

Financing of high-value equipment: mining, agricultural and construction (MAC Protocol)

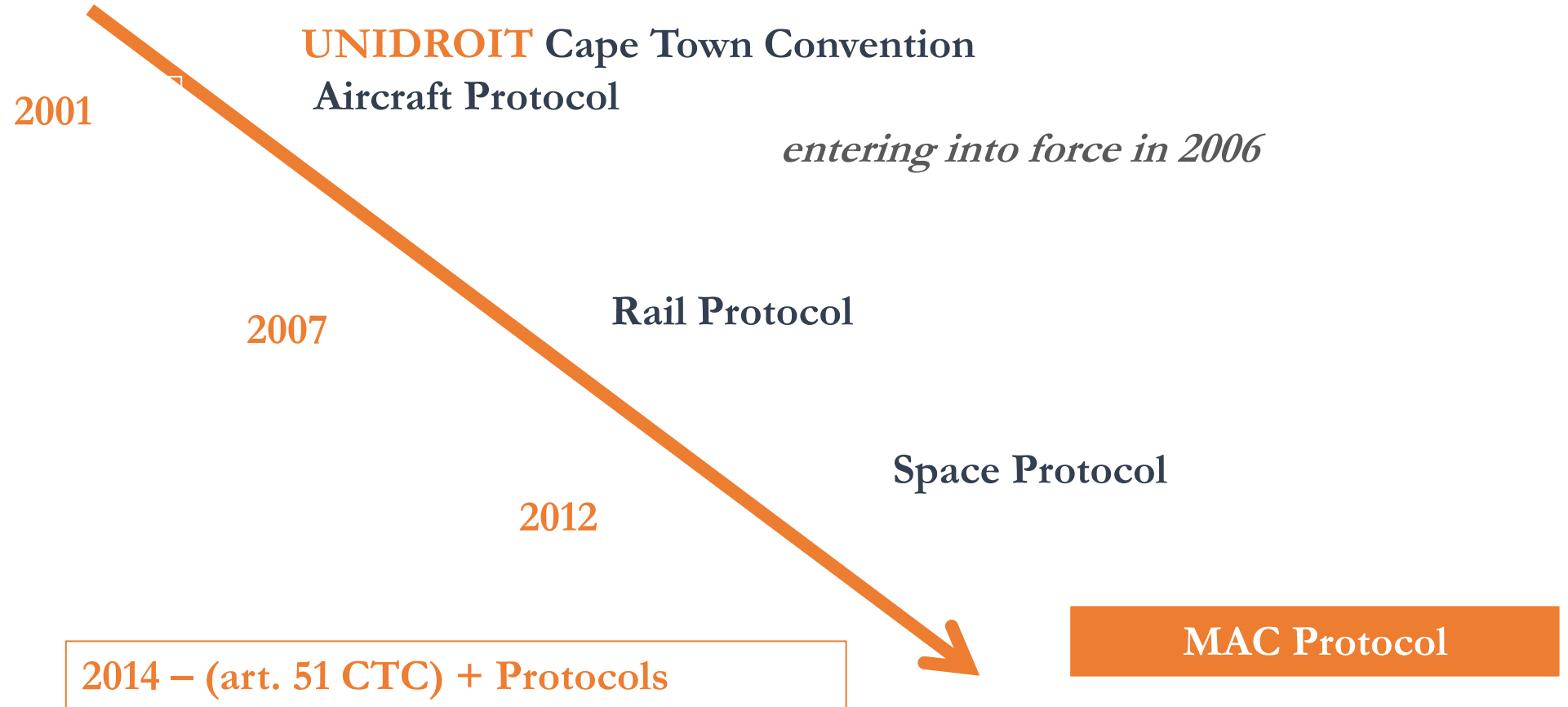
