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Author: Prof. SOUICHIROU KOZUKA
Gakushuin University, Japan

Ms. Fuki Taniguchi
Japan Aerospace Exploration Agency (JAXA), Japan

THE ECONOMIC ASSESSMENT OF THE SPACE ASSETS PROTOCOL TO THE CAPE TOWN
CONVENTION

Abstract

Unidroit (the International Institute for the Unification of Private Law) has worked for more than a decade over the draft Space Assets Protocol to the Cape Town Convention. In February 2011 the Committee of Governmental Experts had its fifth session of the meeting and finalised the draft Protocol, though with some reservations on a few remaining issues. The Diplomatic Conference to adopt the Protocol is expected to take place within a year. If adopted, it will be the first international treaty in thirty years, since the adoption of the Moon Treaty in 1979. It also becomes the first private law instrument in the Space law. This Protocol has been claimed to bring financing opportunities to the space industry, in particular, small businesses and entities in emerging countries. However, the theoretical examination of why and how such benefit is produced has been modest yet. As the economic impact assessment of the Aircraft Protocol proved to be effective in procuring the support in the process of its drafting, and in promoting ratifications to the Aircraft Protocol after it was adopted, the economic analysis of the Space Protocol will be useful. On the one hand, the recent developments in the functional analysis of the law on secured transactions may be relevant. This perspective is all the more important because such functional analysis relying on the “law and economics” approach offered a theoretical basis for the reform of secured transactions law in many countries, especially economies in transition. On the other hand, it must be noted that the satellite industry recently experienced the boom of another type of finance, namely the leveraged buy out of satellite operators. The asset based financing that the Cape Town Convention and its Space Assets Protocol intend to facilitate may add a new alternative for financing the business, or could even replace the leveraged buy out as the major source of financing in this sector of the industry. Based on these observations, this paper makes the “law and economics” analysis of the Space Assets Protocol and evaluates the impact that it will bring to the space industry.