

# Legal Issues in China's Future Participation in the Space Protocol to the Cape Town Convention

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## I. Introduction

In the era of space commercialization, more and more satellites are used for telecommunications, remote sensing and navigation; private entities are increasingly involved in such commercial activities. In view of the high risks entailed in and high capital requirement for space activities, space financing has been frequently used to facilitate private entities to enter the space field. While international legal regime has been instituted in 1988 to deal with general financing issues, space financing, such rules do not work well for space financing, which normally involves assets with high value located in a sovereign-free space. The necessity of setting up appropriate rules for space financing is widely acknowledged.

The work of the International Institute for the Unification of Private Law (UNIDROIT) to conclude a convention on international interests in mobile equipment provided an excellent opportunity for the international society to examine possible rules for space financing.<sup>1</sup> The preparatory work started in 1988 with the Canadian member proposed a working group on the matter,<sup>2</sup> but at that time, the concept of "mobile equipment" was not yet defined and space assets were not included. Through years of study, aircraft equipment, railway rolling stock and space assets were identified as the "mobile equipment" to be regulated by the convention. An important decision was made in 1997 as to the style of this uniform regime: with a convention covering all the

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1 Stacey A. Davis, *Unifying the Final Frontier: Space Industry Financing Reform*, 106 *Commercial Law Journal* 459-462 (2001).

2 Paul B. Larsen & Juergen A. Heilbock, UNIDROIT Project on Security Interests: How the Project Affects Space Objects, 64 *Journal of Air Law and Commerce* 722 (1999); Roy Goode, *Transcending the Boundaries of Earth and Space: The Preliminary Draft UNIDROIT Convention on International Interests in Mobile Equipment*, 3 *Uniform Law Review* 52 (1998); Ronald C.C. Cuming, "Hot Issues" in the Development of the (Draft) Convention on International Interests in Mobile Equipment and the (Draft) Aircraft Equipment Protocol, 34 *International Lawyer* 1093 (2000).

three types of mobile equipment to be concluded first, this convention shall be supplemented by three protocols dealing with these three types of mobile equipment respectively.<sup>3</sup>

The UNIDROIT held a diplomatic conference at Cape Town in 2001 to pass the Convention on International Interest in Mobile Equipment (Cape Town Convention), intending to provide uniform rules to promote international financing for high-value mobile equipment.<sup>4</sup> This convention took effect in 2004. However, the application of this convention shall be combined with the protocol for the specific type of mobile equipment.<sup>5</sup> The Protocol on Matters specific to Aircraft Equipment (Aircraft Protocol) was concluded at the same time and took effect in 2006. The Luxembourg Protocol on Matters specific to Railway Rolling Stock (Railway Protocol) was enacted in 2007. China ratified the Convention and the Aircraft Protocol on 3 February 2009. It took a much longer period of time for the international society to conclude the Protocol on Matters specific to Space Assets (Space Protocol). The work started in 1997 with the setup of a Space Working Group and the Protocol was able to be adopted 15 years later when the diplomatic conference was held in Berlin in 2012 to adopt the Space Protocol. The enactment of this protocol is most meaningful to the future development of space financing. With China rapidly developing its space technology and increasingly advancing its ambition of space commercialization, the enactment of space financing shall no doubt exert heavy influence on future involvement of private entities in space activities in China.

While this protocol was only newly enacted in March 2012, China will need to start seriously consider legal issues involved in possible participation in the space protocol. This paper rightly takes up this task. With China already a member to the aircraft protocol, this paper will carry out the study on possible legal issues related to China's participation in the space protocol by making extensive reference to the practice of China's participation in the aircraft protocol. It is believed the previous experience shall be most beneficial to the study of space protocol since subject matters of both protocols belong to high-value mobile equipment.

Part II offers an overview of the Space Protocol and examines important provisions of the protocol. Part III looks into the impact of the protocol on relevant

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3 Mark J. Sundahl, *The "Cape Town Approach": A New Method of Making International Law*, 44 *Columbia Journal of Transnational Law* 342 (2006).

4 Martin J. Stanford & Alexandre de Fontmichel, *Overview of the Current Situation Regarding the Preliminary draft Space Property Protocol and Its Examination by COPUOS*, 6 *Uniform Law Review*, 60 (2001).

