



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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An overview of the work of UNIDROIT on secured transactions law: The Cape Town Convention system

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- Legal risks in equipment financing:
 - Traditional approach (*lex rei sitae*) not suited for highly mobile assets (*Blue Sky v. Mahan Air*)
 - Legal systems vary in their approach to recognition of security interests (e.g. title-retention and leasing agreements), the process for enforcement, and the remedies available
 - Legal uncertainty = higher risk = higher costs
- General purpose of the Cape Town Convention: to encourage finance and reduce its cost by introducing a sound, internationally adopted legal regime for the creation and enforcement of security interests in high-value mobile equipment



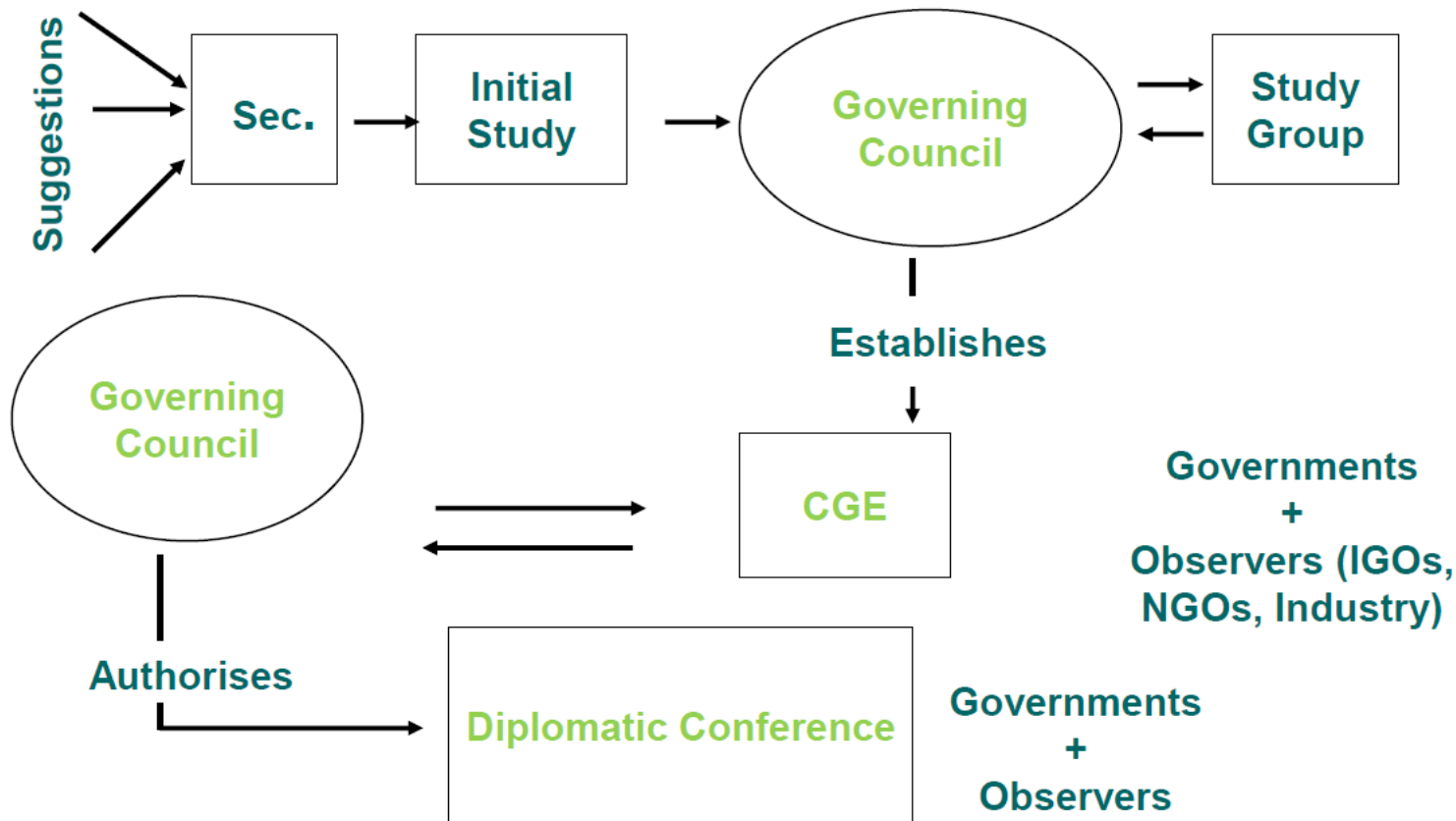
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- Challenges:
 - Diversity of **deep-rooted legal theories** characterising security interests
 - **Political sensitivity** of property and insolvency law
- Solutions:
 - Cape Town offers **clear rules for establishing priority**, including as against interests under domestic law and provides the creditor with a range of **basic default and insolvency-related remedies** and, in case of default, a means of obtaining **speedy interim relief** pending final determination of its claim on the merits
 - Cape Town established an **electronic international registry** for the registration of **international interests** to give notice to third parties and enable the creditor to preserve its priority

