

Overview and Status

March 2012

Cape Town Convention Academic Project

Facilitating the study of the Convention on International Interests in Mobile Equipment



Joint Auspices:
Database/ Resource Materials
and Cape Town Convention Journal

Founding
Sponsor:



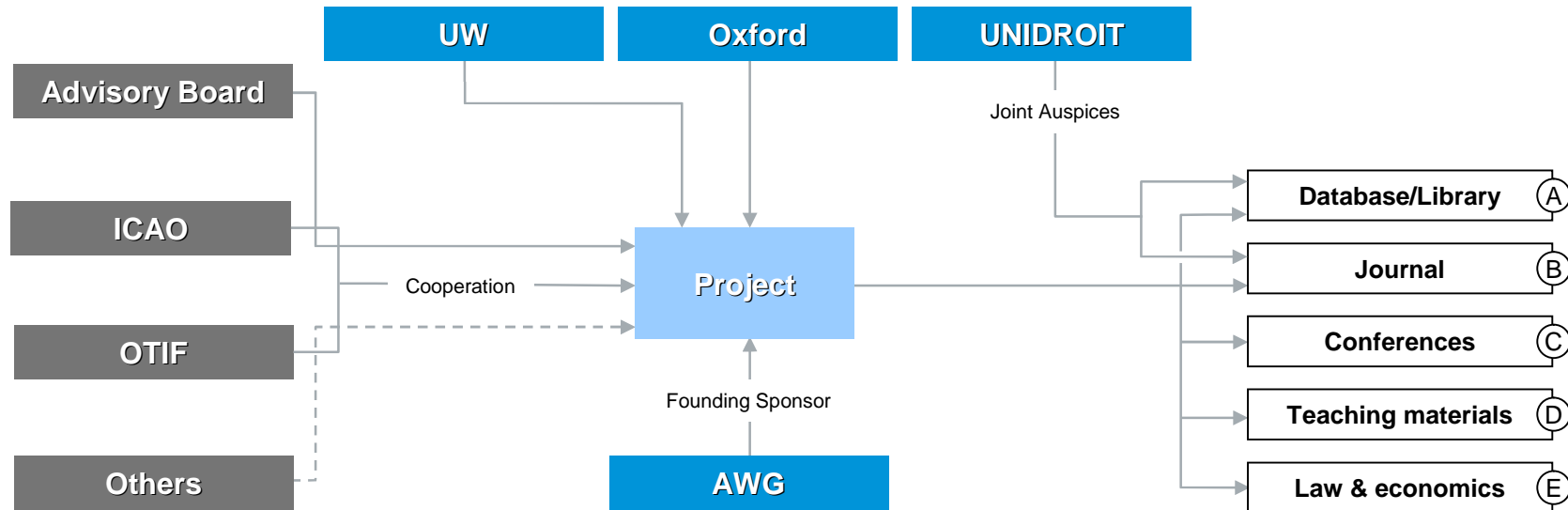
Project Objective and Structure

- The Cape Town Convention Academic Project (the **Project**) is a joint undertaking between the University of Oxford Faculty of Law (**Oxford**) and the University of Washington School of Law (**UW**). See last slide for Project leadership and contact information
- Aspects of the Project are also being undertaken under the auspices of the International Institute for the Unification of Private Law (**UNIDROIT**)
- The Project's purpose is to facilitate the study and assessment of the Convention on International Interests in Mobile Equipment and all its Protocols (the **CTC**) and to advance its aims
- The Project will benefit scholars, practising lawyers, and judges and other government officials
- The Project's founding sponsor is the Aviation Working Group (**AWG**)

Project Objective and Structure

- The main activities of the Project are:
 - The creation of a comprehensive, digitized and searchable database of primary and secondary materials on the CTC, the preparatory work leading to their adoption, and their implementation in national law;
 - The creation of a journal publishing scholarly articles the CTC;
 - Holding annual academic conferences on the CTC;
 - The creation of teaching materials on the CTC; and
 - Economics assessment of the CTC
- Many of these activities will serve as an exemplar for academic projects relating to other transnational commercial law reform (as the CTC will for such law reform)
- The database and journal are under the joint auspices of UNIDROIT
- The International Civil Aviation Organization (**ICAO**) and the Intergovernmental Organisation For International Carriage By Rail (**OTIF**) are also cooperating with the Project

