

MAC Protocol to CTC

Symposium for

UNIDROIT member States and States parties to the Cape Town Convention

Session 4:

The MAC Protocol –
coverage and legal innovations

Teresa Rodríguez de las Heras Ballell

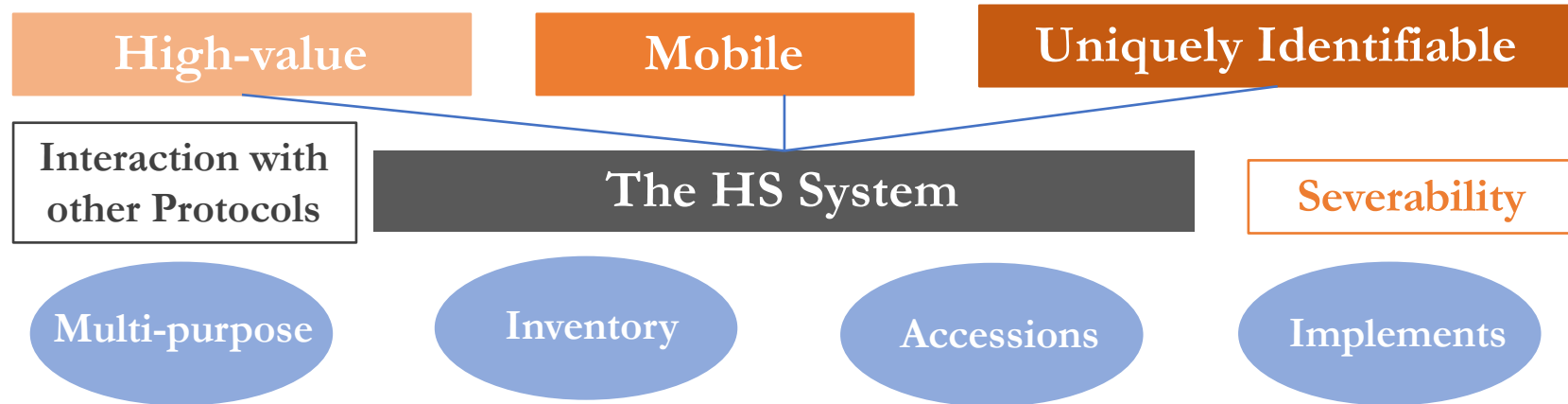
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The MAC Protocol -

I.- Coverage: Mining, Agriculture and Construction equipment



II.- Legal innovations:

Immovable-associated equipment

The MAC Protocol -

Preamble

CHAPTER I – Sphere of application and general provisions

CHAPTER II – Default remedies and priorities

CHAPTER III – Registry provisions related to MAC equipment

CHAPTER IV – Jurisdiction

CHAPTER V – Relationship with other Conventions

CHAPTER VI – Final provisions

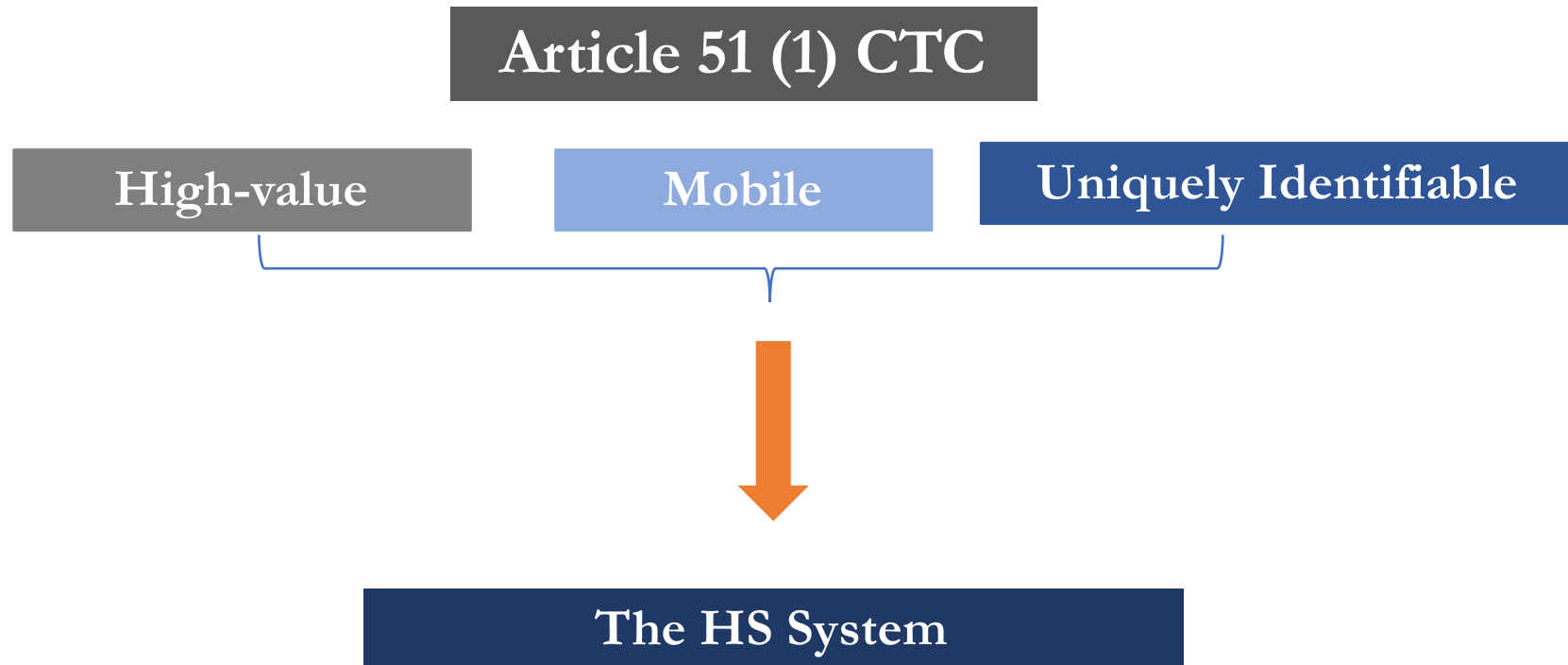
ANNEXES to the Protocol

Annex 1 Agricultural equipment

Annex 2 Construction equipment

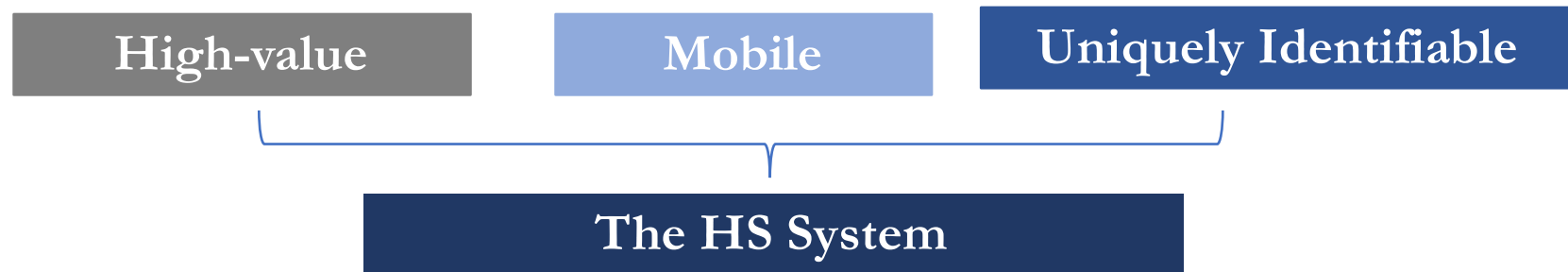
Annex 3 Mining Equipment

I.- Coverage: Mining, agriculture and Construction equipment



Article I.2.e). “Harmonized System” means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System

I.- Coverage: Mining, agriculture and Construction equipment



36 HS Codes

- 20 codes in Annex 1
- 28 codes in Annex 2
- 17 codes in Annex 3

- 9 of 36 in the 3 Annexes

FACTORS to select suitable HS codes (Tier 1):

- Used primarily in MAC industries – if general use, excluded
- High value (from 10,000-7Mill USD – unit value 100,000USD)
- Individually financed under current industry practice
- Individual serial number
- Only parts - excluded
- Significant amounts of international trade

1). Sphere of application

Art. II.1.

*Annex 1 – Agricultural equipment
- including forestry and fisheries
(aquaculture equipment)*

Annex 2– Construction equipment

Annex 3 – Mining equipment

...
843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers
– Plows

...

...
842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

...

...
843010 : Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

...

2). Severability

Art. II.3.

Art. XXXI.4.

OPT-OUT DECLARATION: States may declare that they will limit the application to one or two of the annexes

DENUNCIATIONS: A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex

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3). Multi-purpose equipment

ACTUAL USE IS NOT RELEVANT

If covered by a HS code, Protocol applies – 9 of 36 HS codes are included in the 3 Annexes

4). Inventory

NO DISTINCTION: If identifiable, Protocol applies

4). Inventory

NO DISTINCTION: If identifiable, Protocol applies

5). Interaction with other Protocols

Art. II.4.

SCOPE-DELIMITING SOLUTION: not applicable to objects falling within the definition of object under existing 3 Protocols



6). Association with other assets

Accessions

- 1). No specific provision on accession
- 2). HS codes exclusively covering parts are excluded

Implements

- 1). Discrete pieces of equipment that must be connected to other equipment to be used
- 2). HS codes may cover them and they remain capable of being registered in IR

