



Open Discussion on a Framework for Economic Assessment of the Protocols

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Open Discussion on a Framework for Economic Assessment of the Protocols

The fifth Cape Town Convention Academic Project Conference was held 13–14 September 2016. On 13 September, an open discussion on a framework for economic assessment of the protocols was held. Jeffrey Wool moderated the session. The presenters discussed the following topics with comments and questions from the audience:

- Background on the role of economic assessment in historical international commercial law reform
- Discussion of past economic assessments of the Cape Town Convention and recent developments with data from international rating agencies
- A general formula for calculating economic benefit was presented. The formula, Economic Benefit = [Normative benefits (better rule) + Non-Normative benefits (international rule)] – Z (cost of transitioning to new rule), was discussed as were difficulties applying it, particularly with regards to availability of data
- The effect of treaty implementation on economic benefits
- Factors affecting treaty compliance and the effect treaty compliance has on economic benefits
- The empirical aspects of economic assessment and potential sources of data

The slides from the session are reproduced.



Open Discussion on a Framework for Economic Assessment of the Protocols

Moderator: Jeffrey Wool (Universities of Washington and Oxford)

13-14 September 2016

Cape Town Convention Academic Project

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



Joint Auspices:
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Content

- Background
- Outline of economic assessment-related developments from project inception
- Conceptual framework for assessment of economic benefits
- Some points on elements of that conceptual framework, as applied
- Empirical aspects, data, proof, and issues

Background

- Drivers for international commercial law reform
 - Historical development
 - Presently: what is said, what is fundamental, and what impacts ratification
- Role of economic benefits and economic assessment in international commercial law reform
 - The audience – lawyers, economists, and governmental
 - Data re future changes in law -- timing and causation issues (will revisit below)
 - Modelling and market conditions [first thoughts]

Outline of economic assessment-related developments from project inception

- Wording in, responses to, and conclusions of, the project inception questionnaire (prior to 1992)
- AWG's initial letters to UNIDROIT, statement of principles, and criteria for supporting the effort (1994)
- Sanders and Walters economic impact assessment (1997)
 - conclusions
 - conditioned on the text reflecting the 'asset-based financing principles'
- Eximbank decision to provide 33% reduction ('**CTC discount**') on otherwise applicable fee (prior to entry into force (2006), 2003)
- OECD's Aircraft Sector Understanding ('**ASU**') permits a (smaller though on higher fees and more complex) CTC discount for large aircraft (2007)

Outline of economic assessment-related developments from project inception

- First country-specific economic impact assessment (Linetsky, UK ratification (2010))
- ASU permits across the board 10% discount on higher fees (2011)
 - Similar to points above, with ‘qualifying declarations’, and, going-forward, with a required ‘questionnaire’ confirming *inter alia* the primacy of the CTC
- Wool articles on economic benefits (treaty design, 2012), implementation (with Jonovic, 2014), and compliance (2015)
- Development of international rating agencies criteria taking into account CTC (2010 ~ present)
- First CTC EETC (Doric (Emirates), 2012+2013); Virgin Australia (2013); Air Canada 2013 + 2015); THY (2015); LATAM (2015)

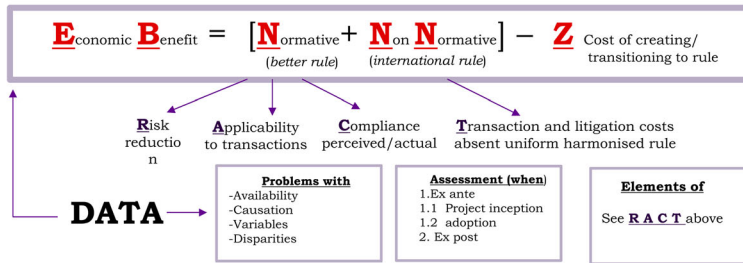
Conceptual framework for assessment of economic benefits

- **See next slide** – general formula being developed under Oxford/UNIDROIT economic assessment of law reform project

Economic Assessment of International Commercial Law Reform

General Formula in respect of Economic Benefit

This general formula is being developed under the Oxford/UNIDROIT economic assessment of law reform project and is used herein solely for discussion purposes!