5 Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: Private International Law: Cape Town Convention on Financing of High-Value, Mobile Equipment*, 98 *American Journal of International Law* 852-853 (2004).

space industries in China: satellite industry, banking industry and insurance industry. Part IV puts forward suggestions and measures to be taken by the Chinese government for its future participation in the Space Protocol. This paper concludes that the Space Protocol will bring benefits to China's space industry and that China shall take a proactive attitude towards the participation in the Space Protocol in the future.

## II. An Overview of the Space Protocol

Acknowledging the benefits of establishing a uniform and predictable regime governing international interests in space assets and in related rights, the Space Protocol aims to establish an international registration system for space assets. The Supervisory Authority shall be established to take over the task of setting up the International Registry, and appointing and dismissing the Registrar.<sup>6</sup> The immediate definitional difficulty lies in the understanding of "space asset". The actual applicable scope of the protocol is determined by this concept.<sup>7</sup> The Committee of Governmental Experts spent many years to reach a consensus on this concept.

The formal document defines "space asset" to be "any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising (i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle, whether or not including a space asset falling within (ii) or (iii) below; (ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with regulations; or (iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations, together all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto."<sup>8</sup>

The Cape Town Convention creates an important term "international interests", which is closely connected with the high-value mobile equipment and can be registered under the regime. The Cape Town Convention puts down three types of international interests: to be granted by the chargor under a security agreement, or vested in a person who is the conditional seller under a title reservation agreement, or vested in a person who is the lessor under a leasing agreement.<sup>9</sup> These international interests extend to proceeds of the

6 The Cape Town Convention, Article 17(2)(a)-(b).

7 Yun Zhao, Revisiting Selected Issues in the Draft Protocol to the Cape Town Convention on Matters Specific to Space Assets, 76 *Journal of Air Law and Commerce*, No. 4, 813-816 (2011).

8 The Space Protocol, Article I.2.(k).

9 The Cape Town Convention, Article 2(2).

object<sup>10</sup> and can be transferred. The priority right is endowed upon those registered interests, over the interests subsequently registered and those unregistered interests.<sup>11</sup>

The convention and the protocol also provide rules on default remedies. The right owner can “take possession or control of any object charged to it, or sell or grant a lease of any such object, or collect or receive any income or profits arising from the management or use of any such object” through self-help measures or application to the court for public relief.<sup>12</sup>

However, such remedies shall be restricted under certain circumstance, in particular in the situation of public service. The understanding of “public service” brought in heated discussions. The protocol avoids the definition for public service and leaves it to the member states. If a certain space asset is used to provide public service, the public service provider or the relevant member state may register a public service notice.<sup>13</sup> In case of default, the debtor can have not more than six months to cure its default.<sup>14</sup> During this period, the debtor, creditor and the public service provider can cooperate in good faith to find an appropriate solution.<sup>15</sup> The creditor can take appropriate remedial actions only after the elapse of the six-month period.

The disputing parties may reach a written agreement concerning the choice of forum for relief; failing such an agreement, the court where the object or the debtor is situated shall have jurisdiction.<sup>16</sup> As far as space assets are concerned, the location of the object, when not on Earth, shall be deemed “located in the Contracting State which registers the space asset, or on the registry of which the space asset is carried.”<sup>17</sup>

Closely related to the issue of jurisdiction, the protocol provides the mechanism of waiver of sovereign immunity. While the international society still have divergent view over the practice of absolute and limited immunity, this protocol avoids setting the default position of either practice by leaving to the member states to decide whether to waive the sovereign immunity in writing.<sup>18</sup>

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10 The Cape Town Convention, Article 2(5).