Items other than an object

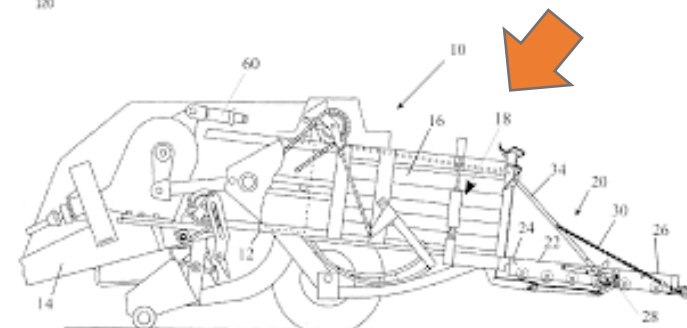
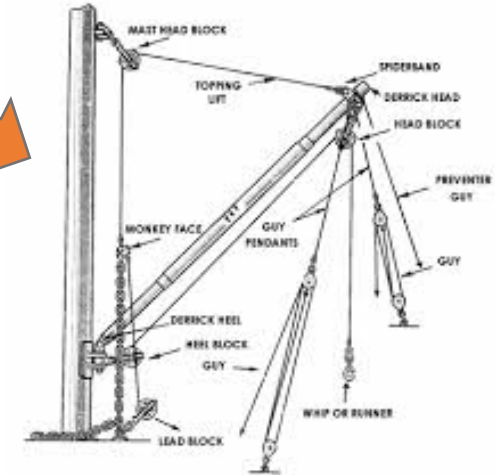
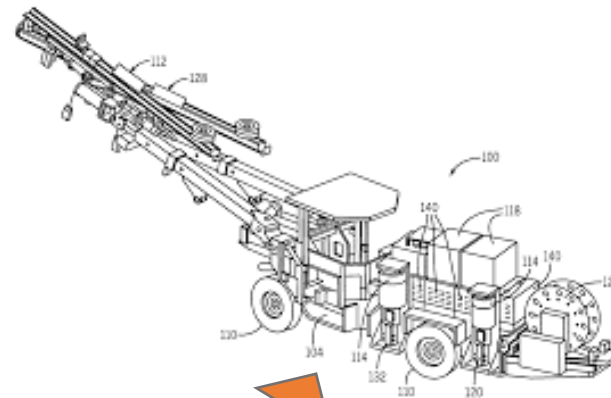
Article 29 (7) applies

6). Association with other assets

Accessions

Implements

Items other
than an object



II.- Association with Immovable Property

Art. VII

Concept: immovable-associated equipment

MAC equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated

- *Association*
- *Extension*
- *Law of situation*

Situations

- a). Ceases to exist
- b). Is subordinated
- c). Is otherwise affected by association

- *Existence*
- *Priority*
- *Other effect*

Scope: Contracting and non-Contracting State

- 1). NCS: applicable law applies
- 2). CS: DECLARATION Alternative A, B or C

- *No NCS*
- *CS: A, B, C*

II.1- Association with Immovable Property

Art. VII

ALTERNATIVES

A

NO EFFECT – PROTOCOL APPLIES: International Interest in MAC equipment continues to exist, retains priority and is not affected by the association

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Art. VII

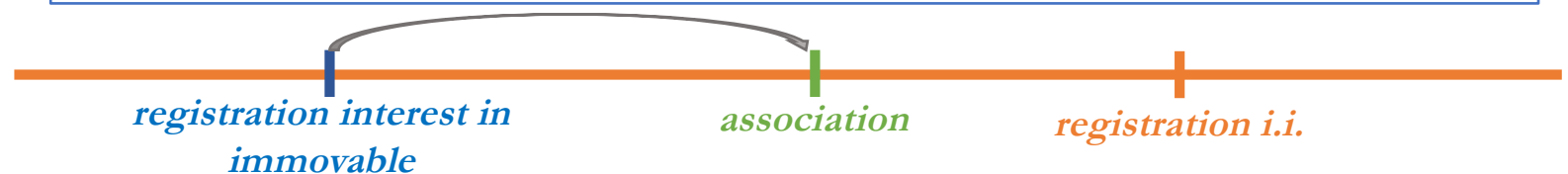
ALTERNATIVES

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NO EFFECT – PROTOCOL APPLIES: International Interest in MAC equipment continues to exist, retains priority and is not affected by the association

B

1). **LOST INDIVIDUAL LEGAL IDENTITY:** domestic law applies
2). **NO LOST IDENTITY:** immovable property interest that extents over equipment has priority **ONLY** if:
- registration of interest in immovable prior to registration of i.i.
- association prior to registration of i.i.



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*registration interest in
immovable*

association

registration i.i.

C

DOMESTIC LAW APPLIES

II.2- Identification of MAC equipment

Arts. V/XVI

A). For the purposes of the agreement:
CREATION

- **By item**
- **By type**
- **All present and future** (*no need of new act of transfer*)
- **All present and future except for specified items or types**

B). For the purposes of the
REGISTRATION

Serial number + manufacturer name
(+ supplementary info in Regulations)

II.3- Other provisions specific to MAC equipment

Arts. VIII-XXXIII

A). REMEDIES (Art. VIII): + export and physical transfer

B). INSOLVENCY (Art. X): Alternatives, A, B and C – opt-in declaration

C). SUPERVISORY AUTHORITY

D). NOTICES OF SALE (Art. XVIII): registration for information purposes only

E). AMENDMENTS AND REVIEW (Art. XXXII):

- amendments of the Protocol
- addition of HS code
- realign Annexes to HS system



UNIDROIT

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