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U.N. CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE, DONE AT NEW YORK ON DECEMBER 12, 2001, AND SIGNED BY THE UNITED STATES ON DECEMBER 30, 2003

FEBRUARY 10, 2016.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 10, 2016.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, subject to certain declarations and understandings set forth in the enclosed report, I transmit herewith the United Nations Convention on the Assignment of Receivables in International Trade, done at New York on December 12, 2001, and signed by the United States on December 30, 2003. The report of the Secretary of State, which includes an overview of the proposed Convention, is enclosed for the information of the Senate.

The Convention sets forth modern uniform rules governing the assignment of receivables for use in international financing transactions. In particular, the Convention facilitates the use of cross-border receivables financing by: (a) recognizing the legal effectiveness of a wide variety of modern receivables financing practices; (b) overriding certain contractual obstacles to receivables financing; and (c) providing clear, uniform conflict-of-laws rules to determine which country's domestic law governs priority as between the assignee of a receivable and competing claimants.

As a global leader in receivables financing, the United States actively participated in the negotiation of this Convention at the United Nations Commission on International Trade Law with the support of U.S. business interests. Drawing on laws and best practices prevalent in the United States and other countries where receivables financing flourishes, the Convention would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international commerce. Widespread ratification of the Convention would help U.S. companies, especially small- and medium-sized enterprises, obtain much-needed working capital financing from U.S. banks and other lenders to export goods, and thereby help create more jobs in the United States.

The rules set forth in the Convention do not differ in any significant respect from those contained in existing U.S. law. In particular, in virtually all cases application of the Convention will produce the same results as those under the Uniform Commercial Code Article 9, which all States and the District of Columbia, Puerto Rico, and the Virgin Islands have enacted.

I recommend, therefore, that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification, subject to certain declarations and undertakings set forth in the enclosed report.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 14, 2015.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the United Nations Convention on the Assignment of Receivables in International Trade, which was adopted at New York on December 12, 2001, and signed by the United States on December 30, 2003. Also enclosed is an Overview of the Convention, which includes a detailed article-by-article analysis.

The Convention sets forth modern uniform rules relating to the assignment of commercial receivables for use in international financing transactions. Receivables are a business's right to future payment from its customers for goods or services provided. When businesses need cash on hand, they may sell their accounts receivable or use them as collateral to obtain cash. These so-called "assignments" of receivables are common in the United States and are governed by clear and predictable rules under uniform state law. When these transactions cross international borders, however, U.S. rules may not apply, and many countries' laws are not well-suited to modern receivables financing practices. The result can be both uncertainty as to which rules apply to cross-border transactions and, depending on which rules apply, the application of unhelpful rules.

The Convention addresses both of these issues. First, it provides certain uniform substantive rules that enable receivables financing practices that have proven to be beneficial in the United States and other countries. For example, the Convention ensures that an assignment of trade receivables is effective notwithstanding certain contractual provisions that would prevent the assignment of receivables. Second, the Convention provides clear conflict-of-laws rules as to a major issue in cross-border receivables financing, that is, which country's law governs the priority of an assignee's claim to receivables as against competing claimants.

As a global leader in receivables financing, the United States participated actively in the negotiation of this Convention. The rules set forth in the Convention do not differ in any significant respect from those contained in existing U.S. law. In particular, in virtually all cases, application of the Convention will produce the same results as those under the Uniform Commercial Code (UCC) Article 9, which all U.S. states and the District of Columbia, Puerto Rico, and the Virgin Islands have enacted.

Widespread ratification of the Convention should help U.S. companies obtain access to working capital financing and increase their exports, thereby creating additional U.S. jobs. As of March 2015, four countries, including the United States, have signed the Convention but only one country has acceded to it.

It is hoped that U.S. ratification of this Convention will encourage other countries to become party to it.

The Department consulted extensively with members of the Uniform Law Commission (ULC) and the American Law Institute (ALI) in the development of the Convention. After the Convention was concluded, an extensive review was conducted under ULC auspices, including knowledgeable members of the ALI and other associations, to examine the consistency of the Convention with U.S. law and practice and the best means of domestic implementation of the Convention. These views have been helpful to the Department in formulating the analysis and recommendations contained in the enclosed overview of the Convention.

The Convention would be self-executing and there would not be a need for the enactment of implementing legislation.

I recommend, therefore, that you transmit the Convention to the Senate for advice and consent to ratification.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

United Nations Convention on the Assignment of Receivables in International Trade

Overview

I. BACKGROUND AND PURPOSE

The United Nations Convention on the Assignment of Receivables in International Trade (the "Convention") provides modern uniform rules to facilitate cross-border receivables financing. The Convention draws on laws and best practices prevalent in the United States and other countries where receivables financing flourishes. By providing for the use of modern legal principles in international commerce, the Convention will help U.S. companies, especially small and medium-sized enterprises ("SMEs"), obtain much-needed working capital financing by creating a more competitive and cost-efficient credit environment.

Currently, U.S. companies (especially SMEs) are hampered in their ability to increase their exports because they have difficulty obtaining working capital financing based on receivables arising from the sale of exported goods. To be sure, these companies often obtain financing by offering their receivables as collateral for loans from U.S. banks and other lenders. However, while these lenders are accustomed to making loans secured by receivables when the borrower's customers are located in the United States, these same lenders often are unwilling to make loans secured by receivables owed by customers in other countries whose laws are inconsistent with modern commercial finance practice.

Widespread ratification of the Convention would go a long way toward remedying this situation. It is hoped that ratification by the United States will encourage other countries to become party to the Convention, which, in turn, would reduce legal risk associated with cross-border transactions involving those countries. This would encourage banks and other lenders to provide financing to U.S. companies based on their export receivables. The result should be enhanced growth of exports by U.S. companies, which will help U.S. companies compete in the global marketplace and create new U.S. jobs.

Ratification of the Convention is supported by leading business and legal associations and organizations. The Commercial Finance Association, the American Bar Association, the International Chamber of Commerce, the International Factors Group, and GE Capital support ratification of the Convention.

The Department consulted extensively with members of the Uniform Law Commission (ULC) and the American Law Institute (ALI) prior to and during the

negotiation of the Convention. The ULC and the ALI developed the text of the uniform state law in the subject area addressed by the Convention – Article 9 of the Uniform Commercial Code (UCC).