11 The Cape Town Convention, Article 29(1).

12 The Cape Town Convention, Article 8(1)-(2).

13 The Space Protocol, Article 27(1).

14 The Space Protocol, Article 27(4).

15 The Space Protocol, Article 27(7)(a).

16 The Cape Town Convention, Article 43(1)-(2).

17 The Space Protocol, Article 1(3).

18 The Space Protocol, Article 33.

### III. Impact of the Space Protocol on the Relevant Industries in China

Since the successful launch of its first liquid meteorological rocket, T-7, in September 1960,<sup>19</sup> China has made spectacular achievements in space technologies and space activities. China launched the first satellite, Dongfanghong-1 (DFH-1) in 1970, and launch and retrieve the first manned spacecraft, the Shenzhou V, in 2003.<sup>20</sup> Along with these technological advancements, China has also carried out space commercial activities. China entered the international commercial space launch market in 1990 when Long March No. 3 rocket launched AsiaSat 1 into orbit.<sup>21</sup> Since then, China has been one major player in the space commercial market, providing not only launch services, but also space products (more specifically, satellites). China is at the moment among the very few countries which can provide both the production and launch services of satellites to a third country. The on-orbit transfer of satellites has been tested on several occasions. For example, China launched the China-built communication satellite PakSat 1R and transferred on-orbit to Pakistan on 12 August 2011.<sup>22</sup>

Satellites can be applied for various purposes and in various fields: forestry, surveying and mapping, environmental protection, disaster management, telecommunications and broadcasting, global navigation and meteorology. To a certain extent, satellites are the basis for space activities. The large amount of investments needed for the satellite production and launching services is usually resolved through space financing. China's expertise in satellite manufacturing and launching will no doubt benefit from the predictable space financing regime of the Space Protocol.

Normally the consumers in the satellite transactions will need to arrange space financing by using the satellite as security. The financial institutions may provide better condition for space financing for consumers from the member state of the Space Protocol since the protocol effectively protects the interests of the creditors. When the transactions take the form of processing contracts, China shall remain the owner of the satellite and undertake risks before the final on-orbit transfer of the operating satellite. Under such situation, China will need to arrange space financing for the production and launch of satellites; China may similarly benefit from the protocol with the satellite as security.

Under the above two models, the consumers and China can get better deals from the financial institutions and thus lower the necessary operational costs.

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19 Brian Harvey, *The Chinese Space Program: From Conception to Future Capabilities*, 10 (Praxis, 1998).

20 The State Council Information Office, *China's Space Activities*, December 2011.

21 C.V. Anderson (Ed.), *National Aeronautics and Space Administration (NASA): Background, Issues, Bibliography*, 62 (New York: Nova, 2002).

22 Stephen Clark, *Chinese Rocket Launches New Satellite for Pakistan*, 12 August 2011, [www.space.com/12622-china-rocket-launch-pakistan-satellite.html](http://www.space.com/12622-china-rocket-launch-pakistan-satellite.html).

As such, it will be easier for consumers from developing countries to secure necessary budget for purchasing satellites; China will also be able to profit from larger number of on-orbit transfers of satellites. The same benefit can also come from China's leasing of satellite services for consumers from other member states.

Banking and insurance are two other industries which may be affected by the operation of the Space Protocol. Under space financing arrangement, the banking industry is normally positioned as "creditor or secured party". The Cape Town Convention and the Space Protocol successfully set up the system for procuring the interests of the creditors. This pro-creditor regime is based on three objectives: 1) a transparent priority principle as mentioned above concerning the priority of the registered international interests over those unregistered or subsequently-registered interests; 2) a prompt enforcement principle for default remedies; 3) a bankruptcy enforcement principle that the enforcement of the first two principles shall not be affected by the bankruptcy of the debtor.<sup>23</sup>

As creditor, the bank shall have international interests over space assets as defined in the Space Protocol. The concept of space asset is broad enough to cover both the objects having been launched into outer space and those still in the process of manufacturing and transportation. The international interests to be registered in the International Registry include not only existing interests, but also prospective interests.<sup>24</sup> In case of default, the creditor can take appropriate measures to protect its interests. The public service exception to default remedies is defined in a neutral and technical manner, avoiding confusion and gray area in the enforcement. By not delving in the understanding of the concept of "public service", the protocol allows relevant parties to serve a notice on the matter and the six-month period shall apply. From the brief discussions above, we can see that registration is the central theme of this protocol. Two types of registration (international interests and public services) are equally important; the time of the registration shall be the technical point in deciding the right of priority and enforcement. As such, the whole system is designed in an easy-to-operate manner and can effectively function to protect the interests of the creditors.

