

DRAFTING COMMITTEE

Article 28¹

1. – A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3.- [Where two or more international interests are unregistered, they rank among themselves in order of creation.]

3. 4.] The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest; and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4 5. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement

¹ It was proposed by the Committee that the question of registration by the trustee in bankruptcy of the date of commencement of the bankruptcy raised by one delegation be considered in the context of the general review of the insolvency-related provisions of the two instruments. The Committee did not believe itself to be in a position to deal with the question of relations between registered international interests and unregistered international interests as also that of non-consensual rights and interests, in the absence of adequate instructions from the Joint Session.

to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5.6. – Any priority given by this Article to an interest in an object extends to [qualified] insurance proceeds payable in respect of the loss or physical destruction of that object [and to amounts paid or payable by any Government or State entity in respect of the confiscation, condemnation or requisition of that object.]

[Article 29²³

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor if prior to the commencement of the bankruptcy that interest was registered in conformity with this Convention⁴

2. – For the purposes of this Article and Article 37²:

- (a) "bankruptcy" includes a liquidation, administration or other insolvency proceeding involving the administration of the estate or affairs of the obligor for the benefit of the general body of the obligor's; creditors.
- (b) "trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

CHAPTER [VIII]

ASSIGNMENTS OF INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION

Article 30

1. – The holder of an international interest ("the assignor") may make an assignment of it to another person ("the assignee") wholly or in part.

² This Article will be revised in the light of a general review of the insolvency provisions of the preliminary draft Aircraft Protocol and consideration of the transfer of some or all of those provisions to the preliminary draft Convention itself.

The Committee moreover proposed that, on the occasion of the general review of the insolvency-related provisions, the definition of "bankruptcy" be extended to cover reorganisation and that consideration possibly be given to the definitions appearing in the Uncitral Model Law on Cross-border Insolvency.

³

⁴ This paragraph is intended to state the substantive rights of the holder of the international interest but not to displace special rules of bankruptcy law restricting the exercise of remedies or avoiding unfair preferences.

2. – An assignment of an international interest shall be valid only if it:
- (a) is in writing;
 - (b) enables the international interest and the object to which it relates to be identified;
 - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be ~~identified~~ determined in accordance with the Protocol [but without the need to state a sum or maximum sum secured].

Article 31

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

- (a) all the interests and priorities of the assignor under this Convention; and
- (b) all associated rights [~~so far as such rights are assignable under the applicable law~~].

2. – Subject to paragraph 3, an assignment made in conformity with the preceding paragraph shall take effect subject to:

- (a) all defences of which the obligor could have availed itself against the assignor; and
- (b) any rights of set-off in respect of claims existing against the assignor and available to the obligor ~~at the time of receipt of a notice of the assignment under Article 33;~~
- (c) any restrictions on assignment contained in the agreement.

3. – The obligor may by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph.

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

Article 32

~~The provisions of Chapter V shall apply to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.~~

Article 33⁵

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 31(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the international interest [; and
- (c) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance].

2. – Irrespective of any other ground on which payment or performance by the obligor 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 shall affect the priority of competing assignments.

Article 34

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 9, 10 and 12 to 15, in so far as they are capable of application to intangible property, apply as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;
- (b) to the chargee and chargor were references to the assignee and assignor of the international interest;
- (c) to the holder of the international interest were references to the holder of the assignment; and
- (d) to the object included references to the assigned rights relating to the object.

Article 35

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

⁵ A question to be considered is whether these provisions should be left to the Protocol, which might in turn refer to the applicable law.

Article 36

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the holder of associated rights not held with an international interest to the extent that the first-mentioned associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object;

and the reasonable costs referred to in Article 9(5).

Article 37

1. – An assignment of an international interest is valid against the trustee in bankruptcy of the assignor if prior to the commencement of the bankruptcy that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects the validity of an assignment of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

[Article 38

1. – Subject to paragraph 2, nothing in this Convention affects rights or interests arising in favour of any person by operation of principles of legal 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.]

[CHAPTER [IX]

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 39

A Contracting State may at any time in an instrument deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

Article 40

A non-consensual right or interest (other than a registrable non-consensual right or interest) which under the law of a Contracting State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent that:

(a) such priority is ~~set out~~ stated by that State at the time of its deposit of ~~in~~ any instrument deposited with the depositary of the Protocol or at any time thereafter and that instrument or that statement has been deposited with the depositary prior to the time when the registration of the international interest takes effect; and

(b) the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.]

[CHAPTER [X]
APPLICATION OF THE CONVENTION TO SALES

Article 41

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object.]

CHAPTER [XI]
JURISDICTION

*Article 42*⁶

1. – A court of a Contracting State has jurisdiction to grant judicial relief under Article 15(1) where:

- (a) the object is within [or is physically controlled from] the territory of that State;
- (b) ~~[one of the parties]~~ [the defendant] is ~~located~~ situated within that territory; or
- (c) the parties have agreed to submit to the jurisdiction of that court.

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 15(1) will or may take place in a court of another State or in an arbitral tribunal.

⁶ This Article and Article 43 will be comprehensively reviewed in the light of advice from the Hague Conference on Private International Law.

[Article 43

A court of a Contracting State to which Article 42(1) applies has jurisdiction in all proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.]