

Key Policy Issues of the United Nations Convention on the Assignment of Receivables in International Trade

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I. INTRODUCTION

On December 12, 2001, the United Nations General Assembly adopted and opened for signature the United Nations Convention on the

Assignment of Receivables in International Trade (the Convention).¹ The Convention is the result of almost six years of work at the inter-governmental level by the United Nations Commission on International Trade Law (UNCITRAL).² It will enter into force upon ratification by five States.³

The main objective of the Convention is to “promote the availability of capital and credit at more affordable rates” across national borders, thus facilitating the cross-border movement of goods and services.⁴ The Convention establishes principles and adopts rules relating to the assignment of contractual monetary claims (receivables),⁵ and will apply to a variety of receivables financing transactions, including asset-based lending, factoring, forfeiting, securitization, and related service transactions in which no financing is provided.⁶ With respect to those practices, the Convention removes legal obstacles, including specific statutory and contractual limitations, and enhances certainty in the context of substantive law (e.g., debtor’s rights and obligations) and conflict-of-laws issues.⁷

One of the most important achievements of the Convention is to subject all priority conflicts between an assignee and third parties claiming an interest in the receivable (including the administrator in the insolvency of the assignor) to the law of the location of the assignor.⁸ This decision has been rightly described as “significant progress in the

1. G.A. Res. 56/81, U.N. GAOR, 56th Sess., Agenda Item 161, U.N. Doc. A/RES/56/17 (2002), [2001] 32 Y.B. COMM’N ON INT’L TRADE L., available at <http://www.uncitral.org> [hereinafter Convention].

2. See *Receivables Financing: Analytical Commentary on the Draft Convention on Assignment of Receivables in International Trade*, U.N. Comm’n on Int’l Trade Law, 34th Sess., at 2-3, U.N. Doc. A/CN.9/489 and Add. 1 (2001), available at <http://www.uncitral.org> [hereinafter *Analytical Commentary*]. UNCITRAL assigned the task of preparing a uniform law on assignments in receivables financing to the Working Group on International Contract Practices in 1995. *Id.* at 2. UNCITRAL adopted the text of the draft convention in 2001. See Convention, *supra* note 1, at 2. For a list of the preparatory documents, see *Analytical Commentary, supra*, at 2-3 nn.1-11. UNCITRAL is the core legal body in the United Nations system in the field of international trade law unification and harmonization. See Convention, *supra* note 1, at 1.

3. Convention, *supra* note 1, art. 45(1).

4. *Id.* pmb., para. 5.

5. *Id.* art. 2.

6. See *Analytical Commentary, supra* note 2, at 5-7.

7. See Convention, *supra* note 1, arts. 8-10, 15-21, 26-32. For a more detailed discussion of the general principles of the Convention and its effect on domestic law, see Spiros V. Bazinas, *Le Projet de Convention de la CNUDCI. Ses Objectifs et Ses Effets sur les Autres Lois*, 75 REVUE DE DROIT BANCAIRE ET DE LA BOURSE 171 (Sept.-Oct. 1999); Spiros V. Bazinas, *Die Arbeit von UNCITRAL im Bereich der Forderungsabtretung zur Kreditfinanzierung*, in *DIE FORDERUNGSABTRETUNG, INSBESONDERE ZUR KREDITSICHERUNG 99* (Walther Hadding & Uwe H. Schneider eds., 1999).

8. Convention, *supra* note 1, art. 22.

development of international commercial law and the harmonization of conflict-of-laws rules in the area of secured transactions.”⁹

Another major achievement of the Convention is the limited priority rule with respect to proceeds, which aims to facilitate practices such as securitization and undisclosed invoice discounting.¹⁰ Parties structuring their transactions in accordance with the Convention will be able to ensure priority with respect to proceeds even in countries whose domestic law does not recognize rights in proceeds, as long as those countries have become party to the Convention.¹¹

The third major achievement of the Convention has several component parts, each related to the validation of assignments. In particular, the Convention validates the assignment of future receivables and of receivables not identified individually.¹² Moreover, the Convention ensures the validation of assignments made despite antiassignment clauses.¹³

This Article briefly discusses the key policy issues of the Convention.¹⁴ Part II analyses the Convention's scope of application. Part III examines the effectiveness of an assignment. Parts IV and V address the relationship between the assignor and the assignee and the assignee-debtor relationship, respectively. Part VI deals with priority issues. Finally, Part VII discusses the independent conflict-of-laws rules of the Convention and Part VIII speaks briefly to some of the most important final provisions.

9. See Michel Deschamps, *The Priority Rules of the United Nations Receivables Convention: A Comment on Bazinas*, 12 DUKE J. COMP. & INT'L L. 389, 389 (2002).

10. See Convention, *supra* note 1, art. 24.

11. See *id.* art. 1.

12. *Id.* art. 8.

13. See *id.* art. 9.

14. For a discussion of earlier drafts of the Convention, see Spiros V. Bazinas, *Lowering the Cost of Credit: The Promise in the Future UNCITRAL Convention on Assignment of Receivables in International Trade*, 9 TUL. J. INT'L & COMP. L. 259 (2001) [hereinafter Bazinas, *Lowering the Cost of Credit*]; Spiros V. Bazinas, *An International Legal Regime for Receivables Financing: UNCITRAL's Contribution*, 8 DUKE J. COMP. & INT'L L. 315 (1998). See also CARSTEN BÖHM, *DIE SICHERUNGSABTRETUNG IM UNCITRAL-KONVENTIONSENTWURF* (Shaker Verlag 2000).

II. SCOPE OF APPLICATION OF THE CONVENTION

A. *Substantive Scope of Application*

1. International Assignments and Assignments of International Receivables

As it focuses on international trade, the Convention applies solely to assignments of international receivables and to international assignments of receivables.¹⁵ The international character of an assignment or a receivable is determined by the location of the assignor and the assignee, or the debtor, at the time of the conclusion of the assignment contract.¹⁶ An assignment is international if the assignor and the assignee are located in different States.¹⁷ A receivable is international if the assignor and the debtor are located in different States.¹⁸

2. Domestic Assignments of Domestic Receivables

The Convention does not apply to domestic assignments of domestic receivables (i.e., where the assignor, the assignee, and the debtor are located in the same State).¹⁹ Two exceptions exist, however. The first relates to subsequent assignments where, for example, *A* assigns to *B*, *B* to *C*, and so on.²⁰ In order to ensure consistent results, the Convention applies to these subsequent assignments irrespective of whether the subsequent assignments are international or relate to international receivables, provided that any prior assignment in the chain of subsequent assignments is governed by the Convention.²¹

The second exception speaks to conflicts of priority between a domestic and a foreign assignee of domestic receivables (i.e., *A* in country *X* and *B* in country *Y*; the receivables are owed by a debtor in country *Y*).²² To ensure certainty as to the priority rights of assignees, the Convention covers all priority conflicts.²³ Article 22 provides the law applicable to “the priority of the right of an assignee in the assigned

15. Convention, *supra* note 1, art. 1(1)(a).

16. *Id.* art. 3. As a result, a change of location of the parties after the conclusion of the assignment contract is irrelevant for the purpose of the application of the Convention.

