

Abstract

This study entitles on “Rules and Legal Problems on Space Assets as Security Interests according to the Convention on International Interests in Mobile Equipments 2001 and the Preliminary Draft Protocol on Matters Specific to Space Assets”. The framework, objectives and some key provisions of the Convention and the latest Preliminary Draft Space Assets Protocol (Rev.13) drafted under the auspices of International Institute for the Unification of Private Law (UNIDROIT) have been described in this study.

The study will illustrate some key issues and present the legal problems that arose from bringing space assets such as satellites and transponders to use as security interests through two approaches: Private International Law and Space Law as a field of Public International Law. Furthermore, this study will criticize the consideration of Thailand in order to commit the obligations of the Convention and its Protocol.

The methodology of this study is based on documentary research from UNIDROIT’s drafting reports, reports of United Nations Committee on the Peaceful Uses of Outer Space (COPOUS) presenting to the General Assembly, legal text books and articles, researches, thesis and dissertations and other materials from website.

The study shows that instead of a series of stand alone Conventions, the work has proceeded on the basis of two separate instruments, so called two-instrument approach or two-tired structure: a Convention providing the general rules and the protocol providing the specific rules for each category of equipment covered by the Convention, namely, Aircraft Protocol, Railway Rolling Stock Protocol and Space Assets Protocol.

In essence the Convention, with its supporting Protocols, is designed to facilitate asset-based financing and leasing of high value mobile equipments, for example, aircraft objects, railway rolling stock and space assets. Its aim is to reduce creditors' uncertainty by providing secure and readily enforceable rights especially in case of space assets such as a satellite which by its nature are not on earth.

The Convention has created an “international interests”, that is, interests granted by the chargor under a security agreement, or vested in a person who is the conditional seller under a title reservation agreement or a lessor under a leasing agreement, other than interests arising under an internal transaction in respect of which a State has made a declaration excluding the application of the Convention.

Additionally, the core of the Convention is the electronic international register system for the registration of international interests in the International Registry. The registration system is wholly automated, so that at the Registry end no human intervention is involved in checking registration applications, effecting registrations, receiving search requests and issuing search certificates.

It was found that, however, there are many legal problems arising from bringing the space assets to use as security interests according to the convention and its protocol, namely, the problem on the scope of the definition of space assets, the identification of part of space assets, the default remedies, the using space assets for public services, the effects on assignment, the supervisory authority and the registrar of space assets including of the enter into the party of the convention by Thailand according to the article 190 of The Constitution of The Kingdom of Thailand.

In addition, considering Thailand's Telecommunication Business Act 1996 (B.E. 2544) consist with the unique agreement, Build-Transfer-Operate (“BTO”) as a concession contract , it was found that there is a special terms that the State has an ownership in all space assets either the satellite in the outer space or the controlling station located on the land. The entrepreneur has only the *usufruct* rights to manage and to service on its transponders for the purpose of the communication within the country. With such restriction in contract, therefore, it is impossible for the entrepreneur to use the space assets as security interests.

As a result, it is unnecessary for Thailand to enter into the party of Space Assets Protocol, but it may be positive to enter into the party of the Convention if required to be the party of the Aircraft Protocol or the Railway Rolling Stock Protocol. In case of so, the studies of both protocols are required in deeply.