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TURKISH AVIATION ACADEMY

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Registration of Aircraft Security Interests

Module 15

**Istanbul Technical University
Air Transportation Management, M.Sc. Program
Air Law, Regulation and Compliance Management
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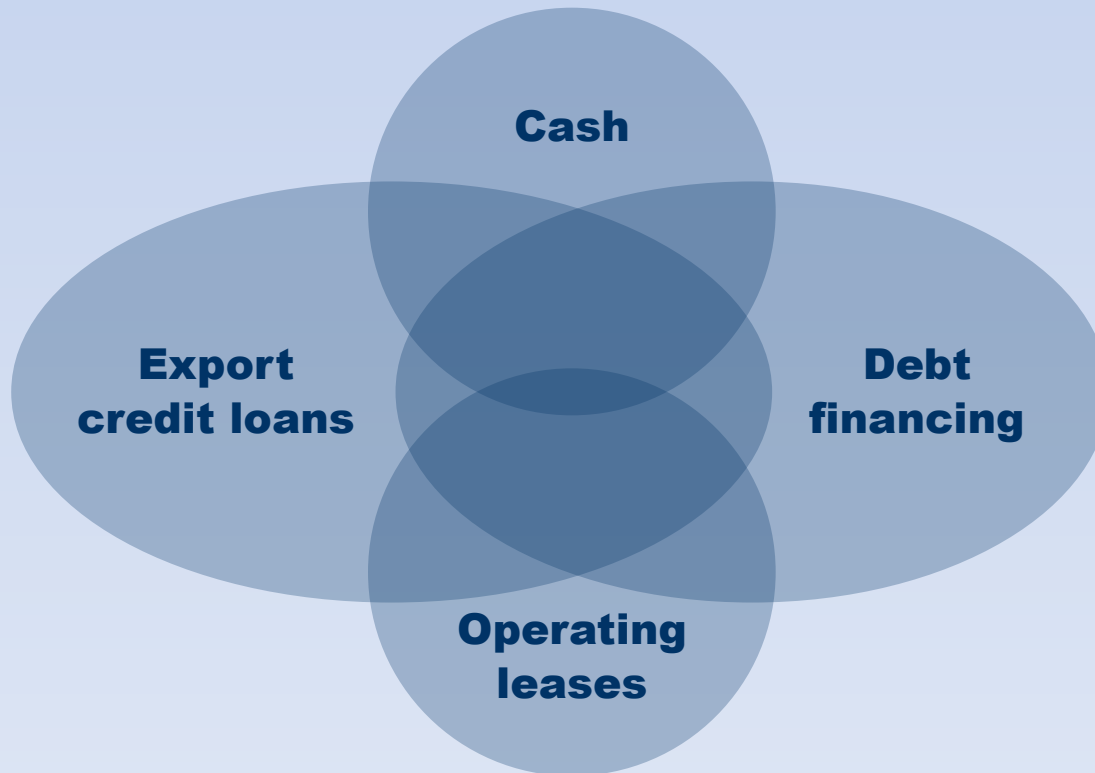
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Outline

- Security Interest
- The Blue Sky Case
- The Cape Town Convention
 - Aircraft Protocol
- Back to the Blue Sky Case...

