International Harmonisation and Reform Efforts In the Field of Secured Transactions: Conflicting Models or Complementarity?

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Relationship between CTC Treaties and reform of domestic secured transactions law (1)

- Cape Town Convention and its Protocols do not presuppose, for their implementation, a reform of general secured transactions law, nor the adoption of a specific model of secured transactions law.
- Contracting States to the Cape Town Convention and Aircraft Protocol have in fact different background national secured transactions laws.
- Reason: distinctive features of the Cape Town Convention model:
  - Multilateral treaty with binding force and specific and discrete scope of application.
  - Geared to facilitating (cross-border) financing of high value equipment.
  - Design and implementation depending on coordinated involvement of industry stakeholders and cooperation with specialised IGO’s (both strength and intrinsic limitation of the CTC model).
  - Flexibility introduced by declaration system/ strong economic incentive to opt in economic declarations (concrete evidence of economic benefits) [examples: enforcement/insolvency].
  - International electronic registry with unique characteristics.
Relationship between CTC Treaties and reform of domestic secured transactions law (2)

BUT:

- Implementation of Cape Town Convention and its Protocols easier if domestic secured transactions law already allows for effective enforcement and effective advance relief measures
- Opting in enhanced enforcement provisions easier if general domestic secured transaction system is modernised
- Cape Town Convention implementation may facilitate domestic law reform of general secured transactions law in the direction of international models – this creates a strong legal framework

A COUPLE OF ISSUES TO CONSIDER:

- Domestic registries/ CTC registries?
- Beyond secured transactions law reform: need to consider insolvency law/procedural and enforcement law
Thank you for your attention!