



DCME Doc No. 44
6/11/01

**DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT
CONVENTION AND AN AIRCRAFT PROTOCOL**

(Cape Town, 29 October to 16 November 2001)

**PROPOSALS FOR TECHNICAL REVISIONS TO
CHAPTER IX OF THE CONVENTION**

(Presented by the United States)

The United States submits the following proposal to the Commission of the Whole for technical revisions of Chapter IX of the Convention dealing with assignments of associated rights and international interests.

We have consulted with several interested delegations and observers concerning this proposal. We believe that the revised Chapter IX annexed to this proposal as an appendix provides an excellent basis for submission to the Drafting Committee. The appendix is marked to reflect deletions and additions from the appendix to DCME Doc No. 28. That appendix is a revised version of Chapter IX prepared by the Rapporteur to the Joint Sessions.

APPENDIX

**PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE
PRELIMINARY DRAFT CONVENTION**

CHAPTER IX

**ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION**

[The following revised Chapter IX of the Convention has been marked to reflect changes from the draft (prepared by the Rapporteur to the Joint Sessions), which is attached as an appendix to the United States' observations, DCME Doc No. 28.]

Article 30

Effects of assignment

1. – An assignment of associated rights ~~or of the related international interest~~ made in conformity with Article 31 also ~~transfers~~ assigns to the assignee, to the extent agreed by the parties to the assignment:

- (a) ~~in the case of an assignment of associated rights, the related international interest;~~
- and
- (b) ~~in the case of an assignment of an international interest, the associated rights; and~~
- (e) all the interests and priorities of the assignor under this Convention.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

3. – The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

4. – In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured have been discharged.

Article 31

Formal requirements of assignment

1. – An assignment ~~of an international interest or~~ of associated rights is valid only if it:
- (a) is in writing;

(b) enables the associated rights, ~~the related international interest and the object to which it relates~~ to be identified; and,

(c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

2. – An assignment of an international interest created pursuant to a security agreement is not valid unless some or all related associated rights also are assigned.

Article 32

Debtor's duty to assignee

1. – To the extent that associated rights and the related international interest have been ~~transferred~~ assigned in accordance with Articles 30 and 31, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

(a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the associated rights ~~and the international interest~~ [; and

(c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person].

2. – Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in ~~the preceding paragraph~~ this article shall affect the priority of competing assignments.

Article 33

Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 7, 8 and 10 to 13 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;

- (b) to the chargee and chargor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the holder of the assignment; and
- (d) to the object were references to the assigned associated rights and the related international interest ~~related to the object~~.

Article 34
Priority of competing assignments

Where there are competing assignments of associated rights and ~~the~~ related international ~~interests~~ interest and at least one of the assignments of the related international interest is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 35
Assignee's priority with respect to associated rights

~~Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred in connection with the assignment, have priority under Article 28 only to the extent that the associated rights relate to:~~

- ~~(a) — a sum advanced and utilised for the purchase of the object;~~
- ~~(b) — a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if:

 - ~~(i) — the assignor assigned the international interest to the assignee;~~
~~and~~
 - ~~(ii) — the assignment has been registered.;~~~~
- ~~(c) — the price payable for the object; or~~
- ~~(d) — the rentals payable in respect of the object,~~
~~and the reasonable costs referred to in Article 7(5).~~

1. — This Article applies where a registered international interest in an object secures or is associated with associated rights under another contract.

2. — The holder of the international interest or an assignee of that interest whose assignment has been registered has priority over another assignee of the associated rights only if the other contract states that they are secured by or associated with the object. In all other cases the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 36
Effects of assignor's insolvency

The provisions of Article 29 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 37
Subrogation

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.

– END –