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The Interaction between International Private Law and Space Law and its Impact on Commercial Space Activities (2)

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LAST COMMENTS ON THE TEXT OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

Abstract

The Convention on International Interests in Mobile Equipment came into force on April 1, 2004, while the third Space Assets Protocol is still being prepared. The Convention and the related Protocols are under the aegis of UNIDROIT, which set up a Committee of Government Experts for the Preparation of a Draft Protocol to the Convention, whose last meeting was held in Rome, on 21-25 February, 2011. The Convention addresses the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner. It recognizes the advantages of asset-based financing and leasing for this purpose and wishes to facilitate these types of transactions by establishing clear rules to govern them. It also sets out the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection. At its meeting held in Rome on 21-25 February, 2011, the Committee of Government Experts for the Preparation of a Draft Protocol to the Convention completed the preliminary working arrangements for the Draft Space Protocol, which must be submitted to the UNIDROIT Council at its next meeting in 2012. Although agreement was reached on certain key issues, such as the definition of space object, which shall include payloads as part of the object, and the introduction of a new category of public service providers, which shall be analyzed in this paper, together with their security instruments, some issues of general interest concerning the treatment of private space activities still remain to be addressed. This paper shall focus on the International Registry in which all the transactions regarding private deeds concerning space assets shall be entered to protect third party interests. Moreover, it will analyze the potential conflict of jurisdiction, control and responsibility that may arise between the parties concerned in case of change of ownership or failure to fulfill the relevant obligations. Other problems concerning the applicable law, also in respect of granting licenses and authorizations and the intervention of the insurance market for space assets in default, will also be addressed and solutions to better the space assets market will be put forward.