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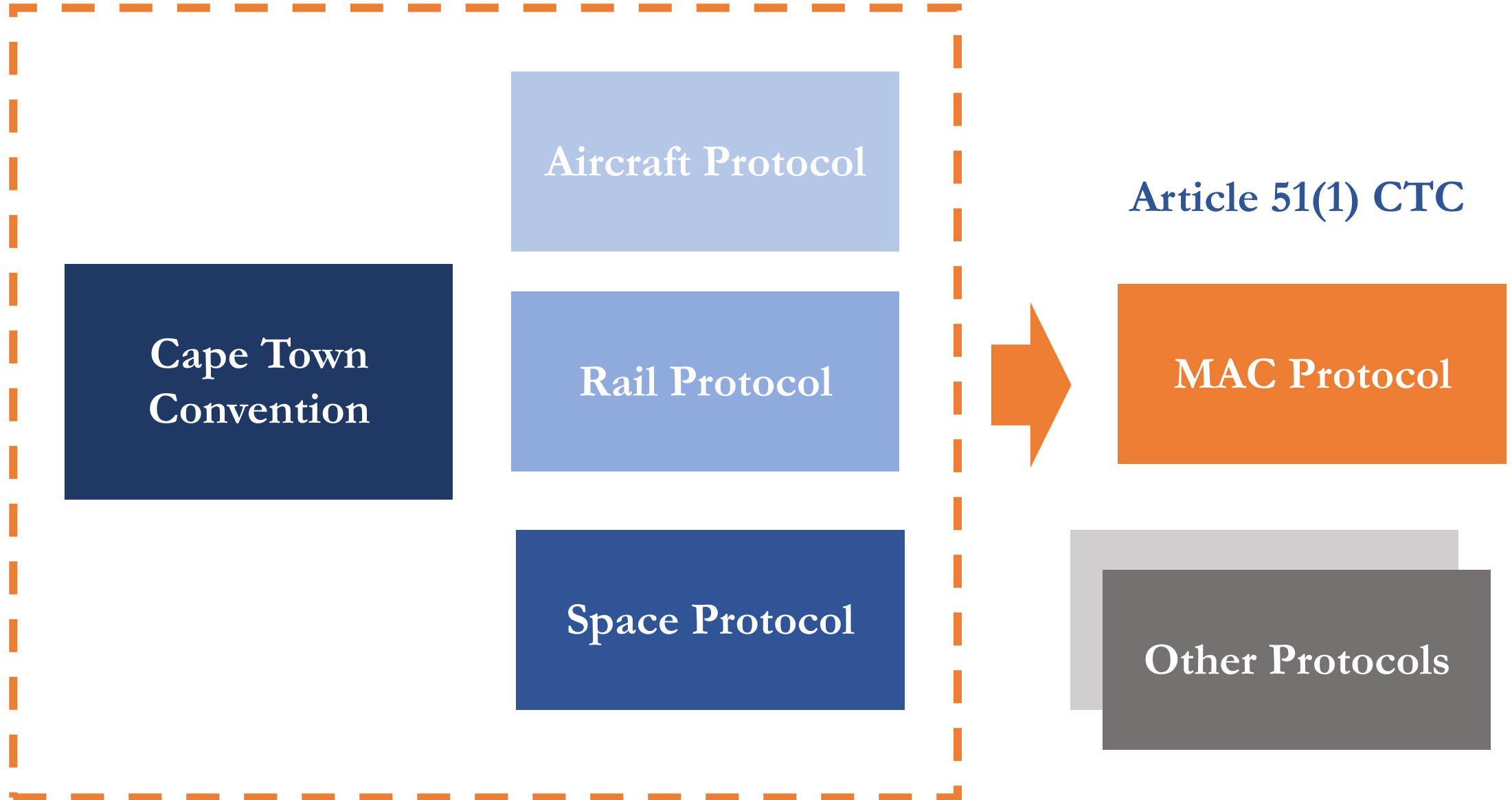
Sir Roy Goode Scholar at UNIDROIT, Rome, 2021-2022