After the United Nations General Assembly adopted the Convention, the ULC, with the participation of knowledgeable members of the ALI, conducted an extensive review to examine the consistency of the Convention with U.S. law and practice and the best means of domestic implementation of the Convention.

Following this review, the ULC adopted a report analyzing the Convention and its compatibility with UCC Article 9. The ULC report noted the "desirable harmony between the rules of the Convention and provisions of the Article 9" and identified only a very small set of circumstances (explained in Section III, infra) in which application of the Convention could lead to a different result than under UCC Article 9. The ULC report also made recommendations with respect to declarations provided for in the Convention and interpretive understandings that would facilitate application of the Convention in the United States and ensure consistency with practice under UCC Article 9.

The Convention applies primarily to assignments of trade, loan, and similar commercial and consumer receivables in asset-based lending, factoring, securitization, and project finance transactions. The Convention does not cover the assignment of contractual rights that are not rights to payment. For example, the Convention does not cover an assignment of the rights of a licensee of intellectual property or the rights of a licensor that are not a contractual right to payment.

The Convention does not mandate a set of priority rules for assignments of receivables. Rather, it contains conflict-of-laws rules to determine which country's law governs priority, and it also contains an Annex that sets forth several alternative priority rules that a State that is a party may choose to bind itself to.

The Convention would be self-executing. Existing commercial law in the United States, including the UCC as enacted by each of the states, the District of Columbia, Puerto Rico and the Virgin Islands, would continue to apply except where superseded by the Convention. The Convention, which would apply only to transactions with international elements, will produce substantially the same results as obtained under enactments of UCC Article 9.

II. Summary of Key Provisions of the Convention and the Annex Thereto

Terminology:

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code promulgated by the Uniform Law Commission and the American Law Institute. Unless otherwise indicated, reference to "UCC Article 9" is to the 2012 Official Text of UCC Article 9 (entitled "Secured Transactions") rather than to a particular U.S. state's enactment of UCC Article 9.

While the Convention achieves results similar to those under state enactments of the UCC, it often uses different terms than those in the UCC. Differences in terminology between the Convention and usage in the United States are noted in this Overview when appropriate.

"State" as used herein means a country, and "Contracting State" means a country for which the Convention is in force.

"UNCITRAL Explanatory Note" means the "Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on the Assignment of Receivables in International Trade." It is a summary of the Convention prepared by the Secretariat of the United Nations Commission on International Trade Law ("UNCITRAL"). The U.S. delegation and industry experts participated in the formulation of the Explanatory Note, and the United States has no objections to its content.

Chapter I. Scope of Application

Article 1. Scope of Application

Article 1 determines which transactions are governed by the Convention.

Article 1(1)(a) provides that the Convention applies only to an assignment of an international receivable or to an international assignment of receivables (rules that determine whether an assignment of a receivable is "international" appear in Article 3). Moreover, for the Convention to apply to such an assignment, the assignor must be located in a Contracting State at the time the contract of assignment is "concluded" (*i.e.*, at the time it is entered into).

When the same receivable is the subject of a chain of successive assignments (such as an assignment from A to B followed by an assignment from B to C, and so forth), (i) the Convention applies to any assignment in the chain regardless of whether the assignment independently qualifies for coverage by the Convention, so long as any prior assignment in the chain was covered by the Convention (Article 1(1)(b)) and (ii) an assignment in the chain may independently

qualify for coverage by the Convention even if prior assignments in the chain were not covered (Article 1(2)).

Although the applicability of the Convention to an international receivables transaction depends on whether the *assignor* is located in a Contracting State, Article 1(3) provides that the Convention's provisions that may affect the rights and obligations of a debtor (the person who owes the receivable) (*see, e.g.*, Articles 9, 15-21) do not apply unless, at the time of concluding the original contract from which the assigned receivables arise, the debtor is located in a Contracting State or the law governing the contract is the law of a Contracting State.

Article 2. Assignment of receivables

Article 2 provides definitions of some key terms used in the Convention relating to the assignment of receivables.

"Assignment" is defined as the transfer by agreement of an interest in a receivable, including the creation of rights in a receivable as security for indebtedness or other obligation. Thus, the Convention, like Article 9 of the UCC, covers two types of assignments of receivables – outright sales of receivables and the creation of a security interest in receivables to secure an obligation.

"Receivable" is defined as a contractual right to payment of a monetary sum from a third person, the debtor.

Article 2(a) defines the "assignor" as the creditor in the contract giving rise to the assigned receivable (usually the seller of goods or provider of services) and who transfers the receivable by agreement. The assignor can be either a borrower assigning a receivable as security or a seller of the receivable. Correspondingly, "assignee" is defined in Article 2(a) as the person to whom the receivable is assigned. As the term is used in the Convention, the assignee may be either the lender to the assignor who obtains a security interest in the receivable or the buyer of the receivable from the assignor.

The "debtor" is the person who owes payment of an assigned receivable. (In U.S. usage under the UCC, this is the "account debtor.") Thus, in the case of receivables arising from the sale of goods or services, the "debtor" is the customer who owes payment.

Article 5 of the Convention provides additional important definitions.

Article 3. Internationality

Article 3 gives meaning to the critical concept of internationality in the general scope rules of Article 1 by providing rules for determining when a receivable or an assignment is "international."

Article 3 provides that a receivable is "international" if, at the time the original contract between the debtor and the assignor is concluded, the assignor and debtor are located in different countries. An assignment of receivables is "international" if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different countries. Rules on determining "location" are set out in Articles 5 and 36.

Article 4. Exclusions and other limitations

Article 4 provides exclusions and other limitations to the scope of application of the Convention. In particular:

Article 4(1) excludes from the Convention assignments made: (a) to an individual for his or her personal, family or household purposes; and (b) as part of the sale or change in the ownership or legal status of the business out of which the assigned receivable arose.

Article 4(2) excludes from the Convention assignments of receivables arising under or from: (a) transactions on regulated exchanges; (b) financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions; (c) foreign exchange transactions; (d) inter-bank payment systems, agreements or clearance and settlement systems relating to securities or other financial assets or instruments; (e) repurchase agreements and loans of securities; (f) bank deposits; and (g) letters of credit.

