THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL: ECONOMIC AND LEGAL SUCCESS

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I. INTRODUCTION

- Background on Cape Town Convention (CTC) and Aircraft Protocol
- Content of CTC and Aircraft Protocol
- Economic and Market Assessments
- Secured Transactions Law Reform for Business Credit: Questions and Puzzles.

II. BACKGROUND ON CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

- Security interests, title reservation agreements, and leases of large civil aircraft, helicopters, and engines
- Principal goal of CTC and Protocol is to facilitate and lower the costs of asset-based financing
- Relationship between CTC and Protocol
- UNIDROIT and ICAO partnership
- CTC and Aircraft Protocol: 71 Contracting States and E.U. (including Australia, China, Denmark, India, Ireland, Luxembourg, Russia, South Africa, Sweden, U.S., and U.K.)

III. CONTENT OF CAPE TOWN CONVENTION AND PROTOCOLS

- Relatively complete regimes for security interests and somewhat less so for title reservation agreements and leases (all are types of "international interests").
- Third-party effectiveness based on registration of international interests in international registry.
- Registry is object-based requiring a description of the relevant equipment.
- First-to-register priority rule.

III. CONTENT OF CAPE TOWN CONVENTION AND PROTOCOLS

- Provisions on default remedies for security interests; more limited for title reservation agreements and leases.
- Provisions for enhanced protection of creditor's rights in debtor's insolvency proceedings based on declaration mechanisms.

IV. ECONOMIC AND MARKET ASSESSMENTS

A. Economic Assessments.

- Anthony Saunders et al., *The Economic Implications of International Secured Transactions Law Reform: A Case Study*, 20 U. Pa. J. Int'l Econ. L. 309, 316-17 (1999) (empirical analysis of increase in value of U.S. airlines publicly traded shares attributable to change in U.S. bankruptcy law and lower anticipated costs of financing).

- Vadim Linetsky, *Economic Benefits of the Cape Town Treaty (2009)*, *available at* http://www.awg.aero/assets/docs/economicbenefitsofCapeTown.pdf (estimating that savings from reducing repossession delay following default from ten months to two months would result in total savings of $161 Billion from 2009-2030).

IV. ECONOMIC AND MARKET ASSESSMENTS (Cont’d)

A. Economic assessments (Cont’d).

- Linetsky’s estimates assume *full implementation of and compliance with* the Convention and Aircraft Protocol.

- Vadim Linetsky, *Accession to the Cape Town Convention by the UK: An Economic Impact Assessment Study* (2010), available at http://www.awg.aero/assets/docs/UKCTC%20Econ%20Impact%20Final%20Version.pdf (estimating enormous economic benefits from U.K. accession and implementation of CTC and Aircraft protocol).

IV. ECONOMIC AND MARKET ASSESSMENTS (Cont'd)

B. Market Response.

- OECD's Aircraft Sector Understanding (updated in 2016): State-supported financing (e.g., export-import banks) provides a 10% discount of financing costs if debtor's State adopts CTC and Aircraft Protocol with qualifying declarations).

IV. ECONOMIC AND MARKET ASSESSMENTS (Cont'd)

C. Further Study.

- Cape Town Convention Academic Project (joint venture between Oxford University and University of Washington, with support of UNIDROIT and Aviation Working Group) is developing conceptual framework for measuring economic benefits.

V. SECURED TRANSACTIONS LAW REFORM FOR BUSINESS CREDIT: QUESTIONS AND PUZZLES

- Would MAC Protocol offer economic benefits comparable to Aircraft Protocol? (N.B., Value of MAC equipment exports in 2014 was almost as large as aircraft equipment exports.)
- Would some States be better off with a discrete, identifiable equipment-oriented law such as the MAC Protocol than with a broad and deep law like the UNCITRAL Model Law (UML)? If so, why?
- Would a modern secured transactions law (e.g., UML) *necessarily* lower the cost of business credit and facilitate credit that otherwise would not be extended? If not, why not?

V. SECURED TRANSACTIONS LAW REFORM FOR BUSINESS CREDIT: QUESTIONS AND PUZZLES (Cont'd)

- What is the role of a secondary market for equipment and various types of inventory in the success or failure of a secured transactions law?

- What is the relationship between the *nature* of a State's insolvency laws and the success of a secured transactions law (e.g., automatic or discretionary stay/moratorium, effectiveness of nonpossessory security interest in insolvency proceeding, etc.)?

- What is the relationship between the *rate of use* of a State's insolvency laws and the success of a secured transactions law?

V. SECURED TRANSACTIONS LAW REFORM FOR BUSINESS CREDIT: QUESTIONS AND PUZZLES (Cont'd)

- Could a secured transactions law be successful even it failed to subject title reservation transactions to the registration system and priority rules?

- Is it plausible that the CTC and Aircraft Protocol could be effective in lowering the cost of business credit in a given State but a modern regime permitting third-party effectiveness through a registration covering, e.g., "all inventory now owned or hereafter acquired" would not have such an effect in that State? If so, why?

V. SECURED TRANSACTIONS LAW REFORM FOR BUSINESS CREDIT: QUESTIONS AND PUZZLES (Cont'd)

- What are the relationships between the structure and strength of a State's financial institutions and other extenders of business credit and the success (or potential success) of a modern secured transactions law?

- Can attributes of a State's culture and its business credit markets impair the beneficial effects of a modern secured transactions law? For example, is there a stigma associated with a public registration of a security interest? Is a registration seen as a signal to the market that a business debtor is desperate in its need to obtain credit?

V. SECURED TRANSACTIONS LAW REFORM FOR BUSINESS CREDIT: QUESTIONS AND PUZZLES (Cont'd)

- For some States, is a modern secured transactions law a necessary but insufficient element of a healthy market for business credit?
- For other States, would adopting a modern secured transactions law have a minimal impact on an already healthy market for business credit that persists even in the absence of such a law?

THANK YOU!