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THE CAPE TOWN CONVENTION SYSTEM: EVOLUTION



HOW TO EXPAND THE CAPE TOWN SYSTEM



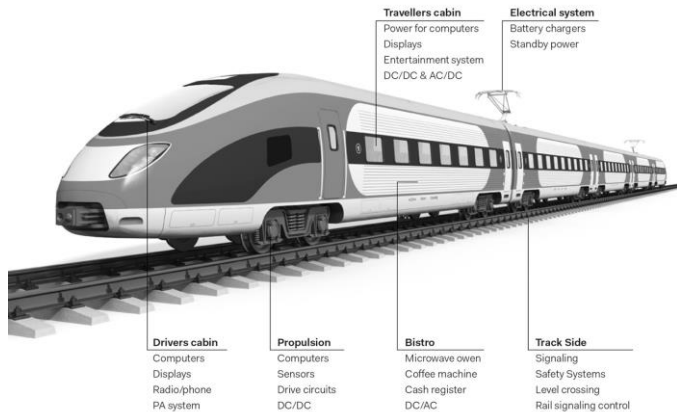
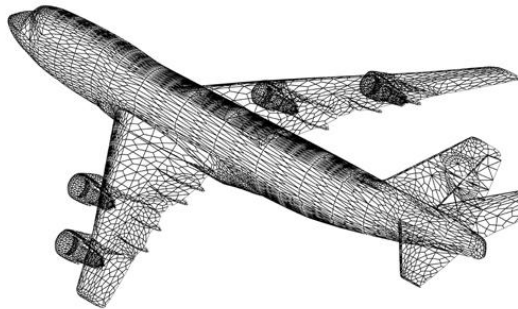
EQUIPMENT CRITERIA

Article 51 (1) CTC

High-value

Mobile

Uniquely Identifiable



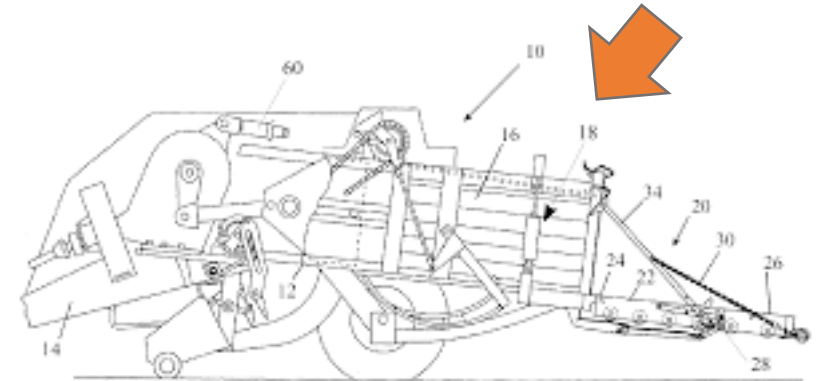
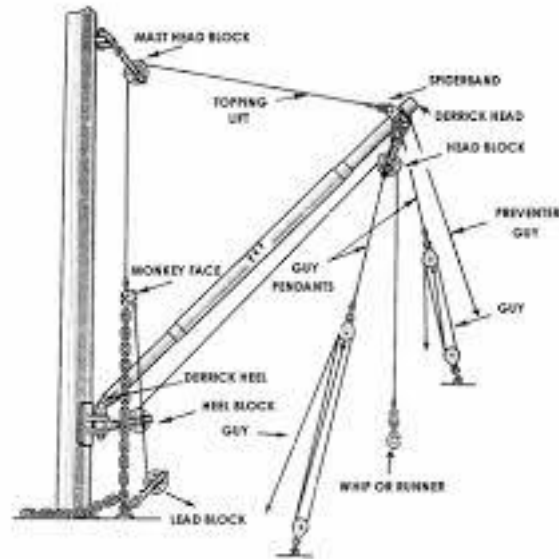
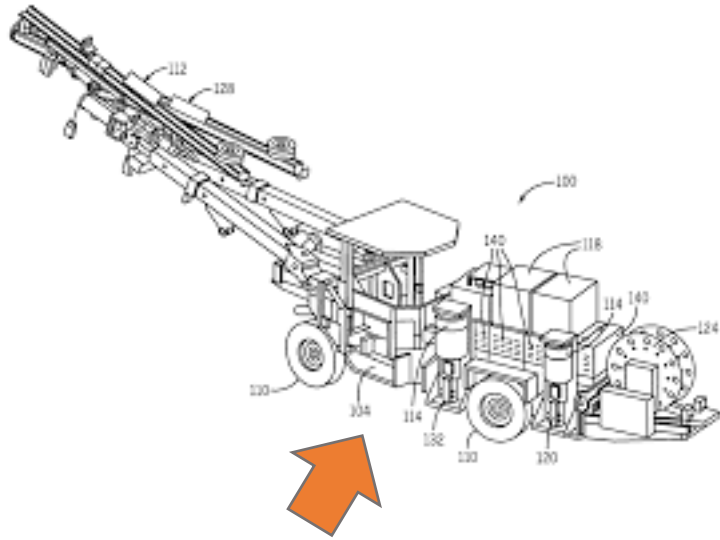
MAC EQUIPMENT