There are three provisions in Article 4 that limit the reach of the Convention with respect to transactions within its scope. First, Article 4(3) provides that the Convention does not affect the rights of parties under negotiable instruments law. Second, pursuant to Article 4(4), the Convention, like Article 9 of the UCC, does not affect the rights of assignors and debtors under consumer protection law. Third, Article 4(5) limits the effect of the Convention on certain matters governed by domestic real estate law. Under this provision, the Convention does not displace application of the law of the State in which the real property is located to the priority of assignments, rents, or other receivables arising from the real property.

As a result of the exclusions and other limitations, the primary impact of the Convention is on the assignment of "trade receivables" arising typically from transactions involving inventory and the import-export of goods.

With regard in particular to Article 4(2)(e), which excludes from the Convention assignments of receivables arising under or from "the transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary," the further limitation "held with an intermediary" applies only to "other financial assets or instruments," *i.e.*, receivables that are not securities. It is recommended that the United States include the following Understanding in its instrument of ratification to clarify this point:

> It is the understanding of the United States that paragraph (2)(e) of Article 4 excludes from the scope of the Convention the assignment of (i) receivables that are securities, regardless of whether such securities are held with an intermediary, and (ii) receivables that are not securities but are financial assets or instruments, if such financial assets or instruments are held with an intermediary.

Chapter II. General Provisions

Article 5. Definitions

Article 5 is the main provision that provides definitions of terms used throughout the Convention.

"Writing" is defined in subparagraph (c) to cover electronic communications.

Subparagraph (h) provides that a person is located in the State in which it has its place of business (or, if it has no place of business, that person's place of habitual residence). If a debtor has a place of business in more than one State, its place of business for purposes of the location rule is in the State that has the closest relationship to the contract that gave rise to the receivable; if an assignor or assignee has a place of business in more than one State, however, its place of business for purposes of the location rule is in the place where the central administration of the assignor or the assignee is exercised.

Article 36 of the Convention sets out additional rules for determining a person's location in a State with two or more territorial units, such as the United States with its 50 states, the District of Columbia, Puerto Rico, the Virgin Islands and other territories and possessions. Consistent with the approach taken in Article 5(h), it provides that a person located in such a State is located in the territorial unit in which it has its place of business (or, if it has no place of business, in the territorial unit of that person's habitual residence). If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the contract that gave rise to the receivable; if an assignor or assignee has a place of business in more than one territorial unit, the place of business is that place in which it exercises its "central administration."

The location rules are particularly important because the location of the parties (among other things) determines whether the transaction is international and thus whether the Convention applies. If the Convention applies, the law of the assignor's location governs issues of priority.

While Article 5(h) refers to the "place where the central administration of the assignor or the assignee is exercised," Article 9 of the UCC refers to the place where the "chief executive office" of the assignor is located. The two formulations should lead to identical results. Nevertheless, because of the importance of the location of parties in determining the scope of the Convention and the applicable law under it, and the importance of certainty as to the meaning of the Convention formulation, and to make clear that it is the understanding of the United States that the "place where the central administration of the assignor or the assignee is exercised" in Article 5(h) and Article 36 does not refer to location-determining rules such as the place of the "registered seat," the "place of organization," or the "centre of main interests" (which are location rules used in some other legal systems), it is recommended that the United States include the following Understanding in its instrument of ratification:

> It is the understanding of the United States that the phrase "that place where the central administration of the assignor or the assignee is exercised" as used in Articles 5(h) and 36 of the Convention has a meaning equivalent to the phrase "that place where the chief executive office of the assignor or assignee is located."

Article 5(k) sets out the definition of "financial contract" which, as drafted, encompasses future developments in financial market usages. In order to clarify

the United States' understanding of the application of this provision to evolving usages, it is recommended that the following Understanding be included in the United States' instrument of ratification:

> It is the understanding of the United States that the reference in the definition of "financial contract" in Article 5(k) to "any other transaction similar to any transaction referred to above entered into in financial markets" is intended to include transactions that are or become the subject of recurrent dealings in financial markets and under which payment rights are determined by reference to (a) underlying asset classes or (b) quantitative measures of economic or financial risk or value associated with an occurrence or contingency. Examples are transactions under which payment rights are determined by reference to weather statistics, freight rates, emissions allowances, or economic statistics.

Article 6. Party autonomy

Article 6 addresses the extent to which parties may, through contracts, adjust the substantive rules of the Convention to meet their business needs. It embodies the modern commercial law standard, as does the UCC, of party autonomy by allowing the assignor, assignee, and the debtor to derogate from or vary by agreement the provisions of the Convention relating to their respective rights and obligations as between themselves, subject to limitations in Article 19 as to a debtor's rights.

Article 7. Principles of interpretation

Article 7 addresses principles of interpretation of the Convention. Among other things, it provides that matters governed by the Convention that are not expressly settled in the Convention are to be resolved in conformity with the general principles on which the Convention is based, or in the absence of such principles, in accordance with applicable law. These principles can be found in part in the preamble, including the promotion of international trade through rules on assignment of receivables that boost certainty and transparency, and protect the interests of debtors.

Chapter III. Effects of Assignment

Article 8. Effectiveness of assignments

Article 8 provides important substantive rules which provide that assignments of receivables are effective notwithstanding aspects of the transaction that in many nations (but not the United States) would be grounds to deny effectiveness of the transaction.

Article 8(1) provides that assignments are not ineffective and the rights of an assignee cannot be denied priority on grounds that they are assignments of future receivables, or of more than one receivable (*i.e.*, a bulk assignment of receivables), or are partial or undivided assignments of receivables provided that the receivables are described in any manner such that they can be identified as receivables to which the assignment relates. In other words, the assignment does not have to describe the receivables individually or specifically, but may describe them generally so long as they may be identified as arising under the contract of assignment.

Article 8(2) provides that a new contract of assignment does not have to be executed when the future receivable thereafter arises or is created. The rule is consistent with UCC Article 9.

Article 8(3) provides that while the above-described rule in Article 8(1) and the limitations on contractual anti-assignment clauses in Article 9 and 10(2) and 10(3) would apply in all countries that join the Convention, other limitations on assignments arising from law remain in effect.

Article 9. Contractual limitations on assignments

Article 9 of the Convention provides that assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables. The rule is similar to rules in UCC Article 9.

Subparagraph (2) provides that, although an assignment within the scope of Article 9 is effective notwithstanding an anti-assignment agreement, this rule does not affect any obligation or liability of the assignor for breach of such an agreement. However, (i) the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach, and

(ii) a person who is not party to such an agreement (such as the assignee) cannot be liable on the sole ground that it had knowledge of the agreement.

