



**Remarks of Jeffrey N. Shane  
Under Secretary of Transportation for Policy**

**Seminar on the Cape Town Convention's Role  
in Facilitating International Trade**

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I want to welcome you all to this seminar and express my appreciation for your willingness to give up your Sunday morning to be here. We certainly hope to make it worth your while.

Over the course of the morning, we will be discussing the Cape Town Convention on International Interests in Mobile Equipment and its accompanying Aircraft Protocol. We have assembled a distinguished group of speakers who will address different aspects of the Convention's role in facilitating international trade:

- Mr. Claude Brandes, Customer Finance Director of Airbus, will speak on the European Perspectives of the Basic Principles.
- Ambassador Thomas Pickering, Senior Vice President of the Boeing Company, will tell you about the importance of a legal framework in international aircraft trade.
- Ms. April Foley, a member of the Board of the Directors of the Export-Import Bank of the United States, will speak about the advantages of the Cape Town Convention.
- Ms. Noreen Doyle, First Vice President of the European Bank for Reconstruction and Development, will address the benefit of the Convention to the investment climate.
- Ambassador Lorne Clark, former IATA General Counsel and General Secretary and Head of IATA's Delegation to the Cape Town Diplomatic Conference, will speak on the airline industry's perspectives on the Convention.

Before turning the program over to our speakers, however, I would like to provide a brief overview of the Convention and Protocol and offer my own views about their significance.

The Convention and Protocol, once fully implemented, will bring help to facilitate the modernization of airline fleets around the world. The economic benefits will be truly global. Less-developed countries and their airlines will be able to modernize their fleets through easier access to aircraft at reduced financing costs. The world's skies will be safer and cleaner as newer aircraft replace those currently in use. And for countries that manufacture aircraft there will be increased exports as the number of aircraft orders increases.

The Cape Town Convention and Aircraft Protocol were negotiated over a five-year period under the auspices of UNIDROIT, the UN agency that deals with private law conventions, and ICAO, the International Civil Aviation Organization. Its provisions reflect a balance between enhanced creditor rights that will help to reduce aircraft financing costs while improving debtor protections. It was concluded in November 2001 at a Diplomatic Conference at Cape Town, South Africa, and has been signed by 26 states, including the United States, which signed just last month. To date, there have been no ratifications, although only three are needed for the Convention to become effective, with eight needed before the Aircraft Protocol can come into force.

The Convention is designed as a "multi-equipment" treaty. Different protocols will be added to the Convention to facilitate specialized treatment of different forms of equipment financing. The Convention can apply to any category of high-value mobile equipment through the adoption of an equipment-specific protocol. The only protocol adopted thus far is the Aircraft Protocol, which applies to airframes, aircraft engines, and helicopters above a minimum size or power threshold.

The mechanics of the Convention and Protocol center on a recognition of "international interests" in mobile equipment and the creation of an international registry in which creditors will file these interests. "International interests" are security interests in a uniquely identifiable object. In the case of an aircraft, this identifier is the manufacturer's name, the serial number, and the model. Once an international interest has been filed by a creditor and becomes searchable at the international registry, that creditor's interest will have priority over all subsequent registered interests and all unregistered interests.

The underlying premise of the Convention is simple. If you can reduce some of the risk that financiers incur in extending credit, you can reduce the financing costs to the debtor. In many countries of the world, the risk factor is significant because local laws either do not protect lenders in the event of default or bankruptcy or are highly unpredictable. With respect to aircraft, this uncertainty is compounded by the fact that because aircraft can and do move readily between countries – that, after all, is why we make them -- it is virtually impossible for a financier to know where the aircraft will be

on the date of default or bankruptcy. It is this uncertainty that drives up the cost of aircraft financing, which is reflected in the interest rate the financier charges the debtor.

The Convention will reduce this uncertainty in a number of ways, and thus reduce financing costs. For example, it provides financiers with a number of key rights with respect to any aircraft financed in a country that has ratified this Convention and Protocol. These include the right, if there should be a default, to deregister the aircraft and procure its export; to take possession or control of the aircraft, or sell or grant a lease in the aircraft; and to collect or receive income or profits arising from the management or use of the aircraft. The extent of these rights and the speed with which they can be exercised will be a function of the declarations a country files at the time it deposits its instrument of ratification. These declarations set out which remedies that state will recognize and the means by which the remedies can be implemented. Very clearly, the greater the remedies a state chooses to recognize in its declarations, the greater the benefits its airlines will realize.

Creditor uncertainty will be further reduced by the operation of the international registry. That is because a search at the time of a financing will allow the creditor to be certain of the priority of his interest. The registry will be notice-based with only basic information included in the system. Because it is a notice-based system, it will be much less expensive to administer, and less prone to errors, than traditional document-based registration systems where the financing documents have to be reviewed and approved before filing. The Convention will allow creditors to file directly with the International Registry, by computer, from anywhere in the world.

The net effect of all these provisions, again, and by far the most important effect, will be to reduce creditors' uncertainty, and thereby reduce the interest rate they must charge to adequately account for their risk. This will be particularly beneficial for developing economies because of the higher interest rates that their airlines often have to pay. For those countries that still finance aircraft acquisitions through the use of sovereign guarantees, a switch to asset-based financing would free up sovereign guarantees to be used for other national purposes.

ICAO will supervise the International Registry, and a Preparatory Commission, established by the diplomatic conference, will determine its initial Host State. The Host State is expected to fund the creation of the International Registry and users will pay sustaining user fees, which are expected to be low since the system is wholly electronic. The feasibility of the system has already been tested and validated.

And now it is time to have our distinguished panel of speakers provide their own unique perspectives on the Cape Town Convention.

Many thanks for taking the time to be with us this morning, and for your attention.