Fundamental Policy Issues

- | | | |
|---|--|--|
| I. Are there other means to achieve EB (repeat above and compare) | II. How are EB to be weight against the retention of current law (a broader cost-benefit analysis) | III. What are the context specific limitations on quantification |
|---|--|--|

Some points on elements of that conceptual framework, as applied

- Implementation – see next slide and AWG national summary of national implementation (www.awg.aero)

- Relationship between legal and political risk – see second and third charts below

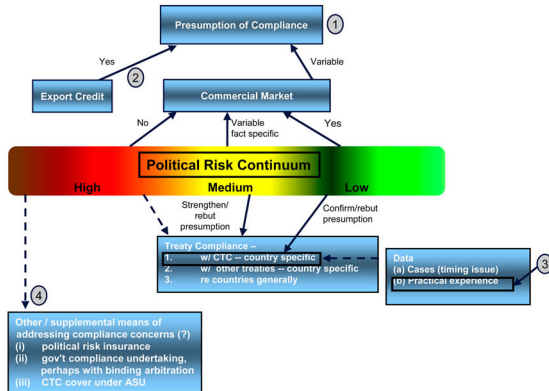
- Data-related issues (availability, causation, variables, and disparities; and timing of)

CTC – declarations and implementation



This is an AWG chart and is used herein solely for discussion purposes

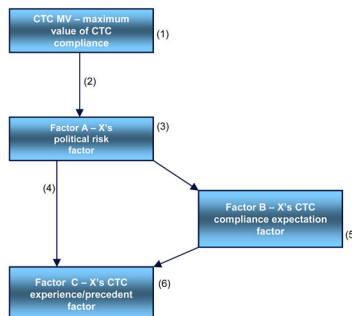
CTC Compliance Assessment Framework



- Notes**
- ① Absent precedent. The presumption of compliance should be stronger than for (i) national law, and (ii) other treaties, given the (a) ASU mechanism (effectively, a collective enforcement device), and (b) aviation context (with a treaty-based and ICAO institutional culture of compliance).
 - ② Countries are eligible for the CTC discount if qualifying declarations have been made and CTC prevails over conflicting laws absent non-compliance. See ASU, Appendix II, articles 30, 36 and 42.
 - ③ To be reported on in CTC Academic Project's (RANIA)
 - ④ Also for medium-risk countries? Dependent on form of financing?

This was prepared by J. Wool and is used herein solely for discussion purposes

CTC Compliance Model



- Notes**
- (1) **CTC MV** is the 'maximum value of full compliance with the CTC', assuming that the qualifying declarations were made and the treaty was properly implemented, such that it prevails over conflicting national law. The CTC MV is set at 10 in all cases.
 - (2) The impact, linked to the category of a particular country (X), on **CTC MV of Factor A** (see point (3) below) depends upon the strength of the general 'presumption of compliance' applicable to the CTC. This would take into account two factors: (i) the position on treaty compliance generally, and (ii) the position on compliance with CTC generally, given the consequences of non-compliance (e.g., loss of ASU CTC discount and reputational costs in aviation legal and commercial investment circles (magnified by the publicity systems being put in place)).
 - (3) **Factor A** for a particular country (X) will depend on political risk / rule of law rating of that country. This will be objective. The reduction would be between 0 and a number to be determined. In long-hand, this will be called the 'political risk factor'.
 - (4) If the result of Factor A is to retain a compliance score (CS) of 10, that is, a reduction of 0, then Factor B is skipped. Go to Factor C.
 - (5) **Factor B** for a particular country (X) assumes no practical experience / precedent under the CTC. If there is such experience / precedent, go directly to Factor C. Factor B will depend a country specific assessment of the likelihood that X will comply with the CTC. This will involve reasoning based on legal, political, and historical considerations, much like the factors taken into account by the rating agencies in the recent EETC transactions. That noted, efforts are needed to make this more objective, empirical, and quantifiable. An approach might be a comparative assessment of treaty compliance by specific countries. There may be other factors. Factor B may increase or decrease the CS. This is the most difficult part of the model. In long-hand, this will be called the 'CTC compliance expectation factor'.
 - (6) **Factor C** for a particular country (X) assumes practical experience / precedent under the CTC. In terms of magnitude, this will be the most significant factor. Factor C may increase or decrease the CS. In long-hand, this will be called the 'CTC experience / precedent factor'.

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Empirical aspects, data, proof, and issues

- Analysis of capital market transactions
- Banks' internal modelling- Basel rules
- Leasing – different factors and effects of CTC compared with banking and capital market transactions
- Modelling versus market conditions [further thoughts]
- The important role of ex post assessments (e.g., compare same transaction, with same borrower, pre-and post CTC (all other factors equal)

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