



UNIDROIT Committee of governmental Experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment



Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

UNIDROIT CGE/Int.Int./3- WP/31
ICAO Ref. LSC/ME/3- WP/31
29/03/00
(Original : English / French)

THIRD JOINT SESSION

(Rome, 20 – 31 March 2000)

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

Following is a revised text of two alternative approaches for Chapter IX of the Convention developed for discussion purposes only by the delegations of Canada, France, and the United States of America at the request of the Chair of the Joint Session

Alternative A

CHAPTER IX

ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 29

Formal requirements of assignment

1. – The holder of ~~an~~ associated rights and the related international interest (“the assignor”) may make an assignment of ~~it~~ the rights and interest to another person (“the assignee”) wholly or in part.
2. – An assignment of ~~an~~ associated rights and the related international interest ~~shall be~~ 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.

3. – An assignment of an international interest is effective only if the related associated rights also are assigned to the assignee.

Article 30 *Effects of assignment*

1. – An assignment of ~~an~~ associated rights and the related 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) the associated rights;
- (b) the international interest related to the associated rights; and
- (c) all the interests and priorities of the assignor under this Convention; ~~and~~
- ~~(b) — all associated rights.~~

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.¹

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

Article 31 *Debtor's duty to assignee*

1. – To the extent that ~~an~~ associated rights and the related international interest ~~has~~ have been assigned in accordance with the provisions of this Chapter, the debtor in relation to those rights and that interest is bound by the assignment; ~~and, in the case of an assignment within Article 30(1)(b),~~ has a duty to make payment or give other performance to the assignee, if but only if:

¹ The United States delegation proposed the new language, which was taken from the analogous provision in the UNCITRAL convention on assignment of receivables.

(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 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 shall affect the priority of competing assignments.

Article 32

Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of ~~an~~ associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as ~~they~~ 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 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~~ and the international interest related to the object.

Article 33

Priority of competing assignments

Where there are competing assignments of associated rights and related international interests and at least one of the assignments is registered, the provisions of Article 27 apply as if the references to an international interest were references to an assignment of ~~an~~ the associated rights and the related international interest.

Article 34

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 ~~by virtue of~~ in connection with the assignment, have priority ~~over the assignee of associated rights [or other rights] not held with an international interest under Article 27 only~~ 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 8(5).

Article 35

Effects of assignor's insolvency

The provisions of Article 28 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 36

*Subrogation*²

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of an 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.

Alternative B

CHAPTER IX

ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 29

~~Formal~~ Requirements in respect of assignment

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 It was assumed by the Drafting Group that contractual subrogations were also meant to be covered under this Article (cf. also Articles 15(1)(e) and 20(4)).

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 determined in accordance with the Protocol but without the need to state a sum or maximum sum secured ;-
 - (d) in the case of an assignment of [an international interest which is] a security agreement includes the related associated rights and enables such associated rights to be identified.

Article 30
Effects of assignment

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