17. *Id.*

18. *Id.*

19. *See id.* art. 1(1)(a).

20. *See id.*

21. *Id.*; see Uwe H. Schneider & Alexandra Dreibus, *Die Kettenabtretung*, in *BANKRECHT UND PERSPEKTIVEN, FESTSCHRIFT FÜR HERBERT SCHIMANSKI* (Norbert Horn, Hans-Juergen Lwowski, Gerd Nobbe eds., RWS Verlag 1999).

22. *See* Convention, *supra* note 1, art. 22.

23. *See id.*

receivable over the right of a competing claimant.”²⁴ The definition of “competing claimant” includes another assignee even if the receivable and the assignment are not international.²⁵ Thus, article 22 covers a conflict of priority between a domestic assignment of domestic receivables and an international assignment of domestic receivables and refers the conflict to the law of the assignor’s location.²⁶

3. The Meaning of the Terms “Assignment” and “Receivable”

“Assignment” is defined in the Convention as a transfer of property in receivables by agreement.²⁷ The definition includes the creation of security rights in receivables and the transfer of full property in receivables, whether or not for security purposes.²⁸ The Convention, however, does not specify what constitutes either an outright assignment or a security transfer, leaving this issue to law applicable outside the Convention.²⁹ An “assignment” may be a contractual subrogation or pledge-type transaction.³⁰ On the other hand, it may not consist of transfers by operation of law (e.g., statutory subrogation) or unilateral assignments.³¹

The “assignor” is the old creditor in the original contract giving rise to the assigned receivable.³² The assignor is either the borrower in the financing contract or a third party assigning its receivables to secure funding to the borrower. The “assignee” is the new creditor, the lender in the financing contract.³³ The “debtor” is the obligor in the original contract.³⁴

The Convention defines a “receivable” as a “contractual right to payment of a monetary sum.”³⁵ Receivables from any type of contract are included. While the exact meaning of the term “contractual right” is left to national law, it is clear that claims from contracts for the supply of goods, construction, and services are covered, whether the contracts are commercial or consumer contracts.³⁶ Also included are toll road receipts,

24. *Id.*

25. *Id.* art. 5(m)(i).

26. *See id.* art. 22.

27. *Id.* art. 2.

28. *Id.*

29. *See id.*

30. *See* Bazinas, *Lowering the Cost of Credit*, *supra* note 14, at 268.

31. *See id.* at 268-70.

32. *See* Convention, *supra* note 1, art. 2.

33. *See id.*

34. *See id.* “The account debtor” in article 9 UCC terminology.

35. *Id.*

36. *See Analytical Commentary*, *supra* note 2, at 5.

royalties, damages for breach of contract, interest, nonmonetary claims convertible to money, and returned goods (at least in the relationship between the assignor and the assignee and provided that they take the place of the receivables).³⁷

4. Exclusions and Other Limitations

The scope of receivables covered is restricted by way of outright or limited exclusions of some types of receivables or assignments.³⁸ The Convention excludes some assignments because no market exists for them (e.g., assignments to a consumer; however, assignments of consumer receivables fall within the scope of the Convention).³⁹ The Convention also excludes the assignment of those types of receivables that are already sufficiently regulated, or for which some of the provisions of the Convention may not be suitable, such as assignments of “financial” receivables arising from securities, letters of credit, bank deposits, and so forth.⁴⁰

a. Receivables Arising from Securities

Worthy of particular reference is the exclusion of transactions involving the assignment of receivables from “securities or other financial assets or instruments held with an intermediary.”⁴¹ The Convention excludes the assignment of receivables arising from securities whether the securities are held directly by their owner or through an intermediary.⁴² The assignment of receivables arising from other financial assets is excluded only if they are held with an intermediary.⁴³ This exclusion reflects verbatim the text suggested by the securities industry.⁴⁴

37. See *id.* at 5-7.

38. See Convention, *supra* note 1, art. 4. For a detailed analysis of exclusions or other limitations relating in particular to securities and to real estate receivables, see Harry C. Sigman & Edwin E. Smith, *Toward Facilitating Cross-Border Secured Financing and Securitization: An Analysis of the United Nations Convention on the Assignment of Receivables in International Trade*, in 57 BUS. LAW. 727, 734 (Feb. 2002). See also Spiros V. Bazinas, *Multi-Jurisdictional Receivables Financing: UNCITRAL's Impact on Securitization and Cross-Border Perfection*, 12 DUKE J. COMP. & INT'L L. 365 (2002).

39. See Convention, *supra* note 1, art. 4(1)(a); *Analytical Commentary*, *supra* note 2, at 5.

40. See Convention, *supra* note 1, art. 4(2).

41. *Id.* art. 4(2)(e).

42. See *id.*

43. See *id.*

44. See *Report of the United Nations Commission on International Trade Law on Its Thirty-Fourth Session*, U.N. GAOR, 56th Sess., Supp. No. 17, ¶ 135, U.N. Doc. A/56/17 (2001), available at <http://www.uncitral.org>.

b. Receivables in the Form of Negotiable Instruments, Consumer Receivables, and Real Estate Receivables

Beyond the outright exclusion of certain types of assignments or receivables, the Convention provides two further types of limitations. One type is the "hold harmless" clause, which applies to assignments of receivables in the form of negotiable instruments, consumer receivables, and real estate receivables.⁴⁵ The Convention applies to the assignment of such receivables. However, it does not change the legal position of certain parties to such assignments.⁴⁶ For example, the priority of a holder in due course is not referred to the law of the assignor's location but remains subject to law applicable outside the Convention.⁴⁷

c. Receivables Other than Trade Receivables

The Convention places another type of limitation upon the scope of the provision, granting effectiveness to assignments notwithstanding antiassignment and similar clauses.⁴⁸ This provision applies to trade receivables, such as receivables from the supply or lease of goods or the provision of services other than financial services.⁴⁹ It does not apply to the assignment of receivables arising from financial service contracts that are not the subject of an outright exclusion from the Convention as a whole (e.g., sales of loans or insurance policies).⁵⁰ This means that the effectiveness of an antiassignment clause in such a financial service contract is subject to law outside the Convention.⁵¹ As a result, if that law gives effect to antiassignment clauses, the assignment will be ineffective and therefore the Convention will not apply.

