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THE PUBLIC SERVICE EXEMPTION IN THE SPACE PROTOCOL IN LIGHT OF THAT FOUND IN
THE LUXEMBOURG PROTOCOL

Abstract

The Cape Town Convention on International Interests in Mobile Equipment creates an international system of security interest recognized and enforceable in Contracting States and aims to encourage the financing and acquisition of three types of mobile equipment of high-value ; aircrafts, railway rolling stock and spacecrafts. The Convention was first supplemented by the Aircraft Protocol, second by the Luxembourg Protocol and finally by Space Protocol.

Nevertheless, financing of space assets raises difficulties stemming from repossession, the conflict of laws, liability, national security and export control concerns etc. Indeed, Space Protocol seeks to offer solutions to these problematic issues. In this effort, the difficulties raised in space financing complicated to find solutions to key issues in the legislation history of the Space Protocol; one of them was the public service exemption.

Certainly, the notion of public service has always been a problematic one, even more so in recent years due to neoliberal politics. In fact, economic and technological changes have led to a dynamic notion of public service. Unsurprisingly, the sphere of application of public service provided by States or local authorities has been extended as the modern society becomes also increasingly dependent on space activities; communication, navigation etc.

Indeed, the particularities of each sector led to different approaches in the making of public service provisions in each of the three Protocols to the Convention. During the legislative history of Space Protocol, the public service exemption was one of the most controversial issues. The case was the same for the Luxembourg Protocol. However, the issue was not as problematic as it is now during the period of preparatory works due to the development and evolution of civil aviation sector.

The aim of this paper is to analyze the public service provision in Space Protocol in order to examine if the existing mechanism finds a compromise between diverging interests of States and creditors (which was one of the aims of the Convention/ Protocol structure) in light of the approach in the Luxembourg Protocol, by questioning the utility of the insertion of a public service exemption into Space Protocol while States have already ensured the maintenance of public service by different ways in their domestic laws.