The Space Protocol of the Cape Town Convention:

An International Secured Transactions Regime for Space Assets

Leiden University

Leiden, Tuesday, 16 April 2019

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The Space Protocol to the Cape Town Convention

- The Space Protocol to the Cape Town Convention is an international treaty adopted in 2012 at a diplomatic Conference in Berlin under the auspices of the International Institute for the Unification of Private Law (UNIDROIT)
- It is part of the Cape Town Convention treaty system, the aim of which is to facilitate asset-based financing and leasing for the manufacture, acquisition and use of specific high value equipment (such as aircraft, railway rolling stock, and space assets)
- The Space Protocol's aim is to adapt the CTC model to the specific characteristics of space assets and space activities

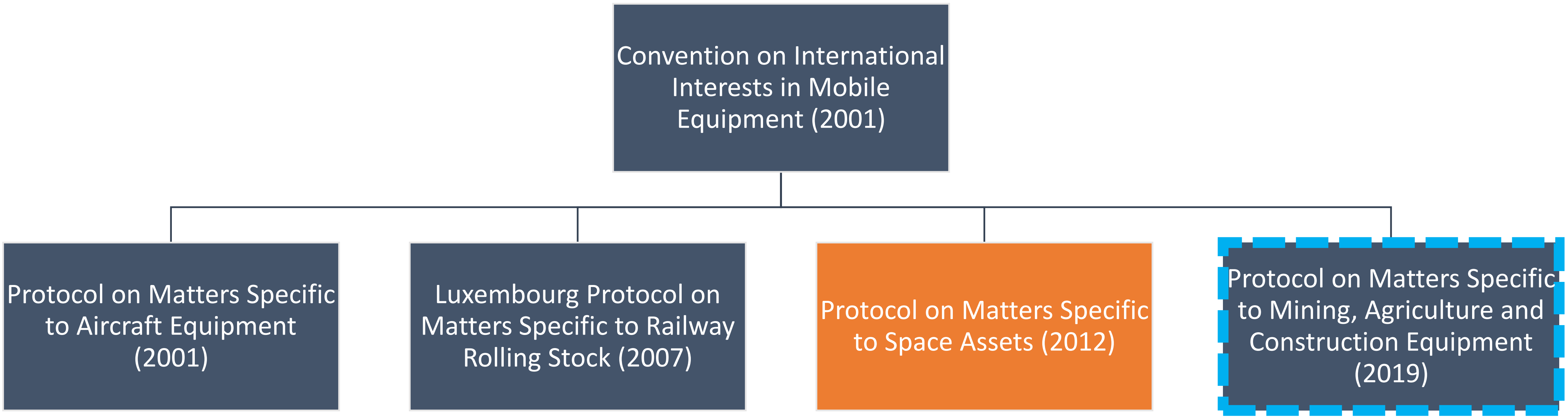
Outline of presentation

- The Space Protocol offers an additional opportunity for financing in the space industry
- The general framework of the Cape Town Convention model applies to the Space Protocol
- The Space Protocol adapts the Cape Town Convention model to space assets and their financing

The Space Protocol offers additional opportunities for financing in the space market

- Highly capital-intensive nature of space industry makes it difficult for entrepreneurs and small companies, from developed and developing countries alike, to progress and compete in the global market
- The Space Protocol provides a predictable international system in which companies of all sizes can gain access to finance for their operations at better conditions and rates
- It does so by relying on asset-based financing techniques, which are presently extremely difficult to use and offer unreliable protection, due to the obstacles in obtaining international recognition and enforcement of creditors' and lessor's rights