B. Territorial Scope of Application

The Convention will apply only if the assignor is located in a State that is a party to the Convention.⁵² Because the Convention (with the exception of the debtor-related provisions) only requires the assignor to be located in a State party to the Convention, the scope of application of the Convention is quite broad. The Convention's scope thus does not

45. Convention, *supra* note 1, art. 4(3)-(5).

46. *See id.*

47. *See id.*

48. *Id.* art. 9(1), (3).

49. *Id.*

50. *See id.* art. 9(3)(a).

51. *Id.* art. 29. Under article 29 this law is the law governing the original contract.

52. *Id.* art. 1(1).

need to be extended or even complicated by reference to general conflict-of-laws rules that are neither uniform nor fully effective.⁵³

The Convention imposes a somewhat different location requirement for the debtor-related provisions. These provisions apply only if the debtor is also located in a State party to the Convention or if the law governing the assigned receivables is the law of a State party to the Convention.⁵⁴

This approach reflects two assumptions. First, the debtor need not be located in a State party to the Convention for the application of the Convention's provisions dealing with an assignment's effectiveness because the debtor is protected through the Convention's notification requirements.⁵⁵ Similarly, the debtor need not be located in a State party to the Convention in order for its priority provisions to apply because the Convention draws a clear distinction between the debtor's rights and obligations and priority among competing claimants.⁵⁶ Second, the reference to the law governing the receivable is sufficiently specific so as not to raise uncertainty.⁵⁷

C. *The Meaning of the Term "Location"*

The Convention defines "location" by reference to the place of business of a party, or the habitual residence, if there is no place of business.⁵⁸ Departing from the traditional "location rule," referring in the case of multiple places of business to the place with the closest relationship to the relevant transaction,⁵⁹ the Convention provides that, when an assignor or an assignee has places of business in more than one State, reference shall be made to the place of central administration (in other terms, the principal place of business or the main centre of interests).⁶⁰

The reason for this approach is to provide certainty with respect to the application of the Convention and, in particular, the law governing

53. For a detailed analysis of, inter alia, the Convention's applicability, see Franco Ferrari, *The Uncitral Draft Convention on Assignment in Receivables Financing: Critical Remarks on Some Specific Issues*, in PRIVATE LAW IN THE INTERNATIONAL ARENA: FROM NATIONAL CONFLICT RULES TOWARDS HARMONIZATION AND UNIFICATION 179 (Jürgen Basedow et al. eds., T.M.C. Asser Press 2000).

54. Convention, *supra* note 1, art. 1(3).

55. *See id.* arts. 15-17.

56. *See, e.g., id.* arts. 15, 30.

57. *See id.* art. 1(3).

58. *Id.* art. 5(h).

59. *See, e.g.,* United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, art. 10(a), U.N. Doc. A/Conf. 97/18, *reprinted in* 19 I.L.M. 671 (1980).

60. Convention, *supra* note 1, art. 5(h).

priority (i.e., the law of the State in which the assignor is located).⁶¹ In contrast, when a debtor has places of business in more than one State, reference is to be made to the place most closely connected to the original contract.⁶² This different approach was taken with regard to the location of the debtor so as to ensure that the debtor is not surprised by the application of legal text to which the original transaction between the debtor and the assignor has no relationship.⁶³

The central administration location rule will refer transactions between a branch office of a foreign business and another business in country *A* to the law of the place of central administration in country *B*.⁶⁴ To the extent that current national law refers to the law of the place to which a certain transaction is most closely connected, the central administration location rule thus introduces a change to national law.⁶⁵ The level of certainty achieved through the central administration location rule outweighs any potential discomfort from this change. In addition, this rule will not affect transactions in which financing institutions are debtors of the original receivable because, in such a case, the close connection test determines the institutions' location.⁶⁶ Moreover, this change will only have a limited impact on transactions in which branch offices of financing institutions are assignors or assignees, because a number of banking transactions are excluded from the scope of application of the Convention or may be excluded by way of a contractual limitation.⁶⁷

III. VALIDITY OF THE ASSIGNMENT

A. *Formal Validity*

The Convention does not contain a general substantive law rule as to the formal validity of the assignment (creating rights *in rem* in

61. *See id.* art. 22.

62. *Id.*

63. This principle of debtor protection informs much of the Convention. *See Analytical Commentary, supra* note 2, at 5; Bazinas, *Lowering Cost of Credit, supra* note 14, at 266, 278.

64. *See* Convention, *supra* note 1, art. 5(h).

65. *See id.*

66. *See id.*

67. *Id.* arts. 4(2), 9. Article 4(2) specifically excludes transactions relating to receivables from deposit accounts, letters of credit, and securities. *Id.* art. 4(2). Article 9 allows for the effectiveness of receivable assignments, notwithstanding contractual limitations, but carves out an exception for financial services. *Id.* art. 9(1), (3)(a). A contractual limitation on financial services is governed by the laws governing the original contract. *Id.* art. 29. For further discussion, see Catherine Walsh, *Receivables Financing and the Conflict of Laws: The UNCITRAL Draft Convention on the Assignment of Receivables in International Trade*, 106 DICK. L. REV. 159 (2001).

receivables) or the contract of assignment (creating only personal rights).⁶⁸ It does contain conflict-of-laws rules; for example, the form of assignment as a condition of priority is referred to the law of the assignor's location.⁶⁹

As to the formal validity of the contract of assignment, the Convention follows the traditional approach.⁷⁰ Under this approach, an assignment contract between parties located in the same State must satisfy the requirements of the law which governs the contract or of the law of the State in which the contract is concluded.⁷¹ A contract of assignment between parties located in different States must satisfy the requirements of the law which governs the contract or of the law of either State.⁷²

B. *Material Validity*

An assignment made by agreement between the assignor and the assignee is effective.⁷³ In order to remove legal obstacles to assignments, the Convention focuses on statutory and contractual limitations.⁷⁴ Other issues related to material validity are resolved by conflict-of-laws rules.⁷⁵

1. Statutory Limitations

A number of significant financing practices involve the assignment of existing and future receivables⁷⁶ without a specific identification of the receivables, including asset-based lending, factoring, and securitization. Yet, in many legal systems, such assignments are not possible because of their impact on the economic freedom of the assignor, related specificity concerns, or priority given to large financing institutions over small suppliers.⁷⁷ The Convention sets aside such statutory limitations.⁷⁸

68. To the extent that notification is required for the assignment to be valid as between the assignor and the assignee, however, it is set aside. *See* Convention, *supra* note 1, art. 14(1); *see also* Sigman & Smith, *supra* note 38, at 738.

69. *See* Convention, *supra* note 1, arts. 5(g), 22.

70. *Id.* art. 27.

71. *Id.* art. 27(1).

72. *Id.* art. 27(2).

73. *See id.* arts. 2(a), 11(1), 14.