Space insurance is indispensable for highly-risky space activities; some states have provided compulsory insurance in their domestic laws.<sup>25</sup> The involvement

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23 Iwan Davies, *The New Lex Mercatoria: International Interests in Mobile Equipment*, 52 *The International and Comparative Law Quarterly*, No. 1, 168-171 (2003).

24 The Cape Town Convention, Article 19(4).

25 See for example, Article 25(1) of the Law of the Russian Federation "About Space Activity" (Decree No. 5663-1 of the Russian House of Soviets) provides that "The organizations and citizens, which exploit space technology or to whose order the creation and use of space technology in scientific and national-economy purpose is

of space insurance is important for the arrangement of space financing. With the failed launches in the mid-1990s, China faced great difficulty in securing insurers and re-insurers in the international market. United Entity, consisting of major insurance companies in China, was set up to undertake insurance businesses for space launchings conducted by China. The foreign insurers were hesitant to offer insurance services for the space businesses from China at that time, having concerns over the launching safety and success rate. This concern has immediate connection with the legal regime for the insurance industry.

The Space Protocol introduced the concept of "salvage" to protect the interests of the insurers. The insurer shall enjoy "a legal or contractual right or interest in, relating to or derived from a space asset [...] upon the payment of a loss relating to the space asset."<sup>26</sup> To prevent possible loopholes to the prejudice of the insurers, the protocol adopts an overarching provision guaranteeing the realization of any rights arising from the applicable domestic law.<sup>27</sup> This arrangement will no doubt enhance the insurers' confidence in their involvement in space financing and ensure the health development of this industry.

From the discussions above, it is clear the Space Protocol was designed to protect the interests of the creditors to facilitate space financing; however, we must note that the debtors could also benefit from such an arrangement. This has been made obvious in the Cape Town Convention that it applies "when, at the time of conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State; the fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention."<sup>28</sup> Once the state from which the debtor comes is a member to the protocol, the creditor, in view of the existing guaranteeing mechanism set up by the protocol, will have more confidence on the debtor and thus is more willing to provide space financing on a better conditions and terms. This debtor will be in a comparatively advantageous position to secure the budget needed for the space activity than the debtors from those states not yet a member to the protocol.

Moreover, the debtors may benefit from the international interests registered by the creditors. As such, the priority right from the registration by the creditors against any unregistered interests or interests subsequently registered can also be enjoyed by the debtors during the period of their control and use of the space assets.

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carried out, shall take compulsory insurance coverage in the amount set by the legislation of Russian Federation."

26 The Space Protocol, Article 4(3).

27 The Space Protocol, Article 4(3).

28 The Cape Town Convention, Article 3.

#### IV. Suggestions on the Chinese Government's Future Participation

##### IV.1. The Coordination between the Space Protocol and the Chinese Legal Regime

The Cape Town Convention and the Space Protocol set up an international registration mechanism to create a transparent regime for international interests in space asset. This international registration mechanism is separate from any existing domestic registration system. This mechanism is believed to be a cost-efficient, fair and easy-operate system. The practice of the Aircraft Protocol testifies the feasibility of this registration mechanism.

While the State Administration for Science, Technology and Industry for National Defense (SASTIND), formerly known as the Commission of Science, Technology and Industry for National Defense (COSTIND), is in charge of national registration of space objects and the Ministry of Foreign Affairs is in charge of international registration of space objects with the United Nations Secretary-General under the Registration Convention, the registration of international interests in space assets is a separate system. It is noted that in China, no domestic registration system for mobile equipment is in place.

While the Property Law defines the registration system for real estates, no similar rules are provided for the registration of all the movables, which is understandable in view of the large number of movables and the infeasibility of registration for each and every movable. Several types of movable are identified for registration, including water-crafts, aero-crafts and motor vehicles.<sup>29</sup> No clear provisions in this law have provided the registration of space assets. We may also refer to the Guaranty Law for assistance. This law identifies some more types of properties whose registration is required for guaranty: land-use right, real estates or factories and other buildings of township (town) or village enterprises, forest trees, aircraft, ships and vehicles, the equipment and other movables of enterprises.<sup>30</sup> Again, the space assets are not clearly listed as those required for registration.

At the same time, the provision of *bona fide* possession of the movables in the same law<sup>31</sup> causes difficulty in the determination of the situation when to

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29 Article 24 of the Property Law provides that "The establishment, modification, transfer and lapse of the right to property in respect of water-crafts, aero-crafts and motor vehicles without first being registered, shall not affect any *bona fide* third party."

