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REALIZING AN INTERNATIONAL SECURED TRANSACTIONS REGIME FOR SPACE ASSETS
NATION BY NATION:
REASSESSMENT OF THE SPACE PROTOCOL TO THE CAPE TOWN CONVENTION FROM A
CHINESE PERSPECTIVE**Abstract**

A stable and secure legal environment for international transactions in space assets will fuel the commercial space industry in the long term. However, the only international instrument specializing in this field, the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets ("Space Protocol"), has not entered into force yet due to concerns among the industry that it may bring unnecessary regulation and conflict with existing financing models. Hence, comparative studies between the contemporary national space financing framework and the Space Protocol can promote understanding and facilitate its realization.

This paper, therefore, reassesses current concerns in applying the Space Protocol in one of the major space-faring nations, China, from the perspective of its space financing regulatory regime, specifically the private international laws. This paper finds that, since China has ratified both the Cape Town Convention and its Aircraft Protocol for over a decade, Chinese practitioners and academics rarely raise issues with the tested asset-based financing mechanisms provided by the Space Protocol, i.e., its substantive aspects, while mainly concentrate on the procedural parts, namely, jurisdiction and applicable laws. Chinese scholars have argued that, applying Article 33 of the Space Protocol may conflict with China's adherence to absolute immunity; the Space Protocol is more lenient with party autonomy than Chinese rules of private international law; Article 8 of the Space Protocol may contradict China's prohibition of remission; the United Nations Convention on Contracts for the International Sale of Goods ("CISG") applies to secured transactions of space assets; and the concept of space asset *situs* needs further refinement.

After scrutinizing these arguments, this paper views that, concerns about state immunity, party autonomy, and remission are based on an improper interpretation of the Space Protocol; applying CISG to contracts related to space assets can be against the purpose of CISG depending on the kind of the assets; in light of China's shifting judicial interpretation of real rights, the *situs* of intangible space assets may indeed be ambiguous. This paper further argues that, despite any remaining issues, the Space Protocol can enhance legal predictability and fill the gap between the booming Chinese commercial space industry and the vacancy in its regulatory regime that consists mainly of administrative policies.

Given the above, this paper concludes that China should join the Space Protocol and promote its adoption by more States so that it may eventually enter into force.