

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
The relations between Trade Law, Finance and Space Law (4)

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THE CAPE TOWN CONVENTION, THE SPACE PROTOCOL, AND THEIR IMPLICATIONS FOR
THE SPACE INDUSTRY.

Abstract

The Convention on International Interests in Mobile Equipment of 16 November 2001 (known as the “Cape Town Convention” and referred to as the “CTC”) and its Aircraft Protocol have been ratified by 79 Contracting States. Conversely, the CTC protocol on matters specific to Space Assets (the “Space Protocol”) adopted in Berlin eleven years later was ratified by four States only and, consequently, has not even entered into force yet. The CTC and its Space Protocol would create an International Registry to record international interests over “Space Assets.” The Space Protocol defines “Space Assets” in a broad sense, encompassing “any man-made uniquely identifiable asset in space or designed to be launch into space, and comprising a spacecraft, such as a satellite, space station, space module, space vehicle or reusable launch vehicle, a payload, a part of a spacecraft or payload such as a transponder, together with all installed, incorporated or attached accessories, parts, equipment, and all data, manuals, and records related thereto.” Some argue that this definition was designed to encompass as many species of Space ‘assets’ as possible, which could be given as collateral in a financing transaction. On the other hand, one could argue that such definition is quite vague and inconsistent with the “Space Object” concept adopted in the UN Space Law Treaties. There is currently no suitable global registration mechanism for titles or security interests in space property. There are multiple registries worldwide, compounded by the different priority rules for each jurisdiction, and creditors cannot easily determine their priority position with respect to competing creditors and claimants. In this sense, the constitution of an International Registry over “Space Assets” could be considered an attractive feature of the CTC and the Space Protocol. Nevertheless, some authors argue that “Space Assets,” unlike Aircraft equipment, are not offered as collateral to and by private stakeholders in the Space industry. Secured loans have been used to finance space ventures but have generally been secured not on space assets. In the case of satellite finance, lenders would look to the income generated from transponder leases and other revenue streams flowing to the satellite operator. This research aims at addressing how private actors finance the acquisition of Space objects and assess the role that the Cape Town Convention would play if the Space Protocol comes into force.