74. *Id.* arts. 8-9.

75. *Id.* arts. 22-23, 26-32.

76. *Id.* art. 8(1). Under the convention, a “‘future receivable’ means a receivable that arises after conclusion of the contract of assignment.” *Id.* art. 5(b). Whether a receivable is mature, payable, or whether it has been earned by performance is irrelevant. *See id.*

77. *See* Hein Kötz, *Rights of Third Parties. Third Party Beneficiaries and Assignment*, in 7 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW § 105 (Martinus Nijhoff Publishers 1992).

This is in line with the Convention's objective to facilitate receivables financing, which benefits the entire economy.⁷⁹ With more affordable credit, the assignor is likely to be able to increase the volume of its business.⁸⁰ It is also likely to offer better terms to its buyers/debtors.⁸¹ The Convention does not frustrate the objective of such limitations. It does not deprive the assignor of its economic freedom to assign its receivables to a second assignee because it does not grant priority to one assignee over the other.⁸² The Convention merely determines the law applicable to priority.⁸³ In addition, the Convention addresses concerns about debtor inconvenience and expense, or uncertainty as to how the debtor is to discharge the debt⁸⁴ in the debtor-related provisions that are aimed at facilitating debtor discharge.⁸⁵

Apart from the statutory limitations mentioned, other statutory limitations, such as those relating to personal or sovereign receivables, are not affected by the Convention.⁸⁶

2. Contractual Limitations

The Convention validates an assignment made in violation of an antiassignment clause without eliminating any liability that the assignor may have for breach of contract under law applicable outside the Convention and without extending that liability to the assignee.⁸⁷

However, if such liability exists, the Convention narrows its scope by providing that mere knowledge of the antiassignment agreement, on the part of the assignee who is not a party to the agreement, does not

78. Specifically, the Convention preempts any limitation on such assignments, not just outright prohibitions. See Convention, *supra* note 1, art. 8. The only condition is that the receivables must be identified as receivables to which the assignment relates. *Id.* art. 8(1)(a). However, if the debtor receives notification of a partial assignment, the debtor may ignore it and pay the assignor. *Id.* art. 17(6).

79. *Id.* pmbl.; see *Analytical Commentary, supra* note 2, at 5.

80. See *Analytical Commentary, supra* note 2, at 5-6.

81. See *id.*

82. See Bazinas, *Le Projet de Convention de la CNUDCI, supra* note 7, at 173. For the Convention's impact on various legal systems, see Bruce A. Markell, *UNCITRAL's Receivables Convention: The First Step, but Not the Last: A Comment on Bazinas*, 12 DUKE J. COMP. & INT'L L. 401 (2002). In fact, UNCITRAL has already taken its next step in the field by embarking on the preparation of a legislative guide on secured transactions, aimed at harmonizing domestic law. *Draft Legislative Guide on Secured Transactions*, U.N. GAOR, U.N. Comm'n on Int'l Trade L., 1st Sess., U.N. Doc. A/CN.9/WG.VI/WP.2 (2002), available at <http://www.uncitral.org> (last visited Apr. 2, 2003).

83. See Convention, *supra* note 1, art. 22.

84. See Kötz, *supra* note 77, § 72.

85. Convention, *supra* note 1, arts. 15-17.

86. *Id.* art. 8(3).

87. *Id.* art. 9(1)-(3).

constitute sufficient ground for liability of the assignee for the breach of the agreement.⁸⁸ In addition, the Convention protects the assignee further by ensuring that the violation of an antiassignment clause by the assignor is not in itself sufficient ground for the avoidance of the original contract by the debtor.⁸⁹ Furthermore, the Convention does not allow a claim for breach of an antiassignment clause to be made by the debtor against the assignee by way of set-off so as to defeat the assignee's demand for payment.⁹⁰

The Convention approach is justified by the need to give precedence to the interest of the economy as a whole, even at the expense of some inconvenience to the debtor, rather than to protect debtors that have a way of protecting themselves. The Convention assumes that debtors can protect themselves if they are in a strong enough bargaining position to negotiate antiassignment clauses.⁹¹ There is one marked exception to the above. With respect to the assignment of sovereign receivables, States may enter a reservation with regard to the application of the provision of the Convention dealing with contractual limitations.⁹² This exception is intended to protect a limited number of States that do not have a policy of protecting themselves by law, but instead rely on contractual limitations.⁹³

3. Transfer of Security Rights

An accessory security right, whether personal or property, securing payment of the assigned receivable is transferred with the receivable without a new act of transfer.⁹⁴ The assignor is obliged to transfer to the assignee an independent security or other supporting right (e.g., an independent guarantee or a standby letter of credit).⁹⁵

With respect to contractual limitations, a security right is treated in the same way as a receivable. This means that the contractual limitation remains valid between the parties thereto but does not affect the transferee.⁹⁶ This provision applies to "trade receivables" defined broadly

88. *Id.* art. 9(2).

89. *Id.*

90. *See id.* art. 18(3).

91. *See id.*

92. *Id.* art. 40.

93. *See Report of the Working Group on International Contract Practices on the Work of Its Twenty-Third Session*, U.N. Comm'n on Int'l Trade L., 34th Sess., ¶ 113, U.N. Doc. A/CN.9/486 (2001), available at <http://www.uncitral.org>.

94. *Id.* art. 10(1).

95. *See id.*

96. *See id.* art. 10(2)-(3).

and does not affect any obligations of the assignor towards the debtor under the law governing the security right.⁹⁷ Similarly, this provision does not affect any form or registration requirement necessary for the transfer of the security right.⁹⁸

IV. THE RIGHTS AND OBLIGATIONS OF THE ASSIGNOR AND THE ASSIGNEE

A. *Freedom of Contract*

The Convention recognizes the right of the assignor and the assignee to structure their contract in any way they wish to meet their particular needs, as long as they do not affect the rights of third parties.⁹⁹ The Convention also gives legislative strength to trade usages agreed upon by the parties and trade practices established between such parties.¹⁰⁰

B. *Default Rules*

The Convention includes certain default rules that provide a list of issues to be addressed in the contract and, at the same time, fill any gaps left in the contract.¹⁰¹ These default rules deal mainly with representations, notification, and payment.¹⁰²

1. Representations

With respect to representations, the Convention follows generally accepted principles and attempts to establish a balance between fairness and practicality.¹⁰³ For example, the risk of hidden defences on the part of the debtor is placed on the assignor.¹⁰⁴ The Convention follows this approach, in light of the fact that the assignor is the contractual partner of the debtor and thus is in a better position to know whether there will be problems with the contract's performance that may give the debtor rights of defence. The parties may agree to shift the risk of such defences to the

97. *Id.* art. 10(4)-(5). For example, this article would not affect the assignor's obligation to pay damages for the transfer of pledged shares to a foreign assignee. *See id.* art. 10(5).