30 Article 42 of the Guaranty Law.

31 Article 106(1) of the Property Law provides that "Where the real or movable property is transferred to a transferee by a person without the power to do so, the rightful owner shall have the right to recover such property. Unless otherwise provided by law, the transferee shall obtain the ownership in respect of such real or movable property in any of the following circumstances: (i) the transferee accepts the transfer in good faith; (ii) such property is transferred with a reasonable price; (iii) the transferred property has been registered in accordance with the laws requiring such registration, and those not required to be registered has been delivered to the transferee."



protect a *bona fide* third party for the space assets. One condition for *bona fide* possession is that the transferred property has been registered in accordance with the laws or delivered to the transferee for those not required for registration.<sup>32</sup> On the one hand, space assets are not those listed under the Property Law requiring registration; on the other hand, the transfer of space assets normally takes the form of constructive possession, which does not fall within the normal scope of “delivery” in the Property Law.

It would thus be advisable to set up a national registration mechanism similar to that of the Space Protocol, if not in all the fields, at least in the field of and for the purpose of space financing. It is good to see that the Credit Reference Center of the People's Bank of China has already established a similar registration mechanism for general financing activities in July 2009.<sup>33</sup> We will need to examine whether this general registration mechanism works for space financing and whether we need to have another national entity in charge of the national registration of interests in space assets; we will also need to see the coordination between the national registration mechanism and the international mechanism with regard to the registration of interests in space assets.

Except a short paragraph on salvage, the Space Protocol does not contain detailed rules regarding insurance. The operation of space insurance largely relies on domestic laws. China does have Insurance Law, which does provide detailed rules on salvage. For example, where the subject matter suffers partial loss, the insured may rescind the contract within 30 days from the time when the insurer pays indemnity; the insurer may notify the insured of the rescission as long as the notification is served 15 days in advance; Upon rescission, the insurer shall refund the insurance premium for the part of the subject matter that has not suffered any loss to the insured, after deducting the premium for the period from the commencement of the insurance liability to the contract rescission.<sup>34</sup> The insured shall acquire all rights in the subject matter after paying the full insured amount which equals the insurable value.<sup>35</sup> It is reasonable to apply all those rules to the situation of salvage of space assets.

However, we must note that the Insurance Law also provides laws and administrative regulations regarding compulsory insurance shall prevail the rules in this law.<sup>36</sup> We have mentioned earlier the compulsory nature of space insurance in most states. The nature of space insurance is quite different from other types of insurance, especially with regard to the sensitiveness of space assets. Space assets normally involve high and sensitive space technologies, relevant states may have restrictive rules in giving up all rights in the space

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32 *Id.*

33 Financing Registration, [www.pbccrc.org.cn/chanpinfuwu\\_306.html](http://www.pbccrc.org.cn/chanpinfuwu_306.html).

34 Article 58 of the Insurance Law.

35 Article 59 of the Insurance Law.

36 Article 186(2) of the Insurance Law.

assets to the insurers or any other third party. Consequently when it comes to the domestic rules on salvage, we may need to keep a close look at the export control regime in China, in particular, the Administrative Regulations on Export Control of Missiles and Missile-related Items and Technologies, and the Administrative Regulations on Export Controls of Military Items.

#### **IV.2. Declarations to be Made for the Purpose of Accession<sup>37</sup>**

The discussions in this paper show that the Space Protocol brings benefits to both the creditors and debtors. As a major space-faring nation in the world, China has a great stake in space financing. As such, China shall generally benefit from acceding to this new regime. No reservation is allowed under the protocol, but China may make some declarations at the time of accession.<sup>38</sup> It is also noted that declarations made under the Cape Town Convention shall apply to this protocol unless stated otherwise.<sup>39</sup> Consequently, China needs to carefully study appropriate declarations well beforehand; this includes the areas under the Space Protocol which are allowed for declarations and the declarations having been made to the Cape Town Convention.