Article 51 (1) CTC

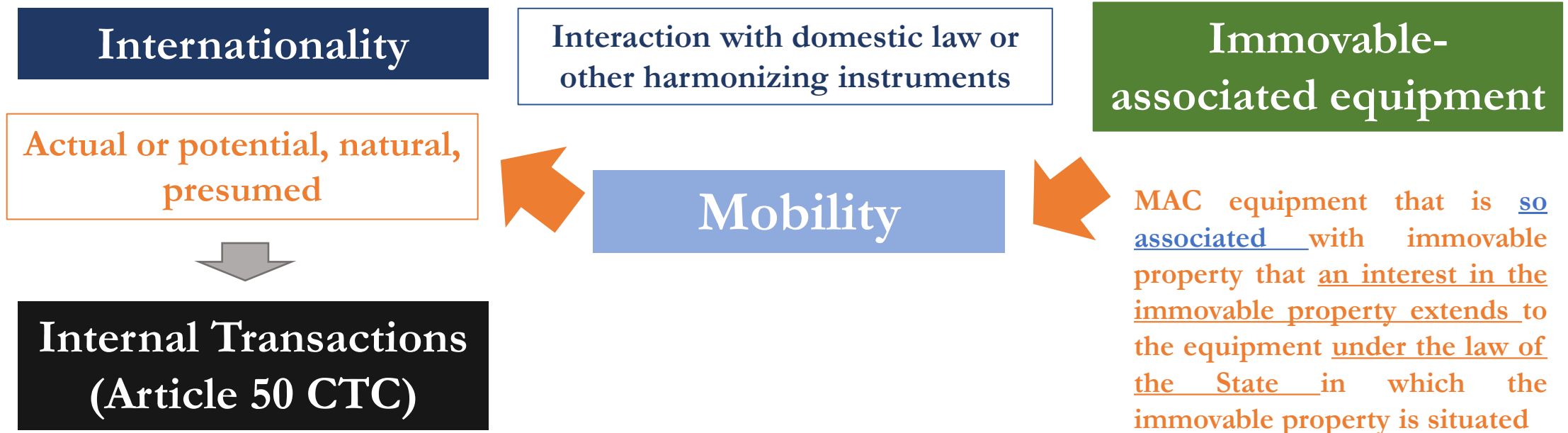
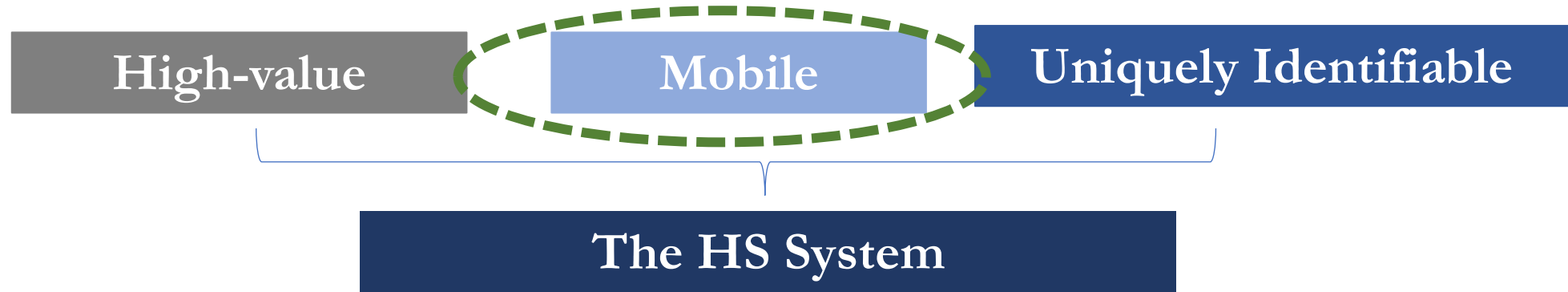
High-value?