Project Schematic



- A. Legislative history, implementation materials, cases, administrative action, academic writing, practitioner materials, registry materials
- B. Yearly. Cutting edge/multi-discipline
- C. Academic conferences

- D. (i) For use in range of courses, e.g., TCL, IBT, comparative/international law, and secured transactions; (ii) detailed Cape Town materials
 - E. With Business School and/or Economics Department
- NB: **All open source, electronic, and free**

Segment 1: Database / Resource Materials

- The Project will establish and maintain a comprehensive and searchable electronic database of **resource materials** on the CTC in digitised form and in hard copy, the latter to be housed at each of Oxford and UW. The electronic database will be accessible at CTC-AcademicProject.org

- The resource materials in the database will be categorized as follows:
 - A items being the operative legal texts,
 - B items being primary source materials,
 - C items being secondary source materials,
 - D items being International Registry materials, and
 - E items being teaching type materials

- A. **Operative legal texts** (Conventions, Protocols, Consolidated Text, Regulations, Procedures)

Segment 1: Database / Resource Materials

- **B1. Developmental and legislative materials** (primary materials produced prior to or at the diplomatic conferences adopting the relevant texts, including chapters from the Official Commentary (all versions))
 - **N.B.:** Regarding hard copy / e-user interface, B1 materials will be categorised as (1) preliminary materials, (2) UNIDROIT Study Group and other developmental materials, (3) inter-governmental negotiation materials, (4) materials related to the diplomatic conference, or (5) materials contemplated by the diplomatic conference (e.g., text alignment, official commentary, and PCIR)
- **B2. National implementation materials** (materials produced by all countries considering or effecting ratification (including the ratification instrument), establishing the CTC as national law, or otherwise implementing its terms (e.g., civil aviation regulations))
 - **N.B:** There will be a country summary note for each country setting out the process followed in connection with each item above. That may be added following the initial core materials, if time prevents concurrent preparation
 - **N.B.:** Leading law firms will provide these materials and produce the country notes *pro bono*. Currently participating firms are listed at Annex 1.

Segment 1: Database / Resource Materials

- **B3. Case reporting** (cases addressing or referring in any way to the CTC, with analysis provided by experts, (initially) AWG's legal advisory panel)
- **C1. Academic and scholarly writing** on the CTC (articles from all countries)
Test is whether an article (i) appears in an academic or scholarly journal, and (ii) has the CTC as its primary (or a main) feature.
- **C2. Practitioner's and professional materials** (materials on the relationship between contracts / transaction practice and the CTC)
- **C3. Economic assessment of the CTC** (materials assessing the impact of the CTC, from micro -, macro -, and development economic perspectives)

Segment 1: Database / Resource Materials

- D. **International Registries** (all developmental and current materials)
- E1. **CTC teaching materials** (teaching materials addressing the totality of the CTC system as an independent topic of study and presentation)
- E2. **CTC materials for established courses** (teaching materials on the CTC as illustrative subject matter for established law school courses (see below))

Segment 1: Database / Resource Materials

- The Project is currently:
 - (1) determining the **specific content** of the resource materials
 - (2) **assembling and organising** the resource materials
 - (3) **determining user interface, searching and retrieval features** of the database system
 - (4) **digitising** the resource materials
 - (5) determining **maintenance and update procedures**
- The database will be operational by September 2012.

