as compared to the major issues identified in the Legal Analysis (Study S72K – SG1 – Doc. 2), it is important for the Study Group to remain cognisant of them in developing the draft Protocol.

The Identification of MAC Equipment in the Registry¹

2. For an international interest to become effective between the parties as well as against third parties, both the agreement creating an interest and a registration form must sufficiently describe the asset taken as collateral. Article 18 of the Cape Town Convention defers to the individual Protocols and regulations issued thereunder to set forth rules for the identification of assets in a registration.

3. Out of the three previous protocols, the Aircraft Protocol is the only one which has entered in force so far and it is therefore also the only one with an active Registry. The Regulations and Procedures for the International Registry issued under the Aircraft Protocol prescribe in Section 5.4(c) the following requirements for identification of an aircraft object in a registration:

¹ NLCIFT pages 62 - 65

- i) type of aircraft object,
- ii) manufacturer's name,
- iii) manufacturer's generic model designation, and
- iv) manufacturer's serial number assigned to the aircraft object.

With the exception of the type of aircraft object, the other three items of information that identify the asset are also searchable criteria that a third party may enter to search the International Registry against. Unique identification of aircraft objects does not seem to pose any difficulties, as manufacturers routinely assign serial numbers and model designations. This might not always be the case with respect to all types of MAC equipment.

4. The other two protocols to the Cape Town Convention – the Railway and the Space Protocol – have not entered in force. Nevertheless, some of the discussions leading to implementation of an international registry under the Railway Protocol could provide useful guidance regarding the identification of MAC equipment in a registration because a number of railway assets are not readily and uniquely identifiable by serial numbers as aircraft objects. In particular, the Unique Rail Vehicle Identification System (URVIS) which has been devised by the Rail Working Group (RWG) might be a good starting point for the development of similar system for the identification and registration of MAC equipment.

5. The URVIS identifies railway assets uniquely and permanently, irrespective of the number of sales, location and modifications made to the asset. While RWG will retain the responsibility for maintaining and updating the URVIS standard it will, however, be the duty of manufacturers to assign URVIS designation and a code number to new railway rolling stock. These markings must remain permanent and may not be recycled even though the particular asset has been decommissioned or destroyed. With respect to the assets that have already been manufactured, their owners or secured creditors may apply for an URVIS designation. URVIS numbers will be made available by the Registrar to manufacturers, owners and secured creditors. The numbers will be issued in a standardized format of nineteen digits. The permanent marking assigned to a rail asset shall thus include the designation URVIS and the nineteen-digit code.

6. Since the scope of the MAC Protocol is yet to be determined, it remains unclear whether an URVIS-like system will be necessary. Given the diverse range of MAC equipment that could potentially fall within the scope of the Protocol, it is likely that there will be a range of different serial code systems (potentially from domestic registries or manufacturer registries) that could be utilised to register each unique object of MAC equipment on the international register. This could require a more complex registration system than that utilised under the Aircraft Protocol.

The Supervisory Authority

7. Article 17 (1) of the Cape Town Convention calls for the establishment of a Supervisory Authority which is – under Article 17 (2) – allocated a range of powers and duties, including the establishment of the International Registry, the appointment and dismissal of the Registrar, the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry, the setting of fees, the supervision of the Registrar and the provision of a procedure for dealing with complaints concerning the operation of the Registry.

8. Given the early stage in the development of the MAC Protocol the designation of a Supervisory Authority is certainly not the most urgent matter on the Agenda. However, keeping in mind that the Supervisory Authority plays a prominent role within the Convention and is essential for the well-functioning of a future MAC Protocol it might be worth to already start thinking – even at this early stage – of an institution or organisation which is best fitted and willing to act as a Supervisory Authority.

9. It is likely that the role of the Supervisory Authority for the MAC Protocol is going to be more demanding than the role of the Supervisory Authority under the Aircraft Protocol. This is due to the potential need for the Supervisory Authority to consider amending the list of MAC equipment under the Regulations due to changes in market changes and changes to technology.

10. For example, if after the MAC Protocol has come into force a new type of high value, internationally mobile and uniquely identifiable type of mining equipment is released into the market under a new HS code, it may be necessary to evaluate whether it should be included in the MAC Protocol. Completing such an evaluation could be a resource intensive endeavour.