Two-tier structure Convention/Protocols

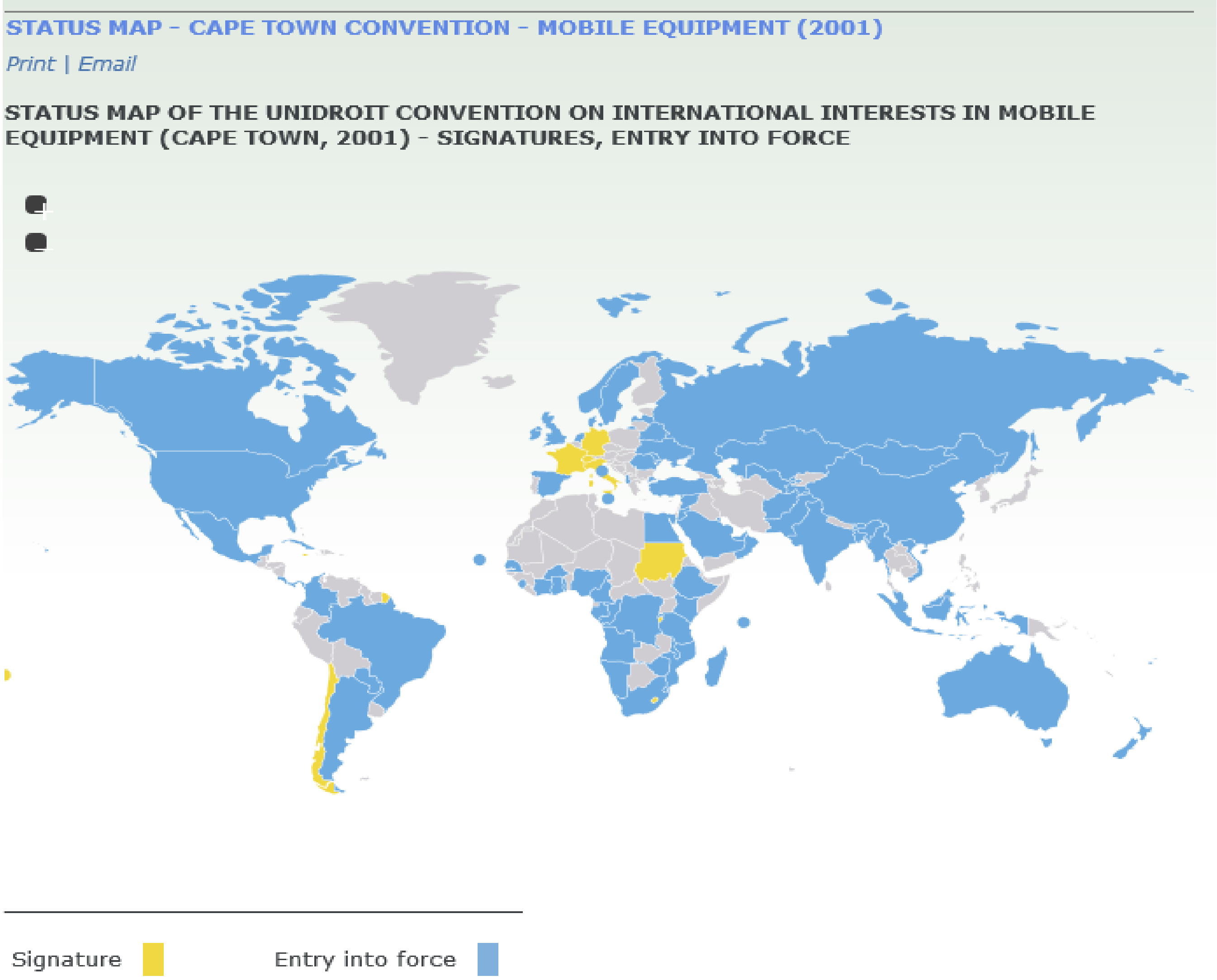


Why the Cape Town Convention and its Protocols?

- **Starting point: growing global need for financing (including private capital) in the construction, acquisition and use of high value mobile equipment**
- **CTC and its Protocols aim at increasing certainty and reducing risks in asset-based financing and leasing of certain types of uniquely identifiable, high value equipment**
- **It does so by offering parties to a security agreement, retention of title sale or leasing the option to create and register internationally an autonomous "international interest" enforceable in contracting States**
  - **This results in the removal of legal obstacles to cross-border use and enforcement of asset-based financing devices, but also**
  - **It generally improves predictability, lowers the cost of credit**

MORE CERTAINTY: LESS RISKS, LOWER COSTS

Cape Town Convention – Status Map (31.3.2019)