Segment 1: Database / Resource Materials

- Supplementary points

- (a) **Organisation:** A materials will be organized by title with all languages of each document grouped together; B1 materials will be grouped by five categories: 1) Preliminary materials, 2) UNIDROIT Study Group and other developmental materials, 3) inter-governmental negotiation materials, 4) materials related to the diplomatic conference, and 5) materials contemplated by the diplomatic conference, within each category, documents will be arranged reverse chronologically; B2 and B3 materials will be grouped for browsing by Country and reverse chronologically with in each Country; C1 and C2 materials will present the user with an option to see the documents grouped by Subject, Author, or Country; C3 materials will present the user with an option to see the documents grouped by Author or Country; D materials will be grouped by the registry they relate to then reverse chronologically within each registry; E2 materials will be grouped for browsing based on the course they relate to then reverse chronologically within each course.

Segment 1: Database / Resource Materials

- (b) All documents will be posted in their **original language**. English abstracts and subject terms will be included to facilitate English-language searching
- (c) **Copyright** approvals will be collected for all applicable materials
- (d) The Project may also create **additional qualitative materials** for inclusion in the database: e.g., (i) table of concordance between official drafts, and (ii) redline of regulations and commentaries
- (e) AWG and ISTAT have pledged additional funding to support the creation of the database
- (f) The creation of the database will be UW led with support from Oxford, UNIDROIT, ICAO, and OTIF

Segment 2: CTC Journal

- The Project will produce an academic journal on the CTC, which will include leading articles and report on material developments
- The Journal will be published electronically once a year, with the first issue in September 2012. The second issue will follow approximately six months later. The third issue will follow a year later
- The Jeffrey Wool, executive director of the Project, will serve as general editor. Rafal Zakrzewski (Oxford) will serve as editor
- The Journal will be Oxford led with close consultation with UNIDROIT
- The Journal will be published and hosted by Hart Publishing
- The electronic version will be free. There will be cost for the hard copy version. (The electronic and hard copy versions will be identical.)

Segment 2: CTC Journal

- The first issue includes:
 - (1) *Lex situs* revisited: effect of the CTC on the Blue Sky case {R. Murphy, Freshfields and William Glaister / Marisa Chan, Clifford Chance}
 - (2) The CTC and the law and practice of electronic commerce {J. Winn, UW Law}
 - (3) The insolvency provisions: historical and economic perspectives {K. van Zwieten, University of Cambridge}
 - (4) Comparison of relief pending final determination and traditional interim relief {G. Cuniberti, University of Luxembourg}
 - (5) The CTC's provisions on priority {R. Goode} {N.B: each issue will have address one section of the convention}
 - (6) Report on diplomatic conference space protocol {J.A. E. Faria or M. Stanford, UNIDROIT}
 - (7) Update (all aspects) {UNIDROIT – coordinated by J. Atwood, UNIDROIT}
 - N.B.: there be editorial by the general editor (each issue) {J. Wool}

Segment 3: Conferences

- The Project will organise and hold academic conferences on the CTC
- The conferences will be one and half day events, the first of which will be held at Oxford in 5 / 6 September 2012. A second event will be held in the Fall of 2013.
- The two conferences benefit from the financial support of these sponsoring firms: Abogados, Sierra, y Vazquez; Blakes; Clifford Chance; Holland & Knight; and Kay Scholer LLP.
- The proposed agenda for the first conference includes the following topics:
 - (1) Select issues on the Convention
 - (2) Select issues on each Protocol
 - (3) Economic assessment of the CTC
 - (4) The CTC and interdisciplinary work (law, economics, government)
 - (5) Teaching the CTC

Segment 4: Teaching Materials

- The Project will prepare materials for use in teaching (a) the totality of the CTC system as an independent topic of study, and (b) the CTC as illustrative subject matter for established law school courses

- The former would be created by the AWG legal advisory panel and used in educational programs for government officials, judges, and professionals and in speciality courses (e.g., advanced degrees in transportation law)