Mobile?

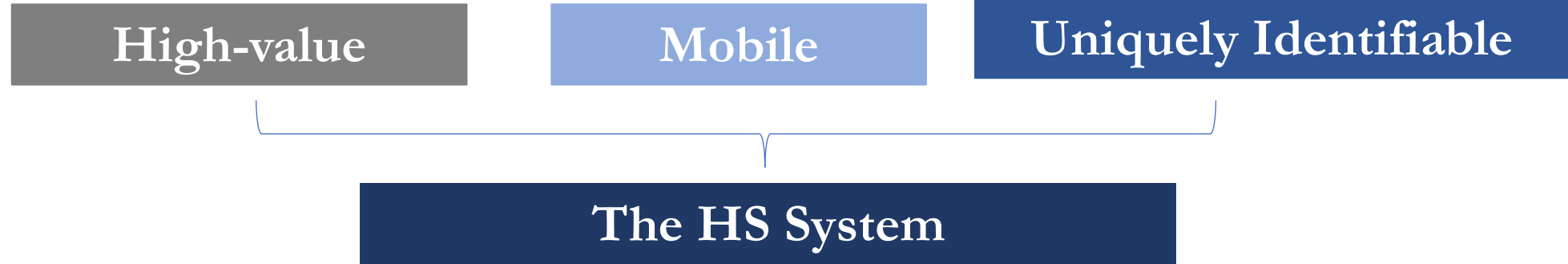
Uniquely Identifiable?



I.- Coverage: Mining, agriculture and Construction equipment



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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). Definitions and scope

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

...

Definitions and scope

Art. II.1.

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



“...irrespective of any intended or actual use ...”

...

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

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Definitions and scope

Art. II.1.

“...irrespective of any intended or actual use ...”

Annex 2– Construction equipment

...

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

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Definitions and scope

Art. II.1.

“...irrespective of any intended or actual use ...”

Annex 3 – Mining equipment



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...



2). Multi-purpose equipment

Art. II.1. + 'irrespective of actual or intended use'

ACTUAL USE IS NOT RELEVANT: If covered by a HS code, Protocol applies
– 9 of 36 HS codes are included in the 3 Annexes

3). Interaction with other Protocols

Art. II.4.

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



Installation situations in the CTC

Item
(other than an
object)

Art. 29(7) CTC



Object

Object
(equipment)

