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THE NORMATIVE IMPLICATION OF UNIDROIT SPACE PROTOCOL FOR CORPUS JURIS
SPATIALIS: REVOLUTIONARY OR EVOLUTIONARY?

Abstract

The (Draft) Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (“Space Protocol”) stands as the first endeavor to secure interests of the private space sector on the international level. By unifying the rules on creation, perfection and enforcement of the security interests on space assets, it will facilitate and endorse asset-based financing pattern in the commercial space sector and eventually further the commercialization process.

Due to the specialty of space assets and the complicated scenario of space commercialization, the drafting process of Space Protocol is quite long and has encountered many difficulties. The “revolutionary” side of Space Protocol is that states are called upon to reconcile the possibility of enforcing security interests on space assets and the necessity of maintaining effective regulatory oversight over national space activities in implementing the Space Protocol. It led to numerous discussions on the necessity of drafting Space Protocol and proposals for the drafting of the key provisions.

While the necessity of drafting Space Protocol is an open question, this article intends to explore how this private space treaty would shed a light on the corpus juris spatialis from the normative perspective. The analysis will focus on the three outstanding issues in the enforcement of security interests on space assets: (i) transfer of intangible rights; (ii) defining “public service” and establishing due procedure; (iii) coordination on change of jurisdiction.

The hypothesis of this article is that, as the full potential of Space Protocol is to be gradually recognized and realized in the commercialization process, Space Protocol will motivate states to develop a common “margin of appreciation” for commercial space interests and contribute to the harmonization of legislative initiatives in national laws of participating states. So this “revolutionary” effort will eventually be transformed into the new driving forces in the “evolution” of corpus juris spatialis.