Security Interest

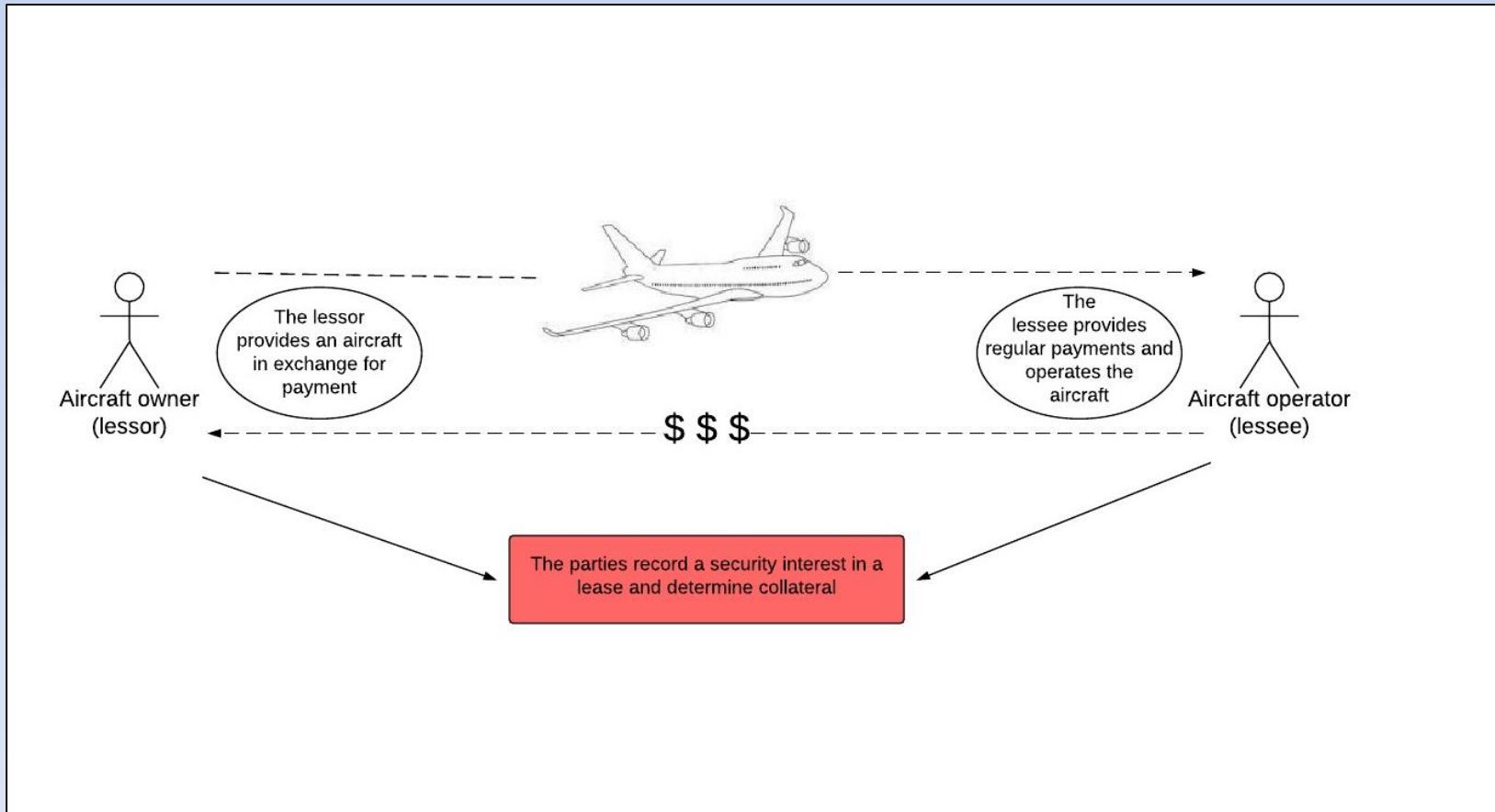
Recall various financing alternatives



What is security interest?

- Security interest is a legal right on collateral that has been pledged to obtain a loan. The borrower provides the lender with a security interest in certain assets that can be recovered if the borrower defaults on loan payments..
 - E.g. if an aircraft lessee defaults on lease payments, the aircraft owner can repossess the leased aircraft

Security interest in aircraft lease



What are the main issues?

- Aircraft are highly mobile assets
 - Users of aircraft wish to have operational freedom
 - Financiers of aircraft wish to preserve aircraft in good condition and access it if default occurs
- Different jurisdictions apply different laws
 - Local regulations on registering security interest vary widely; no two systems are alike

What international laws apply?

- There is no comprehensive system of international substantive property law to govern the purchase and financing of aircraft
 - It is important that the owner is able to gain legal and physical control over aircraft
- However, several rules and principles emerged under international treaties

International treaties

1948 Geneva Convention

CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT, SIGNED AT GENEVA, ON 19 JUNE 1948 (GENEVA CONVENTION)

WHEREAS the International Civil Aviation Conference, held at Chicago in November-December 1944, recommended the early adoption of a Convention dealing with the transfer of title to aircraft,

WHEREAS it is highly desirable in the interest of the future expansion of international civil aviation that rights in aircraft be recognised internationally,

