



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

THE FUTURE FOR RAILWAY FINANCE

HOW THE LUXEMBOURG RAIL PROTOCOL

WILL TRANSFORM THE RAIL SECTOR

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The Cape Town Convention and its Protocols

**A modern international regime
for equipment financing and leasing**

**Prof. Anna Veneziano
Deputy Secretary-General, UNIDROIT**

Cape Town Convention and its Protocols: An International Regime for Asset-Based Financing and Leasing

- **What is the Cape Town Convention system?**
- Uniform legal regime developed within the International Institute for the Unification of Private Law (UNIDROIT)
- Decade-long, highly inclusive, industry-driven process:
 - Legal academics and practitioners
 - Governments and governmental experts
 - National regulatory authorities
 - Specialised Intergovernmental Organisations (Rail Protocol: Intergovernmental Organisation for the International Carriage by Rail - OTIF)
 - Decisive **industry input** during treaty negotiations and treaty implementation
 - for the Rail Protocol: pivotal role of Rail Working Group (RWG)

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- **Two-tier structure: main Convention /specific Protocols**
 - **Aircraft Protocol (2001)**, entered into force 2006: airframes, aircraft engines, helicopters
 - **Rail (Luxembourg) Protocol (2007)**: railway rolling stock
 - **Space Protocol (2012)**: satellites and their components
 - *Draft Protocol on Agricultural, Mining and Construction Equipment (2014-date)*
- **Common core of uniform principles and rules, able to be adapted to the particular industry**
- **Convention and Protocols to be interpreted as a single instrument**
- **Protocol prevails in case of conflict**
- **Aircraft Protocol as a model**

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- **PREDICTABILITY AND CERTAINTY IN SECURED FINANCING**
 - Uniform regime designed to **increase certainty** and **reduce risks** in **asset-based financing and leasing** of certain types of high value mobile equipment
 - Allows the creation of an autonomous, consensual “**international interest**”
 - security agreement
 - Retention of title
 - Leasing agreement
 - Ensures (cross-border) effectiveness and enforcement of the international interest, also in insolvency proceedings
 - Clear rules for determining priorities, including as against interests in national law
 - Transparency and predictability through the establishment of an international registry
 - **More certainty = less risks = lower costs**

Cape Town Convention: an international success

The example of the Aircraft Protocol

CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL:

- **Political acceptance:**
 - In force since 2006
 - Convention: **70** Contracting States
 - Aircraft Protocol: **62** Contracting States
- **Practical impact:**
 - More than 500,000 filings in the International Registry since 2006
 - 86,000 filings in 2013 only (+ 20% in relation to 2012)
 - Estimated value of collateral : 500 billion US\$
- **Quantifiable, concrete economic benefits:**
 - “Cape Town Discount” practiced by Export Credit Agencies (OECD)
 - Improved rating in recourse to capital market debt financing
 - Better conditions for commercial credit

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- **FLEXIBILITY OF THE LEGAL REGIME**

- Adaptation to the specific needs of each market through the two-tier system Convention/Protocols
- Role of party autonomy: Convention gives effectiveness to parties' agreement
- System of DECLARATIONS:
 - States may make **policy choices** in relation to certain issues
 - E.g.: States may opt in to special provisions that are more advantageous to the creditor and enhance economic benefits
 - E.g.: States may declare which non-consensual liens or privileges prevail over the international interest



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Thank you for your attention!