When acceding to the Cape Town Convention, China made declarations to the following articles: Article 39(1)(a); Article 39(1)(b); Article 39(4); Article 40; Article 43; Article 50(1); Article 53; Article 54(1); Article 54(2). By examining these declarations, the author is of the view that most of them can similarly apply to the Space Protocol. Some declarations were made with the Aircraft Protocol in mind, thus what China needs to do is to further extend these several declarations to the Space Protocol. This can include the following articles.

Article 39(1)(a): “All non-consensual rights or interests which have priority over secured creditors under the law of the PRC shall have priority without registration over registered international interests, including but not limited to: claim for bankruptcy expenses and community debts, employee’s wages, taxes arising prior to the mortgage, pledge or lien of the space asset, claim for

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37 The wordings regarding the declarations discussed in this section are cited fully from the official declarations lodged by the People’s Republic of China (PRC) under the Cape Town Convention and the Aircraft Protocol at the Time of the Deposit of its Instrument of Ratification in Respect Thereof, [www.unidroit.org/english/conventions/mobile-equipment/depositaryfunction/declarations/bycountry/china.htm](http://www.unidroit.org/english/conventions/mobile-equipment/depositaryfunction/declarations/bycountry/china.htm). The discussion in this section also benefit from the research report of Research Project No. 2 of the China Institute of Space Law in 2011: “Analysis on the Advantages and Disadvantages of China’s Accession to the Space Protocol”, conducted by the China Great Wall Industry Group Corporation, Ltd., 31 March 2012.

38 Article 43(1) of the Space Protocol provides that “No reservations may be made to this Protocol but declarations authorized by Articles XXXIX, XLI, XLII and XLIV may be made in accordance with these provisions.”

39 Article 42 of the Space Protocol provides that “Declarations made under the Convention...shall be deemed to have also been made under this Protocol unless stated otherwise.”

remuneration for rescuing the space asset, claim for necessary expenses incurred for the custody and maintenance thereof the space asset, etc.”

This declaration is in full compliance with relevant rules in the current Insolvency Law in China regarding the priority right in the insolvency proceedings.<sup>40</sup> The Insolvency Law also provides the order of payment in case of insolvency: 1) insolvency costs and debts of common interest; 2) wages, medical fees, injured and disability compensations, compensations for a bereaved family owned by the debtor to the employees, basic pension and medical insurance premium defaulted by the debtor to the employee's private account; 3) social insurance premium and tax payable by the debtor; 4) general bankrupt claims.<sup>41</sup>

Article 40: “Rights of a person obtaining a court order permitting attachment of a space asset in partial or full satisfaction of a legal judgment shall be registrable non-consensual rights or interest.”

Article 53: the declaration here does not appear to be relevant to the space asset as far as the location of headquarter of relevant airline is concerned.

Other declarations made previously regarding the Convention can continue to apply and China does not need to repeat at the time of acceding to the Space Protocol:

Article 39(1)(b): “Nothing in this Convention shall affect the right of a State or State entity, intergovernmental organization or other provider of public services to arrest or detain an object under the laws of the PRC for payment of amounts owed to such entity, organization or provider directly relating to those services in respect of that object or another object.”

Article 39(4): “A right or interest of a category covered by the declaration made under Article 39(1)(a) shall have priority over an international interest registered prior to the date of ratification of the Protocol.”

Article 43: “Article 43 is applicable to the PRC, and paragraph 1 and 2(a) hereinto are applicable under the condition that the court of a contracting State chosen by the parties shall be a court located in a place that has actual connections with the dispute of the agreement.”

Article 50(1): “The Convention shall not apply to a transaction which is an internal transaction in relation to the PRC.”

Article 54(1): “While the charged object is situated within the territory of the PRC, the chargee shall not grant a lease of the object within the territory of the PRC.”

Article 54(2): “Any remedy available to the creditor under any provision of the Convention which is not there expressed to require application to the court may be exercised only with leave of the court of the PRC.” The Convention

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40 Article 109 of the Insolvency Law provides that “Secured creditors are entitled to obtain payment in priority over debtor's specific asset.”

