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**MAC Protocol  
Committee of Governmental experts  
Second session  
Rome, 2 – 6 October 2017**

UNIDROIT 2017  
Study 72K – CGE2 – Doc. 12  
Original: English  
September 2017

## **COMMENTS**

(Prepared by the Republic of South Africa)

1. South Africa remains supportive of the initiative, and looks forward to working towards the realization of the positive economic consequences that it potentially holds for regions, States and their nationals.
2. South Africa would be grateful if the following comments could be disseminated to delegates at the 2<sup>nd</sup> session of the Committee of Governmental Experts:
  - 1.1 South Africa is desirous that Articles VII and X retain the options embodied in Alternative C in both Articles that afford due recognition to the primacy of the role of domestic law or domestic courts in the context, as well as that exclusion thereof may fatally exclude participation of some States.
  - 1.2 South Africa believes that the right enshrined in Section 34 of the Constitution of the Republic of South Africa, 1996 (the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum) is shared by many other States. Where options are provided for States to exercise, it is important to retain an option that will allow a State to ratify the future MAC Protocol with the inclusion of the right of domestic courts to be the final arbiter in legal disputes with reference to Article X. It is suggested that this provision be drafted in such a manner as to ensure clarity in this regard.
3. South Africa looks forward to participating in the work of the 2<sup>nd</sup> session Committee of Governmental Experts, and wishes to express its appreciation to UNIDROIT for facilitating the work of the Committee.