- The latter could be used in, and would be designed for, these courses:
 - (a) transnational commercial law {**J Wool, J. Eddy, and R Goode**}
 - (b) secured transactions / commercial law {**John Pritchard Holland & Knight**}
 - (c) insolvency / bankruptcy law {**Donald Gray, Blakes**}
 - (d) international business transactions {**Charles Mooney, U. Penn**}
 - (e) comparative law {**Michel Deschamps, McCarthy Tetrault**}
 - (f) international law {**Brian Havel, Oxford University**}
 - (g) conflict of laws {**Herbert Kronke, University of Heidelberg**}
 - (h) business school case study {**Ingo Walters, NYU (Stern)**}

Segment 4: Teaching Materials

- The teaching materials will include PowerPoint presentations, supplemented by questions, exercises, and other materials. In the case of teaching the totality of the CTC system, materials for 5 to 7 lectures. In the case of teaching the CTC as illustrative subject matter, materials for between 1 and 3 lectures

- The Project will
 - (1) **identify best teaching intersections** (for illustrative materials)
 - (2) establish a **format and structure** for the materials
 - (3) **allocate the task of materials preparation**
 - (4) complete the totality of CTC system and one illustrative subject matter example as a template
 - (5) Establish teaching networks, both for totality and illustrative materials

- The Project is currently carrying out preparatory work and all materials are expected to be completed in 2012 – 2013

Segment 5: Economic Assessment

- The Project will establish a platform / forum (**‘Economic Impact Forum’** or **‘EIF’**) for (a) assessing the economic impact of the CTC (micro -, macro -, and development economic perspectives), (b) developing materials relating thereto, and, (c) producing guidelines for applied assessment

- The Economic Impact Forum will bring together and further develop leading thought on the relationship between secured financing and economic benefit and development through a collective process which interacts with policy assessment

- The Project will
 - (1) **compile and assess** the (business / economic / transportation / law / government policy) **literature** in the field {see [Annex 2-A](#)}
 - (2) establish a core **contact group** among leaders in the field {Actively underway; for committed members, see [Annex 2-B](#) }
 - (3) prepare a **framework discussion document**
 - (4) lay groundwork for and hold an **initial brainstorming session** (objective: set agenda and plan for future work)

Segment 5: Economic Assessment

- The Economic Assessment will be UW led with material contributions by the ED, AWG, and Oxford. UW will undertake the research relating to this segment

- Deutsche Bank (coordinated by Patrick Kaufer) will play a leadership role in this segment, and will prepare the framework discussion document (previous slide)

- Supplementary points
 - (a) Close cooperation with business schools is fundamental
 - (b) Establish links with industry and government / policy makers
 - (c) Explore policy implications and guidelines for preparation and assessment of secured financing law reform – and commercial law reform generally

Segment 5: Economic Assessment

- (d) Another prism through which the above can be considered is that of **government policy**: what questions should a government (seeking to assess the benefits) reasonably ask and what replies can and should be reasonably given thereto

- (e) Are there any **costs** associated with the CTC (secured transaction / leasing law reform), and, if so, what are they and how can and should they be quantified

Segment 5: Economic Assessment

- Key initial points for consideration, to be included in the framework discussion paper and addressed in the initial brainstorming session, without limitation:
 - (a) developing outlines of micro, macro, and development economic benefits
 - (b) identifying categories of benefits within these groupings and determining extent to which they are susceptible to quantification
 - (c) basic approaches to methodology for each type / category of benefit
 - (d) what type of data / empirical evidence is available and useful
 - (e) causation questions and what assumptions can reasonably be made
 - (f) approaches absent direct data / evidence; analogies; case studies
 - (g) impact of / relation to political risk, large and small: quantifying treaty-based compliance advantages / effect / incentives

Country

Law Firm

Brazil	Basch & Rameh Consultores; and Embraer
Canada	Blake, Cassels & Graydon
China	King and Wood
European Union	Clifford Chance
India	Rajinder Narain and Company
Indonesia	Mochtar Karuwin Komar
Ireland	A&L Goodbody
Malaysia	Adnan Sundra & Low
Malta	Ganado and Associates
Mexico	Bogados Sierra y Vazquez
Netherlands Antilles	Spigthoff Curacao
New Zealand	Minter Ellison Rudd Watts
Nigeria	Steamsowers & Köhn
Norway	Simonsen Advokatfirma
Pakistan	Kabraji & Talibuddin
Russian Federation	White & Case
Singapore	Allen & Gledhill
Turkey	Dikici Law Office; and Serap Zuvun Law Offices
United Arab Emirates	Al Jallaf & Co.
United Kingdom	Norton Rose
United States of America	Fulbright and Jaworski