Subparagraph (3) limits the scope of application of Article 9 to receivables arising from an original contract for supply or lease of goods or services other than financial services; construction contracts; sale or lease of real property; sale, lease or license of industrial, intellectual property or proprietary information; payment obligations for credit card transactions; and net settlement payments arising from certain netting agreements. Article 9 is thus effectively limited to payment obligations arising from so-called trade receivables.

Because the scope of the Convention is limited to receivables, Article 9 does not in any way affect non-monetary performance obligations of the parties to an anti-assignment agreement, to which anti-assignment obligations would remain effective. Thus, Article 9 (and the parallel rule in Article 10(2)) do not affect any agreement between a licensor and a licensee limiting the licensee's right to sublicense or assign or otherwise transfer interests such as intellectual property. By contrast, a licensor's contractual right to payment under a license (such as a royalty or license fee) and an assignor's contractual right to payment for an interest in intellectual property are rights to payment of a monetary sum, and the Convention applies to assignments of those rights to payment. These provisions are consistent with UCC Article 9.

In order to clarify that point, it is recommended that the United States include the following Understanding in its instrument of ratification:

> It is the understanding of the United States that because the Convention applies only to "receivables," which are defined in Article 2(a) as contractual rights to payment of a monetary sum, the Convention does not apply to other rights of a party to a license of intellectual property or an assignment or other transfer of an interest in intellectual property or other types of interests that are not a contractual right to payment of a monetary sum.

Article 10. Transfer of security rights

Article 10 embodies the principle generally applied in the United States that the collateral follows the debt and addresses some of the implications of that principle in the context of the assignment of receivables.

Article 10(1) provides that a personal or property right securing payment of the receivable is transferred to the assignee with the receivable, and Article 10(2) limits the effect of an agreement to the contrary. Article 10(3) provides that nothing in subparagraph (2) avoids any obligation or liability of the assignor for breach of such an agreement, but does not allow the debtor to void the original contract on that ground.

Article 10(4) limits the scope of Article 10 in the same manner as the scope of Article 9 is limited by Article 9(3). Accordingly, the rights of a party to a license or an assignment of an interest in intellectual property other than a contractual right to payment would not be affected by the Convention.

Notwithstanding the transfer to the assignee of possession of property securing the assigned receivable, Article 10(5) makes clear that the debtor's right against the assignor to receive a return of the property is preserved.

Article 10(6) makes clear that other law establishing the form or registration for the transfer of property securing an assigned receivable is not affected by this Article and thus makes it clear that Article 10(1) does not affect law regarding the recordation of mortgages and the like.

Chapter IV. Rights, Obligations and Defenses

Article 11. Rights and obligations of the assignor and assignee

Article 11 addresses the rights and obligations between an assignor and an assignee of an assigned receivable that flow from the agreement of assignment.

Subparagraphs (1) and (2) provide that the rights and obligations of the assignor and assignee arising under their agreement of assignment are determined by that agreement, including rules or general conditions referred to in that agreement, as well as any usage to which they have agreed and, unless otherwise agreed, any practices (courses of dealing) established between themselves.

Subparagraph (3) provides that, in an international assignment, generally recognized usages in international trade regarding that type of assignment or that category of receivables will be applicable unless otherwise agreed.

Article 12. Representations of the assignor

Article 12 sets out representations that are made by the assignor unless otherwise agreed.

Article 13. Right to notify the debtor

Article 13 addresses who may notify the debtor ("account debtor" in U.S. parlance) of the assignment of a receivable. It provides that either the assignor or assignee or both may, unless otherwise agreed, send the notice, but after the notice has been sent only the assignee may send payment instructions.

Article 14. Right to payment

Article 14 sets out the assignee's rights as against the assignor to payments made in respect of the assigned receivable.

Article 15. Principle of debtor protection

Article 15 contains a general debtor protection principle as well as a specific right of debtors ("account debtors" in U.S. usage). First, it provides that, except as otherwise provided in the Convention, an assignment does not affect the rights and obligations of the debtor without its consent. Second, it specifically provides that a payment instruction made pursuant to an assignment cannot change the currency of payment or the State in which payment is to be made if the change would designate a State other than that in which the debtor is located.

Article 16. Notification of the debtor

Article 16 sets out rules governing the language of a notification. It also provides that such a notification can cover receivables arising after the notification, and provides that a notification of a subsequent assignment also constitutes notification of prior assignments.

Article 17. Debtor's discharge by payment

Subparagraphs (1) through (7) provide rules on the effect of notifications on whom the debtor may pay, and when and under what circumstances the debtor is entitled to discharge. Subparagraph (8) provides that these rules do not affect any other ground on which payment by the debtor to a person entitled thereto, or payment to a judicial or other authority, may discharge the debtor.

Article 18. Defences and rights of set-off of the debtor

Article 18, like Article 9 of the UCC, provides that the debtor may raise against the assignee all defenses and rights of set-off arising from the original

contract, as well as set-offs arising before the debtor received notification of the assignment.

Article 19. Agreement not to raise defences or rights of set-off

Article 19 allows debtors to agree not to assert certain defenses against assignees. This is consistent with Article 9 of the UCC.

Article 20. Modification of the original contract

Article 20 determines the circumstances under which modifications by the assignor and debtor of the contract creating the receivable are effective against the assignee. The rules address the effect of such modifications both when the original contract is modified before notification of the assignment between the assignor and the debtor, and when modification occurs after notification.

Article 21. Recovery of payments

Article 21 provides that the assignor's failure to perform the original contract does not entitle the debtor to recover from the assignee sums paid by the debtor to the assignor or assignee.

Article 22. Law applicable to competing rights

Article 22 is the key conflict-of-laws provision. It determines which State's law governs the priority of an assignee's rights in assigned receivables as against the rights of various third parties (referred to in the Convention as "competing claimants") claiming an interest in the same receivables. Competing claimants may include other assignees of the same receivable, creditors of the assignor who have obtained rights in those receivables, or insolvency administrators. Article 22 provides that, with the exception of matters that are settled elsewhere in the Convention and subject to articles 23 and 24, such priority questions are governed by the law of the State in which the assignor is located. The location of the assignor is determined pursuant to Article 5(h). The proposed U.S. Understanding regarding Article 5(h) (see discussion of Article 5 above) and the proposed U.S. Declaration with respect to Article 36 (see discussion of Article 36 below) will together bring about the result that Article 22 will be supplemented by the detailed location rules of UCC Article 9 in order to determine which U.S. state's law governs priority in the case of assignors who are located in the United States. In the Convention, the term "priority" is defined in Article 5(g) to include both "perfection" and "priority" as those terms are used in UCC Article 9.