98. *Id.* art. 10(6).

99. *See id.* arts. 6, 11.

100. *Id.* art. 11(2). In an international assignment, only international usages are binding, unless otherwise agreed by the parties. *Id.* art. 11(3).

101. *Id.* arts. 11-14.

102. *Id.* arts. 12-14.

103. *See id.* art. 12.

104. *Id.*

assignee.¹⁰⁵ Such an approach, however, would increase the cost of credit to the assignor.

2. Notification and Payment

With respect to notification and payment, the main novelty in the Convention lies in the introduction of an independent right of the assignee to notify the debtor and demand payment as of the time of the assignment.¹⁰⁶ This independent right proves essential where the assignee's relationship with the assignor becomes problematic and the assignor is unlikely to cooperate with the assignee in notifying the debtor.¹⁰⁷ The Convention also provides that notification may be given (by the assignee or the assignor) even in violation of an agreement between them not to notify the debtor.¹⁰⁸ Such a notification, however, has only a limited effect. The debtor is discharged if the debtor pays in accordance with such a notification, but the assignee does not obtain any other benefit from such a notification.¹⁰⁹

3. Right to Proceeds

The Convention also introduces a contractual right to proceeds of receivables and *proceeds of proceeds*.¹¹⁰ As between the assignor and the assignee, the assignee may claim proceeds if payment is made to the assignee, to the assignor, or to another person over whom the assignee has priority.¹¹¹ Whether the assignee may retain such proceeds is an issue of priority left to the law of the assignor's location.¹¹²

105. *Id.*

106. *See id.* art. 13(1).

107. In order to protect the debtor that receives a notification from the assignee, the Convention gives the debtor the right to request adequate proof, which the assignee must provide within a reasonable time. *Id.* art. 17(7). If the debtor requests and receives adequate information, the debtor obtains a valid discharge. *Id.* If the assignee is not the rightful claimant, the Convention deals with the matter as an issue of priority distinct from the debtor's discharge. The debtor is discharged if the debtor does all that is required under the Convention. Whether the assignee that received payment will retain the proceeds of such payment is subject to the priority provisions of the Convention and cannot affect the debtor's discharge. *Id.* art. 14(1)(c).

108. *Id.* art. 13.

109. *See id.* art. 13(2). For example, the debtor is not precluded from accumulating rights of set-off even after such notification.

110. *See id.* arts. 5(j), 14.

111. *See id.* art. 14.

112. *See id.* arts. 14, 22.

V. RIGHTS AND OBLIGATIONS OF THE ASSIGNEE AND THE DEBTOR

A. *Debtor Protection*

An assignment does not affect the debtor's legal position without the debtor's consent, unless a provision of the Convention clearly states otherwise.¹¹³ Furthermore, the assignment cannot change the currency or the State in which payment is to be made.¹¹⁴ The Convention does not address whether the currency or place of payment may be changed by agreement between the assignor or the assignee and the debtor.

Beyond generally codifying the principle of debtor protection, the Convention contains a number of specific expressions of this principle. These provisions deal mainly with the debtor's discharge, defences, rights of set-off, and waivers of such defences or rights of set-off.¹¹⁵

B. *Debtor Discharge*

1. Notification

The debtor may be discharged by paying in accordance with the original contract, unless the debtor receives notification of the assignment.¹¹⁶ After receiving such notification, the debtor is discharged only by paying the assignee or other person identified in the notification as the payee, without written instructions to the contrary.¹¹⁷ The notification of the assignment thereby determines the method by which the debtor shall be discharged.¹¹⁸

The notification must be written in a language that is reasonably expected to be understood by the debtor and must reasonably identify the assigned receivables and the assignee.¹¹⁹

2. Notification and Payment Instructions

Payment instructions do not fall within the definition of notification of the assignment.¹²⁰ This means that a notification is effective to alter the conditions of the debtor's discharge, even though it does not include a payment instruction, but is given mainly to freeze the debtor's defences and rights of set-off.

113. *Id.* art. 15(1).

114. *Id.* art. 15(2).

115. *See id.* arts. 15-19.

116. *Id.* art. 17(1).

117. *Id.* art. 17(2).

118. *See id.* art. 17(1)-(2).

119. *Id.* arts. 5(d), 16(1).

120. *See id.* art. 5(d).

3. Knowledge of a Previous Assignment

Whether the debtor knew or ought to have known of a previous assignment is irrelevant. The Convention adopts this approach so as to ensure an acceptable level of certainty as to debtor discharge, which is an important element in pricing a transaction by the assignee/lender. This approach encourages neither bad faith nor fraud. With respect to bad faith, it is always difficult to prove what the debtor knew or ought to have known. As to fraud, the Convention does not override national law provisions or upgrade fraud to a circumstance that needs to be addressed in a commercial law text.

4. Multiple Notifications

The Convention also provides a series of rules concerning multiple notifications or payment instructions relating to the same assignment, to several assignments of the same receivables by the same assignor, and to several subsequent assignments.¹²¹ When the debtor receives several payment instructions that relate 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.¹²² Where several notifications relate to more than one assignment of the same receivables by the same assignor, the debtor is discharged by paying in accordance with the first notification received.¹²³ In the case of several notifications relating to subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.¹²⁴

Additionally, when the debtor receives several notifications relating to parts of, or undivided interests in, one or more receivables, the debtor is discharged in one of two ways.¹²⁵ The debtor must pay either in accordance with the notifications received or in accordance with the Convention as if no notification had been received.¹²⁶ By giving the debtor, in effect, the right to determine whether or not the notification of a partial assignment is effective with respect to debtor discharge, the Convention avoids regulating what the assignor, the assignee, or the

121. *Id.* art. 17(3)-(5).

122. *Id.* art. 17(3).

123. *Id.* art. 17(4).

124. *Id.* art. 17(5).

125. *See id.* art. 17(6).

126. *Id.*

debtor ought to do.¹²⁷ It also avoids creating liability for any damage or loss to the debtor. This approach does not invalidate partial assignments. Rather, it merely suggests that assignors or assignees need to obtain the debtor's consent at the time of the conclusion of the original contract or the assignment, or to structure payments in an appropriate way.¹²⁸

5. Adequate Proof

One of the key debtor-protection provisions allows the debtor to request adequate proof of the assignment when the assignee gives notification without the cooperation or apparent authorization of the assignor.¹²⁹ This right intends to safeguard the debtor from the risk of having to pay an unknown third party. Adequate proof includes any writing with the assignor's signature indicating that the assignment occurred, such as the assignment contract or an authorization for the assignee to notify.¹³⁰ If the assignee does not provide such proof within a reasonable period of time, the debtor may discharge by paying the assignor.¹³¹

6. Payment Under Other Law

In order to protect the debtor, the Convention allows the debtor to discharge its obligation by payment to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund.¹³² For example, if the debtor is discharged under law outside the Convention by complying with a notification that does not meet the Convention's requirements, the debtor is discharged under the Convention as well.¹³³ Similarly, payment to a public deposit fund under law outside the Convention discharges the debtor under the Convention.¹³⁴

127. However, a notification of a partial assignment is effective for the purpose of freezing the debtor's rights of set-off that are unrelated to the original contract and become available to the debtor after receipt of a notification. *See id.* art. 18.