ANNEX 2-A - Economic Impact Research

- Research to support the Economic Impact Forum (**EIF**) in their assessment comes from several broad subject areas, namely law and economics literature and other materials relating to:
 - 1) the CTC;
 - 2) secured transactions;
 - 3) leasing;
 - 4) commercial law reform including banking and contracts;
 - 5) insolvency and bankruptcy;
 - 6) economic treaties and trade;
 - 7) transportation law; and
 - 8) development

ANNEX 2-A - Economic Impact Research

- The results of the research will be annotated to reflect the perceived relevance to the EIF. Initially, such results will be annotated as:
 - 1) directly relevant,
 - 2) relevant by analogy,
 - 3) potentially relevant, and
 - 4) less relevant

- As time permits, a more formal annotated bibliography will be prepared including a brief summary of each document

ANNEX 2-A - Economic Impact Research

- The research will include collection of the following sources:
 - 1) law-perspective literature (often centered on information and incentives),
 - 2) finance-perspective literature (often centered on credit modeling and pricing, and, thus, linked to methods used by:
 - a. **financing institutions,**
 - b. **rating agencies,**
 - c. **banking regulators (e.g., BIS II / III),**
 - d. **multilateral lending institutions, and**
 - e. **national lending institutions, such as export credit agencies)**
 - 3) economic-perspective literature (often showing linkages between a transactional (micro) efficiency / inefficiency and (macro and developmental) economics metrics), and
 - 4) government-policy perspective literature (including that related to changes of law and regulation generally)

- These broad groupings will be noted in the organisation of the materials

ANNEX 2-A - Economic Impact Research

- Given the specific issue of the extent to which laws, more specifically, international (treaty-based) law are effectively enforced, and, thus may be reasonably relied upon, a separate line of research will be undertaken on compliance with law / effects of rules of law, more specifically, compliance with and effects of treaties
 - The subject areas and sources would include, but not be limited to, those above. For example, other (non-commercial / economic) types of treaty systems (subject areas) and sources (such as political science / international relationship perspective literature) will be included
- As a rule, general law and economics literature which does not offer the type of concrete analysis of costs and benefits will not be collected / assessed

ANNEX 2-B – Contact Group (Economic Assessment)

- Anthony Saunders – NYU (Stern)
- Ingo Walters – NYU (Stern)
- Oren Sussman – Oxford (Said)
- Julian Franks – London Business School
- Vadim Linetsky – Northwestern (McCormick, IEMS)
- Jacques Lawarree – University of Washington (Dept. of Economics)
- Jonathan Root – Moody's
- Thomas Cahill – Morgan Stanley
- Patrick Kaufer – Deutsche Bank
- Eric Eugene – BNP Paribas
- Klaus Heinemann – HH Kapital
- Frederique Dahan – EBRD

- **N.B.:** (1) This is an initial list; invitations have been extended to select others, including the rating agencies, and (2) Airbus and Boeing will support via their co-chair role in AWG

Project Leadership and Contacts

- Jeffrey Wool, Executive Director (and General Editor of the Journal): jeffrey.wool@awg.aero
- Kyle Brown, Project Manager: kyleb22@uw.edu
- Jonathan Eddy, Academic Lead, UW: eddyj@uw.edu
- Louise Gullifer, Academic Lead, Oxford: louise.gullifer@hmc.ox.ac.uk
 - Working with Sir Roy Goode, Oxford: roy.goode@law.ox.ac.uk
- Rafal Zakrzewski, Editor of the Journal: rafal.zakrzewski@law.ox.ac.uk