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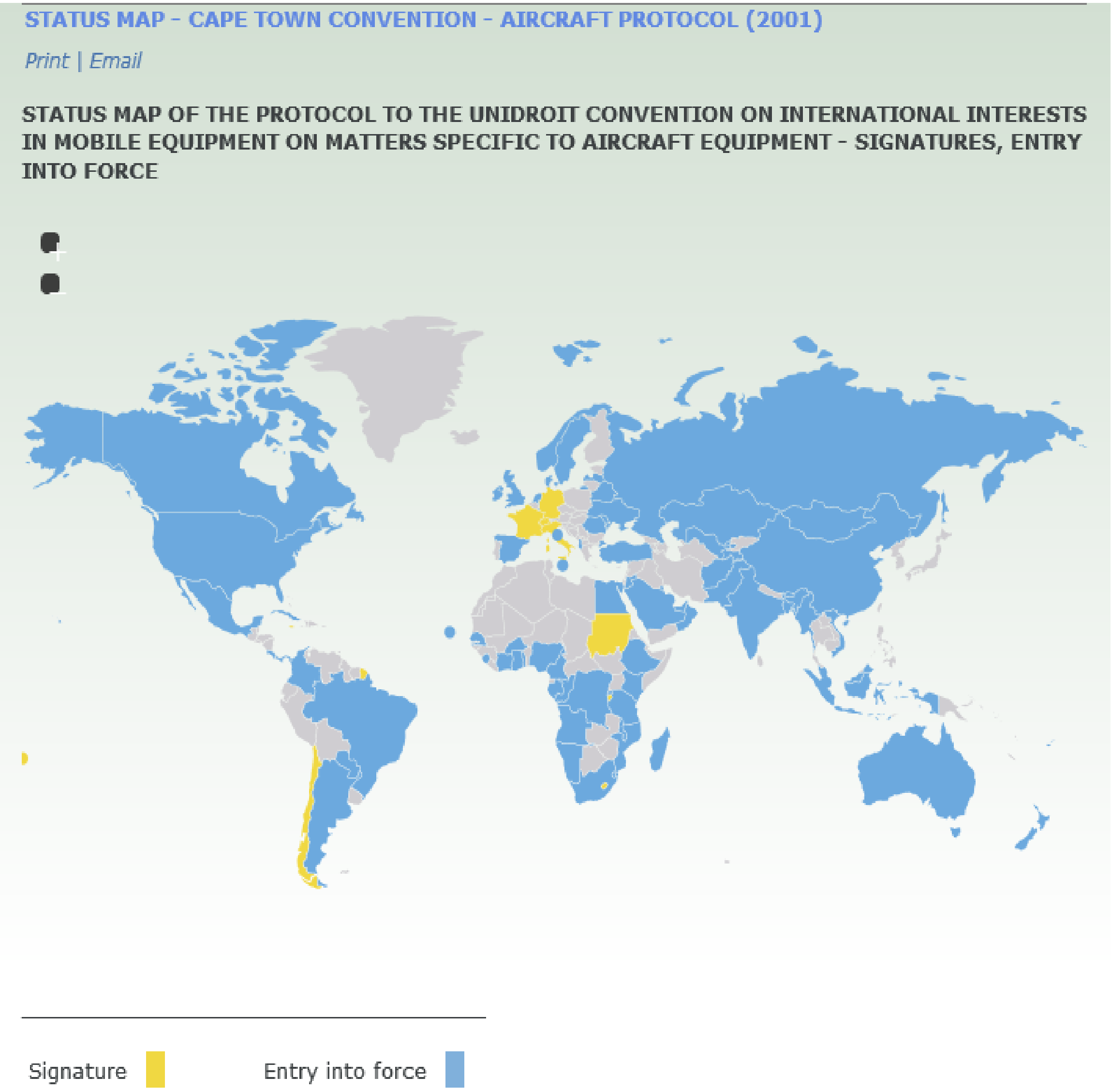
Aircraft Protocol: status map (31.3.2019)



CTC and AP in numbers

Political acceptance:

- CTC: 79 contracting States + 1 REIO (EU)
- AP: 76 contracting States + 1 REIO (EU)

Volume of transactions:

- More than One Million registrations in the AP Registry since 2006
- Estimated value of collateral 500 billion US$

Quantifiable economic benefits deriving from the lowering of the cost of credit:

- “Cape Town Discount” practiced by Export Credit Agencies (OECD)
- Improved rating in recourse to capital market debt financing
- Better conditions for commercial credit (including leasing operations)

Key legal features of the CTC Model (1)

- **AUTONOMOUS INTERNATIONAL INTEREST:** Parties to a financing transaction can create an autonomous "international interest" over the equipment (deriving from a security agreement, retention of title or lease)
- **INTERNATIONAL REGISTRY:** The international interest is registered in a dedicated international asset-based wholly electronic registry (transparency and predictability)
- **ENFORCEABILITY OF REGISTERED INTEREST:** CTC and Protocols ensure (cross-border) effectiveness and enforcement of the registered international interest in contracting States
- **CLEAR PRIORITY RULES:** Clear rule for determining priorities, including as against interests in national law, with clearly identified and transparent exceptions - a registered interest prevails over unregistered and later registered interests (no constructive knowledge)