128. *See id.* art. 17(6). For example, the parties may agree on a "lock-box" arrangement. *See id.* art. 24(2).

129. *Id.* art. 17(7).

130. *See id.*

131. *Id.* The Convention does not explicitly address what happens if payment becomes due during the time the debtor expects to receive "adequate proof." In line with the principle of debtor protection, in such a case the debtor may have a right to pay into an escrow account, pay the assignor, or suspend payments. In any case, a legitimate assignee could protect itself by promptly providing "adequate proof" in the form of a contract of assignment or a writing by the assignor.

132. *See id.* art. 17(8).

133. *See id.*

134. *See id.*

C. Debtor Defences and Rights of Set-off

With respect to the debtor's defences and rights of set-off, the Convention codifies generally accepted rules.¹³⁵ The debtor may raise against the assignee any defences or rights of set-off that the debtor could have raised in a claim against the assignor.¹³⁶ Rights of set-off arising from the original contract or a related transaction may be raised against the assignee even if they become available to the debtor after notification.¹³⁷ However, rights of set-off that do not arise from the original contract or a related transaction, and become available to the debtor after notification, may not be raised against the assignee.¹³⁸ The Convention leaves the meaning of "become available" (i.e., whether the right has to be quantified, has matured, or has become payable) to be determined by the applicable law outside the Convention.¹³⁹

D. Waiver of Defences

The debtor may waive its defences and rights of set-off by agreement with the assignor.¹⁴⁰ To warn the debtor of the important consequences of the waiver, the Convention requires a writing signed by the debtor for a waiver or its modification.¹⁴¹ In order to protect the debtor from undue pressure by the assignor, the Convention also prohibits waiver of defences or rights of set-off arising from fraudulent acts of the assignee or based on the debtor's incapacity.¹⁴² Defences or rights of set-off arising from fraudulent acts of the assignor, however, may be waived. The Convention does not address, and thus does not limit, any agreements between the debtor and the assignee by which the debtor may waive its defences or rights of set-off.¹⁴³

E. Modification of the Original Contract

Often, the original contract needs to be modified to meet the changing needs of the parties. The agreement itself determines the *inter partes* effects of such modifications. The Convention addresses the third-

135. See *id.* art. 18.

136. *Id.* art. 18(1).

137. See *id.*

138. *Id.* art. 18(2).

139. See *id.* art. 29.

140. *Id.* art. 19(1).

141. *Id.* art. 19(1), (3).

142. *Id.* art. 19(2).

143. See *id.* art. 19. For instance, the debtor and the assignee may agree to waive certain defences in exchange for an extension of the payment period.

party effects, such as whether the debtor can pay the receivable as modified and be discharged, and whether the assignee can claim payment of the receivable as modified.¹⁴⁴

The basic rule provides that, up until notification of the debtor, any contract modification is effective as against the assignee, and the assignee acquires the receivable as modified.¹⁴⁵ After notification, such a modification is ineffective as against the assignee without the assignee's actual or constructive consent.¹⁴⁶ The Convention does not affect any liability of the assignor towards the assignee under applicable law for breach of an agreement not to modify the original contract.¹⁴⁷

VI. THE RIGHTS OF THE ASSIGNEE AND COMPETING CREDITORS

A. *Priority*

The definition of "priority" includes not only the right of preference but also the determination of whether that right is personal or *in rem*, whether or not it is a security right, and whether any required steps to render the right effective against a competing claimant have been satisfied.¹⁴⁸ The last element in the definition refers directly to those issues regarding the validity of the assignment not settled elsewhere in the Convention.

B. *Competing Claimant*

The Convention defines "competing claimant" so as to ensure that the Convention covers all possible conflicts of priority.¹⁴⁹ It includes other assignees, even if both the assignment and the receivable are domestic and thus outside the Convention's scope.¹⁵⁰ The definition also includes creditors with rights in other property extended by law to the assigned receivable, such as creditors with a retention of title in goods extended by law to the receivables from the sale of the goods.¹⁵¹

144. *See id.* art. 20.

145. *Id.* art. 20(1).

146. *Id.* art. 20(2)(a).

147. *See id.* art. 20(3).

148. *Id.* art. 5(g).

149. *See id.* art. 5(m).

150. *Id.* art. 5(m)(i).

151. *Id.* If the right in goods is extended to receivables by contract, their assignment falls within the Convention by virtue of article 2(a). *See id.* art. 2(a).

C. *The Law Applicable to Priority*

The main priority rules of the Convention are conflict-of-laws rules.¹⁵² A set of optional substantive law priority rules, which States may opt into by declaration, supplements these conflict-of-laws rules.¹⁵³ The value of the Convention's conflict-of-laws rules lies in the fact that, deviating from traditional approaches, they centralize all priority conflicts to the law of the assignor's location.¹⁵⁴ Because "location" means the place of central administration, if the assignor has a place of business in more than one State, the Convention thereby refers priority conflicts to the law of a single, and easily determinable, jurisdiction.¹⁵⁵ In addition, the main insolvency proceeding with regard to the assignor will be opened in this jurisdiction, a result that makes conflicts between secured transactions and insolvency laws easier to address. The uncertainty currently existing in the world with respect to the law applicable to priority highlights the value of the conflict-of-laws rules of the Convention.¹⁵⁶

152. *See id.* arts. 22-25, 30.

153. *Id.* Annex, arts. 1-2, 6-9.

154. *See id.* arts. 22, 30. The Convention does not address explicitly the question of a change in the location of the assignor. This gap is to be filled in accordance with the principles of the Convention (see art. 7(2)). Article 22 cannot meet its objective of providing certainty and facilitating receivables financing (see preamble) if the relevant time for the determination of the location of the assignor is not the time when the contract of assignment is concluded (see also art. 1(1)(a)). A Secretarial suggestion to deal explicitly with the issue of assignor relocation was not accepted by the Working Group. The thrust of that suggestion was to preserve priority under the law of the initial location (at the time of the assignment) under certain conditions (e.g. for a period of [six months], until priority would have ceased, etc.). At the twenty-ninth session of the Working Group, another suggestion was also made, namely to specify the time ("the time of the first assignment"; see A/CN.9/455, para. 19 in [1999] 30 Y.B. COMM'N INT'L TRADE LAW 55). The Commission chose not to adopt either suggestion. The reason was that either suggestion would have complicated the provision unnecessarily. It was felt that the matter could be addressed with the appropriate definition of the terms "location" and "priority" (see *ibid.*, A/CN.9/455, para. 21). The assumption was that once location was defined by reference to central administration, the issue of relocation would arise only in exceptional circumstances and did not need to be explicitly addressed.