Article 23. Public policy and mandatory rules

Article 23 addresses the extent to which the law of the State in which the assignor is located can be rejected by the forum State or any other State on grounds of public policy or by application of mandatory rules.

Article 23(1) provides that application of the law determined pursuant to Article 22 may be refused only if its application would be "manifestly contrary to the public policy of the forum State." This is substantially identical to the standards applied in most U.S. states to determine whether the law of another jurisdiction will be given effect.

Article 23(2) limits the ability of the forum or other State to refuse application of the law of the State in which the assignor is located on grounds that the forum's law is mandatory, following the same policy behind the rule in subparagraph (1).

Article 23(3) provides an exception to paragraph (2) for insolvency proceedings commenced in a State other than the State in which the assignor is located. The paragraph allows a State by declaration to identify preferential rights arising by operation of law in the forum country which would take precedence over the rights of an assignee.

Several types of preferential rights arise by operation of insolvency laws in the United States. Some preferential rights (such as those arising under Sections 364(d) and 506(c) of the U.S. Bankruptcy Code) give priority over the rights of an assignee in an insolvency proceeding to a lender extending credit to the insolvency estate, or to an insolvency administrator that expends funds of the insolvency estate for the preservation of the assigned receivables. In addition, when an insolvency proceeding in the United States is commenced by or against an assignor, the insolvency administrator may be granted powers to avoid (set aside) an assignment of receivables that is preferential or that constitutes a fraudulent transfer, such as under Sections 547 and 548 of the Bankruptcy Code or, as permitted by Section 544(b) of the Bankruptcy Code, under the law of a state or other territorial unit of the United States.

In order to provide notice of such preferential rights, it is recommended that the following Declaration be including in the United States instrument of ratification:

> Pursuant to Article 23(3), the United States declares that, in an insolvency proceeding of the assignor, the insolvency laws of the United States or its territorial units may under some circumstances (a) result in priority over the rights of an assignee being given to a lender extending credit to the insolvency estate, or to an insolvency administrator that expends funds of the insolvency estate for the preservation of the assigned receivables (see, for example, Title 11 of the United States Code, Sections 364(d) and 506(c)); or (b) subject the assignment of receivables to avoidance rules, such as those dealing with preferences, undervalued transactions and transactions intended to defeat, delay or hinder creditors of the assignor.

The terminology used in clause (b) of the Declaration follows that of the avoidance rules in international texts on insolvency (*see, e.g.*, Recommendation 87 of the Legislative Guide on Insolvency Law (2005), promulgated by UNCITRAL. This formulation also encompasses preferences under Section 547 of the U.S. Bankruptcy Code, fraudulent transfers under Section 548 of the U.S. Bankruptcy Code, and voidable transactions under the Uniform Voidable Transactions Act (formerly known as the Uniform Fraudulent Transfers Act) and similar state laws.

Article 24. Special rules on proceeds

Article 24 provides rules on the rights of various parties to the proceeds of receivables (such as cash) when the receivables have been collected, sold, etc.

Article 24(1) provides that if proceeds are received by the assignee, the assignee is entitled to the proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

Article 24(2) provides that an assignee has the right to reasonably identifiable proceeds of an assigned receivable that are held by the assignor, in a manner consistent with UCC Article 9.

The Convention does not address certain conflicting claims of property rights in proceeds of receivables. One such conflict not addressed is a conflict between an assignee claiming an interest in property that is proceeds of an assigned receivable against a depositary bank, securities intermediary, or other person

claiming an interest in the property other than as proceeds of the receivable, *e.g.*, through a right of setoff or a consensual transfer of an interest in the property. Such matters will be resolved by otherwise applicable law.

Article 24 thus sets forth certain rights of the assignee in the proceeds of an assigned receivable. However, nothing in the text of Article 24 suggests that States may not afford greater rights in those proceeds to the assignee. Nonetheless, it would be advisable to express the United States' understanding that Article 24 provides a minimum base line for the protection of an assignee's interests, but that other laws such as U.S. state enactments of the UCC may provide additional rights to such an assignee. Accordingly, it is recommended that the following Understanding be included in the United States' instrument of ratification:

> The United States understands that, with respect to Article 24 of the Convention, the Article requires a Contracting State to provide a certain minimum level of rights to an assignee with respect to proceeds but that it does not prohibit Contracting States from providing additional rights in such proceeds to such an assignee.

Article 25. Subordination

Article 25 provides that an assignee entitled to priority may subordinate its priority in favor of any existing or future assignees. This is consistent with Article 9 of the UCC.

Chapter V. Autonomous Conflict-of-Laws Rules

Articles 26 to 32

Chapter V of the Convention is an optional chapter providing "autonomous" conflict-of-laws rules to determine the law governing matters not determined elsewhere in the Convention and to apply in cases in which the Convention's substantive rules are not applicable because the appropriate party is not located in a Contracting State. Rules in Chapter V address issues such as validity of an assignment; law applicable to the rights and obligations of the assignor, assignee and the debtor; law applicable to priority; and additional provisions on mandatory rules and public policy exceptions.

Under Article 39, a Contracting State may by declaration indicate that it will not be bound by the rules in Chapter V.

Chapter V is not necessary for the operation of the other articles of the Convention. Indeed, as paragraph 54 of the Explanatory Note points out, the primary purpose of Chapter V is to "fill gaps" left by the Convention. In the United States, however, such gaps are not an issue because the matters in Chapter V are addressed very well by existing state law, which does not differ significantly from the rules in Chapter V. Thus, Chapter V is unnecessary in the United States and could be disruptive of existing practices. Accordingly, it is recommended that the United States decline to be bound by Chapter V of the Convention by including the following Declaration in the United States' instrument of ratification:

> Pursuant to Article 39 of the Convention, the United States declares that it will not be bound by Chapter V of the Convention.

Chapter VI. Final Provisions

Article 33. Depositary

The Secretary General of the United Nations is the depositary for the Convention.

Articles 34. Signature, ratification, acceptance, approval, accession.