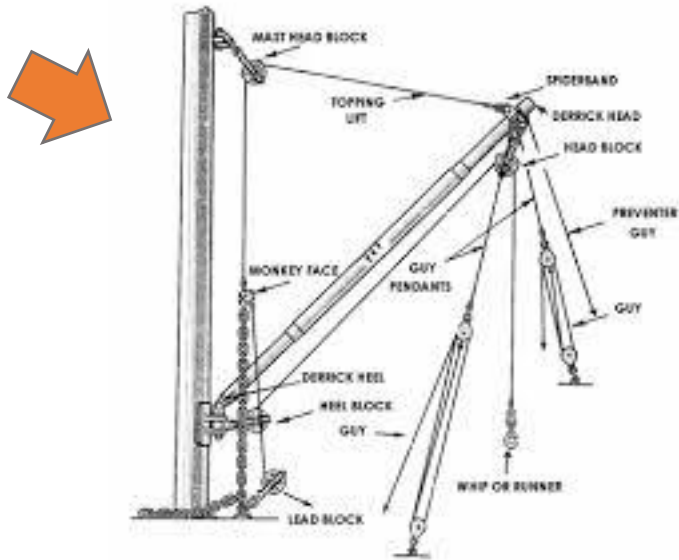
Art. VII MAC Protocol



*Immovable
property*

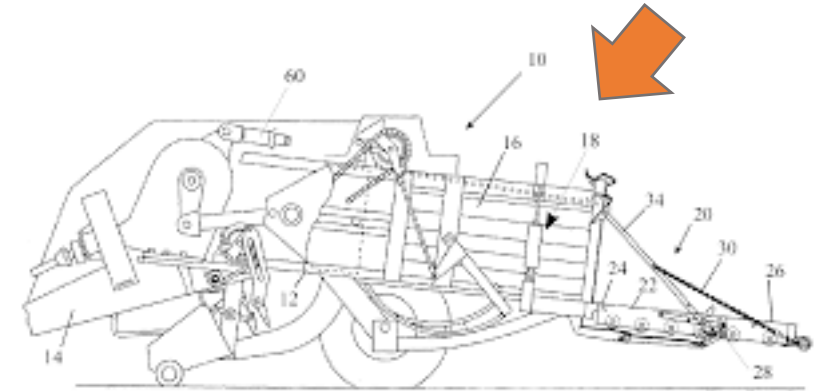
Innovations: Association with Immovable Property

Art. VII



Lack of uniformity

- Terminology
- Association criteria



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

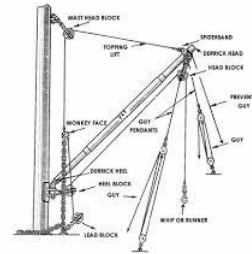
- Association
- Extension
- Law of situation

Applicable law to define i.a.e.
- consequences as per Alternative Art. VII

Innovations: Association with Immovable Property

Art. VII
Mandatory
declaration

PRE-ASSOCIATION INTEREST



POST-ASSOCIATION INTEREST

association

Situations

- Cannot be created
- Has ceased to exist
- Is subordinated
- Is otherwise affected by association

+ CGE2: post-association creation

- *Creation*
- *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*

ALTERNATIVES

A

NO EFFECT – PROTOCOL APPLIES: Immovable-associated equipment is severable **[STANDARD]**

- **standard:**

uniform standard

factual standard

estimated value higher than cost and repair

- **rebuttable presumption:**

association or creation of international interest (the later)

Association with Immovable Property

Art. VII

ALTERNATIVES

A

NO EFFECT – PROTOCOL APPLIES

B

1). **LOST INDIVIDUAL LEGAL IDENTITY:** domestic law applies

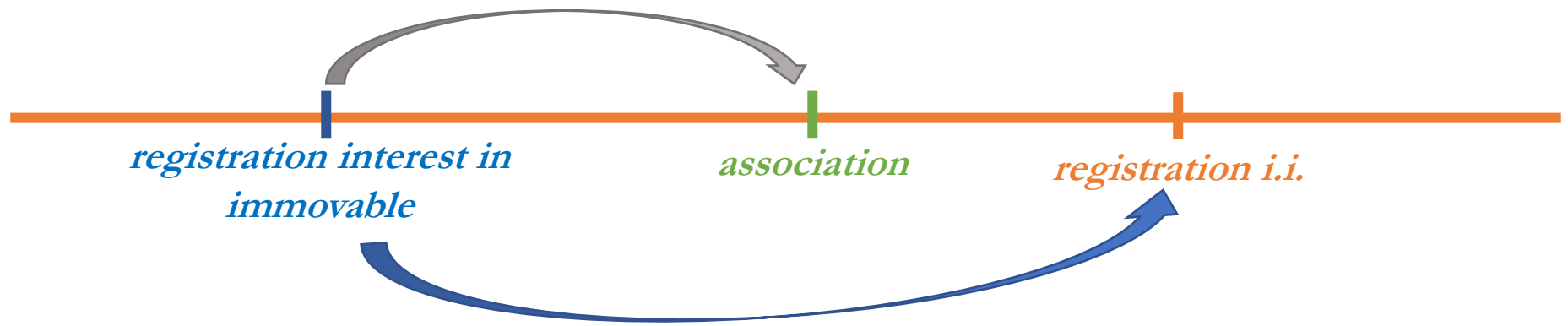
standard:

domestic law standard

legal standard

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.