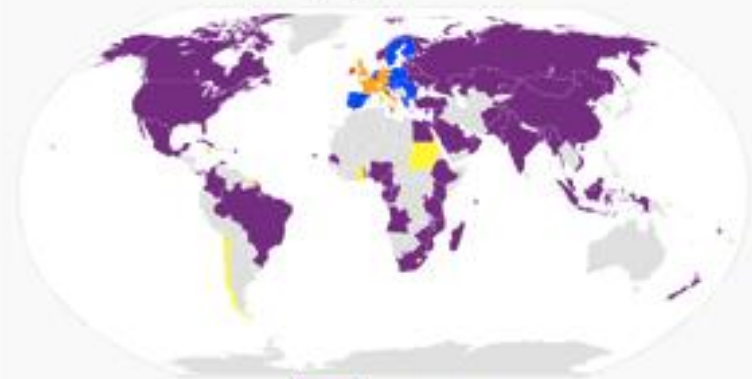
THE UNDERSIGNED, duly authorized, HAVE AGREED, on behalf of their respective Governments, AS FOLLOWS:

Article I

1. The Contracting States undertake to recognise:
 - (a) rights of property in aircraft;
 - (b) rights to acquire aircraft by purchase coupled with possession of the aircraft;
 - (c) rights to possession of aircraft under leases of six months or more;