This Article contains provisions on signature and adherence to the Convention.

Article 35. Exclusion of certain territorial units of a State

Article 35 provides that, if a State has two or more territorial units in which different systems of law are applicable on matters addressed in the Convention, the State can by declaration provide that the Convention applies to some but not all of its territorial units. Maintaining a uniform application of the Convention throughout the United States would be beneficial to businesses, so no declaration is proposed for the United States. Currently, all U.S. states, as well as the District of Columbia, the Virgin Islands, and Puerto Rico, have adopted UCC Article 9.

Article 36. Location

Article 36 supplements the Article 5 definition of "location" by adding rules to determine location within States such as the United States that are comprised of two or more "territorial units." That Article also permits such a State

to specify by declaration other rules for determining the location of a person within that State. It is recommended that, as permitted by Article 36, a declaration be made by the United States to ensure that in the case of an assignor located in the United States (pursuant to the rules in Article 5 of the Convention), that assignor will be treated for the purpose of application of the Convention as being located in the same U.S. state as would be the case under Article 9 of the UCC. Accordingly, it is recommended that the United States include the following Declaration in its instrument of ratification:

> Pursuant to Article 36 of the Convention, the United States declares that, with respect to an assignment of receivables governed by enactments of Article 9 of the Uniform Commercial Code, as adopted in one of its territorial units, if an assignor's location pursuant to Article 5(h) of the Convention is the United States and, under the location rules contained in Section 9-307 of the Uniform Commercial Code, as adopted in that territorial unit, the assignor is located in a territorial unit of the United States, that territorial unit is the location of the assignor for purposes of this Convention.

For assignments of receivables not covered by enactments of Article 9 of the UCC and, thus, not covered by the above Declaration, the location of a person in the United States would be determined pursuant to Article 36.

Article 37. Applicable law within territorial units

Article 37 clarifies that any reference in the Convention to the law of a State means, in the case of a State with two or more "territorial units," the law of the appropriate territorial unit within that State. Article 37, however, also provides that a State may specify by declaration at any time other rules for determining the applicable law, which may be the law of another territorial unit of the State. Because UCC Article 9 contains detailed rules that determine which U.S. state's law governs particular issues relating to the assignment of receivables, it is recommended that a declaration be made. The declaration would provide that the rules to be applied to determine which U.S. state's law governs a particular issue that the Convention specifies is governed by the law of the United States are the conflict-of-laws rules in the U.S. state in which the debtor is located (as specified in the Convention), as those conflict-of-laws rules are stated in UCC Article 9 as enacted in that U.S. state. Generally, for corporations, limited liability companies, and limited liability partnerships organized in the United States, the applicable law

for determining priority under UCC Article 9 is the law of the state of formation of the debtor.

It is therefore recommended that the following Declaration be included in the United States' instrument of ratification:

> Pursuant to Article 37 of the Convention, the United States declares that any reference in the Convention to the law of the United States means the law in force in the territorial unit thereof determined in accordance with Article 36 and the Article 5 (h) definition of location. However, to the extent under the conflict-of-laws rules in force in that territorial unit a particular matter would be governed by the law in force in a different territorial unit of the United States, the reference to "law of the United States" with respect to that matter is to the law in force in the different territorial unit. The conflict-of-laws rules referred to in the preceding sentence refer primarily to the conflict-of-laws rules in Section 9-301of the Uniform Commercial Code as enacted in each state of the United States.

The term "to the extent that" means that separate aspects of a matter may be governed by the laws of different territorial units in the United States.

Article 38. Conflicts with other international agreements

Article 38(1) provides that the Convention does not prevail over any other existing or future international agreement that specifically governs a transaction that otherwise would be governed by this Convention. This deference to other international agreements has narrow application because there are very few international agreements that specifically govern transactions within the scope of the Convention. In fact, the only potential application of this provision for the United States of which we are aware relates to the 2001 UNIDROIT Convention on International Interests in Mobile Equipment (the "Cape Town Convention") and its Protocols. (The United States is a party to the Cape Town Convention and its Protocol on Matters Specific to Aircraft Equipment (the "Aircraft Protocol") but not to its protocols on Railway Rolling Stock and Space Assets.) The Cape Town Convention governs, inter alia, the assignment of "associated rights" – a term that includes receivables arising from transactions with respect to airframes, aircraft engines and helicopters within the scope of the Cape Town Convention. We note

that Article 45 *bis* of the Cape Town Convention provides that it prevails over the Receivables Convention. Thus, provisions in the Cape Town Convention and the Aircraft Protocol with respect to assignments of receivables that constitute associated rights prevail over rules of the Receivables Convention. This deference to the Cape Town Convention reduces transaction costs because parties to transactions involving such assignments of "associated rights" will not have to analyze and adhere to separate and potentially differing rules in the two conventions (primarily with respect to assignments of associated rights as to which priority is governed pursuant to Article 36(1) of the Cape Town Convention) with regard to the same transaction.

Article 38(1) is subject to one exception. Article 38(2) provides that the Convention prevails over the UNIDROIT Convention on International Factoring (1988). (As the United States is not a party to this UNIDROIT Convention, this provision would have no impact on U.S. implementation of the Convention.)

Article 39. Declaration as to application of Chapter V (autonomous conflict-of-laws rules)

Article 39 provides that a State may declare that it will not be bound by Chapter V of the Convention (Articles 26 through 32). As noted in the discussion of Articles 26 through 32, it is recommended that the United States include a Declaration in the United States instrument of ratification declining to be bound by Chapter V of the Convention, which would be as follows:

> Pursuant to Article 39 of the Convention, the United States declares that it will not be bound by Chapter V of the Convention.

Article 40. Limitations relating to Governments and other public entities

Article 40 provides that a State may declare at any time the extent to which it will not be bound by Articles 9 and 10 (which, similar to the UCC, ensures that an assignment of trade receivables is effective notwithstanding contractual provisions that would prevent the assignment of receivables) if the debtor is a governmental entity or an entity constituted for a public purpose.

Under the Convention, statutory limitations (as opposed to contractual limitations) are not overridden by the Convention. Thus, as the Explanatory Note (paragraph 28) points out, the exception in Article 40 is intended to provide an option for a limited number of States that rely on contractual limitations. Further,

this option extends to any governmental entity whether it be at the federal, state, or local level, or any subdivision thereof, or to any entity constituted for a public purpose.

