

## 9<sup>th</sup> ANNUAL CAPE TOWN CONVENTION ACADEMIC PROJECT CONFERENCE

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The ninth annual conference of the Cape Town Convention Academic Project was held both in Rome and virtually, by means of a Zoom platform, on 10th and 11th September 2020.

The encounter enabled the auditors to gather a wide view on some actual themes concerning the implementation of the Cape Town Convention (CTC) on International Interests in Mobile Equipment.

The Cape Town Convention Academic Project (CTCAP) is a joint undertaking composed by the University of Cambridge and UNIDROIT; its aim is to facilitate and deepen the study and assessment of the CTC and its Protocols. The Aviation Working Group is the founding sponsor of the project, while the International Civil Aviation Organization and the Intergovernmental Organisation for International Carriage by Rail are also cooperating<sup>2</sup>.

The meeting was moderated by some of the directors of this project, namely Professor Jeffrey Wool, Senior Research Fellow at Harris Manchester College, Oxford and Secretary-General of the Aviation Working Group, Professor Louise Gullifer, Rouse Ball Professor of English Law, University of Cambridge and Professor Ignacio Tirado, Secretary General of UNIDROIT.

Opening remarks were made by UNIDROIT President Maria Chiara Malaguti. During her speech, she emphasized that the CTC is one of the most successful instruments ever realized to coordinate different jurisdictions in the aviation sector. Undoubtedly, the CTC can represent a great support in addressing many of the issues characterizing the difficult times this industry is experiencing.

The first conference day the discussion focused on the coordination of the CTC with the Insolvency Framework present in Europe ("Recast EIR"). Professor Tirado gave a clear picture of the importance of the insolvency system, defining it as the touchstone for the efficiency of secured transactions. He described the relationship between the EU and its Member States regarding CTC's implementation and he explained how COMI (Center of Main Interests) is considered to decide whether to apply the insolvency rules written in the CTC.

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<sup>1</sup> University of Bologna.

<sup>2</sup> University of Oxford, The Cape Town Convention Academic Project, <<https://www.law.ox.ac.uk/researchsubject-groups/cape-town-convention-academic-project>>.

Secondly, he presented the EU Restructuring Directive 2019/1023, which aims at creating a degree of substantive harmonization, in particular for the informal/hybrid proceedings at an early stage of financial distress.

The commentator Dr. Felix Steffek (Cambridge University) highlighted the need to review the 'relation' between the CTC and the Member States to align national laws, since the lack of harmonisation between the EU and Member States inexorably leads to a strong degree of inefficiency. Furthermore, he made some considerations about the double bond connecting efficient insolvency proceedings and the minimisation of the finance's cost.

Kenneth Gray and Mark Kraggs by Northon Rose Fullbright focused on the conformity of the United Kingdom Corporate Insolvency and Governance Act to the CTC. They clarified how the new moratorium period works and showed the former "CIGA Superscheme" amending Regulation 37 of the Cape Town Convention, stressing also the need to solve some uncertainties about the meaning of "insolvency proceeding".

The conference continued with Professor Wool and Miguel Ruelas for Abogados Sierra, who talked about the judicial breach of CTC's provisions. Professor Wool made an explanatory introduction clarifying that being aware of what a breach of law is also frames the concept of compliance. Some hard points must be solved, for example, establishing the degree of good faith in failing to comply the CTC. Dr. Rumiana Yotova (Cambridge University) commented on this highlighting State's responsibility, and private parties involving State's responsibility, to respect the primacy of treaties.

The last intervention was made by Baris Mesci from the Instambul Kültür University, who talked about the assessment of applicable law contained in the Aircraft Protocol. He started describing the Conflict Rules (a.k.a. Reference Rules) contained in the CTC and in the Aircraft Protocol that determine the *lex causae* when an incident involving different jurisdictions occurs. The discussion continued with a focus on the *lex fori*, which depends on whether the issue is a contractual or proprietary one; in the last case the applicable law is that of the "centre of administration".

The second day Professor Wool and J. Jin displayed a presentation on the compliance with the CTC in the context of COVID 19 and on the Compliance Index recently elaborated. The pandemic represented a new challenge for the coordination of Private and Public International Law systems, and to solve the discrepancies the regulatory public law rule (RPL) may be applied. The Compliance Index was published in February 2020, its aim is to monitor States' compliance with the CTC's provisions and control how the legal implementation of those provisions takes place.

In order to obtain an accurate quantitative result on the behaviour of a State towards CTC's rules, an index formula has been created. The outcome of this formula provides the level of compliance of a jurisdiction that can result as low, medium or high.

Professor Tirado explained how having a perspective on a jurisdiction's compliance with the CTC can provide a useful perspective to the investors of the aviation market.

The second guest, Peter Watson, consultant by Allen and Overy, discussed the Judicial Guide to the CTC. Some jurisdictions are still unfamiliar with the application of the CTC, they often try to understand what other jurisdictions do and risk losing the CTC discount, causing the aviation market to suffer. The solution can be represented by a handbook for judges who do not have specialist knowledge.

Finally, Rob Cowan for Aviareto, Ole Böger from the German Ministry of Justice, Marek Dubovek, executive director by NatLaw and Gavin McCosker of the Australian Financial Security Authority provide an explanation on the MAC International Registry - a separate registry for low value assets - with unique characteristics, such as registration fees reduced to a minimum, absence of unnecessary obstacles and the presence of the manufacturer serial number.

Professor Tirado thanked everyone present and those who contributed to the success of the meeting, then officially declared the conference closed.