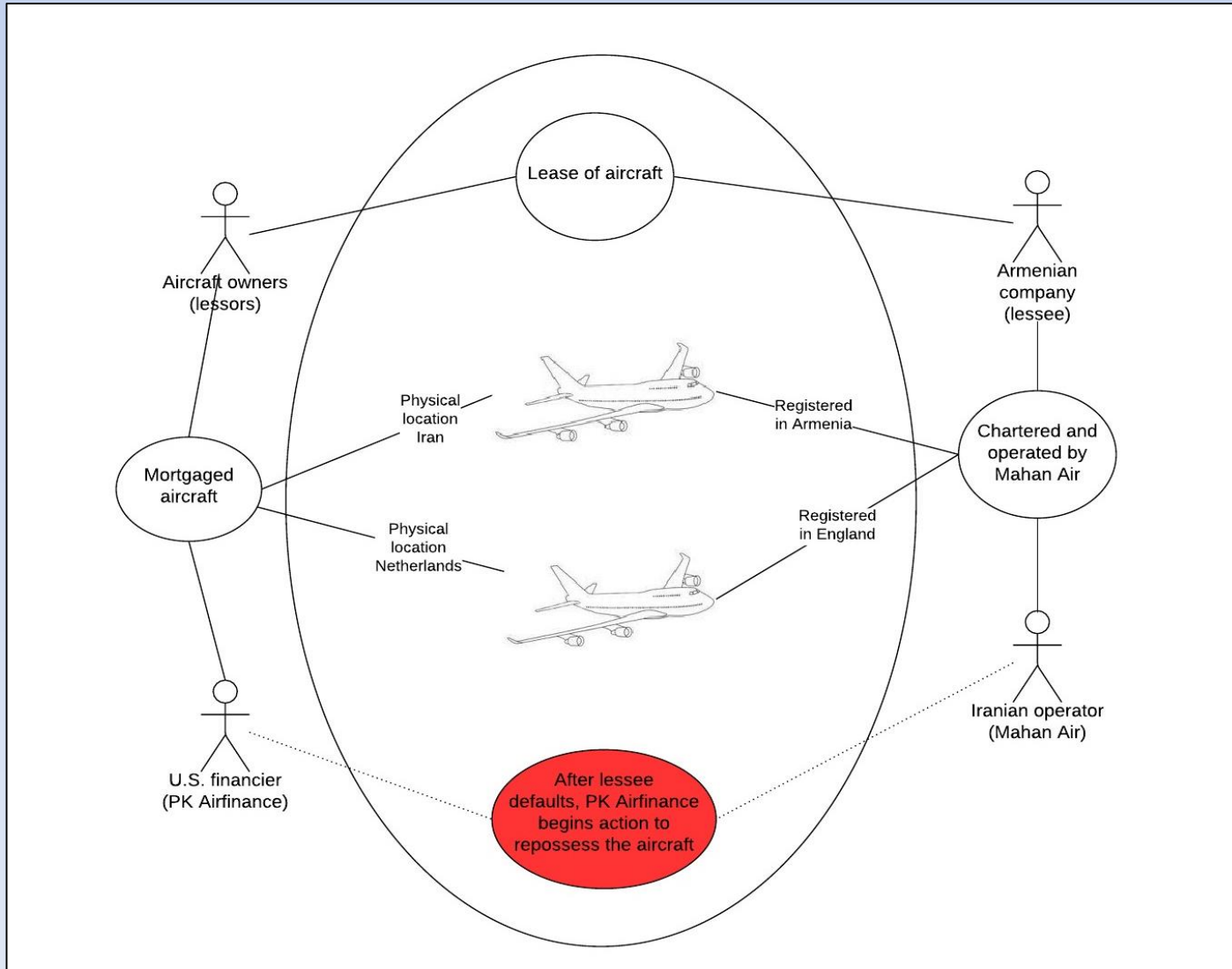
2001 Cape Town Convention

Cape Town Convention on International Interests in Mobile Equipment



The Blue Sky Case

Factual background



Legal questions

- The laws of which country apply?
 - Potentially the laws of England, Armenia, Iran and the Netherlands may apply
- Should the law of the state of nationality (at the time of mortgage) be applied?
- Should the law of the state of aircraft location (at the time of mortgage) be applied?

The Cape Town Convention

Historical context

- ICAO and UNIDROIT offered a solution
- The Cape Town Convention on International Interests in Mobile Equipment (CTC)
 - An umbrella treaty to protect security interests in mobile equipment
 - separate protocols for railways, space objects and aircraft
 - signed in 2001
 - in force since 2006

Main objectives of CTC

- With respect to aviation, there are four key objectives of CTC:
 1. Establish an international recognized security interest in aircraft
 2. Provide remedies and expedited relief for creditors in the case of default
 3. Establish a single international electronic registry, searchable by potential creditors
 4. Increase access and affordability of financing; lower risk for creditors

Who ratified CTC?

- CTC has 64 ratifications
 - The Aircraft Protocol has been ratified by 58 contracting states
- CTC Aircraft Protocol has 28 signatures
 - Signatories include India, China, United Arab Emirates, Singapore, the European Union, Russia and the United States
 - Turkey was among the signatories of the CTC
 - in force since 1 December 2011

Declaration system

- CTC is an unusual treaty due to the declaration system
 - States can make a declaration to “opt in” or “opt out” of specific treaty provision
 - A flexible and customizable structure
 - Private parties have a greater control over the set of rules that will apply to aircraft contracts

How does it work?

- International interest in the aircraft is recorded in an international 24/7 online registry in Ireland, creating priority
 - Potential and existing creditors can search the registry

Remedies

- In the event of default, the creditor has a number of remedies:
 - Self-help enforcement, should the debtor (airline) default on its payments
 - Take possession/control of the aircraft
 - Right to deregister the aircraft and export it
 - Sell or lease the aircraft
 - Collect or receive income/profit from aircraft use

Remedies on insolvency

- States are generally sensitive to potential conflicts of CTC with domestic insolvency laws
 - States can choose CTC insolvency provisions using the declaration system
- In the event of insolvency of the debtor, a creditor has the following remedies
 - *Alternative A*: the debtor must give the creditor aircraft possession or pay all debt and agree to meet all future obligations under the agreement
 - *Alternative B*: the debtor must provide an opportunity to repossess or give notice before bankruptcy proceedings that he will pay all debt and meet all future obligations under the agreement

Impact of CTC on aircraft financing

- Facilitates financing for operators with poor credit rating
 - Export credit agencies offer lower interest rates to states that have ratified CTC
 - Provided they qualify for discount

Problems exist...