41 Article 113 of the Insolvency Law.

provides the possibility of self-help measure; however, the self-help action in another state touches on the sovereignty issue; in the past, China has always taken a cautious attitude towards this position; furthermore, the sensitive nature of the subject matter of the Space Protocol<sup>42</sup> justifies a more cautious attitude towards the actions to be taken for remedy. It is thus advisable to keep this declaration in this regime. But it should be made known that the court procedure is only a formality requirement and will not involve any substantive review of the dispute. As such, the public-help measure shall not cause extra barrier or difficulty for creditors obtain remedies in China. As such, the declaration shall not defeat one of the original purpose of the Cape Town Convention to reduce the cost of financing.<sup>43</sup>

As far as the Space Protocol is concerned, we will need to carefully examine the provisions which allow for declarations.

Article 8 on choice of law and the application of party autonomy: China declares the application of a similar article in the Aircraft Protocol, which requires such a declaration. However, Article 8 of the Space Protocol is drafted such a way that “this Article applies unless a Contracting State has made a declaration.”<sup>44</sup> As such, China does not need to specifically declare the application of this article.

Article 20: The system of relief pending final determination is accepted in almost all the jurisdictions. The Chinese laws also provide interim measures for court proceedings. At this point, similar declaration to the Aircraft Protocol can be made that “China will apply the provisions of Article 20(1), (2), (3) and (4) of the Protocol. The court of the PRC, upon receipt of the application, shall, in respect of the remedies specified in Articles 13(1)(a), (b) and (c) of the Convention, make order within 10 calendar days which shall be enforced immediately and in respect of the remedies specified in Article 13(1)(d) and (e) of the Convention, make order within 30 calendar days which shall be enforced immediately.”

Article 21: Insolvency Law is another area worthy of serious consideration. The Space Protocol contains two provisions on insolvency. Article 21 provides two options for the insolvency remedies. Neither these two options conflict with the Insolvency Law, thus it is up to China to decide on one option which is easier to operate and more beneficial to China. The same position can be taken as the Aircraft Protocol to ensure consistency between the two regimes that “China will apply the entirety of Alternative A to all types of insolvency proceeding defined by the Protocol, and that the waiting period shall be 60 calendar days.”

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42 Martin J. Stanford, *The New Regimen: Its History and Future After South Africa*, 12 *European Review of Private Law* 12-13 (2004).

43 Lome Clark & Jeffrey Wool, *Entry into Force of Transactional Private Law Treaties Affecting Aviation: Case Study – Proposed UNIDROIT/CAO Convention as Applied to Aircraft Equipment*, 66 *Journal of Air Law and Commerce* 1406 (2001).

44 Article 8(1) of the Space Protocol.

Article 22 on the court's assistance in insolvency procedures: This article requires an explicit declaration on the application; to be consistent with the declaration under the Aircraft Protocol, China shall also declare the application of this article.

Article 27(4): in view of the importance of public service to a state and the complexity in the curing of default, China may declare a maximum period of six months from the date of registration by the creditor of a notice in the International Registry for the exercise of remedies by the creditor against a defaulting debtor.

Similar to the declaration made under the Aircraft Protocol, "unless otherwise notified by the Government of the PRC, the Convention and the Space Protocol shall not apply to the Hong Kong Special Administrative Region and Macao Special Administrative Region."

## **V. Conclusion**

The Space Protocol successfully establishes an international registration regime for international interests in space assets. This regime adds transparency to the field of space financing, which benefits both the creditors and debtors. China has actively participated in the whole negotiating and drafting process and takes a positive attitude towards conclusion of this protocol. The author holds an optimistic view that China will accede to the Space Protocol in the near future. Thus, it is urgent to study possible declarations to be made upon China's accession. By making reference to China's practice in acceding to the Cape Town Convention and the Aircraft Protocol, this paper analyses the potential impact of the Space Protocol on China's space and financial industries, and offers suggestions on possible declarations upon accession. With various stakeholders involved in the long negotiation process,<sup>45</sup> the final conclusion of the Space Protocol in March 2012 showed the consensus that the protocol shall well fit in the space financing industry and that all the states, both spacefaring and non-spacefaring nations would be able to benefit from this regime. As a major participating entity in the negotiation, China should take a proactive attitude and prompt actions to accede to the Space Protocol and bring benefits of this protocol to the space and financial industries in China.

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45 Dara A. Panahy & Raman Mittal, *The Prospective UNIDROIT Convention on International Interests in Mobile Equipment as Applied to Space Property*, 4 *Uniform Law Review* 303 (1999).