155. *See id.* art. 5(h).

156. For example, it is not clear whether article 12 of the Rome Convention covers issues of priority. *See* Teun H.D. Struycken, *The Proprietary Aspects of International Assignment of Debts and the Rome Convention, Article 12*, 24 LLOYD'S MAR. & COM. L.Q. 345 (1998). Assuming that it does, it is not clear whether it refers them to the law agreed upon by the parties or to the law governing the original contract. *See id.* at 348-49. In any case, neither solution is workable in the increasingly common case of bulk assignments of all present and future receivables. Using the law agreed to by the parties results in the application of several laws regardless of several assignments; in any case, it is not appropriate to refer third-party contract effects to the law agreed upon by the parties to the contract. Referring to the law governing the original contract creates the same problem in the case of several receivables arising from various contracts. In addition, it does not allow parties to determine the applicable law for future

D. Mandatory Law and Public Policy Exceptions

The Convention deals with conflicts between a priority rule, as determined by the Convention, and the public policy or mandatory law of the forum State in several steps.¹⁵⁷ The first step allows the applicable priority rule to be set aside only if its application is “*manifestly* contrary to the public policy of the forum State.”¹⁵⁸ The second step provides that a mandatory law of the forum may set aside a priority rule of the applicable law, but may not apply in place of the displaced rule.¹⁵⁹ Instead, the balance of the applicable law priority rules will apply.¹⁶⁰ The reason for this novel approach is that replacing the applicable priority rules with the priority rules of the forum State would create uncertainty, thereby negatively affecting the cost of credit. One exception to this rule exists: in the case of insolvency, super-priority rules of the forum, in favour of the State for taxes or employees for wages, may apply instead of the applicable priority rules.¹⁶¹

E. Law Applicable to Priority in Proceeds

The Convention does not contain a general rule on the law applicable to priority in proceeds. The reason lies in the differences between legal systems with respect to the nature and the treatment of rights in proceeds.¹⁶²

However, the Convention contains a limited proceeds rule, which is intended to facilitate practices such as securitization and undisclosed

receivables at the time of assignment. For a critical evaluation of the present status of the law and an analysis of the merits of a place-of-assignor-based solution, see Eva-Maria Kieninger, *Das Statut der Forderungsabtretung im Verhältnis zu Dritten*, 62 RABELS ZEITSCHRIFT 678 (Max Planck Institut 1998). See also Struycken, *supra*.

157. See Convention, *supra* note 1, art. 23.

158. *Id.* art. 23(1) (emphasis added). The attribute manifestly is used to emphasize that public policy exceptions should be interpreted restrictively and be invoked only in exceptional cases of fundamental importance to the forum. See *Draft Guide to Enactment of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: Note by the Secretariat*, U.N. GAOR, U.N. Doc. A/CN.9/436, reprinted in [1997] 28 Y.B. COMM'N ON INT'L TRADE L. 107, U.N. Doc. A/CN.9/SER.A/1997.

159. See Convention, *supra* note 1, art. 23(2).

160. See *id.*

161. See *id.* art. 23(3).

162. See *Report of the Working Group on International Contract Practices on the Work of Its Twenty-Third Session*, U.N. Comm'n on Int'l Trade L., 33rd Sess., ¶50, U.N. Doc. A/CN.9/466 (1999), available at <http://www.uncitral.org>. In some legal systems the rights in receivables are extended to proceeds, since they are considered, in effect, the same asset in another form. In other legal systems, however, no such right in proceeds is recognized, since proceeds are considered as distinct assets from the receivables from which they arise.

invoice discounting.¹⁶³ In such practices, payments are channelled to a special account held by the assignor, separately from its other assets, on behalf of the assignee.¹⁶⁴ The Convention provides that, if the assignee has priority over other claimants with respect to the receivables, it has the same priority with respect to their proceeds, provided that the proceeds are kept by the assignor on behalf of the assignee and are reasonably identifiable from the other assets of the assignor.¹⁶⁵ Parties wishing to avoid problems under various national laws with respect to rights in proceeds would be well advised to structure their payments in such a way that they fall under this “lock-box provision.”

F Substantive Law Priority Rules

In order to obtain the benefit of the Convention’s priority rules, parties will have to structure their transactions in a way that refers priority questions to the appropriate law. The question remains as to what should happen if this is impossible, or is only possible at a considerable cost, and the applicable law has insufficient priority rules.

In order to address this question, the Convention offers model substantive priority provisions.¹⁶⁶ States have a choice between three substantive priority systems.¹⁶⁷ One is based on filing, another is based on notification of the debtor, and a third is based on the time of assignment.¹⁶⁸ States that wish to adjust their legislation may, by declaration, opt into one of these priority regimes.¹⁶⁹ The assumption is that, in an environment of free competition between legal regimes, the one with the most economic benefits will prevail.¹⁷⁰

VII. INDEPENDENT CONFLICT-OF-LAWS RULES

A. Scope of Application

The Convention contains a set of conflict-of-laws rules that may apply independently of any territorial link with a State party to the

163. *See id.* art. 24(2).

164. *Id.* art. 24(2)(b).

165. *Id.* art. 24(2).

166. *See id.* Annex, arts. 6-9.

167. *See id.*

168. *Id.*

169. *Id.* art. 42.

170. For a discussion of the importance of a registration system for cross-border receivables financing, see Steven L. Schwarcz, *Towards a Centralized Perfection System for Cross-Border Receivables Financing*, 20 U. PA. J. INT’L ECON. L. 455 (1999).

Convention.¹⁷¹ In cases where the assignor, or the debtor, is located in a State party to the Convention, or the law governing the original contract is the law of a State party to the Convention, the independent conflict-of-laws rules may apply to fill gaps in the Convention, unless an answer may be derived from the principles underlying the Convention.¹⁷² If the assignor, or the debtor, is *not* located in a State party to the Convention, or the law governing the receivable is *not* the law of a State party, the independent conflict-of-laws rules may apply to transactions to which the other provisions of the Convention would not apply.¹⁷³ Such transactions need to be international, as defined in the Convention, and not be excluded from the scope of the Convention.¹⁷⁴

The independent conflict-of-laws rules of the Convention are subject to a reservation.¹⁷⁵ This reservation was allowed to ensure that States that wished to adopt the Convention would not be prevented from doing so merely because the independent conflict rules were inconsistent with their own conflict rules.