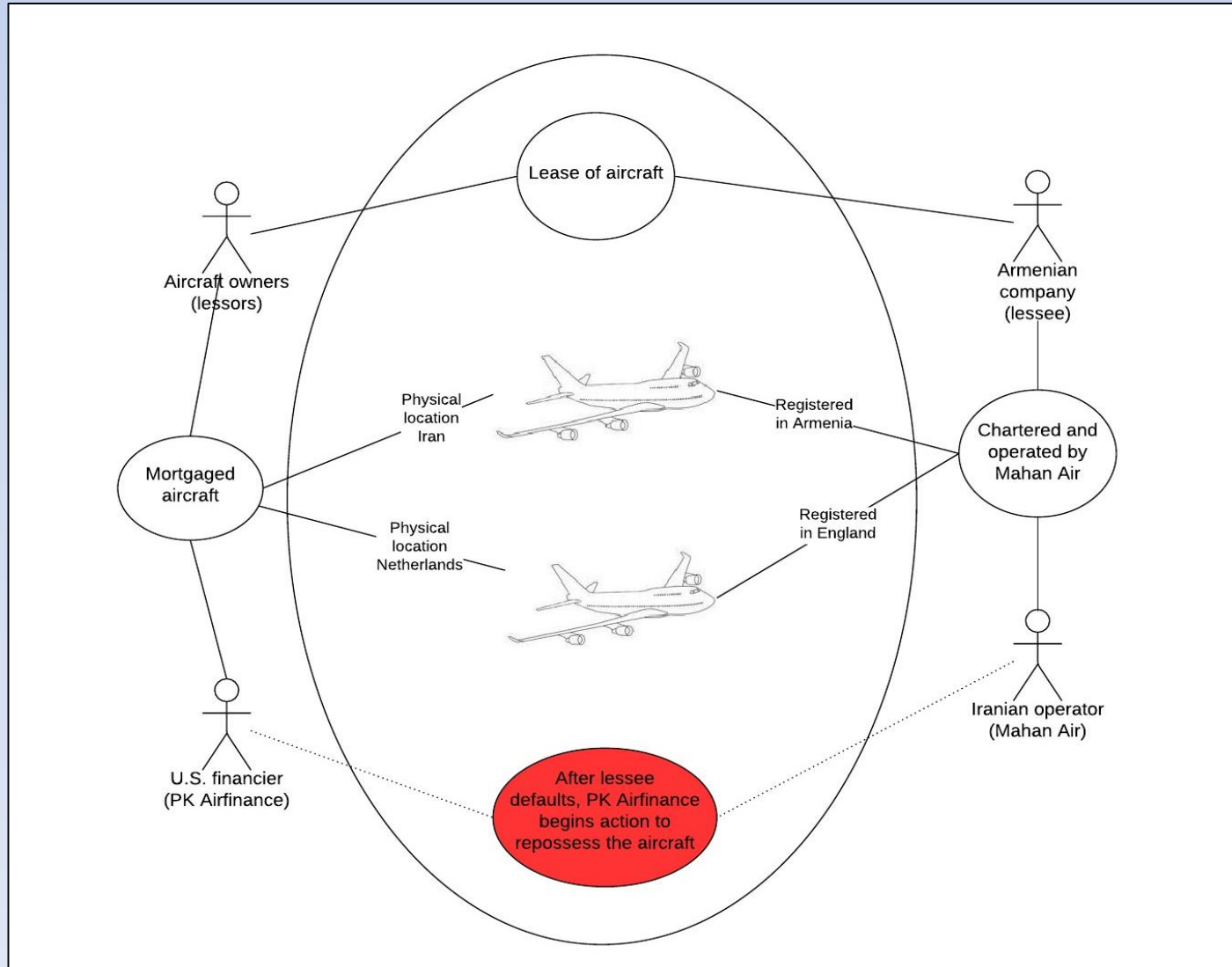
- Complicated ratification
 - Choice of remedies
 - States must make a declaration to choose
 - self help remedy or judicial discretion
 - Declarations
 - e.g. CTC shall prevail over domestic conflicting laws
- Complicated implementation, in an already complicated area
 - US example
 - Includes internal US transactions (FAA, UCC and CTC)

Back to the Blue Sky Case...

Who reviewed the case?

- PK Finance initiated proceedings in England
 - The English High Court
 - Applied English “choice of law” rule to select the appropriate legal system
 - If the selected legal system had its own “choice of law” rules, then the outcome may be unpredictable (e.g. English law may apply)
 - Or the selected state’s domestic property law would apply

Which country's law applied?



What can we learn?

- Adjudication of property rights in movable property (aircraft) involves very complex legal analysis
 - Applying laws of the country of aircraft registration means a predictable legal regime
 - Applying laws of the country of aircraft location create inherent uncertainties and little predictability as aircraft move around
- Property rights created in one country may not apply in another country where the aircraft is operated

What if CTC applied?

- If CTC had applied in the Blue Sky case, the outcome would have been very different
 - Aircraft location is irrelevant
 - The right of PK Airfinance to aircraft is recognized
 - Priority of security interest is established
 - Remedies available to recover the aircraft

Concluding remarks

- CTC helps to resolve the conflict of national law principles
 - Internationalizes the recognition of aircraft security interest
 - Provides a mechanism to enforce aircraft security interest (remedies)
- The key challenge is to extend the application of CTC to more contracting states and to encourage full ratification