In the United States, limitations on assignments of receivables as to which the debtor is a governmental entity are generally established by statute or regulation (such as the Federal Assignment of Claims Act), not by contractual provisions. *See* 31 U.S.C. 3727 and 41 U.S.C. 6305 (prohibiting assignment of rights to payment under Government contracts except for assignments to financial institutions). U.S. law also permits but does not mandate the total prohibition on assignment effected by FAR 52.232-24. Comparable provisions pertain to state or local governments. In order to clarify that current U.S. practice in this area is preserved, it is recommended that the following Declaration be included in the United States' instrument of ratification:

> Pursuant to Article 40, the United States declares that the Convention does not affect contractual anti-assignment provisions where the debtor is a governmental entity or an entity constituted for a public purpose in the United States.

Article 41. Other exclusions

Article 41 provides that a State may declare at any time that it will not apply this Convention to specific types of assignments or to the assignment of specific categories of receivables, other than receivables arising under Article 9(3) (the core of "trade receivables" that are the focus of the Convention).

No declaration by the United States creating such an exclusion is recommended. It is in the interest of the United States to encourage the Convention to have the widest application for all types of cross-border transactions within the scope of the Convention in order to establish clear rules to permit the availability and to lower the cost of credit extended outside the United States.

Article 42. Application of the annex

Article 42 of the Convention permits, but does not require, Contracting States to declare that they will be bound by one of three sets of rules set out in the Annex governing priority. The effect of such a declaration is that, when the conflict-of-laws rules of the Convention provide that the declaring State's law governs priority of competing claims to a receivable, the designated set of priority

rules in the Annex would apply. If a State makes no declaration under this Article, its domestic law on that subject will continue to apply to determine priority under those circumstances.

One of the sets of rules in the Annex – Sections I and II – consists of what is essentially a simplified version of the registration-based priority rules in effect in the United States under enactments of Article 9 of the UCC, in most Canadian provinces, in Mexico, and in many other countries around the world. Section I sets forth rules for priority, and Section II sets forth the elements of a registration system. Systems based on these types of rules as demonstrated by the U.S. experience have proven successful in encouraging the availability and reducing the cost of secured credit. This is because such systems provide relevant information as to security arrangements, and the information is publicly accessible to third parties that are considering extending credit on a secured basis. A lender extending credit based on such publicly available information has greater confidence in the priority of its secured position, and the risk of fraud is reduced.

The other two sets of priority rules (Annex Sections III and IV) are based on current models used in some civil law countries that are not based on transparent and accessible notice-filing. The first set, contained in Section III of the Annex, bases priority on the date of the assignment of a receivable, notwithstanding the absence of any publicly-accessible information from which the assignment could be discovered by a third party. The second set of priority rules, contained in Section IV, bases priority on the date on which an account debtor (referred to in the Convention as the "debtor") is notified of an assignment; because such notification is a private act not reflected in any publicly-available information, this system also does not provide a transparent system.

The trend around the world is toward priority systems of the sort utilized in the United States and provided as an option under Sections I and II of the Annex. Indeed, the UNCITRAL Legislative Guide on Secured Transactions, adopted in 2007, recommends that countries adopt laws consistent with that model.

Although each of the states of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted Article 9 of the UCC, embodying the principles of Section I (priority rules based on registration) and Section II (establishment of a registration system) of the Annex, it is not recommended that the United States make a declaration binding itself to Sections I and II of the Annex. That is because the UCC Article 9 priority rules contain more details, as well as some finely tuned provisions for some types of collateral and transactions,

that in some respects may be viewed as supplementary to or at variance from the more general rules embodied in Sections I and Section II.

Article 43. Effect of declaration

Article 43 provides procedural rules regarding declarations authorized by the Convention, including the dates on which such declarations or their withdrawal are effective and which transactions within the scope of application of the Convention are affected thereby.

Article 44. Reservations

No reservations are permitted except those expressly authorized by the Convention.

Article 45. Entry into force

The Convention will enter into force after ratification, acceptance, approval, or accession by five States. It is anticipated that U.S. ratification will encourage other countries to become party to the Convention.

Article 45(3) provides that application of the Convention is prospective only. It applies to an assignment of a receivable only if the contract of assignment is entered into on or after the date the Convention enters into force in the State in which the assignor is located. The Convention's provisions that deal with rights and obligations of the debtor apply only to assignments of receivables arising from original contracts entered into on or after the date the Convention enters into force for the State in which the debtor is located or the State whose law governs the original contract.

Article 46. Denunciation

A Contracting State may withdraw from the Convention at any time by written notification to the depositary. The withdrawal is effective on the first day of the month following the expiration of one year after notice thereof is received by the depositary or upon expiration of a longer period of time as may be specified in the notice. Withdrawal would not affect rights created or obligations incurred under the Convention before withdrawal.

III. RELATIONSHIP OF THE CONVENTION TO U.S. LAW

As explained above, most of the transactions in receivables covered by the Convention are governed in the United States by state enactments of Article 9 of the UCC, which is a joint product of the ULC and the ALI. Article 9 was substantially revised by those sponsoring organizations in the 1990s, culminating in the enactment of a new version of Article 9 effective in 2001. Thus, the drafting process for both the Convention and revisions to Article 9 coincided. Many from the United States who participated in the negotiation of the Convention also were involved in the drafting of the revisions to Article 9. As a result, issues raised in negotiating the Convention were considered by the Article 9 drafting committee, and issues raised in the Article 9 drafting committee meetings were considered in the negotiation of the Convention.

After the Convention was concluded, a ULC committee, with the participation of knowledgeable members of the ALI, conducted an extensive review to examine the consistency of the Convention with U.S. law and practice and the best means of domestic implementation of the Convention. At the conclusion of its review, the committee issued a report that was adopted by the ULC. The ULC report, while noting that there were some differences between the Convention and Article 9, concluded that they are "largely consistent" with each other, and extolled the "desirable harmony between the rules of the Convention and provisions of the Article 9."

The ULC report recommended technical explanations and proposed formulations for declarations and understandings, aimed at ensuring consistency with practice under UCC Article 9 and facilitating application of the Convention. The Declarations and Understandings recommended herein are consistent with the recommendations of the ULC. The ULC also recommended that the Convention be self-executing.