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UNIDROIT Working Methods: Preparation of Conventions





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– Flexible, evolving structure

- Convention establishes a **common core of principles**
- Equipment-specific protocols allow for **adaptation to the needs of particular industries** (aircraft, rail, space assets)

– System of declarations

- Contracting States are permitted to make declarations **modifying the operation** of some provisions
- Contracting States have taken **different approaches in choosing which declarations to make**
- Convention may **apply in different ways to different Contracting States, according to declarations made**



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Aircraft Protocol (2001)

- **Ratified by 65 States parties and the EU (as regional organisation)**
- **2006: fully operational registry (Aviareto)**
- **ICAO as Supervisory Authority for the International Registry**



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Luxemburg Protocol on **Railway Rolling Stock (2007)**

- **Signed by France, Germany, Italy, Mozambique, Switzerland, United Kingdom; signed and ratified by Luxembourg and the EU (as regional organisation)**
- **2014: contract with the Registrar**
- **OTIF: Secretariat to the future Supervisory Authority for the International Registry**



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Berlin Protocol on **Space Objects (2012)**

- **Signed by Burkina Faso, Germany, Saudi Arabia, Zimbabwe**
- **2014: draft regulations approved by Preparatory Commission**
- **ITU as a candidate for becoming the future Supervisory Authority for the International Registry**



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Characteristics of the International Registry

- **Notice-based** registry (not a 'documentary' system)
- Registry determines **priority** among secured creditors (except for non-consensual interests under Art. 39(1)(a) of the Convention)
 - **'First in time, first in right'** eliminates disputes concerning knowledge/good faith
 - **Neither a condition** to creation of an interest, nor proof that it exists
- Each Registry operated by a **company established for that particular purpose** and supervised by an international organisation with a **relevant mandate**, with the assistance of **industry experts**



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International Registry (Aircraft)

- **Asset-based** rather than debtor registry (unlike UNCITRAL Model Law, OAS Model Law, UCC Article 9 etc.) requiring **unique identification** of equipment
- Operated by **Aviareto**, a private company, by appointment and under the supervision of International Civil Aviation Organisation (ICAO), with the assistance of **industry experts**
- Fully electronic registry accessible to 24/7
- More than **700,000** entries since 2006
- 'Closed system' for **registration**, but 'open system' for **searching**
- All parties must **consent to registrations**, except in the case of Art. 40 (registrable, non consensuals). Only 'benefiting party' consents to discharge



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OECD Aircraft Sector Understanding

Part of the **OECD Arrangement on Officially Supported Export Credits** negotiated to avoid unfair competition through subsidised export credit rates

sets out the “**most favourable terms and conditions** on which officially supported export credits may be provided.”

ASU authorizes participating agencies to grant a reduction of **10% off the minimum premium rate** (“Cape Town Discount”) if the aircraft operator is based in a country that ratified the Cape Town Convention



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Economic Impact - Economic savings though short aircraft repossession delay

- **Upfront risk fee reduction** (% of the loan principal) ranging from 0.26% for a AAA credit rating all the way up to 6.96% for CCC/C-rated debtors
- **Assuming B8 average airline credit rating and US\$4,728 billion aircraft orders in 2009-2030 (Airline Monitor's forecast) and US\$4,018 billion financing need (85% of total orders), US\$161 billion total savings** due to reducing the worldwide repossession delay from ten to two months



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- **New negotiations about to start: [Preliminary draft] Protocol on Agricultural, mining and construction equipment**
- **Possible additional protocols: shipping and renewable energy equipment**



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- **Distinct features of the Cape Town system**
 - **Extensive feasibility and economic impact assessment**
 - **Co-ordinated industry involvement from early stages**
 - **Operation infrastructure (registry) unique among uniform commercial law instruments**
 - **Institutional partnerships with other IGOs (supervisory authority)**
 - **Unique economic incentives mechanism (OECD ASU)**
- **Challenges of the Cape Town system**
 - **Designed only for high-value mobile equipment**
 - **Varying degree of industry support depending on market structure and financing patterns**



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Thank you for your attention.

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