Key Features of the CTC Model (2)

- **EFFECTIVE ENFORCEMENT MEASURES (DEFAULT REMEDIES):** CTC and Protocols provide effective and swift enforcement measures, largely based on the contractual agreement, and including advance relief pending final determination during court proceedings
- **EFFECTIVENESS IN INSOLVENCY:** Registered international interest effective in insolvency proceedings as against the debtor/buyer/lessee

- **STATES CAN MAKE POLICY CHOICES THROUGH DECLARATIONS:**
  - States may protect specific national interests (e.g.: declaration under Art. 39 Conv allows States to list the non-consensual liens that prevail over a registered international interest, like employees' liens, tax liens, liens protecting repairers…)
  - States may enhance economic benefits of Protocols by strengthening creditor's rights in enforcement and insolvency

Special features of the Space Protocol

- Scope of application and definition of space assets
- How to uniquely identify a space asset for the purpose of registration?
- How can a creditor excercise its remedies under the Space Protocol?
- How can the Space Protocol ensure that public services which are rendered through a space asset are not unexpectedly terminated?
- Are salvage rights affected by the Space Protocol?

Scope of application and unique identification

A 'Space asset' is defined in Article I(2)(k) of the Protocol as:

"Any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle, whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations,

together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto"

HOW IS IT POSSIBLE FOR CREDITORS TO EXERCISE THEIR REMEDIES UNDER THE SPACE PROTOCOL?

The Protocol takes into account the physical impossibility of repossession in two ways:

- **ASSIGNABILITY OF DEBTOR'S RIGHTS**

The Protocol recognises the Importance of revenue streams in relation to the space asset for the creditor and contains detailed provisions on the assignment of debtor's rights, broadly defined as "[…] rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset"

- **TT&C ENFORCEMENT MECHANISM**

Moreover, the remedies section of the Protocol contains a provision on the Tracking, Telemetry and Control (TT&C) of space assets which can be found within the command codes associated to it (encryption keys which give control over the satellites)

Article XIX SP allows the parties to specifically agree to the placement of command codes and related data and materials with a third party so that the creditor may establish control over, or operate the space asset

As a safeguard, however, laws and regulations of Contracting States can prohibit, restrict, or attach conditions to the placement of command codes with third parties

PUBLIC SERVICE EXCEPTION

- Space assets are often used for the provision of important public services
- States have a natural interest in ensuring that a creditor exercising its rights does not cause the abrupt termination of a service of public importance (e.g. a satellite system monitoring weather conditions or providing GPS public services)
- The Space Protocol ensures that such services are not unexpectedly terminated in the case of a default on part of the debtors to a financial agreement
- Article XXVII SP contains a provision restricting, up to a certain extent, the remedies available to a creditor with respect to a space asset that provides a public service
- This provision is triggered by the registration of a 'public service notice', which is subject to the agreement of the parties to the public service contract and the Contracting State
- The creditor's consent is not required to register a public service notice, however, creditors will be able to make a contractual provision restricting the debtor's right to consent to the registration of a public service notice

SALVAGE

- ‘Salvage’ is a legal or contractual right or interest in, relating to or derived from a space asset that vests in the insurer upon the payment of a loss relating to the space asset (Article IV(3) SP).
- Insurance is an important consideration in the financing of space assets
- The Space Protocol seeks to ensure that this aspect of the industry is not significantly affected by the Protocol
- Article IV(3) provides that nothing in the Convention or Protocol can affect any legal or contractual rights of an insurer to salvage in accordance with the applicable law. As such, salvage rights, including rights by subrogation, are not affected by the Convention or Protocol, so that any priority dispute between salvage rights and creditor rights will be resolved by the applicable law

What can we conclude?

The commercial space industry has seen tremendous growth which is expected to multiply in the near future

To facilitate this growth in an efficient but also fair direction, it is important to allow access to finance to companies of all sizes and capacities and from developing and developed States alike

The Space Protocol seeks to do this by allowing for capital to be injected into a company based primarily upon its work, while at the same time not displacing other forms of financing where available

Thank you for your attention
Any Questions?

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