After taking account of the Declarations and Understandings recommended herein, very few differences between the Convention and Article 9 remain. In particular, the ULC report noted three minor differences that could lead to the conflict-of-laws rules of the Convention pointing to a different State's law to govern priority than would result from the application of the conflict-of-laws rules in Article 9:

1. In the relatively uncommon situation in which an assignor is a corporation or similar entity chartered in the United States but has its place of central administration outside the United States, the

Convention provides that the assignor is located in the country of central administration, while UCC Article 9 provides that the assignor is located in its U.S. state of incorporation; as a result, the priority rules of that place of central administration would govern under the Convention while the priority rules of the state of incorporation or the like would govern under Article 9.

2. The Convention applies the law of the country in which the assignor is located for purposes of determining priority, while Article 9 may apply the law of the District of Columbia if that foreign law does not meet the criteria set forth in UCC Article 9 (i.e., having priority over lien creditors generally determined by filing in a public registry). This difference will only occur when the State in which the assignor is located has not modernized its secured transaction law along the lines of the systems already in place in the United States, most Canadian provinces, Mexico, and many other countries.

3. The Convention's rule for determining which law governs perfection and priority (the law of the assignor's location) applies to "reified" receivables, such as tangible chattel paper and instruments, while, under UCC Article 9, priority for those types of collateral is governed by the law of the state or country in which the collateral is located, as is perfection in the case of possessory security interests.

Because the conflict-of-laws rules of U.S. state enactments of UCC Article 9 apply only in U.S. courts, and because litigation about assignments from an entity with a foreign place of central administration may take place in the foreign country, parties to such assignments today routinely consider the priority rules of that foreign location. Thus, the difference between the Convention and current law in the United States in each of the three situations noted above likely will have minimal effect on current financing practice. Moreover, the transactional gains provided by the Convention's uniform conflict-of-laws rules significantly outweigh the effect of these minor differences.

اتفاقية الأمم المتحدة لإحالة المستحقات في التجارة الدولية

联合国国际贸易中应收款转让公约

UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE

CONVENTION DES NATIONS UNIES SUR LA CESSION DE CRÉANCES DANS LE COMMERCE INTERNATIONAL

КОНВЕНЦИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ОБ УСТУПКЕ ДЕБИТОРСКОЙ ЗАДОЛЖЕННОСТИ В МЕЖДУНАРОДНОЙ ТОРГОВЛЕ

CONVENCIÓN DE LAS NACIONES UNIDAS SOBRE LA CESIÓN DE CRÉDITOS EN EL COMERCIO INTERNACIONAL

UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE

UNITED NATIONS
2001

UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE

PREAMBLE

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

CHAPTER I
SCOPE OF APPLICATION

Article 1
Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2
Assignment of receivables

For the purposes of this Convention:

(a) "Assignment" means the transfer by agreement from one person ("assignor") to another person ("assignee") of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ("receivable") from a third person ("the debtor"). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee ("subsequent assignment"), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3
Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4
Exclusions and other limitations

1. This Convention does not apply to assignments made:

(a) To an individual for his or her personal, family or household purposes;

(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

CHAPTER II
GENERAL PROVISIONS

Article 5
Definitions and rules of interpretation

For the purposes of this Convention:

(a) "Original contract" means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) "Existing receivable" means a receivable that arises upon or before conclusion of the contract of assignment and "future receivable" means a receivable that arises after conclusion of the contract of assignment;

(c) "Writing" means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

(d) "Notification of the assignment" means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) "Insolvency administrator" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor's assets or affairs;

(f) "Insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) "Priority" means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) "Law" means the law in force in a State other than its rules of private international law;

(j) "Proceeds" means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) "Financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) "Netting agreement" means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

(m) "Competing claimant" means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) A creditor of the assignor; or

(iii) The insolvency administrator.

Article 6
Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7
Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

CHAPTER III
EFFECTS OF ASSIGNMENT

Article 8
Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9
Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10
Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

CHAPTER IV
RIGHTS, OBLIGATIONS AND DEFENCES

SECTION I
ASSIGNOR AND ASSIGNEE

Article 11
Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12
Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13
Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not

ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14
Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

SECTION II
DEBTOR

Article 15
Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:

(a) The currency of payment specified in the original contract; or

(b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16
Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to

inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17
Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18
Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19
Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:

(a) Arising from fraudulent acts on the part of the assignee; or

(b) Based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20
Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

(a) The assignee consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21
Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

SECTION III
THIRD PARTIES

Article 22
Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23
Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24
Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25
Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

CHAPTER V
AUTONOMOUS CONFLICT-OF-LAWS RULES

Article 26
Application of chapter V

The provisions of this chapter apply to matters that are:

(a) Within the scope of this Convention as provided in article 1, paragraph 4; and

(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27
Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the

requirements of either the law which governs it or the law of the State in which it is concluded.

2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28
Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29
Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30
Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31
Mandatory rules

1. Nothing in articles 27 to 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 27 to 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32
Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

CHAPTER VI
FINAL PROVISIONS

Article 33
Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34
Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35
Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36
Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37
Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38
Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39
Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40
Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41
Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42
Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:

(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which contracts of assignment concluded before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43
Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44
Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights

and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46
Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47
Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

ANNEX TO THE CONVENTION

SECTION I
PRIORITY RULES BASED ON REGISTRATION

Article 1
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

SECTION II
REGISTRATION

Article 3
Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4
Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5
Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

SECTION III
PRIORITY RULES BASED ON THE TIME OF THE CONTRACT OF ASSIGNMENT

Article 6
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8
Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

SECTION IV
PRIORITY RULES BASED ON THE TIME OF NOTIFICATION OF ASSIGNMENT

Article 9
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at New York, this 12th day of December two thousand one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

I hereby certify that the foregoing text is a true copy of the United Nations Convention on the Assignment of Receivables in International Trade, adopted by the General Assembly of the United Nations on 12 December 2001, the original of which is deposited with the Secretary-General of the United Nations.

For the Secretary-General,
The Legal Counsel
(Under-Secretary-General
for Legal Affairs)

Je certifie que le texte qui précède est une copie conforme de la Convention des Nations Unies sur la cession de créances dans le commerce international, adoptée par l'Assemblée générale des Nations Unies le 12 décembre 2001, dont l'original se trouve déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

Pour le Secrétaire général,
Le Conseiller juridique
(Secrétaire général adjoint aux
affaires juridiques)

Hans Corell

United Nations
New York
13 December 2001

Organisation des Nations Unies
New York
Le 13 décembre 2001