Association with Immovable Property

Art. VII

ALTERNATIVES

A

NO EFFECT – PROTOCOL APPLIES

B

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

C

DOMESTIC LAW APPLIES

Association with Immovable Property

FINAL REMARKS

Certainty, predictability and sensitivity to legal traditions and domestic legal systems

'Rethinking' the concept of mobile equipment

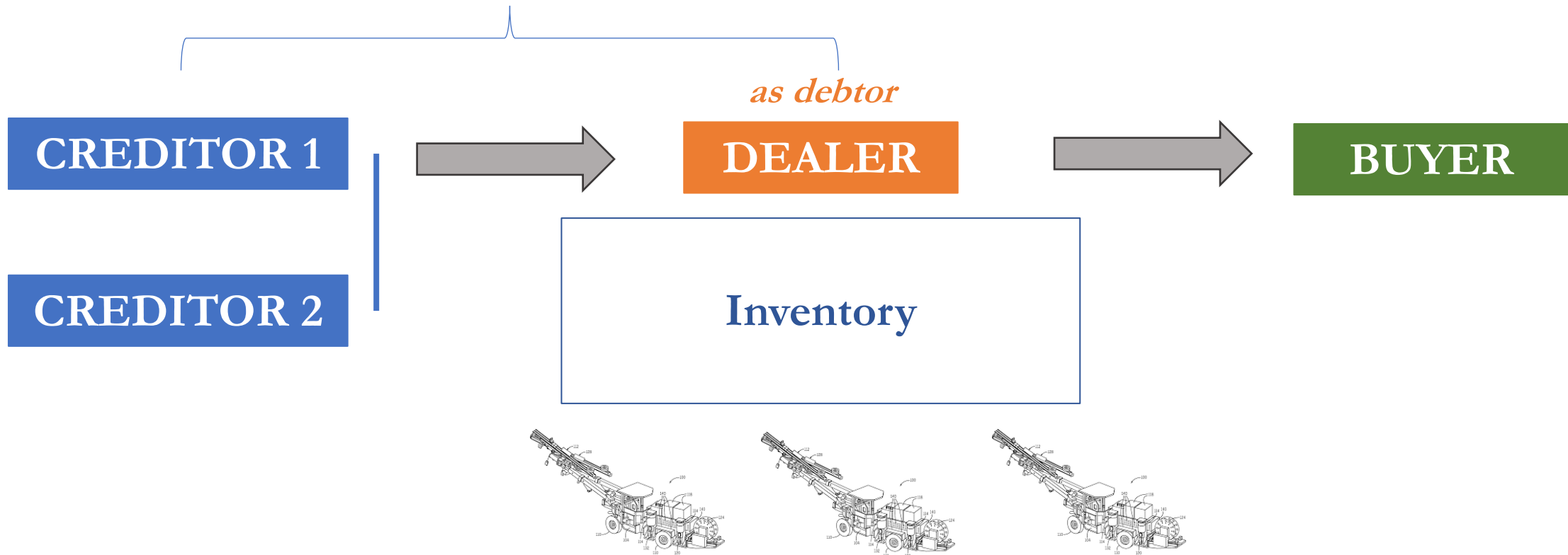
Promotion of harmonized solutions:

- *three uniform alternative*
- *uniform standard*
- *protection of international interest*

II.2- Inventory-related provisions

Dealer means 'a person that sells or leases equipment *in the ordinary course of its business*'

Inventory means 'equipment held by a dealer for sale or lease *in the ordinary course of its business*'



II.2- Inventory-related provisions

DEFINITIONS

OPT-IN DECLARATION

Place of Business

Dealer as debtor

Buyer
Conditional buyer
Lessee

*free from any
unregistered interest*

Article 29(3)(b) / 29(4)(b)

unless the applicable law otherwise provides'

PRIORITY RULES MODIFICATION

Ordinary course

Dealer as debtor

Buyer
Conditional buyer
Lessee

*free from any registered
interest*

Article 29(3)(b) / 29(4)(b)

unless the applicable law otherwise provides'

Testing the soundness and adaptability of Cape Town Convention tenets: lessons from the MAC Protocol's experience

Harmonization
strategy

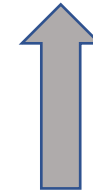


Aircraft Protocol

MAC Protocol

Rail Protocol

Space Protocol



Other Protocols

Article 51(1) CTC

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