B. Form of the Contract of Assignment

In the case of a contract of assignment concluded between persons located in the same State, formal validity of the contract of assignment is subject to the law of the State which governs the contract, or of the State in which the contract is concluded.¹⁷⁶ When a contract of assignment is concluded between persons located in different States, the contract meets the requirements for formal validity if it satisfies the formal requirements of either the law which governs the contract or the law of one of those States.¹⁷⁷

C. Law Applicable to the Mutual Rights and Obligations of the Assignor and the Assignee

The mutual rights and obligations of the assignor and the assignee are subject to the law of their choice.¹⁷⁸ The parties' freedom of choice is subject to the public policy of the forum and the mandatory rules of the

171. See Convention, *supra* note 1, arts. 26-32.

172. See *id.* arts. 7(2), 26.

173. See *id.* art. 1(4).

174. See *id.* arts. 3-4.

175. *Id.* art. 39.

176. *Id.* art. 27(1).

177. *Id.* art. 27(2).

178. *Id.* art. 28(1).

forum or a closely connected third country.¹⁷⁹ In the absence of a choice by the parties, the law of the State with which the contract of assignment is most closely connected governs.¹⁸⁰ The “close connection” test is unlikely to have much impact in view of the fact that in the vast majority of cases parties choose the applicable law.

D. Law Applicable to the Rights and Obligations of the Assignee and the Debtor

The relationship between the assignee and the debtor, the conditions under which the assignment can be invoked as against the debtor, and contractual limitations on the assignment are subject to the law governing the original contract.¹⁸¹ The fact that most of these issues are covered by the substantive law rules of the Convention limits the impact of this provision. However, certain issues were deliberately not covered in the substantive law rules of the Convention, such as the question as to when a right of set-off is available to the debtor under article 18.¹⁸² Article 29 governs that particular issue, at least with respect to transaction set-off (i.e., set-off arising from the original contract or another contract that was part of the same transaction).¹⁸³ Another question falling within the scope of article 29 is the effect of antiassignment clauses on assignments of receivables to which article 9 does not apply either because they relate to assignments of nontrade receivables or because the debtor is not located in a State party to the Convention.¹⁸⁴

Statutory limitations, however, are not covered by article 29.¹⁸⁵ While some statutory limitations aim to protect the debtor, many statutory limitations are intended to protect the assignor. In the absence of a way to draw a clear distinction between the various types of statutory limitations, it would be inappropriate to subject them to the law governing the original contract. In any case, with a few exceptions, the Convention does not affect statutory limitations.¹⁸⁶

179. *Id.* arts. 31-32.

180. *Id.* art. 28(2).

181. *Id.* art. 29.

182. *See id.* art. 18(2).

183. *See id.* art. 29.

184. *See id.* arts. 9, 29.

185. *See id.* art. 29.

186. *Id.* art. 8(1), (3).

E. Law Applicable to Priority

The Convention refers issues of priority to the law of the assignor's location.¹⁸⁷ The value in this rule is that it may apply to transactions to which article 22, which it repeats, does not apply because of the absence of a territorial connection between an assignment and a State party to the Convention.¹⁸⁸

VIII. FINAL PROVISIONS

The Convention will enter into force upon ratification by five States.¹⁸⁹ States may exclude further practices by declaration, but not practices relating to "trade receivables" as they are broadly defined in article 9(3).¹⁹⁰ The Convention prevails over the Ottawa Convention.¹⁹¹ However, this does not affect the application of the Ottawa Convention to the rights and obligations of a debtor if the Convention does not apply to that debtor.¹⁹² For example, the Convention would not prevail where the debtor is not located in a State party to the Convention or the law governing the original contract is not the law of a State party to the Convention.¹⁹³

IX. CONCLUSION

With the right mix of substantive and conflict-of-laws rules, the Convention could have "a dramatic impact on removing significant legal barriers in the financing of international trade"¹⁹⁴ and has been rightly hailed as "the first step toward globalization of asset-based lending."¹⁹⁵

187. *Id.* art. 30.

188. *See* discussion *infra* Part VII.A.

189. Convention, *supra* note 1, art. 45(1).

190. *Id.* art. 41.

191. *Id.* art. 38(2).

192. *Id.*

193. *See id.*

194. Harry C. Sigman & Edwin E. Smith, *The Draft UNCITRAL Convention on Assignment of Receivables in International Trade: A Summary of the Key Provisions as Completion Draws Near*, 33 UCC L.J. 344, 356 (2001).

195. Michael B. Carsella, *UNCITRAL Update*, 55 THE SECURED LENDER 6 (1999). The potential of the United Nations Convention on the Assignment of Receivables in International Trade is generally recognized by commentators. *See* Dorothee Janzen, *Der UNCITRAL-Konventionentwurf zum Recht der Internationalen Finanzierungsabtretung*, 63 RABELS ZEITSCHRIFT 368 (Max Planck Institut 1999); I. Lojendio Osborne, *Proyecto de convención internacional sobre cesión de créditos, Estudios de derecho mercantil: homenaje al Profesor Justino F. Duque Domínguez*, 2 VALLADOLID 1251 (1998); Jean-Pierre Mattout, *Les Besoins de la Pratique*, REVUE DE DROIT BANCAIRE ET DE LA BOURSE, *supra* note 7, at 165; Schwarcz, *supra* note 170; Jean Stoufflet, *Les Contraintes Juridiques Actuelles*, REVUE DE DROIT BANCAIRE ET DE LA BOURSE, *supra* note 7, at 169.

The Convention eliminates or reduces a number of obstacles to cross-border transactions relating mainly to certain statutory limitations, and to contractual limitations. The validation of assignments of future receivables, bulk assignments, and assignments made despite antiassignment clauses in the relevant original contracts is particularly significant in this regard.

In addition, the Convention promotes certainty with respect to a number of substantive law issues, such as those relating to the debtor's rights and obligations. Of particular importance is the structuring of the debtor's discharge around an objective criterion (i.e., written notification) and the separation of the debtor's discharge from issues of priority, as well as the preservation of the debtor's rights and defences.

Moreover, the Convention breaks new ground in centralizing all priority issues under the law of the assignor's location. One of the most important achievements of the Convention may well prove to be the referral of priority in proceeds, covered by a so-called "lock-box arrangement," to the law of the assignor's location. This rule may significantly facilitate receivables financing in countries in which property rights in proceeds are not recognized.

Furthermore, the Convention's independent conflict-of-laws rules provide useful guidance in filling gaps in the Convention and add value to the Convention to the extent they unify generally applicable private international law rules.

Finally, the optional substantive law priority rules contained in the Annex to the Convention usefully supplement the private international law priority rules for those States desiring to modernize or harmonize their laws.